

The background of the slide features a large, faint, light blue watermark of the City of Vancouver coat of arms. The crest includes a crown with four maple leaves, a shield divided into four quadrants (top-left: saltire, top-right: stag's head, bottom-left: sailing ship, bottom-right: eagle), and a banner at the bottom with the motto 'A NE FOR A'.

AGENDA ITEM

6

Whistleblowing Policy

Falkirk Council

Title: Whistleblowing Policy
Meeting: Executive
Date: 27 September 2016
Submitted By: Director of Corporate and Housing Services

1. Purpose of Report

- 1.1 The purpose of this report is to present a whistleblowing policy for consideration by the Executive to replace the existing confidential reporting policy. The opportunity is also taken to report on the anti-fraud and corruption strategy developed by the Council's corporate fraud team.

2. Recommendation(s)

- 2.1 **The Executive is asked to (a) approve the whistleblowing policy attached as appendix 1 to this report and (b) note and endorse the anti-fraud and corruption strategy attached as appendix 2.**

3. Background

- 3.1 The Public Interest Disclosure Act 1998 introduced provisions protecting workers from retaliation if they "blow the whistle".
- 3.2 Whistleblowing is defined by the charity, Public Concern at Work (PCAW), as being when a worker raises a concern about wrongdoing, risk or malpractice with someone in authority either internally or externally. The technical term for this under the 1998 Act is making a "public interest disclosure". While the anti-fraud and corruption strategy also addresses employees, it and the reporting line are available also to members of the public.
- 3.3 The term "worker" includes employees, contractors, agency workers and those providing services under a contract with the Council in their own premises (e.g. care homes).
- 3.4 To be covered by whistleblowing law, a worker who makes a disclosure must reasonably believe two things. The first is that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistleblowing law. The second is that the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the following categories:

- criminal offences (this may include, for example, types of financial impropriety such as fraud)
- failure to comply with an obligation set out in law
- miscarriages of justice
- endangering of someone's health and safety
- damage to the environment
- covering up wrongdoing in the above categories

3.5 For over ten years, the Council has had in place a confidential reporting policy which has enabled employees and others to raise any concerns they may have about serious wrongdoing within the Council. It forms an important element of the Council's corporate governance procedures and sits alongside other policies and procedures for preventing, detecting and investigating fraud and error, for example the anti-fraud and corruption strategy.

3.6 The confidential reporting policy has been reviewed periodically over the years, but it is considered appropriate to review and refresh it more broadly to take account of good practice guidance issued by PCAW and the Department for Business, Innovation and Skills as well as to dovetail with the facility for Council staff to raise concerns relating to fraud or corruption via the corporate fraud telephone line and mailbox. The opportunity is also taken to adopt a more plain English approach to the policy, including re-naming it, with "whistleblowing" now being a more generally understood term.

3.7 The anti-fraud and corruption strategy was approved by the Audit Committee on 22 September 2014 and the corporate fraud team, under the auspices of the internal audit manager, was established on 1 February 2016. The team incorporates staff previously responsible for benefits fraud investigation which now sits with the Department of Work and Pensions.

4. Considerations

4.1 The aim of the whistleblowing policy is to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is designed to give confidence to employees that their concerns will be listened to and that they need not fear victimisation, subsequent discrimination, disadvantage or dismissal.

4.2 It is also intended to encourage and enable employees to raise serious concerns within the Council rather than ignoring the problem or "blowing the whistle" outwith the Council, and to do so at the earliest opportunity so that those concerns can be properly investigated. However, the policy does inform employees how they can legitimately pursue the matter outside the Council if they are not satisfied with how it has been dealt with internally.

- 4.3 The updated policy is based on best practice guidance from PCAW, which is a whistleblowing charity and leading authority in the field, and the Department of Business Innovation and Skills. It incorporates legislative changes introduced by the Enterprise and Regulatory Reform Act 2013 with regard to the public interest test, good faith and vicarious liability.
- 4.4 Following approval of the policy, awareness raising initiatives will be scheduled to ensure that whistleblowing continues to be appropriately publicised and that suitable linkages are made with the publicity material relating to the corporate fraud reporting line and mailbox. The policy will also be highlighted as part of the induction process for new members of staff and in training for existing members of staff. It will be freely available on the website and will be advertised by way of posters placed on notice boards throughout the Council.

5. Consultation

- 5.1 Given the nature of the subject matter, internal consultation on the terms of the policy has taken place with the Internal Audit, Risk and Corporate Fraud Unit and Human Resources.

6. Implications

Financial

- 6.1 No direct financial implications arise from this report, however one of the benefits of having a strong whistleblowing policy is to help address the risk of financial malpractice or fraud with the corporate fraud reporting line and mailbox being valuable additions to the suite of governance measures.

Resources

- 6.2 No specific resources issues arise from this report.

Legal

- 6.3 The legal provisions on whistleblowing can be technical and complex. They sit under the Public Interest Disclosure Act 1998 which has been incorporated into the Employment Rights Act 1996, subsequent regulations and developing case law, all intended to protect workers from victimisation or detriment following the making of a public interest disclosure. Although the law does not require employers to have a whistleblowing policy in place, a written policy is indicative of good practice in corporate governance and expresses the Council's overt commitment to the legal protection afforded to whistle blowers.

Risk

- 6.4 No specific risks arise from this report, however the risk of serious wrongdoing or malpractice going unchallenged within the Council is reduced by having the policy in place.

Equalities

- 6.5 No adverse equalities issues arise from this policy.

Sustainability/Environmental Impact

- 6.6 A sustainability impact assessment was not required.

7. Conclusions

- 7.1 A widely advertised whistleblowing policy with clear links to corporate fraud reporting arrangements assists to embed the principles of good practice within the Council by giving all workers the confidence to raise genuine concerns in safety and with the assurance that they will be treated properly and their concerns will be acted on.

Director of Corporate and Housing Services

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Appendices: 1 (Whistleblowing policy)
2 (Falkirk Council – Anti Fraud and Corruption Strategy)

List of Background Papers:

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

- Public Concern at Work: Whistleblowing in the Public Sector
- Department for Business Innovation and Skills - Whistleblowing: guidance and code of practice for employers
- Department for Business Innovation and Skills - Whistleblowing: guidance for prescribed persons

WHISTLEBLOWING POLICY

1. What is Whistleblowing?

In this policy 'whistleblowing' means the reporting by employees and others¹ of suspected wrongdoing, malpractice, illegality or risk in the workplace.

The policy aims to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It sits alongside other policies for ensuring probity within the Council, for example the anti-fraud and corruption strategy.

Employees are often the first to realise that something seriously wrong may be happening within the Council. However, they may not express their concerns either because they feel that speaking up would be disloyal to their colleagues or to the Council or because they fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern than to report it.

The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it encourages employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. It recognises that certain cases will have to proceed on a confidential basis. This policy makes it clear that staff can do so without fear of reprisals and is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or publicly disclosing the matter.

If you are considering raising a concern you should read this policy first. It explains:

- the types of issues that can be raised
- how the person raising a concern will be protected from victimisation and harassment
- how to raise a concern, and
- what the Council will do

If you are unsure whether to use this policy or want independent advice at any stage, you can contact the independent charity **Public Concern at Work** on **020 7404 6609** 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.

¹ Whistleblowing protection extends to others who work for the Council but are not employees e.g. agency staff or contractors.

2. What is the aim of the policy and when does it apply?

Aims of the policy

This policy is designed to ensure that you can raise your concerns about wrongdoing or malpractice within the Council without fear of victimisation, subsequent discrimination, disadvantage or dismissal.

It is also intended to encourage and enable you to raise serious concerns **within** the Council rather than ignoring a problem or 'blowing the whistle' outside.

The policy aims to:

- encourage you to feel confident in raising serious concerns at the earliest opportunity
- provide avenues for you to raise those concerns (for example, the corporate fraud reporting line/mailbox) and receive feedback on any action taken
- ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied
- reassure you that you will be protected from possible reprisals or victimisation if you have made any disclosure in good faith.

The whistleblowing policy is not intended to replace existing procedures:

- if your concern relates to your own treatment as an employee, you should raise it under existing grievance or dignity at work procedures
- if a client has a concern about services provided to him/her, it should be raised as a complaint to the Council

Who can raise a concern under this policy?

Legislation defines a whistleblower as a 'worker', that is, someone inside the organisation. The policy therefore applies to all people working for the Council. This includes full and part-time, temporary and casual staff and contractors working for the Council on Council premises (e.g. agency workers). It also covers Council suppliers and those providing services under a contract with the Council in their own premises (e.g. care homes).

What does the policy cover?

A whistleblowing concern is where a worker discloses information about suspected malpractice, risk, abuse or wrong-doing. It is best to raise the concern as early as possible to allow the matter to be looked into promptly. The following list illustrates the types of issues that may be raised:

- the abuse of children and/or vulnerable adults
- any unlawful act (e.g. theft)
- health and safety risks, either to the public or other employees
- the unauthorised use of public funds
- maladministration
- failure to safeguard personal and/or sensitive information (data protection)
- damage to the environment (e.g. pollution)
- fraud and corruption (including bribery)
- racial, sexual, disability or other discrimination
- disclosures related to miscarriages of justice
- any deliberate concealment of information tending to show any of the above.

This list is not exhaustive.

3. Protecting the Whistleblower

Your legal rights

This policy has been written to take account of the Public Interest Disclosure Act 1998 which protects workers making disclosures about certain matters of concern, when those disclosures are made in accordance with the Act's provisions and in the public interest.

The Act protects employees 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.

As a whistleblower, you are protected if you:

- reasonably believe the information disclosed tends to show that one of the following has happened, is happening or is likely to happen:
 - criminal activity
 - failure to comply with a legal obligation
 - 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 is being made to the right person.

Support to you

Throughout this process:

- you will be given full support from senior management
- your concerns will be taken seriously, and
- the Council will do all it can to help you throughout the investigation

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

Confidentiality

All concerns will be treated in confidence and the Council will do its best to protect your identity if you do not want your name to be disclosed. If investigation of a concern discloses a situation which 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, 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 whenever possible. If you do not tell us who you are it will be much more difficult for us to protect your position or to give you feedback.

Concerns expressed anonymously are more difficult to investigate, harder to substantiate and further liaison with the whistleblower is not 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 employees 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 employees 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 or for personal gain, appropriate action that could include disciplinary action, may be taken.

4. Raising a Concern

Who should you raise your concern with?

This will depend on the seriousness and sensitivity of the issues involved and who is suspected of the wrongdoing. As a first step, you should normally raise concerns with your immediate manager or his/her line manager. In cases where this is not appropriate, the concern should be raised with:

- your Head of Service or Director, or
- the Chief Governance Officer in her role as Monitoring Officer, or
- the Chief Executive.

If your concern relates to potential fraud, corruption (including bribery), theft, misuse of Council funds or assets, you can also use the **dedicated corporate fraud reporting line (01324 504500) or mailbox (corporate.fraud@falkirk.gov.uk)**.

If you are unsure who to contact you may want to call the independent charity **Public Concern at Work (0207 404 6609)** or the **ACAS helpline (0300 123 1100)** or your **trade union** for advice.

How to raise a concern

You may raise your concern by telephone, in person or in writing. 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
- 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.

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

5. What the Council will do

The Council will respond to your concerns as quickly as possible. Do not forget that testing your concerns is not the same as either accepting or rejecting them.

The overriding principle for the Council will be the public interest. In order to be fair to all employees, including those who may be wrongly or mistakenly accused, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations that fall within the scope of other existing procedures will normally be referred for consideration under those procedures.

The action taken by the Council 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 corporate fraud unit or through the disciplinary/grievance process
- be referred to the police
- be referred to the external auditor
- be referred and put through established child/adult protection procedures
- form the subject of an independent inquiry

Within ten working days of a concern being raised, the person investigating your concern will write to you:

- acknowledging that the concern has been received
- indicating how the Council proposes to deal with the matter
- supplying you with information on staff support mechanisms
- 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, the potential difficulties involved and the clarity of your information. 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 union or professional association representative or a colleague may accompany you in support.

The Council will do what it can 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.

The Council accepts that you need to be assured that your disclosure has been properly addressed. Unless there are any legal reasons why this cannot be done, you will receive information about the outcome of any investigation.

6. The Responsible Officer

While the Council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy, responsibility for investigating referrals or concerns may sit with other teams or officers.

7. How the Matter can be Taken Further

This Policy is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and you feel it is right to take the matter outside the Council, the following are the Council's prescribed contacts:

- the Council's external auditors
- your trade union
- the police
- other relevant bodies prescribed by legislation – the Council's Monitoring Officer or Public Concern at Work will be able to advise you who you can contact. You can also see the list of appropriate regulatory bodies set out in the document **Blowing The Whistle to a Prescribed Person: List of prescribed persons and bodies** which can be found at this address: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf

If you raise concerns **outside** the Council you should ensure that it is to one of these prescribed contacts. 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 contacts.

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

8. Corporate Recording and Monitoring

The Monitoring Officer will maintain a corporate register containing all concerns that are brought to her attention. Similarly, the Corporate Fraud Team will maintain a record of all referrals made via the dedicated telephone line and mailbox.

All officers allocated to look into a concern must ensure the Monitoring Officer is provided with sufficient details for the corporate register.

The Monitoring Officer will review the corporate register and produce an annual report for the relevant committee. The report will include a summary of the concerns raised, to which Service they related, the post to which the

concerns related (if not confidential) and any lessons learned. The report will not include any employee names. The aim of this is to ensure:

- the Council and/or the relevant Service learns from mistakes and does not repeat them, and
- consistency of approach across the Services

The corporate register together with the annual reports will be available for inspection by internal and external audit, after removing any confidential details.

9. Training and Awareness

Directors and Heads of Service are responsible for ensuring that their employees are aware of the whistleblowing policy and process and that any training needs are addressed which may arise from the application of the policy. Raising awareness of the policy should form part of the induction training for all employees 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.

FALKIRK COUNCIL – ANTI FRAUD AND CORRUPTION STRATEGY

Introduction

1. Falkirk Council aims to provide excellent public service, and is committed to a culture of honesty, integrity, and propriety. The Council does not tolerate fraud, corruption, bribery, or other irregular practices.
2. This Strategy sets out the Council's commitment to the prevention and detection of fraud and corruption, and our rejection of practices aimed at bypassing our framework of internal control.
3. The Strategy is a high level statement of intent. A framework of procedures and guidance is in place to support the Strategy. The Strategy, and all supporting guidance, will be periodically reviewed, updated and, if necessary, further developed.

What is meant by Fraud and Corruption?

4. Fraud is the use of wrongful or criminal deception to obtain financial or personal gain. Examples of fraud include forgery, false representation, or the concealment of material facts.
5. Corruption is offering, promising, or giving someone an inducement to act improperly. The Bribery Act 2010 makes it a criminal offence to give, promise, or offer a bribe, and to request, agree to receive, or accept a bribe. The Act also introduced a 'corporate offence' of failure to prevent bribery by people working on behalf of the Council.

Operating Culture

6. The Council will not tolerate fraud and corruption, and will deal timeously and robustly with any instances of fraud or corrupt practice.
7. Elected Members and Officers must act honestly and with integrity at all times, and must lead by example. Compliance with the Councillors' Code of Conduct and with the Code of Conduct for Members and Officers is expected.
8. Financial Regulation 24.6 is clear that Chief Officers must identify and manage the risk of fraud and corruption, and ensure that appropriate risk management, internal control, and governance arrangements are in place. This includes the communication and implementation of this Strategy, and other relevant policies and procedures, in their area of responsibility.
9. Council employees must be alert to potential and / or actual malpractice, and must be encouraged to report these appropriately (through their line manager, Chief Finance Officer, Internal Audit Manager, or in line with the Council's Whistleblowing Policy).
10. This Strategy is supported by a Fraud and Corruption Investigation Procedure. This includes guidance on liaison with Police Scotland, and on developing the most appropriate investigative strategy.

The investigative strategy to be followed (as well as lead responsibility for investigation) will depend on the seriousness, materiality, and nature of the alleged or actual malpractice, and may involve close working with other public or private organisations.

11. Where there is evidence of improper behaviour the Council's Disciplinary Policy will also be invoked.
12. That said, while the Council is committed to reacting to alleged or actual fraud or corruption, the raising of vexatious or malicious allegations is considered a serious matter that will be dealt with appropriately.

Prevention and Detection

13. As above, all elected Members must comply with the Councillors' Code of Conduct and Officers and elected Members must comply with the Code of Conduct for Members and Officers. Contract Standing Orders and Financial Regulations, as well as the wider scheme of delegation, provide a transparent framework of financial control. These, and supplementary guidance, are mandatory.
14. Related to that, the risk of fraud and corruption must be included, where appropriate, within corporate, Service, Division, or project risk registers. Such inclusion ensures that these risks are acknowledged, and that they are properly managed and monitored.
15. The Council is aware of the need to maintain a balance between internal control and process efficiency. Managers are responsible for reviewing and developing financial and other systems to minimise the risk of fraud while not unduly compromising service delivery. The adequacy of the Council's financial and other controls and systems is independently reviewed and monitored by both Internal and External Audit. Managers must ensure the timely implementation of all Internal and External Audit recommendations.
16. Hospitality must only be given or accepted on a scale appropriate to circumstances, and registers of gifts and interests are maintained.
17. The Chief Finance Officer acts as the Council's Money Laundering Reporting Officer. This allows the submission of Suspicious Activity Reports to the National Crime Agency if potentially suspicious transactions are identified.
18. In addition, the Council participates in the bi-ennial National Fraud Initiative data matching exercise, and shares information with partners, such as the National Anti Fraud Network, on fraud information and indicators.
19. The Council's framework of internal control has been designed to provide reasonable (not absolute) protection from the risk of fraud and corruption. Despite this, however, the alertness of Council employees and members of the public to fraud indicators is vital, as attempted fraud or malpractice will inevitably be designed to bypass established controls.

Conclusion

20. Falkirk Council is determined to ensure that the risk and impact of fraud and corruption is minimised. This Strategy confirms and re-iterates that aim.
21. The Council's policies, procedures, and guidance provide a framework for managing the risk of fraud and corruption. Underpinning that, however, is the need to ensure that all managers and staff remain aware of emerging threats, with preventative and detective activities and techniques continuously adapted to meet the ever evolving fraud and corruption risk.