

NORTH TYNESIDE COUNCIL

Standards Committee

Whistle-blowing Procedure for Members

1 Aims and scope of the procedure

This procedure aims to:

- give Members information on how to raise concerns about inappropriate behaviour and practice within the Council;
- provide routes to express these concerns; and
- provide a route to follow if the Member is not satisfied with the way that their concerns have been dealt with.

2 How to raise a concern

Members should first raise concerns about inappropriate behaviour or practice with the relevant Head of Service responsible. If the Member considers this to be inappropriate they should either approach the Chief Executive, the Monitoring Officer or the Section 151 Officer.

If the Member's concern relates to the performance of an Officer this should be dealt with in accordance with the Protocol on Member/Officer relations by referring the matter to the relevant Head of Service or the Chief Executive.

3 Concerns about the conduct of Members

If a Member's concern is over the behaviour of another Member of the Council then that concern must not be raised under this policy. The Member can raise their concern with their Group Leader, the Chief Executive or the Monitoring Officer with a view to addressing the matter informally. Alternatively they can make a complaint to the Standards Committee that the Member has breached the Code of Conduct for Members. The Code of Conduct Complaint Form is available from the Monitoring Officer or on the Council's web site.

4 What will happen when a concern is raised

The Head of Service, Chief Executive, Section 151 Officer or Monitoring Officer, will clarify the Member's concerns, ensuring that they feel they have been accurately recorded, and will, if it is appropriate, investigate them. The investigation will not imply that the Member's concerns have either been accepted or rejected; they are simply being investigated.

An initial written response will:

- clearly define the concerns the Member has expressed;
- say how the Authority proposes to deal with it; and
- say approximately how long it expects this to take.

Depending on the nature of the Member's concerns, they may be investigated by the Chief Executive, the Monitoring Officer, the Section 151 Officer or internal audit. If it is possible that the law has been broken, then the investigation may also be undertaken by the Police or other external statutory agency, for example, the Council's external auditor. It is possible, although not usual, that an internal and an external investigation could run simultaneously.

Some concerns may be resolved by agreed action without the need for investigation.

Members should note that it may not always be possible to inform them of progress and any outcome of an investigation.

If the Member's concern appears to be sufficiently serious or urgent to warrant immediate intervention, appropriate action will be taken with immediate effect.

5 What happens if a Member is not satisfied with the way their concern has been dealt with

If a Member, after raising their concern in the manner described in paragraph 4 above, is dissatisfied with how their concern has been dealt with they can refer the matter directly to an appropriate external agency. However, Members must be aware that the disclosure of confidential information may constitute a breach of the Code of Conduct for Members. Confidential information can be disclosed in very specific circumstances. A detailed explanation of these circumstances is given in paragraph 6 of this Policy.

Disclosures of information may be made to the following external agencies that have been prescribed by the Government for this purpose.

Please click on the link below to access the list of external agencies prescribed by the Government:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies#contents>

6 Safeguards and the Code of Conduct for Members

Members should note that anonymity cannot be guaranteed for a Member who raises a concern under this procedure.

However, the Code of Conduct for Members provides a safeguard for Members where the raising of the concern would result in a breach of confidentiality in respect of information held personally either by the Member or the Council.

The Code of Conduct for Members provides that:

Members must not disclose confidential information, or information which they believe to be of a confidential nature, **except** in any of the following circumstances:

- they have the consent of the person authorised to give it.
- they are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, the Monitoring Officer/Section 151 Officer or other professional adviser) provided that person agrees not to disclose the information to any other person.
- The disclosure is in the public interest.

Furthermore disclosure is only justified in limited circumstances, when all of the following four requirements are met:

1. the disclosure must be reasonable;
2. the disclosure must be in the public interest;
3. the disclosure must be made in good faith; and
4. the disclosure must be made in compliance with any reasonable requirements of the Council. Following this procedure constitutes compliance with the Council's reasonable requirements.

In relation to the **disclosure of confidential information in the public interest**, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires the Member to consider matters such as:

- Whether they believe that the information disclosed, and any allegation contained in it, is substantially true. If they do not believe this, the disclosure is unlikely to be reasonable.
- Whether they make the disclosure for personal gain. If they are paid to disclose the information, the disclosure is unlikely to be reasonable.

- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the Police or to an appropriate regulator. It is less likely to be reasonable for the Member to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.
- Whether the disclosure involves the Council failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) The Council or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.

(f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

3. The third requirement, that the disclosure is made in good faith, will not be met if the Member acts with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4. The fourth requirement, that the Member complies with the reasonable requirements of the Council, means that before making the disclosure the Member must comply with this procedure by first raising their concerns through the appropriate channels set out in paragraph 2 of this procedure.

In summary, to decide whether the disclosure is reasonable and in the public interest, the Member may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure.

This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences. In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

7. Further Advice

Further information and advice in relation to this procedure is available from the Chief Executive, the Section 151 Officer or the Monitoring Officer.