Document Control Sheet

<table>
<thead>
<tr>
<th>Document title</th>
<th>Whistleblowing policy and procedure</th>
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<tbody>
<tr>
<td><strong>Summary of purpose</strong></td>
<td>The purpose of this policy and procedure is to provide information and guidance for employees and workers on how to disclose malpractice. The policy and procedure provides a guide for employees on all aspects of the process.</td>
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<td>HR</td>
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<td><strong>Policy Owner</strong></td>
<td>The Business Improvement Manager.</td>
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**Validity Statement**

This document is due for review by the date shown above, after which it may become invalid. Users of the strategy or policy should ensure that they are consulting the currently valid version of the document.
If you would like this information in large print, Braille or another language, please contact HR.

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Section One – Policy and Procedure Overview

1 Policy Statement

1.1 Maldon District Council is committed to the provision of the highest quality services for the benefit of the local community and to full accountability for those services.

1.2 Although the Council has set in place rules, regulations, quality standards and procedures to ensure that the highest standards of conduct and commitment to service are observed, it recognises that malpractice can occur.

1.3 The Council is not prepared to tolerate any such malpractice in the performance and delivery of its services and will treat any complaints very seriously.

1.4 The Council encourages all individuals to raise concerns about the conduct of others in the business or the way in which the business is run.

1.5 The whistle-blower’s identity will, so far as is possible, be kept confidential

1.6 Any employee who, in good faith, makes allegations that turn out to be unfounded will not be penalised for being genuinely mistaken

1.7 Legislation provides protection for workers who raise legitimate concerns about specified matters. These are called "qualifying disclosures". A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach of any other legal obligation; or
- concealment of any of the above;

is being, has been, or is likely to be, committed. It is not necessary for the worker to have proof that such an act is being, has been, or is likely to be, committed – a reasonable belief is sufficient.

A worker who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because he/she has made a disclosure.
2 **Policy Principles**

2.1 Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Workers should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.

2.2 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the worker who raised the issue.

2.3 A worker who makes a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because he/she has made a disclosure. This means that the continued employment and opportunities for future promotion or training of the worker will not be prejudiced because he/she has raised a legitimate concern.

2.4 Victimisation of a worker for raising a qualified disclosure will be a disciplinary offence.

2.5 If misconduct is discovered as a result of any investigation under this procedure the Council’s disciplinary procedure will be used, in addition to any appropriate external measures.

2.6 Maliciously making a false allegation is a disciplinary offence.

2.7 An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, workers should not agree to remain silent. They should report the matter to the Business Improvement Manager or another named officer.

3 **Procedure Overview**

**Stage 1**

3.1 The Council encourages workers to raise their concerns under this procedure to their line manager in the first instance. If a worker is not sure whether or not to raise a concern, he/she should discuss the issue with his/her line manager or Human Resources.

**Stage 2**

3.2 The issue will be investigated and necessary action will be taken such as reporting the issue to one of the regulatory bodies. The worker will be advised of the outcome of the investigation (subject to legal constraints)

**Stage 3**

3.3 The worker can report the issue to the Business Improvement Manager or another officer designated in this policy if they consider that the issue has not been investigated appropriately or if they consider that they cannot raise the issue with their line manager.
3.4 If on conclusion of Stages 1, 2 and 3 the worker reasonably believes that the appropriate action has not been taken, he/she should report the matter to the proper authority (see Section Two – Procedure)

4 Scope of this Policy

4.1 This policy applies to all employees of the Council. Other individuals performing functions in relation to the organisation, such as agency workers and contractors, are encouraged to use it.

4.2 This policy statement covers any malpractice by:

- Any Member of Maldon District Council.
- Any Officer of Maldon District Council.
- Any partner, contractor, supplier or consultant of Maldon District Council in the course of their work for the Council.

5 Links to other Policies/Procedures

Grievance Policy

5.1 If an employee is concerned that his/her own contract has been, or is likely to be, broken, he/she may use the Council’s grievance procedure.

The difference between a Grievance and a Protected Disclosure

5.2 The following illustrates the difference between a grievance and a protected disclosure.

5.3 A grievance will concern an employee personally, i.e. the individual may have a complaint about:

- his or her pay or working hours;
- the amount of work that he or she is expected to do;
- working conditions; or
- being bullied by fellow workers.

5.4 A protected disclosure, on the other hand, will concern the conduct of another person in the workplace (whether or not that conduct affects the complainant personally), in circumstances where the complainant genuinely believes that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment.
Examples of the difference between a Grievance and a Protected Disclosure

<table>
<thead>
<tr>
<th>Grievance</th>
<th>Protected Disclosure</th>
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<tbody>
<tr>
<td>An employee’s complaint about the type of work that he or she is being</td>
<td>A disclosure that an individual has been instructed to carry out actions that he or</td>
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<tr>
<td>asked to do, for example if it is not covered by his or her contract</td>
<td>she genuinely believes to be illegal, e.g. to falsify tax returns</td>
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<tr>
<td>A employee’s complaint that he or she has received insufficient safety</td>
<td>A disclosure that safety rules within the workplace are routinely being flouted, thus</td>
</tr>
<tr>
<td>training</td>
<td>endangering safety</td>
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<tr>
<td>An employee’s complaint about the hours that he or she is expected to work</td>
<td>A disclosure that the requirements imposed by the company on a group of staff</td>
</tr>
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<td>represent a breach of the working time legislation</td>
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Member/Officer relations protocol

5.5 Where appropriate, employees should refer to the Member/Officers Relations protocol to discuss areas of concern, differences or complaints with regard to the Member and Officer relationships. This is contained within the Maldon District Council Yearbook.
Section Two – Procedure

1 Roles and Responsibilities

1.1 Line Managers are expected to:

- Be familiar with the policy and be clear on the distinction between a grievance and a complaint raised under the scope of this policy.
- Treat all such disclosures as confidential and seek the advice of Human Resources should they become aware of a complaint raised under this policy.
- Take all complaints raised under this policy or any other complaints policy, seriously and seek to resolve issues as soon as practicable.
- Undertake or participate in an investigation into a complaint raised under this procedure as appropriate.
- Not victimise the employee or worker who has raised an issue under this policy.

1.2 Employees are expected to:

- Raise any concerns or complaints under this policy as soon as identified.
- Participate in any investigation process as necessary.

The Council will regard the failure by an employee to report such malpractice, or the suspicion of malpractice, as a disciplinary matter.

1.3 The Internal Audit function will:

- In conjunction with the service if appropriate, ensure that any matter raised under this procedure will be investigated fairly thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the worker who raised the issue.
- Provide advice and guidance on the use of this policy.

2 The Procedure

Raising a Complaint

2.1 Concerns may be raised verbally or in writing.

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

2.3 In order 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.
Maldon District Council – Whistleblowing Policy and Procedure

2.4 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.

2.5 Employees may be accompanied by a trade union representative or a workplace colleague to any meetings or interviews in connection with the concerns raised.

Stage 1

2.6 In the first instance, and unless the worker reasonably believes his/her line manager to be involved in the wrongdoing, or if for any other reason the worker does not wish to approach his/her line manager, any concerns should be raised with the worker’s line manager. If he/she believes the line manager to be involved, or for any reason does not wish to approach the line manager, then the worker should proceed straight to Stage 3.

Stage 2

2.7 The line manager will arrange an investigation of the matter (either by investigating the matter him/herself if they have the appropriate investigation skills or immediately passing the issue to someone in a more senior position). The investigation may involve the worker and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above in section 1.1. The worker's statement will be taken into account, and he/she will be asked to comment on any additional evidence obtained. The line manager (or the person who carried out the investigation) will then report to the Group Manager or Chief Executive as appropriate, which will take any necessary action, including reporting the matter to any appropriate government department or regulatory agency. If disciplinary action is required, the line manager (or the person who carried out the investigation) will report the matter to Human Resources. On conclusion of any investigation, the worker will be told the outcome of the investigation and what the Council has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

Stage 3

2.8 If the worker is concerned that his/her line manager is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigations to the Council, he/she should inform the Business Improvement Manager who will arrange for another manager to review the investigation carried out, make any necessary enquiries and make his/her own report to the Group Manager or Chief Executive as appropriate as in Stage 2 above. If for any other reason the worker does not wish to approach his/her line manager he/she should also in the first instance contact the Business Improvement Manager. Any approach to the Business Improvement Manager will be treated with the strictest confidence and the worker’s identity will not be disclosed without his/her prior consent.

2.9 If on conclusion of Stages 1, 2 and 3 the worker reasonably believes that the appropriate action has not been taken, he/she should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- HM Revenue & Customs;
• the Financial Services Authority;
• the Office of Fair Trading;
• the Health and Safety Executive;
• the Environment Agency;
• the Serious Fraud Office
• the Information Commissioner
• the Food Standards Agency

The employee/worker may also make a disclosure to the Council’s external auditors.

The Types of Misconduct that might justify Whistleblowing

2.10 The law defines clearly what types of disclosure qualify the person making them for protection against dismissal or detriment. These are known as ‘protected disclosures’. The list covers disclosures alleging:

• Criminal offences
• Failure to comply with a legal obligation
• Miscarriages of justice
• Risks to health and safety or
• Environmental damage

Examples of the above might be

• failure to pay staff rates of pay equivalent to at least the minimum wage;
• the use of unsafe equipment or unsafe working practices;
• the employment of illegal immigrants;
• concealment of a chemical spillage that might damage the environment;
• false returns to HM Revenue & Customs;
• falsification of financial records; and
• bribery

The Routes of Disclosure that are protected

2.11 The law lays down clear principles about how a potential whistle-blower must make a disclosure if the disclosure is to be protected. The purpose of these rules is primarily
to encourage workers to raise their concerns through appropriate channels rather than, for example, publicising their allegations in the newspapers. There are six routes that may attract protection, these being a disclosure in good faith:

- to the employer directly;
- to a legal adviser, if made in the course of obtaining legal advice;
- to a Minister of the Crown, where the worker is engaged in Crown or public employment;
- to a 'prescribed person' (see above, Raising a Complaint);
- elsewhere in defined circumstances (see below, Disclosures Elsewhere); and
- elsewhere in exceptionally serious cases (see below, Disclosures in Exceptionally Services Cases).

**Disclosures Elsewhere**

2.12 A disclosure made elsewhere – for example, to the police, an elected Member of the Council, an MP, the external audit firm appointed to oversee the Council's affairs, or a non-prescribed regulator – may qualify as a protected disclosure if:

- the worker reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body;
- the worker had previously disclosed his or her concerns to the employer or a prescribed body; or
- in circumstances where there is no prescribed body, the worker reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice.

The investigation will be overseen by the Whistleblowing officer or another designated officer under this policy if appropriate.

2.13 Certain other conditions must also be met. These are that:

- the disclosure must be made in good faith;
- the person making the disclosure must reasonably believe that the information disclosed is substantially true;
- the person making the disclosure must not have done so for personal gain; and
- it must be reasonable in the circumstances for the person to have made the disclosure in that way.
Disclosures in exceptionally Serious Cases

2.14 If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. 'Exceptionally serious' is not defined in the legislation, but is likely to be restricted to matters where disclosure would serve the public interest.

2.15 The worker making the disclosure must:

- make it in good faith;
- reasonably believe that the information being disclosed is substantially true; and
- not be disclosing the information for financial gain.

2.16 It must also be reasonable in all the circumstances for the person to make the disclosure.

2.17 Should the above in sections 2.15 and 2.16 not apply the employee may not be protected under the provisions outlined within this policy.

Designated Officers under this Procedure

2.18 The following officers are designated contacts under this policy:

- Director of Service Delivery
- Director of Strategy, Performance & Governance
- Director of Resources
- Monitoring Officer

The Responsible Officer

2.19 The Directors have overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not compromise confidentiality) and will report as necessary to the Council.

3 More Information

3.1 For more information please contact HR Specialists.