

WHISTLEBLOWING PROCEDURE GUIDANCE FOR CONTRACTORS AND CONTRACT MANAGERS

Scope and Purpose

The County Council's Whistleblowing Procedure (copy attached) applies to contractors as it does to County Council employees. The relevant section of the Whistleblowing Procedure is the "Scope" Section, which provides:

"This procedure applies to all County Council employees (with the exception of school based employees as referred to below), agency workers working for the County Council, contractors working for or providing services to the County Council, a person providing goods or services to the County Council under a contract, including anyone providing goods or services on their own or a third party's premises. It also applies to County Councillors."

The purpose of this Guidance is to assist contractors and those County Council officers involved in the managing or monitoring of contracts in exercising their responsibilities under the Whistleblowing Procedure.

How to Make and Deal with Allegations

Contractors' employees have the same rights and responsibilities under the Whistleblowing Procedure as County Council employees. If a contractor's employee ("the whistleblower") has a serious concern about the conduct of a fellow employee, the conduct of an employee of another contractor providing a service to the County Council or the conduct of a County Council officer, they should raise their concern with their immediate or line manager or, where this is not possible, with a more senior manager in their company (in either case referred to in this Guidance as a "Company Manager") in accordance with any procedures put in place by their company.

Where the whistleblower does not feel able to raise a concern with a Company Manager, for example because they believe that their management is implicated in the conduct complained of, they may make an allegation to the County Council officer responsible for the management or monitoring of the contract ("the Council's Contract Manager"). Alternatively, they may make the allegation to one of the Reporting Officers under the Whistleblowing Procedure.

If a Company Manager receives a complaint or allegation which, after discussion with the whistleblower, the whistleblower wants to proceed with as a whistleblowing allegation, the Company Manager will inform the Council's Contract Manager as soon as practicable.

Where the Council's Contract Manager receives a complaint or allegation, either directly from a contractor's employee or from a Company Manager, the Council's Contract Manager will inform the County Council's Monitoring

Officer in accordance with Section 9 of the Whistleblowing Procedure. The Council's Contract Manager may need to seek information from the Company Manager in order to clarify the allegation, but should not otherwise discuss the allegation with the Company Manager or the whistleblower. The Council's Contract Manager should not attempt to investigate the allegation.

Anonymous Allegations

If a Company Manager receives an anonymous allegation, the Company Manager will deal with it in accordance with any relevant company procedures. If there are no relevant company procedures, the Company Manager will refer the allegation to the Council's Contract Manager.

Where the Council's Contract Manager receives an anonymous allegation, the Council's Contract Manager will refer it to the County Council's Monitoring Officer so that it may be dealt with in accordance with Section 7 of the Whistleblowing Procedure.

Confidentiality

Company managers and Contract Managers should take great care to ensure that they do not disclose the identity of a whistleblower except where authorised under the Whistleblowing Procedure. They should familiarise themselves with Section 6 of the Whistleblowing Procedure and take particular care in relation to communication with the whistleblower and inadvertent disclosure.

General

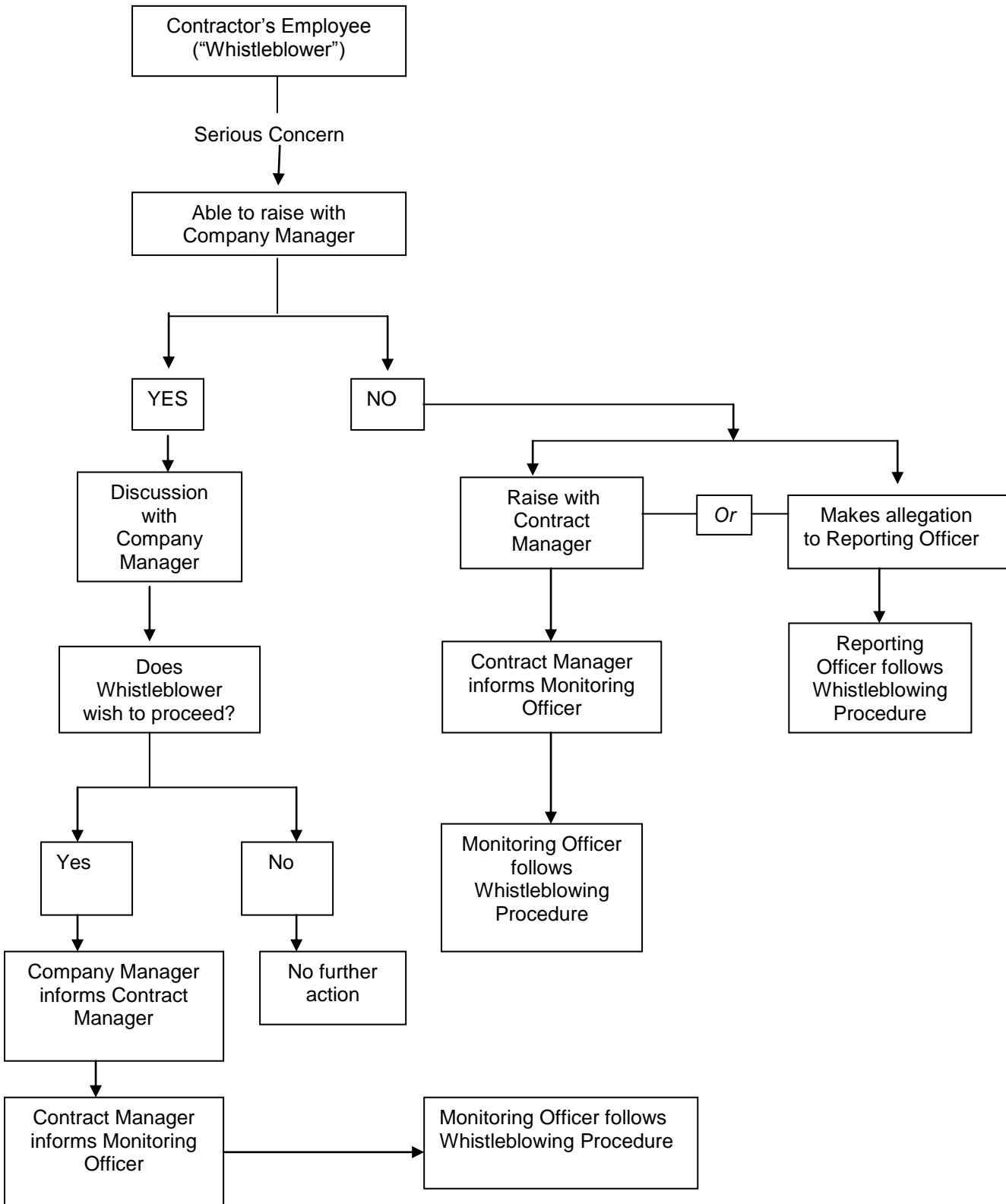
A flowchart is attached to this Guidance to provide further assistance.

Further information and guidance can be obtained from the County Council's Monitoring Officer if necessary. The Monitoring Officer's contact details and those of the other Reporting Officers are to be found in Section 4 of the Whistleblowing Procedure.

Kathryn Pettitt
Chief Legal Officer (Monitoring Officer)
October 2013

WHISTLEBLOWING PROCEDURE

GUIDANCE FOR CONTRACTORS AND CONTRACT MANAGERS



Whistleblowing Procedure

Extracted from ANNEX 17 - CODE OF CONDUCT FOR OFFICERS

Legal Framework: The Constitution of Hertfordshire County Council sets out the rules under which the County Council conducts its business

This procedure is an annex to the Constitution which is available on the Council's website.

1. Key Points

The Whistleblowing Procedure sets out the framework for dealing with allegations of illegal and improper conduct.

2. Introduction

Hertfordshire County Council is committed to the highest standards of transparency, probity, integrity and accountability.

This procedure is intended to provide a mechanism for making serious allegations about standards, conduct, financial irregularity or possible unlawful action. It does so in a way that will ensure confidentiality and protect those making such allegations in the reasonable belief that it is in the public interest to do so from being victimised, discriminated against or disadvantaged.

This procedure is intended to ensure that the County Council complies with its duty under the Public Interest Disclosure Act 1998.

3. Scope

This procedure applies to:

- all County Council employees (with the exception of school based employees as referred to below),
- agency workers working for the County Council,
- contractors working for or providing services to the County Council,
- a person providing goods or services to the County Council under a contract, including anyone providing goods or services on their own or a third party's premises
- County Councillors.

This procedure **does not** replace other County Council policies or procedures including:

- the Grievance Policy
- the Harassment and Bullying Policy
- Safeguarding Adults at Risk Policy
- those relating to Safeguarding Children.

You should only consider raising concerns through this procedure if:

- you have genuine reasons why you cannot use the above policies and procedures
- you have reason to believe that these policies are failing or are not being properly applied
- there is a public interest aspect to your concern.

This procedure applies to, but is not limited to, allegations about any of the following:

- Conduct which is an offence or breach of the law
- Alleged miscarriage of justice
- Serious Health and Safety risks
- The unauthorised use of public funds
- Possible fraud and corruption
- Witnessing sexual, physical or verbal abuse, or bullying or intimidation of employees, customers or service users
- Abuse of authority
- Other unethical conduct

This procedure does not apply to schools, to whistleblowers based in Schools or to others acting on behalf of the County Council based in schools other than in the circumstances mentioned in the next paragraph (Maintained Schools).

Maintained Schools

Individuals employed or working in maintained schools (e.g. community schools, community special schools, pupil referral units, voluntary controlled schools and maintained nursery schools) should raise their concerns with the school using the school's own whistleblowing policy and reporting arrangements rather than directly with the County Council. If the employee, however, has a concern which they feel they cannot discuss with the management of the school or have good reason to consider that their complaint or disclosure will not be properly handled, then they may report their concerns direct to the County Council or prescribed regulator.

If the concern relates to a child protection issue this should be reported to the Local Authority Designated Officer (LADO) and in line with the specific guidelines outlined in the school's safeguarding policy.

Foundation and Voluntary Aided Schools

This policy does not extend to staff employed in these schools as in these schools the governing body is the employer not the County Council. It is therefore the responsibility of the governing body to adopt a whistleblowing policy. In a foundation or voluntary aided school it is for the governing body to decide how, within its policy, employees and workers may make a qualifying

disclosure which they do not feel able to share with the Head Teacher or Chair of Governors.

Academies, Sixth Form Colleges, Further Education Establishments and Free Schools

The Council has no legal powers to investigate a disclosure made in respect of academies, sixth form colleges or free schools (except for disclosures made in respect of safeguarding issues and Special Educational Needs). If the County Council receives any disclosures relating to these institutions we will acknowledge these and seek to advise on an appropriate course of action on the matters raised.

Generally

In respect of disclosures of serious misconduct or wrong doing relating to safeguarding children or adults at risk and/or Special Educational Needs the Council has a legal obligation to investigate and will do so irrespective of the status of the school.

4. Contact Details for Reporting Officers

In this procedure reference is made to Reporting Officers. The following County Council officers are Reporting Officers:

- The County Council's Monitoring Officer (the Chief Legal Officer)
- The Assistant Director of HR
- The Head of Assurance Services

The contact details for the Reporting Officers are as follows:

The Monitoring Officer (Chief Legal Officer)

Kathryn Pettitt

Postal Address: Room 212, County Hall, Hertford, SG13 8DE

Postal Point: CHO241

Telephone: 01992 555527

Comnet: 25527

E-mail: whistle@hertfordshire.gov.uk

This is a dedicated e-mail address for whistleblowing complaints to which only the Monitoring Officer and her two nominated Deputy Monitoring Officers will have access.

Assistant Director of HR

Sally Hopper

Postal Address: Room 202, County Hall, Hertford, SG13 8DE

Postal Point: CHO243

Telephone: 01992 556653

Comnet: 26653

E-mail: sally.hopper@hertfordshire.gov.uk

The Head of Assurance Services

Terry Barnett

Postal Address: First Floor, Robertson House, Six Hills Way,
Stevenage, SG1 2FQ

Postal Point: SROB 105

Telephone: 01438 845508

Comnet: 55508

E-mail: terry.barnett@hertfordshire.gov.uk

The County Council's employee assistance service, Carewell, is available to support and counsel whistleblowers or those considering using the Whistleblowing Procedure. While this service can provide useful support in what can be a difficult and worrying process, it cannot be used to make an allegation (the way to do this is set out in section Procedure for making an Allegation below).

Carewell contact numbers are: 0800 731 0905 (minicom 0800 854 739)

5. Safeguards

The County Council recognises that the decision to make an allegation can be a difficult one to make. However, whistleblowers who make serious allegations in the reasonable belief that it is in the public interest to do so should be reassured that they are doing their duty either to their employer and/or to those for whom they are providing a service.

The County Council will take appropriate action to protect a whistleblower who makes a serious allegation in the reasonable belief that it is in the public interest to do so from any reprisals, harassment or victimisation.

6. Confidentiality

All allegations will be treated in confidence and every effort will be made not to reveal a whistleblower's identity unless the whistleblower otherwise requests or unless there is a legal requirement to do so.

If the matter is subsequently dealt with through other County Council procedures such as the Disciplinary Procedure the whistleblower's identity may have to be revealed in accordance with that procedure if the matter is to be effectively dealt with. Similarly, if the allegation results in court proceedings then the whistleblower may have to give evidence in open court if the case is to be successful.

A Reporting Officer will not, without the whistleblower's consent, disclose the identity of a whistleblower to anyone other than another Reporting Officer or to a person who has been asked by the Reporting Officer to investigate the allegation. A Reporting Officer, who intends to ask another person to carry out an investigation, will, as far as is practicable, inform the whistleblower before

disclosing the whistleblower's identity to the person to be asked to carry out the investigation. Any person asked to carry out an investigation by a Reporting Officer and to whom a whistleblower's identity has been disclosed, will not further disclose that identity to any person without the whistleblower's consent.

Reporting Officers will take the utmost care to ensure that the identity of a whistleblower is not inadvertently disclosed. In particular, Reporting Officers will ensure that they only communicate with a whistleblower through means agreed with the whistleblower and will also ensure that the content of any communication to a third party about the allegation could not lead to inadvertent disclosure of the identity of a whistleblower.

7. Anonymous Allegations

This procedure encourages whistleblowers to put their name to an allegation wherever possible as anonymous allegations may often be difficult to substantiate/prove.

Allegations made anonymously are much less powerful but anonymous allegations will be considered at the discretion of the Monitoring Officer.

In exercising discretion to accept an anonymous allegation the factors to be taken into account by the Monitoring Officer would include:

- The seriousness of the issue raised
- The credibility of the allegation; and
- Whether the allegation can realistically be investigated from factors or sources other than the complainant

8. Untrue Allegations

No disciplinary or other action will be taken against a whistleblower who makes an allegation in good faith genuinely believing it to be true even if the allegation is not substantiated by an investigation. However, disciplinary action may be taken against a whistleblower who makes an allegation without reasonable belief that it is in the public interest to do so (e.g. making an allegation frivolously, maliciously or for personal gain where there is no element of public interest).

9. Procedure for Making an Allegation

It is preferable for allegations to be made to an employee's immediate manager, if the whistleblower is an employee, or to the County Council employee to whom they report if the whistleblower is not an employee. However, this may depend on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if the whistleblower believes that management is involved it would be inappropriate to raise the matter directly with them. The whistleblower may then make an allegation direct to any one of the three Reporting Officers.

If an officer who is not a Reporting Officer (e.g. the whistleblower's line manager) receives an allegation he/she will discuss the allegation with the whistleblower. If, following discussion, the whistleblower wants to proceed with the allegation the officer who received the allegation will inform the Monitoring Officer who will then deal with the allegation under this Procedure as if the allegation had been made direct to the Monitoring Officer. An allegation may be made to a Reporting Officer orally or in writing. If an allegation is made orally the Reporting Officer to whom it is made may ask that it be confirmed in writing. Whether a written or oral report is made it is important that relevant information is provided including:

- The name of the person making the allegation and a contact point. As referred to above it will be more difficult for the County Council to pursue issues if allegations are made anonymously;
- The background and history of the allegation (giving relevant dates and names and positions of those who may be in a position to have contributed to the allegation);
- The specific reason for the allegation.

Although someone making an allegation will not be expected to prove the truth of any allegations, they will need to provide information to the Reporting Officer to establish that there are reasonable grounds for the allegation.

The earlier the allegation is made the easier it is to take action.

Someone making an allegation may be accompanied by another person of their choosing during any meetings or interviews in connection with the allegation. However, if the matter is subsequently dealt with through another County Council procedure the right to be accompanied will at that stage be in accordance with the relevant procedure (e.g. the Disciplinary Procedure gives the right to be accompanied by a trade union representative or work colleague).

10. Action on receipt of an Allegation

The Reporting Officer will record details of the allegation using the pro-forma record form approved by the Monitoring Officer. If not the Monitoring Officer, the Reporting Officer will, within 5 working days of receipt of the allegation, inform the Monitoring Officer in writing that the allegation has been made and forward to the Monitoring Officer copies of:

- The record of the allegation;
- The acknowledgement of the allegation;
- Any documents supplied by the whistleblower.

The Reporting Officer will ask the whistleblower for his/her preferred means of communication and contact details and use these for all communications with the whistleblower in order to preserve confidentiality.

The Reporting Officer who received the allegation will determine whether the allegation should be investigated and, if so, the best way of investigating the allegation. If the allegation relates to fraud, potential fraud or other financial irregularity the Reporting Officer will, within 5 working days of receipt of the allegation, inform the Head of Assurance Services in writing, who will determine whether the allegation should be investigated and the method of investigation.

If the allegation discloses evidence of a criminal offence the Monitoring Officer, will discuss the matter with the other Reporting Officers and a decision will be made as to whether to inform the Police.

If the allegation concerns suspected harm to children, the Monitoring Officer will consult the Local Authority Designated Officer (LADO). If the issue is around suspected harm to vulnerable adults, the Monitoring Officer should consult with the Head of Safeguarding (Health & Community Services).

Some allegations may be resolved by agreed action without the need for investigation. Where this is the case the Reporting Officer(s) will document the justification for this decision.

The Reporting Officer to whom the allegation has been made will acknowledge the allegation in writing within 10 working days by sending the whistleblower an acknowledgement in the standard format approved by the Monitoring Officer and containing the following information:

- An indication of how the County Council propose to deal with the matter
- An estimate of how long it will take to provide a final response
- An indication of whether any initial enquiries have been made
- Information on whistleblower support mechanisms, and
- Indicating whether further investigations will take place and if not, why not

Where the allegation has been made internally and anonymously, obviously the County Council will be unable to communicate what action has been taken.

The amount of contact between the Reporting Officer and the person making the allegation will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the County Council will seek further information from the person making the allegation.

The County Council will take steps to minimise any difficulties which may be experienced as a result of making an allegation. For instance, if a

whistleblower is required to give evidence in criminal or disciplinary proceedings the Council will arrange for them to receive advice about the procedure and advise on the support mechanisms that are available.

The County Council accepts that whistleblowers need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform those making allegations of the outcome of any investigation. On conclusion of any investigation feedback will also be requested from the whistleblower on the process set out in this procedure for considering their allegation.

11. Responsibility for the Procedure

The Monitoring Officer has overall responsibility for the operation of this Procedure and for determining the administrative processes to be followed and the format of the records to be kept.

12. The Register of Whistleblowing Allegations

The Monitoring Officer will maintain a Register of whistleblowing allegations made under this procedure.

The Register will be in a format determined by the Monitoring Officer and will record the following details:

- The name and status (e.g. employee) of the whistleblower
- The date on which the allegation was received
- The nature of the allegation
- Details of the Reporting Officer who received the allegation
- Whether the allegation is to be investigated and, if yes, by whom
- The outcome of the investigation
- Any other details determined by the Monitoring Officer

The Register will be confidential and only available for inspection by another Reporting Officer.

The Monitoring Officer will report annually to the County Council's Audit Committee on the operation of the Procedure and on the whistleblowing allegations made during the period covered by the report. The report will be in a form which does not identify whistleblowers and will normally be considered by the Audit Committee in public.

13. Raising your concerns externally

Whistleblowers are encouraged to raise their concerns internally. The Public Interest Disclosure Act (PIDA) 1998 provides protection to workers from dismissal, harassment or victimisation if such treatment occurs as a result of having made a whistle-blowing disclosure **to their employer** considered to be in the public interest. Protection is also available to workers who report a disclosure to a '**prescribed person/body**'. The list of prescribed persons/bodies is available on the gov.uk website <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies> and includes the NSPCC in relation to child welfare and protection.