

Shetland Islands Council – Whistleblowing & Response Policy – November 2023

Message from Director Corporate Services

We, as a Council, have a duty to make sure public funds are properly used and protected, for everyone's benefit.

We are committed to preventing people committing fraud and becoming involved in corruption and bribery.

We are also committed to making sure we have the right controls in place to prevent these acts from happening at all.

Shetland Islands Council employees have a duty to report any concerns they may have regarding possible fraud or wrongdoing.

Given the potentially high cost of fraud to everyone, we will also encourage members of the public to let us know if they detect or suspect someone is involved in this activity.

By phoning the Whistleblowing Hotline on 01595 80 8999, filling in a form at www.shetland.gov.uk/whistleblowing or emailing using fraud@shetland.gov.uk we can investigate the matter thoroughly and take action to deal with it properly.

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1. Introduction

Whistleblowing is when you suspect someone is doing something wrong, and you report it to someone in the organisation in a position of authority. The whistleblowing facility exists for members of staff. Members of the public can also report any cases of wrongdoing which they believe are being committed across the Shetland Islands. Examples include Council Tax Reduction Scheme fraud, tenancy fraud and misuse of public funds.

The purpose of the Whistleblowing and Response Policy is to advise you about the ways cases of wrongdoing can be reported and how we will deal with it. The policy set out in this document covers the following areas:

- Preventing fraud, corruption, and bribery,
- The Council's rules and procedures; and
- The Council's whistleblowing and investigation arrangements for staff and the public.

2. Aims of the Council's Arrangements

Most importantly, our arrangements aim to:

- Provide secure ways for our staff and the public to raise concerns; and
- Provide reassurance that every effort will be made to protect anyone who makes a report from being victimised.

There are procedures in place which allow staff members to lodge a grievance relating to their own employment, for example, bullying and harassment.

Whistleblowing is intended to cover concerns that fall outside the range of these procedures, except in exceptional circumstances where an employee has a concern that is so serious that they feel they have no route to report it.

3. Preventing Fraud, Corruption, and Bribery in the Workplace

A number of rules and procedures have been approved and guidance produced to make sure the Council's business is properly controlled. It is important that all Elected Members and employees are aware of, and uphold, them.

Our guidance documents include the following:

- Councillors' Code of Conduct
- Employee Code of Conduct
- Financial Regulations
- Contract Standing Orders
- Procurement Strategy and Procedures
- Scheme of Admin and Delegations

Our employees must read, understand, and carry out the rules and procedures of the Council's Code of Conduct.

If employees don't follow these rules and procedures, they may be disciplined which may result in being dismissed.

All cases of actual or suspected fraud, corruption, bribery, and theft must be reported immediately to the Chief Internal Auditor. Council Directors must make sure their employees are aware they must do this.

4. Whistleblowing and Investigation Arrangements for Employees

Whistleblowers are protected by legislation if they whistleblow appropriately. The following information outlines the legislative protection offered to employees.

Whistleblower Protection

Whistleblowers are protected if they:

- Reasonably believe the information disclosed tends to show that one of the following has happened, is happening, or is likely to happen:
 - Criminal activity.
 - Breach of a legal obligation, for example, not having insurance for employees or the public.
 - Miscarriage of justice.
 - Danger to an individual's health and safety.
 - Damage to the environment.
 - A deliberate attempt to cover up any of the above.
- Make the disclosure in the public interest.
- Reasonably believe the information is true.
- Believe the whistleblowing allegation is being made to the right person.

As well as using the Council's facility there are outside agencies whistleblowers can contact. However, an employee can only inform the outside agency if they reasonably believe the disclosure lies within the remit of that agency; and the information disclosed, and any allegation contained within it, is substantially true.

Whistleblowers' Rights

An employee cannot be dismissed because of whistleblowing. If they are, the employee can claim unfair dismissal provided they satisfy that the main reason for the dismissal was the making of the disclosure they believed to be true, in the public interest and told to the right person.

An employee cannot miss out on opportunities for promotion, transfer, training, or any other benefits because of whistleblowing. Also, they cannot be bullied, harassed, or victimised on the grounds of whistleblowing. If they do suffer detriment, they can bring a claim before an Employment Tribunal. The Council is now responsible for an act of detriment committed by an employee against a colleague. An employee who victimises their whistleblowing colleagues will also be held personally liable.

Who is Protected?

The following people are protected:

- Employees
- Agency workers
- People who are training with an employer, but not employed
- Self-employed workers, and
- Home workers

Who is Not Protected?

Employees are not protected from dismissal if:

- They found out about the wrongdoing when someone wanted legal advice, for example, if they are a solicitor
- They break the law when making the disclosure, for example, they signed the Official Secrets Act.

Employment Tribunals

Employees who are dismissed, or who suffer detriment on the grounds of whistleblowing, can take a claim before an Employment Tribunal. There is no minimum length of service required by an employee before they can bring a case of unfair dismissal or detriment, on the grounds of whistleblowing.

If the tribunal decides the employee has been unfairly dismissed, it will order that they:

- Get their job back, and/or,
- Receive financial compensation.

If the Employment Tribunal decides the employee has suffered detriment, they will award compensation.

There is no upper limit on the level of compensation an Employment Tribunal may award. However, a tribunal judge can reduce any compensation awarded by up to 25%. This will be done if they find the whistleblower did not make the disclosure in good faith.

5. Safeguards

Harassment or Victimisation

The Council recognises the decision to report a concern can be a difficult one to make because of the fear of retaliation.

The Council will not tolerate harassment or victimisation and will take action to protect employees when they raise a concern in the public interest. Employees who victimise colleagues who have made a disclosure will be held responsible and appear at an Employment Tribunal for their actions. An employee who causes detriment to a whistleblowing colleague will be disciplined.

Confidentiality

The Council will do its best to protect the identity of individuals who raise concerns and do not want their names to be disclosed.

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 necessary to show that an allegation is correct.

Anonymous Allegations

Concerns expressed anonymously are much less powerful than concerns to which you put your name, but anonymous allegations will be considered at the discretion of the Chief Internal Auditor. Accounts will be taken of the:

- Seriousness of the issue raised
- Credibility of the concern raised
- Likelihood of confirming the allegation from attributable sources.

Untrue Allegations

If you make an allegation in the public interest and you reasonably believe it to be true, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make malicious or vexatious allegations, the allegations will not be taken further, and it will result in disciplinary action being taken against you. The judgement of whether an allegation is malicious or vexatious rests with the Chief Internal Auditor.

6. Preventing Fraud, Corruption, and Bribery

The best way to tackle fraud, corruption and bribery is to prevent it from happening in the first place. Maintaining and publicising whistleblowing facilities that allow and encourage the public to report concerns, for example, the whistleblowing hotline and web reporting facilities, will help the Council in this regard.

7. Whistleblowing and Investigation Arrangements for the Public

Confidentiality

The Council will do its best to protect the identity of anyone who raises concerns and does not want their name to be disclosed. However, the investigation process may reveal the source of the information and your statement may be required as part of the evidence necessary to show that an allegation is correct.

Anonymous allegations

Concerns expressed anonymously are much less powerful than concerns to which you put your name to. Anonymous allegations will be considered at the discretion of the Chief Internal Auditor. Account will be taken of the:

- Seriousness of the issue raised
- Credibility of the concern
- Likelihood of confirming the allegation from attributable sources.

How your complaint will be dealt with

The Chief Internal Auditor will log all reports and carry out a review in each case to determine the most appropriate course of action. The action will depend on the nature of the concern. Any matters which fall within the scope of other existing procedures, for example, child protection, complaints, or discrimination issues, will be dealt with under these procedures. Some concerns may be resolved by agreed action without the need

for investigation. Matters to be investigated may be:

- Dealt with internally by Internal Audit or other specialist sections such as the Trading Standards Unit, or
- Referred to the Police or other external agency.

Where possible, the Council will advise you that your allegation has been received.

The Council may also ask for more information where this would help in the investigation.

Investigations may result in recommendations for changes to procedures and systems which will be included in action plans. Follow up reviews are carried out to make sure that recommendations are implemented.

Investigations may lead to disciplinary action against employees. These will be conducted according to the Council's disciplinary procedures.

Where appropriate, after discussion with the Chief Executive or Executive Manager – Governance and Law, the Chief Internal Auditor will refer findings to the Police for investigation or review.

Depending on the results of any enquiries it may not be possible to advise you of the outcome. Examples would include if the matter were referred to the Police for further enquiries, or to protect an individual's human rights if the complaint is dealt with under the Council's disciplinary procedures.

8. How to raise a concern

The Council's Whistleblowing Arrangements are managed by the Chief Internal Auditor.

You can report your concerns by:

- Phoning 01595 80 8999. The Whistleblowing Hotline will be answered when possible and at other times you can leave a voicemail message.
- Filling in our online form at www.shetland.gov.uk/whistleblowing. This option allows you to attach any documentary evidence to support your concern.
- Emailing fraud@shetland.gov.uk. This option also allows you to attach any documentary evidence in support of your concern.

If your concern relates to Social Security benefit fraud, including Housing Benefits and Universal Credit, please contact, Social Security Scotland - www.mygov.scot/benefit-fraud or the Department for Work and Pensions - www.gov.uk/whistleblowing/contacts

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

Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for concern.

9. Services provided on behalf of the NHS

The National Whistleblowing Standards set out how the Independent National Whistleblowing Officer (INWO) expects all NHS service providers to handle concerns that are raised with them, and which meet the definition of a 'whistleblowing concern'.

If you are a Council employee and have a concern regarding a service provided on behalf of the NHS, then this should be raised directly with management. However if you would prefer to raise it independently and in confidence that you can raise it in line with this Whistleblowing Policy by phoning the Whistleblowing Hotline on 01595 80 8999, filling in a form at www.shetland.gov.uk/whistleblowing or emailing fraud@shetland.gov.uk. All concerns raised will be logged, and Internal Audit will thereafter liaise with the Confidential Contacts within the NHS in line with the National Whistleblowing Standards.

The Independent National Whistleblowing Officer (<https://inwo.spsa.org.uk/>) is available to provide advice for a whistleblowing concern regarding NHS services and can be contacted at 0800 008 6112. A concern can also be raised directly with the Independent National Whistleblowing Officer if, after reporting locally, you remain concerned.

10. Internal Audit Contact Details

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