

Whistleblowing Policy 2021



1.0 INTRODUCTION

1.1 It can be daunting to raise concerns with your employer, this policy sets out the legal position if you do. MDDC wants to be an open and transparent employer and understands that whistleblowing can lead to improved services. There are good business reasons for listening to workers who raise concerns, as it gives an opportunity to stop poor practice at an early stage, before it becomes normalised and serious incidents take place.

1.2 What is Whistleblowing?

The disclosure by a person, usually an employee in a government agency or private enterprise, to the public or to those in authority, of mismanagement, corruption, illegality, or some other wrongdoing. (Legal Dictionary definition)

2.0 WHAT IS A WHISTLEBLOWER?

2.1 You are a “whistleblower” if you’re a worker and you report certain types of wrongdoing. This will usually be something you’ve seen at work - though not always.

2.2 The wrongdoing you disclose must be “in the public interest”. This means it must affect others e.g. the general public. So if you believe, for example, that there is a breach of your contract of employment which only affects you this would be unlikely to meet this test.

2.3 For matters arising directly from employment and/or working practices of the Council, report these under MDDC’s Grievance Policy.

2.4 As a whistleblower you’re protected by law - you shouldn’t be treated unfairly or lose your job because you “blow the whistle”.

2.5 You can raise your concern at any time about an incident that happened in the past, is happening now or which you believe will happen in the near future.

3.0 WHO IS PROTECTED BY LAW?

3.1 You are protected if you’re a worker e.g.:

- an employee, such as a lifeguard, a casual employee, office worker, waste operative
- a trainee, such as an apprentice
- an agency worker
- independent contractors

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- 3.2 Volunteers are not covered by the legislation but please still raise concerns with the person you report to.
- 3.3 Get independent advice if you're not sure you're protected e.g. from Citizens' Advice. (<http://www.adviceguide.org.uk/>)

4.0 WHAT KIND OF CONCERNS ARE COVERED?

- 4.1 The Public Interest Disclosure Act 1998 specifies "Qualifying Disclosures" as follows:
- a criminal offence, e.g. fraud
 - someone's health and safety is in danger
 - risk or actual damage to the environment
 - a miscarriage of justice
 - the company is breaking the law, e.g. doesn't have the right insurance
 - you believe someone is covering up wrongdoing
- 4.2 A qualifying disclosure to the commission will be a 'protected' disclosure provided you make the disclosure in good faith.
- 4.3 The above list is not exhaustive, you may not be certain that there is "wrongdoing" because it is not mentioned in the above list. MDDC does not expect you to be able to prove malpractice. That is the Council's responsibility. But if in doubt, please raise it.

5.0 COMPLAINTS THAT DON'T COUNT AS WHISTLE BLOWING

- 5.1 Personal grievances (e.g. bullying, harassment) aren't covered by whistleblowing law, unless your particular case is in the public interest.
- 5.2 Report these under MDDC's Dignity at Work Policy.
- 5.3 Contact the Advisory, Conciliation and Arbitration Service (ACAS) [Home | Acas](#) for help and advice on resolving a workplace dispute.

6.0 WHO CAN I RAISE A CONCERN WITH?

- 6.1 This will often depend on the nature of the allegation and how serious it is. Normally you should raise any issues with your immediate line manager. If however, you feel that the matter cannot be resolved by talking to your line manager you can speak to another manager.

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6.2 If you do not feel able to contact any of these people you can talk to any one of the Council's designated Whistle-blowing Advisers who are responsible for making sure that an enquiry is made into all concerns raised. These are:

- Maria De Leburne, Monitoring Officer, ext 4210
- Steve Carr, Corporate Performance & Improvement Manager, ext 4217
- devonauditpartnershipwhistleblowing-mailbox@devon.gov.uk

6.3 MDDC recognises that you may wish to seek advice and be represented by your Trade Union when using this policy (staff not belonging to the Trade Union may be represented by a work colleague). MDDC acknowledges and endorses the role Trade Union officers can play in helping to identify concerns and alert management of these.

6.4 There are other options if you don't want to report your concern to your employer, e.g. you can get legal advice from a lawyer, or tell a prescribed person or body.

6.5 The prescribed person or body for MDDC is our external auditors:

Bishop Fleming
Stratus House
Emperor Way
Exeter Business Park
Exeter
EX1 3QS

Or the Comptroller and Auditor General for concerns about the proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services:

The Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
London
SW1W 9SP

6.6 For complaints about Members please refer to the Monitoring Officer, the same protections will apply.

7.0 WILL MY IDENTITY BE KEPT CONFIDENTIAL?

7.1 It is in MDDC's interest that concerns are raised so we can put them right and we will protect you when you voice concerns, this includes protecting your confidentiality.

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- 7.2 You can tell MDDC or a prescribed person anonymously but they may not be able to take the claim further if you haven't provided all the information they need.
- 7.3 You can give your name but request confidentiality - the person or body you tell should make every effort to protect your identity.
- 7.4 If you report your concern to the media, in most cases you'll lose your whistleblowing law rights. The whistleblowing charity Protect gives this advice:

The law protects individuals who make a wider disclosure (ie beyond the employer or relevant regulator) from detriment or dismissal if they meet certain other legal tests (set out in Section 43G ERA). Usually you will be expected to have raised a concern with the employer or prescribed regulator before you make a wider disclosure, but there are limited circumstances when you can make a wider disclosure without taking the matter elsewhere first.

Seek advice before you make a wider disclosure, and especially if you plan to go to the press.

- 7.5 You should be aware that if a concern leads to an investigation you will be asked to provide information and your identity may have to be disclosed. If this is the case, you will be informed in advance and the Council will make sure that you are given support and protection. MDDC will work to ensure that only those involved in the investigation are aware of your identity.
- 7.6 All documentation relating to the concern raised will be kept confidential and in a secure place.

8.0 WHAT IS THE PROCEDURE FOR INVESTIGATING A CONCERN?

- 8.1 MDDC or the prescribed person will listen to your concern and decide if any action is needed. You may be asked for further information.
- 8.2 You must say straight away if you don't want anyone else to know it was you who raised the concern.
- 8.3 You won't have a say in how your concern is dealt with although your views may be considered.
- 8.4 The first decision to be made by the Council or Prescribed person is whether the matter needs to be investigated at all. This does not mean that your concern will be brushed aside, simply that there may be a simple explanation.

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For example, your line manager (or the person you have raised the concern with) may know that the practice is legal or authorised.

- 8.5 If the decision is taken to proceed with an investigation, this will then be carried out in accordance with the Council's Investigation procedures.
- 8.6 MDDC or the prescribed person can keep you informed about the action they've taken, but they can't give you much detail if they have to keep the confidence of other people.
- 8.7 A prescribed person can't help you with your relationship with MDDC for this you should seek advice from HR.

9.0 WILL I BE PROTECTED FROM VICTIMISATION?

- 9.1 As long as you reasonably believe the disclosure is "in the public interest" you are protected by law.
- 9.2 You can take a case to an employment tribunal if you've been treated unfairly because you have "blown the whistle".
- 9.3 You can get further information from ACAS, Citizens' Advice, the whistleblowing charity Protect or your trade union.
- 9.4 You must raise any claim of unfair dismissal within 3 months of your employment ending.

10.0 WHAT WILL HAPPEN IF MY CONCERN IS NOT UPHELD?

- 10.1 You may raise a genuine concern that is not upheld by an investigation. In such circumstances you will be thanked for raising your concerns. No action will be brought against you. You will continue to be protected against victimisation.

11.0 WHAT HAPPENS IF A MALICIOUS ALLEGATION IS MADE?

- 11.1 If the Council believes that you made an allegation frivolously, maliciously or for personal gain you may face disciplinary action.

12.0 RESPONSIBILITY FOR THIS POLICY

- 12.1 The Corporate Performance & Improvement Manager has overall responsibility for the maintenance and operation of this Policy. The Policy will be reviewed and updated to ensure that it is both up to date and working as intended every 4 years unless there are earlier changes to the legislation.

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- 12.2 A confidential record of disclosure and its outcomes will be kept for a period of 5 years from the date all action was concluded on the matter. Reports will be made to the Scrutiny Committee on a half yearly basis to inform them of the number of instances of Whistleblowing and which category they fall into. However, no personal details will be listed to ensure that confidentiality is not jeopardised.