



Draft Disclosure ('Whistleblowing') Code

Disclosure Code

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1. Introduction

- 1.1 This Code sets out how the Council will afford protection to anyone who in good faith brings to the Council's attention suspicions that the Council may be subject to wrong-doing.
- 1.2 Under the provisions of the Local Government and Housing Act 1989, Councils have a duty to appoint a Monitoring Officer to ensure the lawfulness and fairness of Council decision making. The Monitoring Officer effectively serves as the guardian of the Council's Constitution and the decision-making process. He is responsible for advising the Council on the legality of its decisions and providing guidance to Councillors and officers on the Council's Constitution and its powers.
- 1.3 Councillors are collectively the ultimate policy-makers and carry out a number of strategic and corporate management functions. They are involved in the decision-making process and participate in the governance of the Council.
- 1.4 The Council has comprehensive controls set out in rules, regulations, quality standards, practices and procedures intended to prevent and deter wrong-doing, but wrong-doing will nonetheless occur. Quite often a tip-off is what alerts any organisation. Information from anyone who has evidence of wrong-doing or potential wrong-doing is important in helping detect instances where preventative and deterrent measures have failed. This Code therefore applies both to everyone external to or within the Council.
- 1.5 The Chief Executive writes each year to all employees, drawing attention to the need to declare any personal and financial interests. The letter also refers to the importance of reporting any suspicions of wrong-doing that might impact directly on the interests of the Council (and thus on the public the Council serves), whether the perpetrators are Council employees, Members of the Council, members of the public, or outside bodies.
- 1.6 The Public Interest Disclosure Act 1998 (the PID Act) provides legal protection, in defined circumstances, for 'whistle-blowers'. Full details of the Act are readily accessible on the Internet. In very simple terms, for a disclosure to be protected, it must be in the public interest and made in good faith, and, if the employer has a procedure for dealing with such allegations internally, that procedure should be followed, as a first recourse. If the employer fails to take appropriate action, the Act

then provides protection against any reprisals by the employer for certain forms of disclosure outside the employing body. All public bodies are expected to have such a procedure.

2. Aims and Scope of the Disclosure Code

2.1 The aims of the Disclosure Code (the Code) are:

- to endorse and comply with the Government's requirement (see Section 1.3);
- to define a procedure by which any employee is able to report any instances where he or she has reason to believe that wrong-doing has occurred, is on-going, or is likely to occur, and can do so in strict confidentiality, and thus with an immediate safeguard against reprisals of any kind;
- to show how the further protection afforded by the Act will be provided in practice;
- to make the procedure (although not the full protection of the law) available to others;
- to guide anyone thinking about whether and how to make a disclosure; and
- to specify how disclosures will subsequently be handled.

2.2 Examples (but not a comprehensive list) of wrong-doing covered by the Act include:

- a criminal offence or breach of law
- damage to the environment
- the unauthorised use of public funds
- miscarriages of justice
- risks to health and safety
- fraud and corruption.

2.3 The Code extends further, to cover any wrong-doing that impacts adversely on the Council, whether one comprised in the above list (which is not comprehensive) or one of comparable seriousness, by

any individual person, group or organisation either within or external to the Council.

2.4 This procedure is the default for handling disclosures if no specific mechanisms are prescribed elsewhere in the Council's Constitution. Examples of specific mechanisms include:

- most concerns about health and safety on the Council's property and in its work-places are best dealt with through the Council's Safety Committee;
- suspicions of council tax and/or benefit fraud should be reported anonymously by use of the 24 hour freephone service 0800 373 852, or by submitting an on-line fraud reporting form;
- complaints about a breach of the Members' Code of Conduct should be made to the Council's Monitoring Officer (but see also Section 2.10).

Although the Code provides for disclosures to be redirected, when necessary, into other channels, the use of the correct channel initially will save time and may avoid the Council having to seek additional information or a resubmission.

2.5 It may be that the person making the disclosure sees no need to maintain the strict confidentiality which this present Code offers. In that case, the disclosure may still be made through this procedure, but with an explicit and irrevocable renunciation of the safeguard of confidentiality. To make a disclosure openly may facilitate the subsequent investigation. The protection of the law and of the Council's own provisions (which extend further than the Act requires) will remain, although more likely to be needed and more difficult to enforce. The Council will still operate the procedure with due discretion in disclosing any personal details about the case.

2.6 Members of the public, contractors, Council suppliers and other persons or organisations who have dealings with the Council, are encouraged to raise any issue that concerns them regarding wrongdoing affecting the Council. This Code is available for their use, and any Council Member or employee informally approached by an outside person who is thinking about making a disclosure is advised to draw it to that person's notice (see especially Section 4).

- 2.7 This Code is not intended for use by Council employees in cases of personal grievances. The Council has a separate Grievance Procedure. Occasionally, wrong-doing, properly dealt with through the Disclosure Code, might also give rise to a personal grievance: if, for example, an employee were to be ordered to become involved in, or became the victim of, an act of wrong-doing by another employee. Or wrong-doing causing personal grievances might be exposed by a third party and dealt with through the present Code; if, for example, there were instances of systematic or institutional bullying, harassment or racism. If there is doubt, guidance can be sought, from the charitable organisation *Public Concern at Work* (see Section 3.11), from a Union representative or, through the present procedure, from the Council: this Code provides for an initial anonymous contact to help resolve any such uncertainties.
- 2.8 This Code is not intended to deal with minor misdemeanours nor should anyone with duties that include responsibility for subordinate staff attempt to use it as a way of avoiding exercising supervision and discipline of those staff and of others who are subordinate to him or her in rank.
- 2.9 This Code is not intended to deal with wrong-doing, however serious, that does not directly impact on the Council or involve it in some way. Wrong-doing by an employee or Member, other than in the course of, or in relation to, their Council duties, cannot be investigated by the Council. Any disclosure of such wrong-doing should be made to the Police or whichever body has responsibility for acting on the matter. There are provisions, within the Council's Constitution or in law, for action to be taken to protect the Council's interests if a Member or officer were to be convicted of a criminal offence.
- 2.10 Any disclosure raising suspicion of wrong-doing by a Member of the Council would raise the question whether the alleged wrong-doing, if proven, would constitute a breach of the Members' Code of Conduct. At the time of any such disclosure, the person making the disclosure will be asked whether, if it were appropriate to pursue the matter through that procedure, he or she would be willing to make a signed written complaint, to be considered in confidence by the Council's Standards Committee. The alternative, unless the offence alleged is so serious as to merit immediate referral to the Police or other outside organisation or is likely to result in court proceedings, is that an officer of the Council will be designated as the complainant and will make the

necessary written complaint to the Committee. That can be done only if the person making the disclosure provides sufficient evidence (a) to demonstrate to the Committee that the alleged offence, if proven, would be likely to amount to a breach of the Members' Code of Conduct and (b) to make feasible an investigation with a reasonable chance of succeeding.

3. Keeping your Identity Secure

- 3.1 The Council intends that anyone making disclosures under the provisions of this Code should have the option of keeping their identity secret. This option provides a safeguard against reprisals of any kind and by any persons.
- 3.2 However, there is a risk that colleagues and others may guess or be able to infer who is responsible for the disclosure. Very exceptionally, if a criminal prosecution results, giving evidence in court may be essential for a successful action. Further safeguards and protections are in place to reduce such risks. For example, it is a serious disciplinary offence for anyone for improper motives to deter, or to attempt to deter, someone from raising valid concerns or subsequently to subject him or her to any form of reprisal.
- 3.3 Employees who raise allegations in good faith will suffer no repercussions. This applies even if the allegations cannot be substantiated by an investigation. However, making unfounded allegations that are clearly malicious or made for personal gain may be treated as a disciplinary offence (and may give rise to an action for defamation). Persons who have themselves been active in wrongdoing should not assume that by exposing the wrong-doing they acquire immunity from disciplinary action.
- 3.4 The Code provides for disclosures to be made to a person who has no direct involvement in the Council's management. The identity of the person making the disclosure will not be made known, without his or her permission, to anyone else and then only to the extent that is necessary for a successful investigation (See also Section 4.1).
- 3.5 The person(s) carrying out the investigation will not normally be told the source of the disclosure. While the person who made the disclosure may fortuitously be questioned as part of the investigation, so too will be any others who might have relevant information.

- 3.6 During the course of an interview, or in some other way, the identity of the source of the disclosure may become evident to the investigator(s). Investigators have instructions to treat any such identification in strict confidence.
- 3.7 Those who, in response to questioning, show themselves to have had information which should have given them reasonable cause for suspicion of the alleged wrong-doing, will suffer no adverse consequences, provided that they have at no time been involved in the wrong-doing. In other words, for an employee to fail to volunteer a cause or potential cause for suspicion is not in itself a disciplinary offence.
- 3.8 The primary aim of any investigation will be to use the initial disclosure only as a starting point and to build a case that is independent of the disclosure.
- 3.9 Anyone who is considering making a disclosure should not attempt an investigation or make informal enquiries to confirm an initial suspicion. To do so may seriously prejudice a subsequent investigation, by, for example, alerting the wrong-doer. It may leave evidence of the identity of the person making the disclosure and increase the likelihood of being needed to give evidence in proceedings. The possibility of an innocent explanation of the suspicious circumstances should always be borne in mind. It will usually be clear, after time for reflection, whether there are or are not reasonable grounds for suspicion.
- 3.10 If, exceptionally and for good reason, the use of the procedures in this Code is not acceptable, a disclosure may be made, still in strict confidence, to the External Auditor. The External Auditor will decide whether to refer the matter for external investigation or to investigate it himself or to refer it to some external agency for investigation.
- 3.11 The Council recognises that the decision to make a disclosure will often be difficult. The implications need to be thought through carefully. The procedure, set out below (Section 4), provides for an initial anonymous telephone discussion. That is an opportunity to clarify the procedure. There is also provision for a disclosure to be made anonymously (see Section 6). Advice and guidance are available, at any stage in the process and in strict confidence, from the independent charity *Public Concern at Work* (Tel: 0207 404 6609),

which also has an informative website (www.pcaw.co.uk). The charity does not pursue cases on behalf of others.

4. How to make a Disclosure

- 4.1 For those seeking the highest degree of confidentiality, there is a telephone hot-line (XXXX) on which initial contact should be made, anonymously if desired, and uncertainties and queries raised. Unless the disclosure itself is to be made anonymously (see Section 6), a name, and means of secure communication (such as a home address, home or mobile telephone number and/or a private e-mail address) will have to be provided. Mail will be marked 'private and confidential'. Although every effort will be made to ensure confidentiality, the Council cannot accept any responsibility for breaches of confidence outside its control. A reference number will be allotted that will be used to identify the disclosure. The personal information provided will be kept secure within the Council in a database that is not on a networked computer. Unless the disclosure is very simple or action is needed as a matter of extreme urgency or there is some other good reason, a written statement will then be requested. The statement should be addressed to the Internal Audit Manager. This procedure can be used by anyone, internal or external (see also Section 3.4).
- 4.2 The statement must be headed with the reference number provided and should not include any personal identifiers or be signed, since it will go on the case file and be seen thereafter by several persons. Typed rather than handwritten statements will help protect the identity of the person making the statement. The statement should provide as much information as is available about what has aroused concern: for example, the dates and times when the cause(s) for suspicion came to attention; who was involved; where any documentary evidence was seen and might be found on investigation, and the identity of any other possible witnesses. Note, however, the caution, in Section 3.9, not to engage in a private investigation. The information provided must be sufficient to allow (a) an independent judgement to be made whether there are reasonable grounds for suspicion of a serious wrong-doing, and (b) the launch of at least a preliminary investigation (see Sections 5.3. & 5.4).
- 4.3 The discloser may be asked to supply further information. An explanation will be given as to why it is needed. For example without further information the disclosure might be judged unreasonable (in

- which case he or she may opt to withdraw it and no further action taken) or an investigation would be impossible (in which case no further action would be taken except to keep the disclosure on file).
- 4.4 An acceptable alternative, if the highest possible confidentiality is not necessary, is for the initial disclosure to be made in writing. Any contact information should be separate from the disclosure statement in an attached note, and sent, with the envelope marked 'Disclosure: in confidence' to the Internal Audit Manager, Council Offices, The Causeway, Bishop's Stortford CM23 2EN. This is the course of action that a Member or officer of the Council should recommend if approached by someone who wishes to disclose some wrong-doing.
- 4.5 It is likely that from time to time allegations of wrong-doing will be made by people who are unaware of this Code. Anyone receiving such a disclosure should pass it without delay to the Internal Audit Manager and do no more, by way of reply, than to acknowledge its receipt and say to whom it has been passed. It will then be dealt with, so far as is practicable, in the same way as an internal disclosure by a Member or by an employee of the Council. For obvious reasons, the protection and safeguards built into the Council's internal procedures cannot be assumed to extend to such disclosures. Assurances of protection from reprisals (for example, by the person's employer or colleagues) would be meaningless and should not be given. Every reasonable effort will nonetheless be made, within the Council, to keep the matter confidential.

5. How the Council handles Disclosures

- 5.1 The Council is committed to ensuring that a disclosure will be investigated if it gives reasonable cause to suspect wrong-doing and furnishes enough evidence for an investigation to be feasible. If wrong-doing is proven, appropriate action will be taken.
- 5.2 As set out above, all disclosures not made direct to him will be reported without delay to the Internal Audit Manager. Any allegations or disclosures involving the suspicion of fraud or corruption will, as a matter of urgency, be dealt with in conformity with the Council's "Anti-Fraud and Anti-Corruption Strategy". For all other disclosures, the Internal Audit Manager will consider whether the matter is one affecting the Council's interests. If so, he will decide whether the Code is appropriate or whether the matter might best be dealt with through another internal procedure (in which case whichever Officer has

- responsibility will be involved and a decision made). Irrespective of whether the matter disclosed does or does not affect the Council's interests, if reasonable suspicions of a criminal offence are raised then the matter will be passed to the Chief Executive for a decision on further referral, with or without further internal action, to another body for investigation and action.
- 5.3 Having decided that a case is appropriately pursued through the Disclosure Code, the Internal Audit Manager will (a) decide whether there is sufficient information to justify and enable investigation and, if need be, arrange for further information to be sought from the source of the disclosure; (b) decide whether any immediate action is required and initiate any such action; (c) decide who at this preliminary stage needs to know and inform them; (d) designate an investigating officer and, with appropriate planning and consultation, launch a preliminary investigation and report thereon at the earliest opportunity to the Chief Executive and to anyone else he and the Chief Executive decide needs to know.
 - 5.4 On the basis of the preliminary investigation and advice a decision will be taken by the Chief Executive (a) that there should be a full investigation; or (b) that the matter should be referred forthwith to an appropriate external agency; or (c) that no further action is justified. That decision will be recorded on the case file.
 - 5.5 The Internal Audit Manager is responsible for carrying out or supervising any full investigation and for the preparation of a report and will liaise with the Director of Internal Services to ensure that an appropriate allocation of resources is made. All Members are expected to and officers are required to give their full co-operation with the carrying out of any investigation.
 - 5.6 On the basis of a full report of the investigation and advice, the Chief Executive may decide (a) that no further action is needed; or (b) that the matter should be referred for external action; or (c) that the matter should be dealt with by internal action. That decision will be recorded on the case file. In the case of internal action involving personal culpability, the Council's Head of Legal Services and the Head of Human Resources will advise whether the Council's Disciplinary Procedure should be invoked or the matter dealt with by legal action. The Director in whose area of responsibility the matter occurred will, with the Internal Audit Manager, assess, as a matter of urgency,

whether in the light of the report of the investigation there is any need for changes to deter and prevent any recurrences, and will take any necessary steps to have appropriate changes authorised and implemented.

- 5.7 A person making a disclosure is entitled to have feedback if he or she so requests. There will then be an initial response within 10 working days of the request to inform him or her how it is proposed to deal with disclosure, including a provisional timetable of the investigation, and indicating whether any investigations are under way.
- 5.8 Further feedback will be given at key stages. The final outcome will, in any case, be communicated to the person making the disclosure provided a contact address has been provided). If he or she is not satisfied with the outcome, the PID Act provides, in certain circumstances, for the matter to be taken further, through, for example, a Union, a Member of Parliament, or an outside regulatory agency. The Council advises that any such action should be taken only after careful consideration and, preferably, having sought disinterested guidance (see Section 3.11).

6. Anonymous Disclosure

- 6.1 The Council encourages all disclosures to have names put to them, not least because that offers some assurance that the disclosure is not malicious, and further information can be sought if necessary for a successful investigation. The Council believes the safeguards and protections listed in this Code should be sufficient to make anonymity unnecessary for anyone making a disclosure or allegation in good faith. The protections afforded by this procedure cannot be guaranteed to anonymous informants. Concerns expressed anonymously are themselves suspect, but they will be acted on if accompanied by enough objective or readily verifiable evidence to justify an investigation and to allow one to be mounted with a reasonable chance of success. Those considering anonymous disclosures should bear in mind that they will have no feedback about the progress of an investigation, and, since it will not be known that they have gone through the designated internal procedure, the protection of the Act may not extend to any external disclosures they might choose to make.

7. Review

7.1 This Code will be subject to review on at least an annual basis.

APPENDIX A

Summary of Key Information

1. Introduction

- Purpose is to give all those associated with the Council the confidence to come forward and raise issues of concern without fear of reprisals.

2. Aims and Scope

- To provide safe and confidential avenues for all those associated with the Council to raise concerns and receive feedback over alleged malpractice.

3. Keeping your Identity Secure

- Individuals who raise concerns will not have their identity disclosed without their prior consent. It must be recognised, however, that in some circumstances it may be impracticable to keep identity secret. But any attempt, no matter by whom, to victimise someone making a disclosure will be treated as a major offence. If an allegation is made but, following investigation, is not upheld no action will be taken against the instigator providing they:
 - acted in good faith;
 - believe that information disclosed is substantially true; and
 - have not acted for personal gain.

- If a malicious or false allegation is made, disciplinary action will be considered.

4. How to make a Disclosure

- Telephone hotline number xxxxxx
- Written statement addressed to Internal Audit Manager, Council Offices, The Causeway, Bishop's Stortford CM23 2EN marked 'Private & Confidential'
 - Secure contact details should be provided separate from the statement
 - Statement itself should not include any personal identifiers or be signed.
- Any other person receiving a disclosure should pass it without delay to the Internal Audit Manager.

5. How the Council handles Disclosure

- The Internal Audit Manager will receive the disclosure and consider the appropriate course of action, reporting to the Chief Executive at the earliest opportunity.
- The Internal Audit Manager is responsible for carrying out or supervising any investigation considered necessary. He will liaise with the Director of Internal Services to ensure that adequate resources can be made available.
- The Chief Executive will receive a full report of the investigation and will decide how to take the matter forward.
- Feedback will be given to the person making the disclosure at key stages during the investigation.

6. Anonymous Disclosures

- Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council. In exercising this discretion, factors to take into account include
 - the seriousness of the issue raised;
 - the credibility of the concern; and
 - the likelihood of confirming the allegation from attributable sources.

7. Review

- The Code will be subject to review on at least an annual basis.

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