Rotherham Metropolitan Borough Council

WHISTLEBLOWING AND SERIOUS MISCONDUCT POLICY

(Amended January 2025)

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ROTHERHAM METROPOLITAN BOROUGH COUNCIL

WHISTLEBLOWING AND SERIOUS MISCONDUCT POLICY

1. Introduction

1.1 Rotherham Metropolitan Borough Council is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty and accountability.

1.2 The term whistleblowing has a specific legal definition, i.e. a disclosure or allegation of serious wrongdoing made by an employee, and a wider public definition, i.e. any disclosure or allegation of serious wrongdoing.

1.3 This policy document seeks to cover disclosures and allegations of serious wrongdoing and to this end, where this policy makes reference to a Whistleblower; it refers to individual who is making a disclosure or allegation of serious wrongdoing.

1.4 Where a Rotherham Metropolitan Borough Council employee, a worker for a Council contractor (including seconded Council employees) is aware of any serious wrongdoing, such as:-

- breach of a legal obligation;
- any criminal activity, including incitement to commit a criminal act;
- corruption or fraud;
- a miscarriage of justice;
- a danger to the health or safety of any individual or damage to the environment;
- abuse of power or authority;
- failure to comply with professional standards, Council policies or codes of practice/conduct.
- Modern Slavery [including slavery, servitude, and forced or compulsory labour and human trafficking]

Committed by or related to the actions of:-

- Rotherham Metropolitan Borough Council employees;
- Borough Councillors; and/or
- Contractors, agency staff, suppliers or consultants of Rotherham Metropolitan Borough Council in the course of their work for the Council;

and reports it, the Council will investigate any such allegations and, where appropriate, take action. The Council is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistleblowing, and where appropriate, take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a Whistleblower.

1.5 This policy seeks to set out how the Council will handle and respond to any such allegations, made either by Council staff or members of the public.

1.6 This policy seeks to:-

(a) encourage employees or their representatives to feel confident in raising concerns or allegations in the public interest about suspected serious wrongdoing in the Council and it's services without fear of reprisals or victimisation even where the concern or allegations are not subsequently confirmed by the investigation;

(b) give a clear message that allegations of serious wrongdoing or impropriety are taken seriously;

(c) ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions;

(d) set out what employees can expect by way of confidentiality and protection when making a whistleblowing disclosure; and

(e) identify independent support for employees who wish to make a whistleblowing disclosure (see section 6).

1.7 This policy is not designed to be used:-

(a) for raising or reconsideration of matters that come under existing internal Rotherham Metropolitan Borough Council procedures e.g. Grievance, Disciplinary, Capability, Dignity at Work or Rotherham Metropolitan Borough Council's general complaints procedure; or

(b) for allegations that fall within the scope of specific procedures (for example child or vulnerable adult protection) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or

(c) as an appeal process from any complaint or grievance handled under any of the above procedures.

1.8 Where a complaint made under this policy falls outside the scope of the policy, e.g. where the complaint falls outside the scope of "serious wrongdoing", Rotherham Metropolitan Borough Council will advise the Whistleblower of this and consult with the Whistleblower in respect of taking the complaint further. Wherever possible, the Council will comply with the views of the Whistleblower, but there are situations where the Council is legally required to pass on details of allegations, without the consent of the Whistleblower, such as in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the Council.

1.9 Likewise, if an allegation made under either of the other above complaints processes falls under the remit of a "serious wrongdoing", the Council will notify the Whistleblower of this and investigate the allegation under this process.

2. The Public Interest Disclosure Act 1998 ("PIDA")

2.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the Council) to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the organisation.

2.2 This is called making a "Protected Disclosure" under the Act, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from harassment or victimisation as a result of the disclosure.

2.3 The person making the disclosure does not have to be directly or personally affected by the serious wrongdoing, but the disclosure must be made in the public interest.

2.4 To be protected, the disclosure must be in the public interest and raise a concern that:-

(a) a criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed;

(b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(c) a miscarriage of justice has been/is likely to occur;

(d) the health or safety of any individual has been/is likely to be endangered;

(e) the environment has been/is likely to be damaged;

(f) public funds are being used in an unauthorised manner;

(g) Rotherham Metropolitan Borough Council's Constitution (including Standing Orders, Financial and Procurement Procedure Rules, etc.) has not been observed or is being breached by a Borough Councillor(s) and/or a Council Officer(s);

(h) sexual or physical abuse by any member of staff on service user is taking place;

(i) unlawful discrimination is occurring to any member of staff or service recipient in relation to the legally protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation (see guidance on Equality Act at https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance

(j) any other form of improper action or conduct is taking place.

(k) information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.

2.5 PIDA will protect any employee or worker making a Protected Disclosure, irrespective of whether or not the disclosure relates to information gained in

the course of their employment (e.g. a protected disclosure made by an employee acting as a service user would still fall under the PIDA protection).

2.6 If an employee does not feel comfortable making a disclosure to the Council, he/she may be entitled to make a disclosure to other prescribed persons, as referred to at Paragraph 4.3 below.

3. Advice to Employees Wishing to Raise a Concern or Make a Disclosure

3.1 Employees who have major concerns arising from their employment may wish to seek advice from their Trade Union or the charity Protect (0203 117 2520 - https://www.protect-advice.org.uk/) to see whether the information which they wish to report would meet the definition of a 'qualifying disclosure' and whether they should be using this procedure, or some other procedure.

3.2 Alternatively, confidential support is also available for employees via the Human Resources Department.

4. How to Report an Actual or Suspected Serious Wrong Doing

4.1 A person who wishes to report any suspected serious wrongdoing ("a disclosure") to the Borough Council should contact the Borough Council either by:-

- E-mail to: whistleblowing@rotherham.gov.uk
- Whistleblowing Hotline – 01709 822400 Where a recorded message can be left

Post to:- Whistleblowing,
c/o Head of Legal Services,
Rotherham Metropolitan Borough Council,
Riverside House,
Main Street,
ROTHERHAM. S60 1AE

Setting out the following information:-

- Name: (unless they wish to be anonymous)
- Contact details (unless they wish to be anonymous)
- Who has committed the alleged serious wrong doing?
- What is the nature of the alleged serious wrong doing?

Whistleblowing Officers

Alternatively, a person wishing to report any suspected wrong doing may contact the any of the three Whistleblowing Officers who are:

- Head of Legal Services - bal.nahal@rotherham.gov.uk - Tel: 01709 823661
- S. 151 Officer – judith.badger@rotherham.gov.uk - Tel:01709 822046

- Head of Internal Audit – Louise.Ivens@rotherham.gov.uk - Tel:01709 823282

- Assistant Director Human Resources – lynsey.linton@rotherham.gov.uk -Tel:01709 914290

The four Whistleblowing Officers are responsible for the oversight and operation of the Whistleblowing Policy once a disclosure has been received by the Council.

Further, a person wishing to report any suspected wrongdoing may do so by contacting the Chief Executive as below, providing the information as set out above:

Chief Executive – sharon.kemp@rotherham.gov.uk – Tel: 01709 822770

4.2 Council employees are also entitled to make a Protected Disclosure through their manager if they feel confident in approaching their manager to report a concern or allegation of serious wrongdoing that falls under this policy. The manager must follow the obligation of confidentiality, but must, as soon as possible, and no later than 2 working days after receiving the Protected Disclosure, log the disclosure in accordance with 5.1 below, and then confirm to the employee concerned, in writing or by email, that this matter has been recorded.

4.3 In the event that an employee does not feel comfortable in making a disclosure internally to Council officers, they are entitled to also make a Protected Disclosure in a number of other different ways:-

- Local Councillors - Details of how to contact them and surgery hours are on the Council's website www.rotherham.gov.uk;

- Grant Thornton - the Council's External Auditors. They are completely independent from the Council and can be contacted on 0113 245 5514 or by writing to them at:-

  Grant Thornton
  No 1, Whitehall Riverside
  LEEDS.
  LS1 4BN

- Relevant professional bodies;

- Solicitors;

- South Yorkshire Police - Telephone: 101;

- Protect - An independent authority which seeks to ensure that concerns about malpractice are properly raised and addressed in the workplace. Contact details are on their website at https://www.protect-advice.org.uk

- By contacting the relevant prescribed person on the list at: Whistleblowing: list of prescribed people and bodies - GOV.UK (www.gov.uk)

4.4 Concerns about a child safeguarding issue, eg that a child may have suffered harm, neglect or abuse, can be reported to the Children's Social Care Service on 01709 336080; or in an emergency contact South Yorkshire Police direct.

4.5 Adult safeguarding concerns can be reported to the Adult Care Service on 01709 822330, or in an emergency contact South Yorkshire Police direct.

5. How the Council will Respond to a Disclosure

5.1 The Council will acknowledge receipt of a disclosure received via the whistleblowing reporting options set out above, whether it has been made by a member of the public and/or an employee, within 2 working days.

5.2 The Council will then consider and decide whether the disclosure falls under the whistleblowing criteria and decide how the disclosure will be investigated.

5.3 Where appropriate, the matters raised may:-

- be investigated by management, Internal Audit or by Human Resources and if necessary, through the disciplinary process;
- be referred to the Police;
- be referred to the External Auditor;
- be referred for independent inquiry.

5.4 There are situations where the Council is legally required to investigate, under separate procedures, without the consent of the Whistleblower, such as investigating allegations of ill-treatment or abuse of children or vulnerable adults (safeguarding). In these circumstances, the Council will, wherever possible, advise the Whistleblower that the disclosure will be investigated under another process, but there may be situations where it is not appropriate to disclose the existence of these investigations.

5.5 When the disclosure is considered to come under the whistleblowing policy, and the Council has assigned an investigator, one of the Whistleblowing Officers will contact the Whistleblower, within 5 working days of the acknowledgment being sent, to advise them of the following:-

(a) That the disclosure is being dealt with under the whistleblowing policy

(b) the arrangements for confidentiality;

(c) how the person making the disclosure will be expected to contribute to the investigation;

(d) the outcome of any discussions which may have taken place over anonymity;

(e) the right of an employee to representation by a recognised trade union or work colleague at any meeting; and

(f) the right of any non-employee to seek support and representation at any meeting.

5.6 The Council, wherever possible, will seek to advise the Whistleblower when the investigation has been concluded. However, the Council is bound by

the Data Protection Act and the Human Rights Act in respect of allegations relating to individuals and may not be able to disclose the outcome of the investigation or information where legal proceedings are pending.

5.7 The use of this whistleblowing process does not automatically amount to acceptance by the Council that the information provided is necessarily a qualifying disclosure.

5.8 For monitoring purposes the Council keeps a list of communications received from people using this whistleblowing process. This information is used for monitoring purposes and to detect if there are areas where there is a high incidence of alleged serious wrongdoing.

6. Confidentiality and Anonymity

6.1 Although the PIDA does not refer to the confidentiality of concerns raised in a qualifying disclosure, there is a widespread assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. Rotherham Metropolitan Borough Council will seek to avoid disclosing information identifying any Whistleblower, even if the Council considers that the disclosure by the Whistleblower falls outside the scope of a qualifying disclosure. However, there are situations where, due to the circumstances of the alleged serious wrongdoing, it is impossible to avoid disclosing information identifying any Whistleblower. In these circumstances, Rotherham Metropolitan Borough Council will consult with the Whistleblower prior to the disclosure taking place and offer support.

6.2 There may also be situations where the Council may be obliged to disclose information, such as where there are legal proceedings following on from the investigation of the whistleblowing investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the Whistleblower may be expected to give evidence at any hearing. In these circumstances, the Council should discuss the implications for the Whistleblower if he or she proceeds with the disclosure, and where appropriate, discuss appropriate support arrangements.

6.3 Rotherham Metropolitan Borough Council may also be required to disclose the identity of the Whistleblower to third parties, where necessary for the purposes of undertaking investigations e.g. where the allegations relate to serious criminal offences where the Council considers that the Police should investigate.

6.4 Anonymous complaints will be considered but, depending on the information given and the credibility of the evidence, there may not be enough information for a proper investigation without the investigator being able to contact the Whistleblower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation. Therefore, the Council would always encourage a Whistleblower to provide their name in order to make an investigation easier and more effective and enable feedback about the investigation to be provided. However anonymous allegations are preferred to silence about serious wrongdoing.

6.5 Rotherham Metropolitan Borough Council, as a public authority, is subject to the Freedom of Information Act. This means that there is a presumption that Rotherham Metropolitan Borough Council discloses any information it holds, unless that information falls under one or more exemptions and, in most

cases, that the application of that exemption is in the public interest.

6.6 The Freedom of Information Act contains exemptions that may be applicable to permit the withholding of information identifying the Whistleblower, including:-

- S40 Personal Data.
- S41 Information which, if disclosed, would give rise to an actionable breach of confidence.

6.7 If Rotherham Metropolitan Borough Council receives a request for information identifying a Whistleblower, it will contact the Whistleblower to seek their views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.

6.8 The Council is mindful, in reconciling the legal obligation to disclose information it holds under the Freedom of Information Act 2000, of its legal obligations under:-

(a) The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and

(b) The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees.

7. Protecting an Employee Whistleblower

7.1 Employees are protected if:-

- they honestly think what they report is true;
- they think they are telling the right person; and
- they believe that their disclosure is in the public interest.

7.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistleblowing. The Borough Council has adopted this procedure in order to encourage early internal whistleblowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised because of blowing the whistle, he or she should make a further complaint under this whistleblowing procedure directly to the one of the Whistleblowing Officers referred to above.

7.3 An employee has the right to complain of victimisation as a result of any whistleblowing to an employment tribunal.

7.4 Any employee who victimises a Whistleblower could:-

- be subject to an internal Council investigation and potential disciplinary action, including potential dismissal;
- face a civil claim personally, as the affected Whistleblower could be entitled to directly issue a legal claim against the culprit

8. Whistleblowing by Members of the Public

8.1 Unlike disclosures by employees, PIDA(Public Interest Disclosure Act 1998) does not offer legal protection for disclosures made by members of the public.

However, the Council will take reasonable and appropriate action to protect members of the public when they make a disclosure.

8.2 The Council considers that any disclosure made by members of the public in respect of serious misconduct should be handled in the same way as disclosures made by employees.

8.3 Once a disclosure from a member of the public has been received by the Council, it will be handled in the same way as a disclosure made by an employee under PIDA and the provisions of section 5 shall apply.

9. Recording and Monitoring Complaints

9.1 Rotherham Metropolitan Borough Council maintains a list of concerns raised by employees made under the Public Interest Disclosure Act. Inclusion in this list does not amount to acceptance that the communication amounts to a Protected Disclosure and any subsequent decision that the matter falls outside the Act will be added to the record on the list.

9.2 For the purposes of investigating whether or not there are any systemic issues that need to be addressed, and to monitor the performance of any investigation, an anonymised summary of all disclosures of serious wrongdoing, made by employees will be sent on a quarterly basis to:-

(a) the Director for the area to which the complaint relates (unless the complaint is in relation to the Director); and

(b) the Standards and Ethics Committee of Rotherham Metropolitan Borough Council.

9.3 The Council will record details of all complaints made under this policy, anonymising the identity of the Whistleblower and use this information for the purposes of identifying areas of concern, which may indicate further action is required, and where appropriate, share this information with other appropriate regulatory bodies.

9.4 Both lists are maintained in accordance with the Data Protection Act 1998.

9.5 A report on the number of concerns will be published annually. This report will not include any information identifying any Whistleblower.