***Organisational Development, Human Resources and Performance***

***Whistleblowing Policy (Confidential Reporting)***

Version 4

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| 0.3 | February 2012 | Update required as part of Risk Management Toolkit for Audit Scotland. |
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1 INTRODUCTION

* 1. EXECUTIVE SUMMARY

This policy encourages an employee to feel confident in raising serious concerns and to question and act upon concerns about malpractice. It provides avenues for employees to raise those concerns and receive feedback on any action taken. It ensures that an employee receives a response to their concerns and that they are aware of how to pursue them if they are not satisfied. It also reassures the employee that they will be protected from possible detriment or dismissal or victimisation if they have a reasonable belief that they have made any disclosure in good faith.

* 1. BACKGROUND

It is in the interests of all concerned that disclosures of wrongdoing or irregularity are dealt with properly, quickly and discreetly. This includes the interests of Inverclyde Council, its employees, any person(s) who is/are the subject of such disclosures, and the person making the disclosure.

Confidential Reporting, also known as Whistleblowing, is the disclosure or communication of information about possible malpractice by individuals, services, government bodies, corporations or public and private organisations (including contractors, etc.), either internally or externally to an outside authority. The term malpractice has equal validity in relation to breaches of civil and criminal law.

* 1. STRATEGIC CONTEXT

This policy supports the Council in the delivery of the Council Plan 2023/28 in relation to the following outcomes:

* High quality and innovative services are provided, giving value for money
* Our employees are supported and developed

1.4 LINKS TO LEGISLATION

This policy takes into account the requirements of the Public Interest Disclosure Act 1998. The Act, which introduces specific rights into the Employment Rights Act 1996, provides an employee or worker with potential protection from detriment and dismissal for making a ‘qualifying disclosure’. However, the Act encourages workers to raise matters internally with their employers initially and disclosures will only be protected if they meet strict legal requirements (See Annex A for further details).

* 1. AIM

This policy aims to:

* + Encourage an employee to feel confident in raising serious concerns and to question and act upon concerns about malpractice
  + Provide avenues for employees to raise those concerns and receive feedback on any action taken
  + Ensure that an employee receives a response to their concerns and that they are aware of how to pursue them if they are not satisfied
  + Reassure the employee that they will be protected from possible detriment or dismissal or victimisation if they have a reasonable belief that they have made any disclosure in good faith
  1. LINKS TO CORPORATE GROUPS

This policy links to the Trade Union Liaison Group, which is a mechanism for local trade union representatives to meet with Human Resources and Organisational Development teams.

1. Scope

This policy is complementary to and forms part of the Council’s Code of Conduct for Employees. The Council has made it clear to employees through the Code of Conduct, the standards of propriety and good practice expected of them.

This policy is wider in scope than the ‘qualifying disclosures’ of the Public Interest Disclosure Act, and an employee’s concern about malpractice, may in this context include a reasonable belief that one or more of the following has occurred or is likely to occur:

* conduct which is a criminal offence or breach of law
* disclosures related to miscarriage of justice
* dangers relating to Health and Safety, including risks to the public as well as other employees
* damage to the environment
* the unauthorised use of public funds
* fraud and corruption
* sexual or physical abuse of clients, or
* other unethical conduct (e.g. obligations under Code of Conduct, Standing Orders, financial and procurement regulations).

Employees are often the first to realise that there may be something seriously wrong within their Service or the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues, their managers or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

Inverclyde Council is committed to the highest possible standards of openness, honesty and accountability. In line with that commitment, it expects employees and others with whom it deals, who have serious concerns about any aspect of the Council’s work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.

This policy compliments the Council’s Anti-Fraud,Corruption and Irregularity Policy and makes it clear that any employee can raise concerns without fear of victimisation, subsequent discrimination or disadvantage. This confidential reporting policy is intended to encourage and enable employees to raise serious concerns within their Service/Council rather than ignoring a problem or ‘blowing the whistle’ outside to the media or external bodies.

This policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders, drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, residential care homes.

These procedures are in addition to the Council’s Complaints Procedure and other statutory reporting procedures operating in certain Services.

Managers are responsible for making service users aware of the existence of these procedures.

There are existing procedures in place to enable an employee to lodge a grievance relating to their own employment. This Confidential Reporting Policy is intended to cover major concerns that fall outside the scope of other Council Grievance Policy & Procedures. These include:-

• conduct which is an offence or a breach of civil law

• disclosures related to miscarriages of justice

• Health and Safety risks, including risks to the public as well as other employees

• damage to the environment

• the unauthorised use of public funds

• possible fraud and corruption

• sexual or physical abuse of clients; or

• other unethical conduct.

Thus, any serious concerns that an employee has about any aspect of service provision or the conduct of elected members or officers of the Council or others acting on behalf of the Council can be reported under this Confidential Reporting Policy. This may be about something that:

* + - makes an employee feel uncomfortable in terms of known standards, their experience or the standards the employee believes the Council subscribes to; or
    - is outwith the scope of the Council’s Standing Orders, or other policies or procedural arrangements
    - falls below the established standard of practice; or
    - amounts to improper conduct

This policy does not replace the Council’s Complaints Procedure.

1. **POLICY CONTENT**
   1. SAFEGUARDS FROM HARASSMENT OR VICTIMISATION

The Public Interest Disclosure Act 1998 provides an employee or worker with potential protection from detriment and dismissal for making a ‘qualifying disclosure’. Detriment means someone experiences one or both of the following because they made a disclosure:

* being treated worse than before, or
* having their situation made worse.

The Council is committed to good practice and high standards and wants to be supportive of all its employees.

The Council recognises that a decision to report a concern can be a difficult one to make, not least because of the fear of reprisals from those responsible for the malpractice.

The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect employees when they raise a concern in good faith.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect an employee. This does not mean that these procedures will be halted as a result of an employee’s disclosures.

* 1. CONFIDENTIALITY

All concerns will be treated in confidence and every effort will be made not to reveal the identity of an employee if they so desire. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual may be required as part of the evidence. Further, at an appropriate time, an employee may need to come forward as a witness.

* 1. ANONYMOUS ALLEGATIONS

This policy encourages employees to put their names to allegations whenever possible.

Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.

In exercising this discretion, the factors to be taken into account would include:

* the seriousness of the issues raised
* the credibility of the concern; and
* the likelihood of confirming the allegation from attributable sources.
  1. UNTRUE ALLEGATIONS

In the event that no conclusion can be drawn, and the employee making the report acted in good faith and not maliciously or for the purposes of personal gain, the senior officer will advise the employee of the outcome of the investigation, highlighting the discrepancy between the initial report and the findings. The employee will not suffer any detriment as a result of the allegation made.

Where it is proved that false allegations are made deliberately or maliciously, this will be viewed seriously and the complainant may be liable to appropriate action.

* 1. HOW TO RAISE A CONCERN

For minor issues already covered by the Council’s ***Code of Conduct for Employees*** (e.g., personal use of Council equipment, abuse of flexi-time), employees should raise concerns with their immediate supervisor.

If an employee wishes to report a matter which falls into one of the categories outlined in Section 2, the employee should contact their Head of Service, Corporate Director, or, the Chief Executive. Where this is not appropriate contact should be made with the Council’s Monitoring Officer. The initial contact can be made either in writing or in person.

Alternatively, an employee may utilise the phone number, email address or online form operated by Internal Audit and Corporate Fraud as follows:

**01475 712184**

**Email:** [**corporatefraud@inverclyde.gov.uk**](mailto:corporatefraud@inverclyde.gov.uk)

**Online:** [**www.inverclyde.gov.uk/reportingfraud**](http://www.inverclyde.gov.uk/reportingfraud)

The employee may not wish to make any further contact or divulge their identity following an initial report. However providing personal details can be beneficial for the following reasons:

* If Internal Audit can advise management that the name of the Whistleblower is known, then they are likely to take the report more seriously
* Further information may be needed from the caller to assist with conducting a proper investigation

The earlier the concern is expressed, the easier it is to take action.

Although an employee is not expected to prove beyond doubt the truth of an allegation, the employee will need to demonstrate to the person contacted that there are reasonable grounds for their concern.

Advice and guidance on how matters of concern may be pursued can be obtained from the Head of Organisational Development, Policy and Communications.

An employee may consider discussing their concerns with a colleague first, on the grounds that they may find it easier to raise the matter if there are two (or more) employees who have had the same experience or concerns.

Employees may invite their Trade Union representative or an appropriate member from their professional organisation to be present at any meetings or interviews in connection with the concerns they have raised.

* 1. HOW THE COMPLAINT WILL BE HANDLED

The manager receiving the report will then arrange an initial interview to make an assessment of the issues. The interview will be conducted either by the manager to whom the report was made, or a nominated senior officer, and will be confidential. Where reporting is via Internal Audit and Corporate Fraud, that team will deal directly with the matter, where it is clear that it is not related to fraud or irregularity, the Head of Service will be contacted directly to look into what is more likely to be an operational matter and HR should be involved if there is the potential for the disciplinary process to be invoked.

At this stage the employee will be given an undertaking about confidentiality. In the event that anonymity cannot be guaranteed, the employee will be given assurances about protection from detriment or dismissal as a result of having made this disclosure. Support will be available at all times from Organisational Development, Policy and Communications.

The following criteria will be used to decide whether the complainant can remain anonymous:

(a) The seriousness and nature of the issues raised

(b) The likelihood of confirming any allegation from other attributable sources

(c) The need for evidential statements as part of any investigation

(d) The credibility of the allegation, and, in all the circumstances, the need to allow a person against whom an allegation is made to test the veracity and substance of it, and

(e) The likelihood, in all the circumstances, of unwarranted reprisals being directed against a person who makes a disclosure.

The employee may also be asked to make a written statement if this has not already been done. This may be disclosed to a third party. For example:

* where an offence may have been committed and there is considered to be an obligation to report the matter to the Police or Procurator Fiscal, or to co-operate with enquiries instituted by the Police or the Fiscal.
* otherwise where there would be any failure on the part of the Council to comply with any legal obligation on them, or
* to a professional body.

The employee will also be advised of the name of the nominated officer who will conduct the investigation into the information received.

Within 10 working days of the interview, the investigating officer will submit a report to the manager/senior officer who will advise the employee what further action will be taken. If no further action is to be taken, the employee will be notified and given reasons in writing for this decision. A copy of the initial report and recommendations will be given to the Head of Service.

If a more detailed investigation is required, the investigating officer will discuss with the manager/senior officer how this would best be handled. A decision will be made as to whether the subject(s) of the complaint should be advised at this stage.

On conclusion of the further investigation, the findings will again be assessed by the manager/senior officer who will consider what appropriate action should be taken. A copy of the final report and recommendations will be given to the Head of Service. If the Head of Service wishes the matter to be investigated under the disciplinary procedures, Human Resources (HR) must be notified.

Thereafter, the manager/senior officer will contact the employee and advise him/her in writing of the outcome of the investigation. If the matter will be referred to HR for an investigation under the disciplinary procedures then HR should be contacted before the employee is advised of the outcome. Should the employee have concerns at these findings, he/she may submit these to the Chief Executive. Once the Chief Executive has made a determination, if the employee feels that the concerns have not been addressed she/he should refer the matter to the Council’s Monitoring Officer.

The employee may request an update from the manager/senior officer at any stage of the investigation.

* 1. TAKING CONCERNS OUTWITH THE COUNCIL

This policy is intended to provide employees with a way to raise concerns within the Council. If an employee feels it is appropriate to take the matter outwith the Council, then the Council may provide advice and guidance to the employee on their rights, etc., under the Public Interest Disclosure Act 1998. The following are possible contact points:

* the external auditor
* the Trade Unions
* relevant professional bodies or regulatory organisations
* the Police
* the Health & Safety Executive
* the employee’s solicitor
* the employee’s local elected Member (if the employee lives in the area of the Council),
* Member of Parliament or Member of Scottish Parliament.

If employees do take the matter outwith the Council, they need to first ensure that they are not disclosing confidential or privileged information. This can be checked with the Head of Organisational Development, Policy and Communications in consultation with the Head of Legal, Democratic, Digital and Customer Services, who will advise on ways to proceed.

Contact with the media is not a protected disclosure for the purposes of employment law. Any employee contacting the media will no longer enjoy the protections within this policy and may be subject to disciplinary action.

* 1. FURTHER ADVICE

Further advice on the application of the policy can be obtained from the Head of Organisational Development, Policy and Communications.

**4 ROLES AND RESPONSIBILITIES**

4.1 THE CHIEF EXECUTIVE

The Chief Executive has overall responsibility for the maintenance and operation of this policy. The Chief Executive will maintain a record of concerns raised and the outcomes (but in a form which does not endanger employee confidentiality) and will report as necessary to the Council.

4.2 DIRECTORS

Directors are responsible for setting the strategic direction of their Service consistent with the principles of best value.

4.3 HEADS OF SERVICE

Heads of Service should promote a culture whereby employees are supported to report wrongdoing or irregularity.

4.4. SERVICE MANAGERS

Service Managers should ensure employee awareness of key policies, including the Confidential Reporting Policy.

4.5 OFFICERS

Officers should be alert to the potential for wrongdoing or irregularity and use the policy to report incidents.

**5 IMPLEMENTATION**

5.1 TRAINING

Specific training on the content of this policy is not planned. However it will be incorporated into wider training on Human Resources policies as appropriate.

5.2 COMMUNICATION OF THE POLICY

The policy will be available on ICON, the intranet, as well as publically via the Council website.

**6 RISK**

6.1 LEGISLATIVE RISK

This policy takes into account the requirements of the Public Interest Disclosure Act 1998. The Act, which introduces specific rights into the Employment Rights Act 1996, provides an employee or worker with potential protection from detriment and dismissal for making a ‘qualifying disclosure’.

6.2 WIDER RISKS

Without this policy there is a risk that wrongdoing or irregularity is not reported and therefore not effectively dealt with. This, in turn, could expose the Council to wider financial, health and safety, reputational or legal risks.

**7 EQUALITIES**

7.1 CONSULTATION AND ENGAGEMENT

This policy was updated in consultation with the cross Service Workforce Development Group, Internal Audit and the Trade Union Liaison Group.

7.2 EQUALITY IMPACT ASSESSMENT

This policy was assessed in relation to the Council’s equality duties. All employees are entitled to use, access and be subjected to the Whistleblowing Policy and Procedure and there is no evidence to indicate that this policy could affect employees differently or less favourably, on the grounds of their Protected Characteristics.

**8 APPENDICES**

8.1 PUBLIC INTEREST DISCLOSURE ACT 1998

**Introduction**

The Public Interest Disclosure Act (PIDA), took effect on 2nd July 1999. Its provisions protect persons who disclose certain types of information, to certain individuals in certain circumstances.

**Workers**

Individuals covered by the Act include employees, casual/sessional workers, freelancers and agency staff. PIDA also extends the meaning of workers to include individuals working under training contracts.

**Qualifying Disclosures**

A qualifying disclosure is a disclosure which in the reasonable belief of the worker relates to one or more of the following:

1. A criminal offence has been committed, is being committed, or is likely to be committed;
2. That a person has failed, is failing, or is likely to fail to comply with a particular legal obligation;
3. A miscarriage of justice has occurred, is occurring, or is likely to occur;
4. The health and safety of any individual has been or is likely to be compromised;
5. The environment has been, is being, or is likely to be damaged; or
6. Information indicating the occurrence of any of the above has been, is being, or is likely to be deliberately concealed.

**Exclusions**

Workers who make disclosures will not qualify for protection if either: the person commits an offence by making it, e.g. a breach of the Official Secrets Act, or, it is a disclosure in respect of which legal professional privilege would apply.

**Qualifying Procedures**

The worker making a protected disclosure must make it in one of the six specified circumstances to remain protected under PIDA. The circumstances can be categorised as:

1. disclosure to employer, or person legally responsible or an appropriate

individual authorised by the employer to receive disclosures.

1. disclosure to a legal advisor.
2. disclosure to a government minister, where the worker’s employer is appointed by a minister.
3. disclosure to a prescribed person.

1. disclosure to an individual unconnected with the organisation (external

disclosures), e.g., police or media.

1. disclosure in exceptionally serious cases (all disclosures must be made “in good faith” with the exception of a disclosure to a legal advisor).

**Disclosure to Prescribed Persons**

Prescribed persons or bodies prescribed by an order made by the Secretary of State. PIDA currently lists more than 30 regulatory bodies to whom protected disclosures may be made. These include the Data Protection Register, the Environment Agency and the Health and Safety Executive.

**External Disclosures**

Workers will only be protected if they have previously raised the matter with the employer or prescribed person, or have not done so because they reasonably believe they will be victimised. If there is no prescribed person, there must be a reasonable belief that a complaint to the employer would result in evidence being concealed or destroyed. Alternatively, the worker has already disclosed this information to the employer or prescribed person. The worker must also make the disclosure in good faith, in the reasonable belief that the allegations are substantially true, and must not act for personal gain. It must also be “reasonable in all the circumstances” of the case to make the disclosure.

The Act stipulates that the following factors should be taken into account when

assessing reasonableness:

* the identity of the person to whom the disclosure is made.
* the seriousness of the concern.
* whether the matter is continuing or is likely to occur in the future.
* whether the disclosure is made in breach of a duty of confidentiality owed by the employer to another person, e.g., to protect client confidentiality

Further details and guidance regarding this Act can be obtained from Human Resources.