
Report to **Clackmannanshire Council**

Date of Meeting: 5th October 2023

Subject: **Whistleblowing Policy**

Report by: **Senior Manager of Legal and Governance / Monitoring Officer**

1.0 Purpose

- 1.1. This paper invites Council to consider and approve a revised Whistleblowing Policy.

2.0 Recommendations

It is recommended that Council:

- 2.1. **Notes, challenges and comments on** the contents of the Whistleblowing Policy; and
2.2. having done so, **Approves** the Whistleblowing Policy as per Appendix1..

3.0 Considerations

- 3.1. The Council is committed to upholding the highest possible standard of behaviour, conduct, practice and ethics in all areas of the Council's work, and is committed to treat all disclosures consistently and fairly. In line with this commitment, if employees have serious concerns about any aspect of the Council's work, they are encouraged through our Whistleblowing Policy to come forward and voice those concerns.
- 3.2. The Policy covers wrongdoing under the relevant whistleblowing legislation which is the Public Interest Disclosure Act 1998 (the 'Act') and an insertion to the Employment Rights Act 1996, which protects current and former employees and workers who make a protected disclosure. The Policy is not intended to replace any other statutory reporting procedures operated by the Council.
- 3.3. Matters of concern relating to your employment situation which would normally be dealt with under the Council's Grievance Policy or Dignity at Work Policy should continue to be handled in that way.
- 3.4. The Monitoring Officer will have overall responsibility for this Policy which means undertaking periodic reviews to reflect organisational changes, best practice, operational experience or legislative updates.
- 3.5. The Policy provides a clear, accessible mechanism by which staff can raise concerns about wrongdoing. It is always important that concerns may be raised in the public interest – but recent tragic events have underscored the importance of getting this right.

- 3.6. As Council may be aware, Lucy Letby, a former neonatal nurse, was sentenced on 21 August 2023 for the murder of seven babies and attempted murder of six others. Passing sentence, Mr Justice Goss said “senior doctors started to ‘think the unthinkable’ and consider the possibility that someone was, in fact, deliberately harming the babies and Ms Letby was identified as the common factor.” The UK Government has ordered an independent inquiry, to learn vital lessons from the tragedy, and which will be specifically mandated to consider the handling of concerns and wider governance issues.
- 3.7. The revised Whistleblowing Policy as set out at Appendix 1, provides a governance framework enabling employees to freely raise concerns in the public interest in the knowledge that they will be heard and taken seriously, and will be investigated promptly and thoroughly.
- 3.8. In order to ensure collaborative and partnership working, the Council’s policy group, which comprises TU colleagues, management and Human Resources staff, meet regularly to review and agree new/revised policies and procedures. A special policy group was convened on the 31 August 2023 and agreement on the policy was reached with Trade Union colleagues. The proposed policy was also noted at the Tripartite meeting which met on the 13 September 2023.
- 3.9. Should Council approve the revised Whistleblowing Policy, it will be promoted and deployed

Conclusion

- 3.10. Good governance demands that employee concerns can be freely voiced, combined with reassurance that such concerns will be heard, taken seriously and promptly and thoroughly investigated. The revised Whistleblowing Policy as set out at Appendix 1, provides an enabling and supportive framework for employees to raise serious concerns at work.

4.0 Sustainability Implications

- 4.1. There are no direct sustainability implications arising from this report.

5.0 Resource Implications

- 5.1. *Financial Details – There are no direct financial implications arising from this report.*
- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes ✓
- 5.3. Finance have been consulted and agreed the financial implications as set out. Yes ✓
- 5.4. *Staffing – There are no direct staffing implications arising from this report.*

6.0 Exempt Reports

- 6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No ✓

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all ✓
- Our families; children and young people will have the best possible start in life ✓
- Women and girls will be confident and aspirational, and achieve their full potential ✓
- Our communities will be resilient and empowered so that they can thrive and flourish ✓

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

- 8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations? Yes No ✓

There are no direct equalities implications arising from this report (having screened at first stage, impacts on protected characteristics have been assessed as neutral).

9.0 Legality

- 9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes ✓

10.0 Appendices

- 10.1 Please list any appendices attached. If there are no appendices, please state "none".

Appendix 1 –

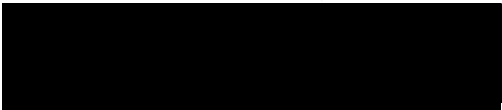
11.0 Background Papers

- 11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered) Yes ✓ (please list the documents below) NO

Author(s)

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Lee Robertson	Senior Manager Legal and Governance	

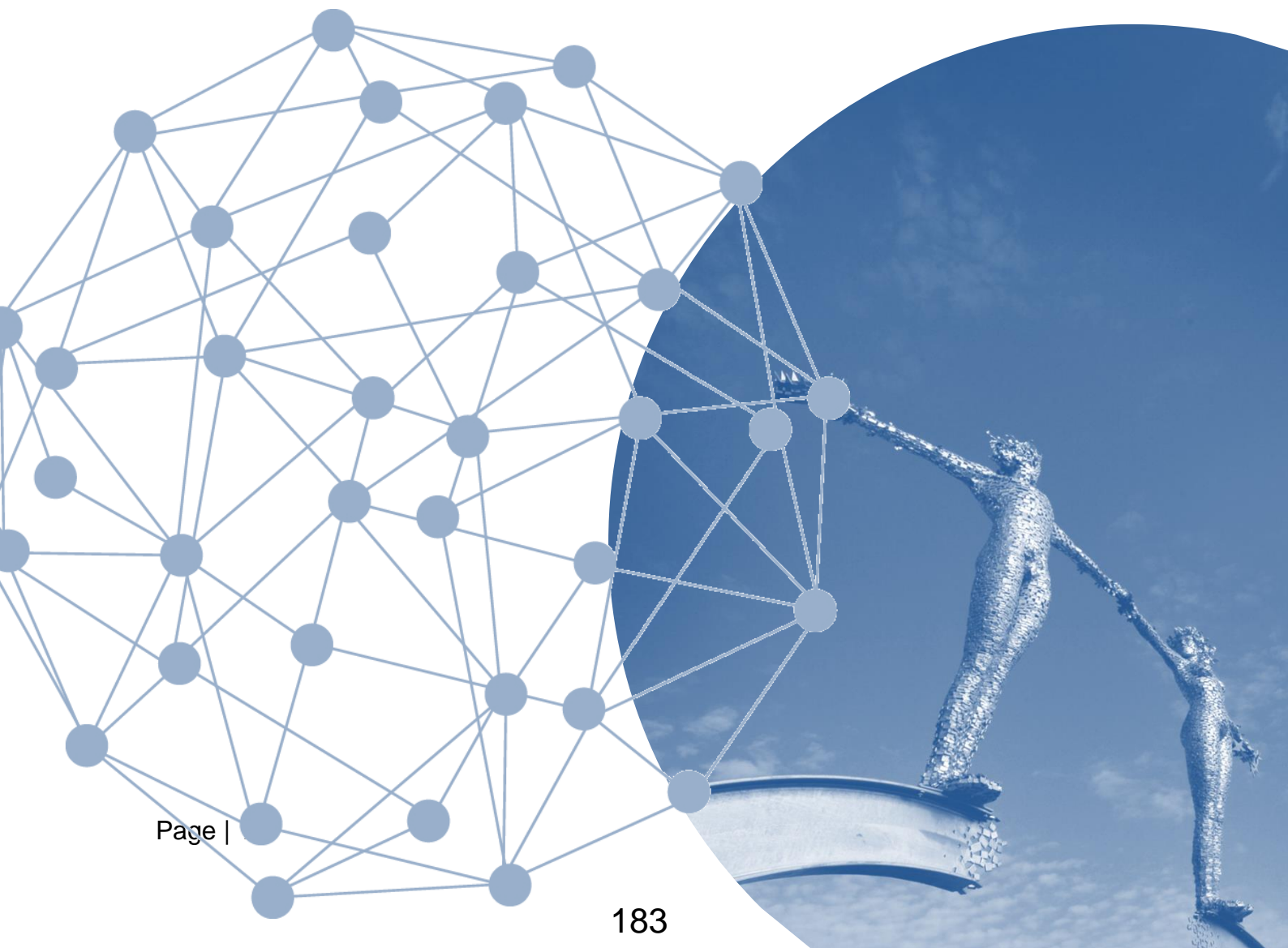
Approved by

NAME	DESIGNATION	SIGNATURE
Stuart Crickmar	Strategic Director – Partnership & Performance	



Whistleblowing Policy

2023



WHISTLEBLOWING POLICY

1. Policy Statement

- 1.1. The Council is committed to upholding the highest possible standard of behaviour, conduct, practice and ethics in all areas of the Council's work.
- 1.2. The Council is committed to treat all disclosures consistently and fairly.
- 1.3. In line with this commitment if you have serious concerns about any aspect of the Council's work you are encouraged to come forward and voice those concerns.
- 1.4. This Policy covers wrongdoing under the relevant whistleblowing legislation which is the Public Interest Disclosure Act 1998 (the 'Act') and an insertion to the Employment Rights Act 1996, which protects current and former employees and workers who make a protected disclosure ('blow the whistle').
- 1.5. This Policy is not intended to replace any other statutory reporting procedures operated by the Council.
- 1.6. Matters of concern relating to your employment situation which would normally be dealt with under the Council's Grievance Policy or Dignity at Work Policy should continue to be handled in that way.
- 1.7. The Monitoring Officer has overall responsibility for this Policy which means undertaking periodic reviews to reflect organisational changes, best practice, operation experience or legislative updates.

2. Policy Aims

- To encourage you to act when you become aware of a serious public interest concern, by making an internal disclosure under this policy;
- To support you to feel confident in raising those concerns at the earliest opportunity;
- To provide a way for you to raise those concerns and receive feedback on any action taken;
- To ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied;
- To reassure you that you will be protected from possible reprisals or victimisation if you have made a protected disclosure in good faith (i.e. where you believe the disclosure to be in the public interest and your belief was objectively reasonable at the time of disclosure); and
- To clarify the conditions in which it may be appropriate to make a protected disclosure to bodies outside of the Council.

3. Principles

- 3.1. You have the right to raise concerns in the knowledge that they will be taken seriously, investigated appropriately and your confidentiality will be maintained.
- 3.2. You will be able to raise genuine public interest concerns of wrongdoing or malpractice internally within the Council without fear of reprisals, victimisation or subsequent discrimination, disadvantage or dismissal, even if they turn out to be mistaken.
- 3.3. You can raise a concern in several ways; by making a disclosure to any Manager within the Council; or by contacting the Monitoring Officer or Chief Executive directly.
- 3.4. The Monitoring Officer (the Council's Senior Manager, Legal and Governance) has overall responsibility for this Policy which means undertaking periodic reviews to reflect organisational changes, best practice, operational experience or legislative updates.

What can you raise as a whistleblowing concern?

- 3.5. Under this policy the following areas of malpractice can be raised:
 - 3.5.1. criminal activity;
 - 3.5.2. failure to comply with any legal obligation;
 - 3.5.3. miscarriages of justice;
 - 3.5.4. danger to the health and safety of any person;
 - 3.5.5. damage to the environment;
 - 3.5.6. deliberate concealment of any of the above;
 - 3.5.7. any serious concerns regarding any aspect of Council business, the conduct of officers, elected members or others acting on behalf of the Council under this policy;
 - 3.5.8. concerns can be raised in relation to matters that have taken place, continue to take place or are likely to take place in the future;
 - 3.5.9. concerns raised by customers of the council should **not** be raised under this policy.

Who does this policy apply to:

- 3.6 This Policy applies to all workers including employees, full-time, part-time, temporary or casual, including persons contracted to personally provide services to the Council, persons undergoing training or work experience as part of a training course, contractors and agency workers.

4. Definitions

Protected disclosure – disclosure is the information provided by the whistleblower, verbally or in writing, about their concerns.

Whistleblower – the person who makes a protected disclosure to any manager in the Council, Monitoring Officer, Chief Executive or an external prescribed person.

Public interest – a concern which is of legitimate interest to the public at large and not one that relates only to you alone (such as a dispute about employment status).

Prescribed person - defined external bodies to which protected disclosures may be properly made. A list of prescribed persons is made available by the Secretary of State, who currently lists more than 50 regulatory bodies to whom protected disclosures can be made. Some names and contact details are listed in Appendix A. More information can be found at <https://www.gov.uk/whistleblowing/how-to-blow-the-whistle>

Worker – a person entitled to make a protected disclosure including employees, casual workers, agency workers, contractors, and persons undergoing training or work experience as part of a recognised training programme, whether full-time, part-time, casual, directly or indirectly engaged.

5. Roles and Responsibilities

5.1 Employee / Worker Responsibilities

- 5.1.1 You should report any concerns to those identified in this Policy.
- 5.1.2 You should make this disclosure where you have a reasonable belief that malpractice has occurred, is taking place or is likely to take place, where you have any serious concerns and it is in the public interest to do so.
- 5.1.3 You are responsible for acting professionally if you have a concern about the work of your colleagues, including an expectation on you to report malpractice.
- 5.1.4 You should not use this Policy for complaints relating to your employment as they are best addressed by the Grievance Policy.
- 5.1.5 In the unlikely event that your reported concern or issue is found to be deliberately vexatious or malicious this will be considered as a disciplinary matter.
- 5.1.6 If you are unsure whether to use this policy or want independent advice at any stage, you can contact the independent charity Protect (formerly known as Public Concern at Work) on 020 3117 2550 / whistle@protect-advice.org.uk or the ACAS helpline on 0300 123 1100. Their advisers can give you free confidential advice on how to raise a concern about serious malpractice at work. If you are a member of a trade union, you may also wish to contact it for advice.

5.2 Employer responsibilities

- 5.2.1 Clackmannanshire Council will ensure that there is zero tolerance of any victimisation of a co-worker who has raised concerns, stressing that it is a serious disciplinary offence and will be dealt with under the disciplinary policy.
- 5.2.2 All concerns will be appropriately investigated.
- 5.2.3 Feedback will be provided if appropriate to do so.
- 5.2.4 All concerns will be acknowledged within 10 days. It will not be possible to provide feedback on any subsequent investigation or outcome in all circumstances, but where it is, this will usually be provided within 21 days of acknowledgement.

5.3 All parties – reportee, investigator, etc

- 5.3.1 All parties who play a role in respect of this Policy undertake to keep confidential and not disclose or discuss the circumstances of any whistleblowing concern with any person or organisation save as may be required for the purpose of investigating and reporting on the whistleblowing concern itself.

6. Equalities and impact assessment

It has been assessed that this policy will have no direct equalities impact.

7. Review

The policy will be reviewed on an ongoing basis in order to make sure that it remains relevant and up to date. The Monitoring Officer, in consultation with Internal Audit, Human Resources, management and trade unions, is responsible for reviewing and renewing this policy no less than every 3 years.

Appendix 1 gives a flowchart of the arrangements and appropriate contacts provided under this policy.

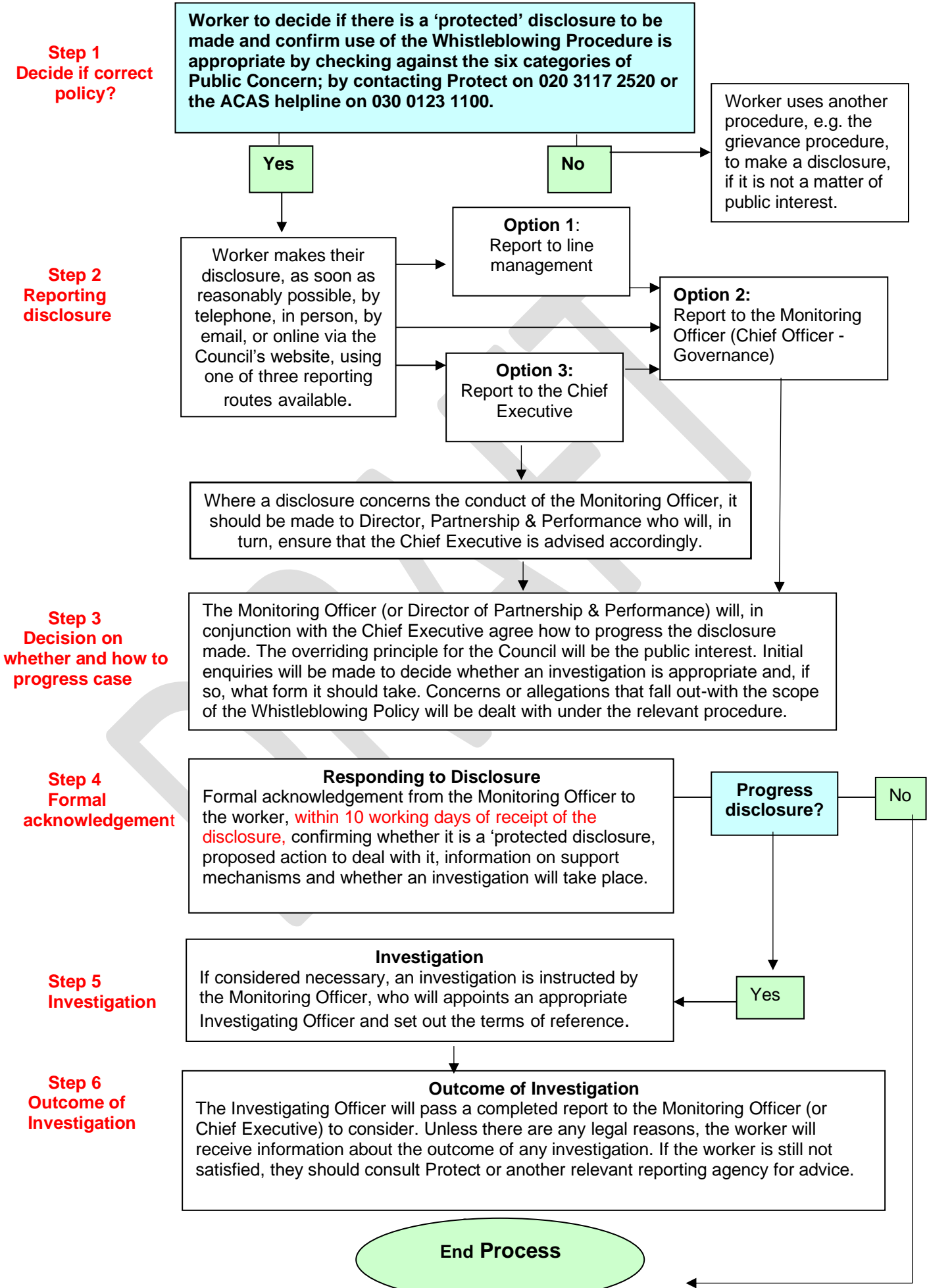
Appendix 2 details how you will be protected as a Whistleblower under this policy.

Appendix 3 gives details of process of how to raise a concern.

Appendix 4

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf

Appendix 1 - Flowchart of reporting a concern



Appendix 2 - Protecting the Whistleblower

Your legal rights

This policy takes account of the Employment Rights Act 1996 (as amended), the Public Interest Disclosure Act 1998, and the Enterprise and Regulatory Reform Act 2013, which protect workers making disclosures about certain matters of concern, providing those disclosures are made in the public interest and in accordance with the Public Interest Disclosure Act. The worker making any such disclosure is expected to have an objectively reasonable belief, that at the time of the disclosure, it is in the public interest.

The legislation protects workers from any detriment from their employer or colleagues that arises as a result of making a protected disclosure in the public interest. This includes protection from harassment, victimisation or dismissal by their employer.

Support to you

Throughout this process:

- you will be given full support from senior management; and
- your concerns will be taken seriously.

For those who are not Council employees, the Council will endeavour to provide appropriate advice and support wherever possible.

Senior management will also consider the impact on any teams who may be directly affected by a whistleblowing allegation or investigation, and will endeavour to provide appropriate advice and support.

Safeguards

Harassment or victimisation. The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for, or suspected of, malpractice. The Council will not tolerate harassment or victimisation and will take action to protect workers when they raise a concern in good faith. This does not mean that if an worker is already the subject of disciplinary or redundancy procedures, those procedures will be halted as a result of their 'Whistleblowing'.

Confidentiality. All concerns will be treated in confidence and the Council will do its best, subject to any overriding legal obligations, to protect your identity if you do not want your name to be disclosed. If investigation of a concern discloses a situation that is sufficiently serious to warrant, for example, disciplinary action or police involvement, then it may not be possible to take action as a result of your disclosure without your help, so you may be asked to come forward as a witness. However, and subject to the foregoing, your name will not be released as a possible witness until the reasons for its disclosure at this stage have been fully discussed with you. You will also be given as much support as possible throughout these processes.

Anonymous allegations. This policy encourages you to put your name to your allegation. If you do not tell us who you are, it will be much more difficult for us to fully investigate, or to protect your position or give you feedback.

Even if you wish to remain anonymous, it would be helpful if you provided a mobile phone number or email address through which contact can be made.

Concerns expressed anonymously are more difficult to investigate, harder to substantiate and dialogue with the individual who has made the disclosure may not be possible. Given these inherent difficulties, the Council will exercise discretion in deciding whether or not to investigate anonymous allegations. 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 allegations from other sources.

Untrue Allegations

While encouraging workers to bring forward matters of concern, the Council must guard against claims which are untrue or vexatious. This is because of the risk of claims made to deliberately damage the reputation of other workers or the Council as a whole.

If you make an allegation in good faith, reasonably believing it to be true, but it is not confirmed by the investigation, the Council will recognise your concern and you have nothing to fear. However, if you make an allegation frivolously, maliciously, vexatiously or for personal gain, appropriate action (including disciplinary action) may be taken.

Appendix 3 – Raising a concern

How to raise a concern?

You may raise your concern by telephone, in person, or by email. The earlier you express your concern, the easier it is to take action. You will need to provide the following information:

- the nature of your concern and why you believe it to be true; and
- the background and history of the concern (giving names, dates and places, where possible).

Although you are not expected to prove beyond doubt the truth of your suspicion, you will need to demonstrate to the person contacted that you have a genuine concern relating to suspected wrongdoing or malpractice within the Council and that there are reasonable grounds for your concern. This will enable a decision to be made on whether your disclosure can and should be investigated.

You may invite a trade union representative or a colleague to be present for support during any meetings or interviews in connection with the concerns you have raised.

Who to raise a concern with?

This will depend on who is suspected of the wrongdoing and the seriousness and/or sensitivity of the issues involved. You should raise your concerns with your immediate line manager or their line manager in the first instance. If this was not appropriate or you are not comfortable reporting to them, you should report the matter to:-

- Monitoring Officer, Senior Manager Legal and Governance
- Chief Executive
- Director of Partnership & Performance

If your concern relates to potential fraud, corruption (including bribery), theft, misuse of Council funds or assets, you should contact the Council's Audit Service Manager or, alternatively, use the dedicated mailbox whistleblowing@clacks.gov.uk

If you are unsure who to contact you may want to call the independent charity **Protect (formerly Public Concern at Work 020 31172520)** or the **ACAS helpline (030 0123 1100)** or your **trade union** for advice.

What the Council will do

All disclosures, however made, will be passed to the Council's Monitoring Officer on their receipt unless they concern the conduct of that officer. The Monitoring Officer will formally acknowledge your concerns within five working days, and will consider whether an investigation should be commenced. Where a disclosure concerns the conduct of the Monitoring Officer, it should be passed to the Director of Partnership & Performance, who will share this with the Chief Executive.

The action taken will depend on the nature of the concern. It may not be necessary to carry out a formal investigation in every case and some concerns may be resolved with you directly without the need for investigation or it may be that an investigation can be completed without the person or persons under investigation being aware of the process.

Where appropriate, the matters raised may:

- be investigated by management, the Audit service, or through the disciplinary/grievance process;
- be referred to the police;
- be referred to a relevant reporting agency;
- be referred to the external auditor;
- be referred and put through established child/adult protection procedures; or
- form the subject of an independent inquiry.

The Monitoring Officer may also, where they consider it appropriate, inform relevant Elected Members of the matter.

The Monitoring Officer will write to you within ten working days of receiving your disclosure:

- acknowledging that the concern has been received;
- confirming whether your disclosure meets the criteria of a protected disclosure;
- indicating how the Council proposes to deal with the matter;
- supplying you with information on support mechanisms; and
- telling you whether further investigations will take place and if not, why not.

The amount of contact between you and the officers considering the issues will depend on the nature of the matters raised and the clarity of your disclosure. If necessary, further information will be sought from you. You may also be interviewed to ensure that your disclosure is fully understood.

Any meeting can be arranged away from your workplace, if you wish, and a trade union representative or a colleague may attend to support you.

The Council will try to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are asked to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive appropriate advice and support.

If you raise concerns **outside** the Council you should ensure that your disclosure is made to a prescribed person. A public disclosure to anyone else could take you outside the protection of the Public Interest Disclosure Act and of this policy.

You should not disclose information that is confidential to the Council or to anyone else, such as a client or contractor of the Council, except to those included in the list of prescribed persons.

This Policy **does not** prevent you from taking your own legal advice.

Training and awareness

Directors, Senior Managers and Chief Officers are responsible for ensuring that workers within their area of responsibility are aware of this policy and its contents, and that any training needs that may arise from the application of the policy are addressed. Raising awareness of the policy should form part of the induction training for all workers and should be addressed as part of any refresher training.

Employees have a responsibility to ensure that they are aware of and understand the Council's policy in relation to whistleblowing.

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Appendix 4 - Agencies to whom public interest disclosures may be made

Please note that this is not an exhaustive list and workers may wish to check with Protect formerly (Public Concern at Work) who will be able provide advice and information.

<p><u>Protect UK (formerly Public Concern at Work)</u> The Green House 244-254 Cambridge Heath Road London E2 9DA General Enquiries: 020 3117 2520 Website: https://protect-advice.org.uk/contact-protect-advice-line/ Email: https://protect-advice-line/</p>	<p><u>Audit Scotland</u> FAO Correspondence Team, 4th Floor 102 West Port Edinburgh EH3 9DN Tel: 0131 625 1500 Website: www.audit-scotland.gov.uk/contact-us/whistleblowing (a whistleblowing disclosure form is available to download and complete) Email: correspondence@audit-scotland.gov.uk</p>
<p><u>Care Inspectorate</u> Compass House 11 Riverside Drive Dundee DD1 4NY Tel: 0345 600 9527 Website: www.careinspectorate.com Email: enquiries@careinspectorate.com</p>	<p><u>Commissioner for Ethical Standards in Public Life in Scotland</u> Thistle House 91 Haymarket Terrace Edinburgh EH12 5HE Tel: 0300 011 0551 Website: www.ethicalstandards.org.uk Email: info@ethicalstandards.org.uk</p>
<p><u>Police Scotland</u> Tel: 101 Website: www.scotland.police.uk www.scotland.police.uk/contact-us/contact-us-form</p>	<p><u>Office of the Scottish Charity Regulator</u> 2nd Floor Quadrant House 9 Riverside Drive Dundee DD1 4NY Tel: 01382 220446 Website: www.oscr.org.uk Email: C&I@oscr.org.uk</p>
<p><u>Scottish Housing Regulator</u> Buchanan House 58 Port Dundas Road Glasgow G4 0HF Tel: 0141 271 3810 Website: www.housingregulator.gov.scot Email: shr@shr.gov.uk</p>	<p><u>Scottish Human Rights Commission</u> Bridgeside House 99 McDonald Road Edinburgh EH7 4NS Tel: 0131 297 5750 Website: www.scottishhumanrights.com Email: hello@scottishhumanrights.com</p>

<p><u>Food Standards Scotland</u> 4th floor, Pilgrim House Aberdeen AB11 5RL Tel: 01224 285 100 Website: www.foodstandards.gov.scot Email: enquiries@fss.scot</p>	<p><u>Scottish Environmental Protection Agency (SEPA)</u> Strathallan House, Castle Business Park Stirling FK9 4TZ Tel: 01786 457 700 03000 996 699 (customer enquiries) 0800 807 060 (pollution hotline) Website: www.sepa.org.uk Email: whistleblowing@sepa.org.uk</p>
<p><u>Scottish Social Services Council</u> Compass House 11 Riverside Drive Dundee DD1 4NY Tel: 0345 60 30 891 Website: www.sssc.uk.com Email: ftp@sssc.uk.com</p>	<p><u>Standards Commission for Scotland</u> Room T2.21 Scottish Parliament Edinburgh EH99 1SP Tel: 0131 348 6666 Website: www.standardscommissionscotland.org.uk Email: enquiries@standardscommission.org.uk</p>
<p><u>Health and Safety Executive</u> 375 West George Street Glasgow G2 4LW Tel: 0300 003 1647 Website: https://www.hse.gov.uk/contact/whistleblowers.htm</p> <p>Belford House, 59 Belford Road Edinburgh EH4 3UE</p>	
<p><u>Scottish Public Services Ombudsman</u> Bridgeside House 99 McDonald Road Edinburgh EH7 4NS Tel: 0800 377 7330 (freephone) Website: www.spsso.org.uk Email: www.spsso.org.uk/contact-us</p> <p>(Freepost envelopes can be obtained by phoning 0800 377 7330 or by via contact form via https://www.spsso.org.uk/contact-us)</p>	

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