

CONFIDENTIAL REPORTING (WHISTLEBLOWING) POLICY



BODMIN TOWN COUNCIL

**Bodmin Town Council, Shire House, Mount Folly Square, BODMIN, PL31 2DQ
Tel: 01208 74159 Fax: 01208 264764
email: Pat.Cook@bodmin.gov.uk**

**CONFIDENTIAL REPORTING
(WHISTLEBLOWING)
POLICY**

Contents		Pages
1.	Introduction	3
2.	Principle	3
3.	Aims and Scope of the Policy	3
4.	Our Assurances to You	4
5.	How and When Should You Raise a Concern?	5
6.	How Bodmin Town Council Will Handle the Matter?	6
7.	Independent Advice	7
8.	External Contacts	7
9.	If You Remain Dissatisfied	8
10.	Corporate Recording & Monitoring	8
11.	Alternative Formats	8
 Annex		
1.	What is the Legal Position?	9

CONFIDENTIAL REPORTING (WHISTLEBLOWING)

POLICY

1.0 INTRODUCTION

- 1.1 All of us at one time or another have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about unlawful conduct, including financial malpractice or dangers to the public or the environment, it can be difficult to know what to do.
- 1.2 You may be worried about raising such issues or you may want to keep the concerns to yourself. Perhaps you feel it's none of your business or that it's only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the organisation.
- 1.3 You may decide to say something, but find that you have spoken to the wrong person or have raised the issue in the wrong way and are not sure what to do next.

2.0 PRINCIPLE

- 2.1 Bodmin Town Council has brought in this policy to enable you to raise legitimate concerns about such malpractice at an early stage and in the right way. We would rather that you raised the matter when it is just a concern rather than wait for proof.

3.0 AIMS AND SCOPE OF THE POLICY

- 3.1 This Whistleblowing Policy is primarily for concerns where the interests of the organisation itself are at risk and need safeguarding.
- 3.2 It aims to provide avenues for you to raise concerns and receive feedback on any action taken. It allows you to go further if you are dissatisfied with the Council's response and to reassure you that you will be protected from reprisals or victimisation from Whistleblowing in good faith.
- 3.3 The policy is intended to help **Members of Staff and those working for a company that has a contract with the Council** who have major concerns about wrong-doing within Bodmin Town Council relating to unlawful conduct, financial malpractice, or dangers to the public or the environment. Specific examples could include:
 - a criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed;
 - a miscarriage of justice has been/is likely to occur;
 - the health and safety of any individual has been/is likely to be endangered;
 - the environment has been/is likely to be damaged;
 - public funds are being used in an unauthorised manner;

- the Council's Constitution (including Standing Orders and, Financial Regulations) has not been observed or is being breached by Members and/or staff;
 - to initiate concern about misconduct of Members;
 - services falling below established standards or practice;
 - information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same; and
 - the Town Council's contractors' activities.
- 3.4 When Members of the Public raise concerns that are identified as falling within the Confidential Reporting (Whistleblowing) Policy, where appropriate the systems and procedures that are available to staff and how Bodmin Town Council will handle the matter will apply.

4.0 OUR ASSURANCES TO YOU

- 4.1 Bodmin Town Council is committed to this policy. If you raise a genuine concern under this Policy, you will not be at risk of losing your job or suffering any form of retribution as a result provided that:
- the disclosure is made in good faith - it does not matter if you are mistaken; you reasonably believe that information, and any allegations contained in it, are substantially true; and
 - you raised your concerns through one of the channels (see paragraph 5.5; 5.9; 7.1) named in this Policy.

Of course we do not extend this assurance to someone who maliciously or vexatiously raises a matter they know is untrue.

- 4.2 Bodmin Town Council will not tolerate the harassment or victimisation of anyone raising a genuine concern. However, we recognise that you may nonetheless want to raise a concern confidentially under this Policy. If you ask us not to reveal your identity by keeping your confidence, we will not disclose it without your consent. If the situation arises where we are not able to resolve the concern without revealing your identity (for instance because your evidence is needed in court), we will discuss with you whether and how we can proceed.
- 4.3 Remember that if you do not tell us who you are, it will be much more difficult for us to look into the matter, protect your position or to give you feedback. Accordingly, while we will consider anonymous allegations this may hinder investigating appropriately. Anonymous concerns may be raised in writing or by telephone to one of the named officers in this policy (see paragraph 5.5).

5.0 HOW AND WHEN SHOULD YOU RAISE A CONCERN?

- 5.1 You should act in accordance with this guidance, which is designed to ensure that further impartial checks are carried out before any appropriate action is taken. These procedures should also give you the reassurance that all reported incidents will be properly and fully investigated.
- 5.2 In the event that a suspicion proves to be groundless, provided that you have acted in good faith and in the best interests of the Council, there will be absolutely no consequences for you.
- 5.3 Please note that you are **not** expected to know the precise nature of any wrongdoing, nor its extent. In particular you are **not** authorised to carry out any investigation work on your own account to obtain evidence or confirm your suspicions.

In no circumstances should you confront any member of staff whom you suspect of any wrongdoing.

- 5.4 These arrangements are an important and integral part of the Council's control systems. All Members of Staff will be given a copy of this guidance and are expected to understand and comply with it.
- 5.5 As soon as you become reasonably concerned, we hope you will feel able to raise it first with your Line Manager. Alternatively, you could speak or write to another Manager, the Responsible Finance Officer, the Town Clerk or his Deputy. These senior officers will also be able to advise on confidentiality and further action required.
- 5.6 Please be assured that all the Senior Officers who may be approached all work within ethical frameworks governed by their professional associations e.g, the Responsible Finance Officer reports to several accountancy bodies.
- 5.7 Members of Staff who wish to raise their concern in writing should use the following format:
- Give the Background and History - relevant dates are always helpful;
 - Reason why you are particularly concerned about the situation.
- 5.8 When raising the concern it is acceptable for you to be assisted, or accompanied by either your Trade Union representative or a colleague who works for the Council.
- 5.9 If you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact:

Chairman of the Finance, Staffing and General Purposes Committee whose contact details may be obtained from the Council Offices or from its website (www.bodmin.gov.uk).

- Depending on the nature of the suspicion, he will either take up the matter with the Town Clerk or contact the Council's Internal Auditors.
- 5.10 Once you have reported your suspicions, you should await acknowledgement. You should **not** discuss your suspicions with anyone in the meantime.
 - 5.11 You may be requested to attend an interview, and this will be arranged in absolute privacy.
 - 5.12 Keep a copy of any report or item submitted. If you have not had any response from the Town Clerk or Responsible Finance Officer within ten working days you should contact the Chairman of the Finance, Staffing and General Purposes Committee.
 - 5.13 You should also contact the Chairman of the Finance, Staffing and General Purposes Committee if you are not satisfied in any way with the initial response you have been given, for example if you are asked to do anything in connection with your suspicions which you consider improper or beyond the scope of your normal duties.
 - 5.14 Remember: You are **not** expected to form any judgement about your findings. The responsibility of every employee is primarily to notify, or report to one (or more if you wish) of the contacts named above, who will know what further procedures will need to be taken.

6.0 HOW BODMIN TOWN COUNCIL WILL HANDLE THE MATTER?

- 6.1 If the concern is raised face to face, the person receiving the information should put it in writing as soon as practicable to ensure that it properly reflects the concern raised. The Member of Staff must also indicate if the concern is to be treated in confidence. The person receiving the concern will ensure the Town Clerk, or his Deputy, is provided with sufficient details to be aware of the concern raised.
- 6.2 Once you have reported your concern, depending on its nature the Town Clerk or Responsible Finance Officer will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation. The contact that you reported you concern to will tell you who will handle the matter and how you can contact them and whether your further assistance may be needed. If you request it, they will write to you at this point summarising your concern(s) and setting out how they propose to handle it.
- 6.3 When you raise the concern(s) you may be asked how you think the matter might best be resolved. If you have any personal interest in the matter, please say at the outset. If your concerns would be more appropriately dealt with under another policy that the Council has (for example, the Anti-Fraud and Corruption Policy or Complaints Policy), you will be advised.
- 6.4 While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, Bodmin Town Council will give you as much feedback as it properly can. Please note, however, that it may

not be able to tell you the precise action taken where this would infringe a duty of confidence owed by us to someone else.

6.5 Where appropriate, the matters raised may:

- be investigated by Management, Internal Audit, or through the disciplinary process;
- be referred to the Police;
- be referred to the External Auditor; or
- form the subject of an Independent Inquiry.

6.6 Usually within ten working days of the concern being raised, the person looking into your concern will write to you:

- acknowledging that the concern has been raised;
- indicating how Bodmin Town Council propose to deal with the matter;
- giving an estimate of how long it will take to provide a full response;
- saying whether any initial enquiries have been made;
- supplying information on support available to you; and
- saying whether further investigations will take place and if not, why not.

Subject to any legal constraints, you will normally be informed of the final outcome of any investigation.

7.0 INDEPENDENT ADVICE

7.1 If you are unsure whether to use this policy or you want independent advice at any stage, you may contact as applicable your;

- Trade Union e.g. Unison
- Professional Association;
- The independent charity Public Concern at Work on 020 7404 6609. Its lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

8.0 EXTERNAL CONTACTS

8.1 Whilst Bodmin Town Council hopes this policy gives you the reassurance you need to raise such matters internally and in confidence, it recognises that there may be circumstances where it may be more appropriate for you to go to the Police or outside regulators (e.g. Audit Commission) and at times consult Public Concern at Work.

8.2 Where you take the matter outside of the Council, you should ensure that no disclosure of confidential information takes place and should check with the Town Clerk or Deputy as you feel fit, as the Public Interest Disclosure Act does not provide blanket protection and could leave you vulnerable to disciplinary or other action, if you disclose confidential information in circumstances not covered by the Act.

9.0 IF YOU REMAIN DISSATISFIED

- 9.1 While Bodmin Town Council cannot guarantee that it will respond to all matters in the way that you might wish, it undertakes to handle the matter fairly and properly. However, if you are unhappy with our response, you can ask for the decision to be reconsidered by stating clearly in writing why you disagree with the decision within seven working days of receipt of the decision.
- 9.2 Within fourteen days a Confidential Reporting (Whistleblowing) Sub-Committee, consisting of the Mayor, the Deputy Mayor and the Vice-Chairman of the most relevant Committee, or an appropriately representative group, will meet to consider your challenge and to formulate a response from the Council.
- 9.3 This will either confirm the decision of the Investigating Officer or, after considering fully the details of your concern raised revise the decision and within three working days of the outcome of this final stage, you will again be advised in writing.
- 9.4 This exhausts the Council's Confidential Reporting (Whistleblowing) Policy. If you still have concerns you may find it helpful to seek further independent advice that is offered by those bodies mentioned in para 7.1.

10.0 CORPORATE RECORDING & MONITORING

- 10.1 The Town Clerk has responsibility for the maintenance and operation of this Policy. This includes maintaining a record of concerns raised, the outcome and reporting as necessary to the Mayor and the FS & GP Committee in a form that does not endanger your confidentiality.
- 10.2 To ensure this Policy's continuing effectiveness it will be reviewed on an annual basis.

11.0 ALTERNATIVE FORMATS

11.1 Disability Discrimination Act

- In compliance with the *Disability Discrimination Act* 1995 copies of this document in large print (A3 Format) or larger font size, or recorded onto tape as a 'talking book' can be made available for those with sight impairment on request from the Council Office (see address below) or e-mailing Pat.Cook@bodmin.gov.uk
- The Council can also arrange to provide versions in other languages.

11.2 Freedom of Information

- In accordance with the *Freedom of Information Act* 2000, this Document will be posted on the Council's Website www.bodmin.gov.uk

Bodmin Town Council, Shire House, Mount Folly Square, BODMIN, PL31 2DQ
Tel: 01208 74159 Fax: 01208 264764
email: Pat.Cook@bodmin.gov.uk

WHAT IS THE LEGAL POSITION?

THE FRAUD ACT 2006 came into force on the 15 January 2007 applies in England, Wales and Northern Ireland.

The Act repeals all the deception offences in the Theft Acts of 1968 and 1978 and replaces them with a single offence of fraud (Section 1) which can be committed in three different ways by:

- False representation (Section 2);
- Failure to disclose information when there is a legal duty to do so (Section 3);
- Abuse of position (Section 4).

The Act also created new offences of:

- Possession and making or supplying articles for use in frauds;
- Fraudulent trading will apply to sole traders;
- Obtaining services by deception is replaced by a new offence of obtaining services dishonestly;

There are also other minor provisions.

Jurisdiction

There is jurisdiction to prosecute all the offences in the Fraud Act if a “**relevant event**” occurred in England or Wales - Criminal Justice Act 1993, Part 1 (**Archbold 2007, para. 2-37**) and **Home Office Circular 19/1999**. A “**relevant event**” for the purposes of the Criminal Justice Act 1993 is defined in Section 2 (1) of that Act as “any act or omission or other event (including the result of any one or more acts or omissions) proof of which is required for conviction of the offence.”

THE PUBLIC INTEREST DISCLOSURE ACT 1998 protects members of staff against the detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. The Act covers protected disclosures under six categories, namely:

- Crime
- Illegality
- Miscarriage of Justice
- Damage to Health and Safety
- Damage to the Environment, and
- Cover-ups about these issues.

The Act distinguishes between:

- **Internal disclosures** - this is a disclosure made in good faith to a manager or the employer that is protected if the Whistleblower has reasonable suspicion that the malpractice has occurred or is likely to occur;
- **Regulatory disclosures** - can be made in good faith to prescribed bodies such as:
 - The Health and Safety Executive re Health and Safety risks
 - Environment Agency re Environment issues
 - H M Revenue and Customs re Financial irregularities
 - Audit Commission re Public sector finance
 - The Standards Board for England re Councillors' conduct
 - Information Commission re Breaches of the Data Protection Act.
- **Wider disclosures** - can be made to the Police, the Media, and MPs and are protected if, in addition to the tests for internal disclosures, they are reasonable in all the circumstances and they meet one of three conditions. Provided they are not made for personal gain these conditions are, that the Whistleblower:
 - Reasonably believed they would be victimised if they raised the matter internally or with a prescribed regulator;
 - Reasonably believed a cover-up was likely and there was no prescribed regulator; or
 - Had already raised the matter internally or with a prescribed regulator.

To obtain protection Members of Staff must first report their suspicion to their Line Manager or another Manager, the Responsible Finance Officer, the Town Clerk or his Deputy or to a Body prescribed for the purposes of receiving such information e.g. your Trade Union or Professional association.