

Audit Committee

28 November 2022

Confidential Reporting Code (Whistleblowing)



Report of Paul Darby, Corporate Director of Resources

Electoral division(s) affected:

All

Purpose of the Report

- 1 This report presents the Audit Committee with the updated Confidential Reporting Code and seeks to remind members and employees of how employees can express any concerns they have about a procedure, process, or person confidentially.

Executive Summary

- 2 Durham County Councils Counter Fraud and Corruption Strategy sets out the commitments of the Council to tackling fraud, corruption, and bribery.
- 3 The 'Pursue' pillar pledges that the Council will punish fraudsters and recover losses by prioritising the use of civil sanctions, developing capability and capacity to investigate fraudsters, and developing a more collaborative and supportive local enforcement response on sanctions and collaboration'
- 4 The Confidential Reporting Code is a live annex to the Strategy, setting out how employees can express their concerns about a procedure, process, or person confidentially.
- 5 The Council's Whistleblowing Policy is designed to allow those employed by the Council and/or members of the public to come forward and raise both disclosures and serious allegations of wrongdoing involving the actions of the Council's employees, its Councillors, contractors, or any aspect of the Council's activities.
- 6 As such the Council is committed to a policy which seeks to protect those individuals who make certain disclosures about any instance of malpractice or wrongdoing and to investigate them in the public interest.

Recommendations

- 7 Audit Committee are asked to note and agree the Confidential Reporting Code attached at Appendix 2.

Background

- 8 Whistleblowing is the confidential disclosure by an individual of any concerns relating to a perceived wrongdoing involving any aspect of the work or those who work for an organisation. The whistleblowing process assists individuals, who believe they have discovered malpractice, impropriety, or wrongdoing, to raise a concern, in order that this can be addressed.
- 9 The Public Interest Disclosure Act 1998 (PIDA) is known as the Whistleblowing law and is designed to encourage and enable employees to “speak out” and to report suspected wrongdoing at work. This is commonly known as “blowing the whistle”.
- 10 PIDA legislation legally protects employees (including temporary and agency workers), from any detriment from their employer or colleagues that arises because of making a “protected disclosure” (a qualifying disclosure) in the public interest. This includes protection from harassment, victimisation, or dismissal by their employer.
- 11 A qualifying disclosure means any disclosure of information made which in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
 - Criminal offences
 - Failure to comply with an obligation set out in law
 - Miscarriages of justice
 - Endangering someone’s health and safety
 - Damage to the environment.
 - Covering up wrongdoing in the above categories.
- 12 A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

Content

- 13 Durham County Council’s Confidential Reporting Code covers all employees except school-based employees, where a school’s own procedures will apply.
- 14 The code also applies to former employees, job applicants, agency staff working for the council, contractors, and suppliers.

- 15 The Code aims to:
- Encourage employees to feel confident in raising serious concerns and to question and act upon concerns about practice.
 - Provide avenues for employees to raise those concerns and receive feedback on any action taken.
 - Ensure that employees receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied
 - reassure employees that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in the public interest.
- 16 To make a disclosure under this code an employee must reasonably believe that they are acting in the public interest
- 17 This code covers concerns outside of the following areas and does not replace the following procedures:
- The Councils complaints procedure
 - Financial procedure rules and financial management standards
 - Arrestable offences
 - Resolution Procedure
 - Contract procedure rules
- 18 The code gives employees reassurance around safeguarding and confidentiality and encourages them to put their name against an allegation so that it can be fully investigated without prejudice.
- 19 Where appropriate, the matters raised may:
- Be investigated by management, internal audit, and corporate fraud, or through the disciplinary process.
 - Be referred to the Police.
 - Be referred to the external auditor
 - For the subject of an independent enquiry.
- 20 The Corporate Director of Resources has overall responsibility for the maintenance and operation of the code and, via the Chief Internal Auditor and Corporate Fraud Manager, will maintain a record of concerns raised, monitor the progress, and record the outcomes and will report as necessary to the Audit Committee.

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Appendix 1: Implications

Legal Implications

Ensuring proper governance procedures are in place, (particularly the Counter Fraud & Corruption Strategy, Contract Procedure Rules, Financial Procedure Rules, Codes of Conduct and the Confidential Reporting Code), that are supported by a robust audit programme of counter fraud awareness measures and assurance reviews will assist the Council in complying with anti-corruption law, in particular the Bribery Act, and also serves to reduce the risk of reputation damage and financial loss by litigation.

Finance

Loss to the Council arising from fraudulent actions. The cost of the Corporate Fraud Team for 2021/22 is £277,847 and in 2021/22 the team recovered or intercepted over £2.2 million of potential fraud. Since the set-up of the Team in June 2015 the team have recovered or intercepted over £14 million. Not all of this relates to a direct impact on Council budgets. Some of the work of the team is also not measured and therefore does not have a value that can be calculated.

Consultation

The Trade Unions have been sited on this policy.

Equality and Diversity / Public Sector Equality Duty

None

Climate Change

None

Human Rights

None

Crime and Disorder

Fraud is a criminal offence as defined by the Fraud Act 2006.

Staffing

Action is to be taken against employees where fraud has been proven.

Accommodation

None

Risk

The risk of fraud and corruption is recognised as a corporate strategic risk. An effective counter fraud strategy is a key control in helping to mitigate the risk.

Procurement

None.

Confidential Reporting Code (Whistleblowing)



1 Introduction

1.1 What is the code about?

Employees can sometimes be the first to realise that there may be something seriously wrong with procedures and/or processes within Durham County Council (the council). However, they may not always express their concerns because they feel that speaking up would be disloyal to their colleagues or to the council. They may also fear the threat of harassment or victimisation and in these circumstances, they may feel it easier to just ignore their concern rather than report what may just be a suspicion of malpractice.

'Whistleblowing' is the term used when an employee passes on information concerning wrongdoing. This is generally referred to as 'making a disclosure' or 'blowing the whistle'. Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998).

The council is committed to the highest possible standards of openness, honesty and accountability. In line with that commitment, we expect employees, and others that we deal with, who have any serious concerns about any aspect of the council's work to come forward and voice those concerns. Wherever possible, employees are encouraged to use relevant council procedures to report issues in an open and transparent way, because that is the type of organisational culture we are trying to foster. It is recognised, however, that some cases will have to proceed on a confidential basis.

This document makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. The Confidential Reporting Code is intended to encourage and enable employees to raise serious concerns within the council rather than overlooking a problem or 'blowing the whistle' outside.

1.2 Who does the policy apply to?

This code covers all employees except for school-based employees, where a school's own procedures will apply.

The code also applies to former employees, job applicants, agency staff working for the council, contractors and suppliers.

The code is recommended as good practice to all other groups associated with the council who have the discretion in their employment to adopt our policies. Apart from schools, this will include such groups as voluntary sector organisations.

These procedures are in addition to the council's complaints procedure and other statutory reporting procedures applying to some services. If asked, employees should make service users aware of the existence of these procedures.

Aims and scope of the code

1.3 Aim of the code

This code aims to:

- encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
- provide avenues for you to raise those concerns 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 a reasonable belief that you have made any disclosure in the public interest.

1.4 Scope of the code

There are existing procedures in place to enable you to lodge a resolution (formerly grievance) relating to your own employment (see section 2.3 below).

An employee who makes a disclosure under this code must reasonably believe:

- (i) That they are acting in the public interest.
- (ii) That the disclosure tends to show past, present, or likely future wrongdoing falling into one or more of the following categories:
 - criminal offences.
 - 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.

Examples of the above could include:

- conduct which is an offence or a breach of law.
- health and safety risks, including risks to the public as well as other employees.
- the unauthorised use of public funds.
- negligence.
- unauthorised disclosure of confidential information.
- possible fraud and corruption.
(NB. The council's counter fraud and corruption strategy is also accessible on the intranet and extranet or by clicking [here](#))
- sexual or physical abuse of children and/or vulnerable young people/adults.
- deliberate concealment of the above matters.

The above list is neither exclusive nor exhaustive.

Thus, any serious concerns that you have, which are in the public interest, about any aspects of service provision or the conduct of officers or members of the council or others acting on behalf of the council, can be reported under the Confidential Reporting Code.

1.5 Other procedures

This code covers concerns outside of the following areas and does not replace the following procedures:

1.5.1 The council's complaints procedure

Complaints by an individual customer or group of customers about the standard of service, actions or lack of actions by the council should be managed under the council's complaints guidance.

The council deals with two main types of complaint:

- **Statutory** - a complaint which arises from the duties placed on a local social services authority to provide assessments and care services under the provisions of relevant adult and children's social care legislation. The process for managing such complaints is prescribed in Regulations.
- **Non-statutory** - all other complaints.

The council's service standards for dealing with non-statutory complaints are:

- Acknowledge all complaints within 24 hours.

After exhausting the complaints process, a complainant will be advised on how to pursue their case through the Local Government Ombudsman.

1.5.2 Financial procedure rules and financial management standards

Under the council's financial procedure rules Chief Officers and Heads of Service are ultimately responsible to the council for ensuring that financial procedures are correctly applied and observed by employees and contractors providing services on the council's behalf. They are also responsible for reporting any known breach or suspected breach of procedures or any failures of financial controls to the Chief Finance Officer. In practice the Head of Corporate Finance and Commercial Services or the Head of Transactional Services should be notified of any such incident.

The Chief Internal Auditor and Corporate Fraud Manager (the Head of Internal Audit) must be notified immediately of any suspected fraud, theft, irregularity, improper use or misappropriation of the council's property or resources.

1.5.3 Arrestable offences

In any case where a Corporate Director has reason to believe that an employee of the council may have committed an arrestable offence, the Corporate Director of Resources or the Chief Internal Auditor and Corporate Fraud Manager must be informed and where it is considered an arrestable offence has occurred, the Corporate Director of Resources or the Chief Internal Auditor and Corporate Fraud Manager in consultation with Legal Services will inform the police.

1.5.4 Resolution procedure

The Council's Resolution Policy is designed to ensure that concerns, problems and complaints arising in the course of employment can be raised and resolved quickly and in a fair and reasonable manner. The Resolution Policy exists to provide a mechanism for employees to raise concerns that are not covered by other procedures. Further information on the policy and the type of issues that can be raised as a resolution can be found in the Resolution Policy on the intranet.

If it is unclear which procedure the employee wishes to pursue, the employee or manager should seek advice from the Human Resources (HR) Advice and Support Team.

1.5.5 Contract procedure rules

The Contract Procedure Rules (CPRs) provide the framework for procurement activity across the council setting out how contracts for goods, works, services and utilities should be put in place and managed, and detailing the record keeping and reporting requirements related to procurement activity. They apply to all service groupings across the council.

The CPRs should not be seen in isolation, but rather as part of the overall regulatory framework of the council as set out in the Constitution.

The content of these CPRs is supported by additional guidance and documentation contained in the Advice Centre within the 'Procurement and Purchasing' section of the council's intranet.

All procurement procedures must:

- realise value for money by achieving the optimum combination of whole life costs and quality of outcome.
- be consistent with the highest standards of integrity.
- operate in a transparent manner.
- ensure fairness in allocation of public contracts.
- comply with all legal requirements including European Union (EU) treaty principles.
- support all relevant council priorities and policies including the Medium-Term Financial Plan, and
- comply with the council's Corporate Procurement Strategy, and the Sustainable Commissioning and Procurement Policy.

If you become aware that there has been a breach of the contract procurement rules you can report such a breach using the Confidential Reporting Code.

2 Safeguards

The council is committed to good practice and high standards and wants to be supportive of employees.

The council recognises that the decision to report a concern can be a difficult one to make. If you believe what you are saying is true and the statement being made is in the public interest, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.

It is understandable that whistle-blowers are sometimes worried about possible repercussions. The council aims to encourage openness and will support employees who raise genuine concerns under this code, even if they turn out to be mistaken.

The council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in the public interest. This action will depend on the type of concern and specific service arrangements.

Employees or ex-employees must therefore not suffer any detrimental treatment because of raising a disclosure. Detrimental treatment includes dismissal, disciplinary action, threats, or other unfavorable treatment connected with raising a disclosure.

Employees must not threaten or retaliate against whistle-blowers in any way. If you are involved in such conduct, you may be subject to disciplinary action.

On occasions, you may be asked whether you would be prepared to obtain further information. This would be entirely at your discretion and a full risk assessment would be completed, prior to such a course of action being agreed.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

3 Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. Any breach of confidentiality will be regarded as a serious matter and will be dealt with accordingly.

Although every effort will be made not to reveal your identity you may however be called as a witness if this matter is progressed.

Durham County Council complies with all relevant statutory obligations. Personal information processed by the Council will be handled in accordance with the Council's privacy statement, which can be accessed [here](#). Human Resources privacy notice provides more specific information on the data collected and how it is handled, a copy of which can be accessed [here](#).

If you have any concerns about how your data is handled, please contact either the Data Protection Officer at dpo@durham.gov.uk or the [Information Commissioner's Office](#).

4 Anonymous allegations

This code encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously can be more difficult to investigate. When considering an investigation into an anonymous complaint, the following will be taken into consideration:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

5 Untrue allegations

If you make an allegation in the public interest but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you under the council's Disciplinary Policy.

6 How to raise a concern

As a first step, you should normally raise concerns with your immediate manager or their superior. This can be done verbally or in writing. Wherever possible concerns should be made in writing direct by the person raising the concerns using the Confidential Reporting Code Form which can be downloaded from the intranet.

The completed form should normally be reviewed by the manager to whom the concern has been raised and any points of clarity or additional information noted following any discussion with the person raising the concern.

The completed form should then be sent to the Corporate Fraud inbox: corporatefraudteam@durham.gov.uk as soon as possible, so to prevent any delay and allow for any urgent action to be taken. Alternatively, telephone concerns can be reported to 03000 266 745.

All concerns will be logged for monitoring purposes and the Chief Internal Auditor and Corporate Fraud Manager, in consultation with the service manager, and any other relevant officers, will agree how the concern should be investigated.

In certain circumstances, you may feel unable, or it may not be appropriate, to raise your concerns with your immediate manager due to the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. If this is the case, the concern can be reported direct to one of the following officers using the same form:

- Head of Service.
- Corporate Director Resources.
- Chief Executive.
- Chief Internal Auditor and Corporate Fraud Manager (Head of Internal Audit).

The earlier you express the concern the easier it is to take action.

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

Advice/guidance on how to pursue matters of concern may be obtained from:

Head of Legal and Democratic Services	☎ 03000 26 0000
Corporate Director Resources	☎ 03000 26 0000
Chief Internal Auditor and Corporate Fraud Manager	☎ 03000 26 0000
Chief Procurement Officer	☎ 03000 26 0000

Alternatively, you may wish to seek advice from a person independent of the council. In this case you should contact the council's **External Auditors, Mazars**:

Mazars LLP	Address: 26 Mosley Street Newcastle, NE1 1DF ☎ 0191 3836300
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Or alternatively you can seek advice at the following independent whistleblowing charity:

Protect (formerly Public Concern at Work)	Address: The Green House 244-254 Cambridge Heath Road London E2 9DA Website: https://protect-advice.org.uk/homepage/ email: info@protect-advice.org.uk ☎ 020 3117 2520 (Advice Line – option 1)
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You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

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

Ideally you should feel able to make a disclosure within the council however there may be circumstances where you feel unable to. You can make a disclosure under whistleblowing law to prescribed person(s) who are mainly regulators and professional bodies but include other persons and bodies such as MPs. The relevant prescribed person depends on the subject matter of the disclosure, for example a disclosure about wrongdoing in a care home could be made to the Care Quality Commission. A full list of prescribed persons can be found [here](#).

7 How the council will respond

The council will respond to your concerns. Following the recording of the concern, either directly by the whistle-blower or the manager to whom it was reported, the completed form should then be immediately forwarded to the Chief Internal Auditor and Corporate Fraud Manager for logging and monitoring purposes.

The Chief Internal Auditor and Corporate Fraud Manager is independent and has unlimited access to any officer, member or information within the council and, in consultation with the appropriate officer, can agree the most appropriate way of investigating the concern.

Where appropriate, the matters raised may:

- be investigated by management, internal audit, and corporate fraud, or through the disciplinary process.
- be referred to the police.
- be referred to the external auditor.
- form the subject of an independent inquiry.

To protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it

should take. The overriding principles, which the council will have in mind, are your well-being and the public interest. Concerns or allegations that fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

Within ten working days of a concern being raised, the person with whom you have raised your concern will respond to you in writing:

- acknowledging that the concern has been received.
- indicating how we propose to deal with the matter.
- giving an estimate of how long it will take to provide a final response.
- telling you whether any initial enquiries have been made.
- supplying you with information on employee support mechanisms; and
- telling you whether further investigations will take place and if not, why not.

A copy of the response will be forwarded to the Chief Internal Auditor and Corporate Fraud Manager for monitoring purposes.

The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, the council will seek further information from you. However, should this further information need to be gleaned by you, from another person, without them being made aware of your involvement in the confidential reporting process, specific procedures will need to be applied.

Should a manager believe that this additional information may assist the enquiry, and that the information can only be obtained by you, no action will be taken until the matter has been referred to the relevant person(s) for a decision to be made as to whether such a course of action is both necessary and proportionate.

Important:

All employees must not, under any circumstances attempt to obtain any further information covertly either directly or indirectly without first having complied with the council's procedures in relation to employee surveillance which can be found in the Regulation of Investigatory Powers Act (RIPA) Policy – a copy of this is available on the [intranet](#). Failure to do so may infringe Human Rights and render the council liable to legal action.

Where any meeting is arranged, off-site if you so wish, you can be accompanied by a trade union or professional association representative or a work colleague.

The council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the council will arrange for you to receive advice about the procedure.

The council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

This code 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 if you feel it is right to take the matter outside the council, the following are possible contact points:

- the council's External Auditors, Mazars;
- your local Citizens' Advice Bureau;
- the police;
- the independent whistleblowing charity Protect (formerly Public Concern at Work) – telephone 020 3117 2520 (Advice Line – option 1) or further details are available at <https://protect-advice.org.uk/homepage/>
- prescribed person(s) as detailed in Section 7.

8 The responsible officer

The Corporate Director Resources has overall responsibility for the maintenance and operation of the code. The Corporate Director Resources, via the Chief Internal Auditor and Corporate Fraud Manager, will maintain a record of concerns raised, appoint investigating officers, monitor the progress and record the outcomes (but in a form which does not endanger your confidentiality) and will report as necessary to the Audit Committee.

For advice regarding the application of this guidance please contact:

HR Advice and Support

hradviceandsupport@durham.gov.uk

Payroll and Employee Services can be contacted by emailing: Neighborhoods and Climate Change

PESNCC@durham.gov.uk Regeneration, Economy and Growth

PESREG@durham.gov.uk Children and Young People's Services

PESCYPS@durham.gov.uk Adult Health Services

PESAHS@durham.gov.uk

Resources

PESResources@durham.gov.uk

Further support can be accessed by contacting:

Occupational Health

03000 268 999

occhealthadmin@durham.gov.uk

Health and Safety

hsteam@durham.gov.uk

Employee Assistance Programme

0800 716 017

www.healthassuredeap.com

Username: durham Password: council