

Scottish Parliament Public Petitions Committee Call for Evidence
Consideration of Petition PE1488 – Whistleblowing
Evidence from North Ayrshire Council

The Public Petitions Committee has asked the following question of each Local Authority: -

How are Elected Members of Local Authorities involved in the Local Authority's Whistleblowing Policy?

Prior to providing details of North Ayrshire Council's Whistleblowing Policy it is important to recognise that Petition PE1488 does not relate to those Public Interest Disclosures or Whistleblowing which are the subject of this Council's (and probably every other Council) Whistleblowing Policy. In terms of the Public Interest Disclosure Act 1998 an employee who reports certain categories of wrong doing will be protected from dismissal. The categories of wrongdoing are:-

- Criminal offence
- Failure to comply with a legal obligation
- Miscarriage of justice
- Health and Safety of any individual has been or is likely to be endangered
- The environment has been or is likely to be damaged
- Information tending to show any matter falling within the preceding paragraphs has been or is likely to be deliberately concealed

North Ayrshire Council's procedure is that Whistleblowing complaints should be investigated by the Solicitor to the Council. Depending on the complaint the Solicitor to the Council may involve other senior officers, Internal Audit, External Audit or the Police. While Elected Members of the Council approved the Policy, they are not involved in any formal operational stage. There are a number of good reasons why this is not the case:-

- Councillors are the final appeal stage of the Council's Disciplinary and Grievance Policy. It is important that in dealing with any such appeal Members have not pre-judged the issues. Not infrequently purported Whistleblowing claims are linked to on-going disciplinary action or an employee's grievance. Keeping the Whistleblowing, Disciplinary and Grievance Procedures separate ensures that there is no question of Members having prejudged any appeal.
- The question of whether the purported Whistleblowing complaint is a genuine Public Interest Disclosure or more appropriately dealt with through another procedure such as the Grievance Procedure can be a technical one.

- The Council has an obligation to protect the genuine Whistleblower. In terms of North Ayrshire Council's Policy it undertakes to do its best to protect an individual's identity where they raise a concern and do not want their name to be disclosed. It is therefore important that as few people as possible know the identity of the Whistleblower. In certain cases, it will be important to undertake a confidential investigation to avoid alerting the alleged wrongdoer. The Petition suggests that "the adversarial nature of party politics, where no one party will allow the truth to be buried if they can use it to their electoral advantage would ensure Whistleblowers disclosures could never be swept under the carpet". Such use of Whistleblowing claims for party political purposes, while not something ever likely to occur in North Ayrshire Council, would be unlikely to preserve the confidentiality of the Whistleblower, and could prejudice the outcome of confidential investigations.
- Part of Audit Scotland's role is to report on the effectiveness of a Council's Whistleblowing Policy and its treatment of any Whistleblowing complaints. This forms part of the Council's Assurance and Improvement Plan prepared by Audit Scotland. This is reported to Elected Members, both to Full Council and to the Audit Committee. Any Audit work relating to Whistleblowing complaints would, in due course be reported to the Council's Audit Committee.

The Petition calls on the Scottish Parliament to order that every Scottish Local Authority provides staff with a Whistleblowing hotline to report mismanagement. It states it seeks to address concerns arising across Scotland about Public Interest Disclosures. However it should be noted that mismanagement is not a Public Interest Disclosure in terms of the 1998 Act. In terms of that Act a report of mismanagement would not provide an employee with protected status. It is respectively suggested that if the Petitioner wishes the Public Interest Disclosure Act 1998 to be extended to include mismanagement this will require amendment of a UK statute which maybe outwith the competence of the Scottish Parliament.

Extending Whistleblowing to include mismanagement is in our view misconceived for a number of reasons:-

- The term mismanagement is entirely subjective. It would be difficult to distinguish between a genuine issue, an employee grievance or an employee attempting to use Whistleblowing as a shield against disciplinary action.
- Following the principles of self-determination, subsidiarity and local decision making outlined in the First Ministers Lerwick declaration, the White Paper and the first report of the Commission on Strengthening Local Democracy it is important that wherever possible decisions are left to individual Local Authorities. Legislation should not impose central, one size fits all solutions. The decision on which level within an Authority that Whistleblowing complaints are considered, whether the Solicitor of the Council, Chief Auditor or Members, is one of the internal governance of a Local Authority. In the same way that we would not expect the UK Government to interfere in matters relating to the internal operations of the Scottish Parliament, we would

not expect the Scottish Parliament to seek to prescribe the internal operations of Local Authorities.

- As previously detailed there is a danger that involving Members in Whistleblowing complaints, particularly those relating to mismanagement may prejudice their consideration of appeals under the Council's Disciplinary or Grievance Policy.
- Similarly, there could be a danger, as suggested by the Petitioner, that in some Councils the Whistleblowing issue may become politicised if handled by Members. To be fair, this is not something likely to occur in North Ayrshire Council. However if it did occur the subsequent publicity could result in the identity of the whistleblower being revealed and/or prejudice to the outcome of a confidential investigation.
- This remedy duplicates and potentially obstructs Audit Scotland's role in regulating Whistleblowing and mismanagement.
- It is likely that in most Councils an employee could report an issue of mismanagement to Elected Members through the Grievance Policy. In addition an employee could report mismanagement to either Internal or External Audit. This could result in the issue being considered by Audit Scotland as part of their Assurance and Improvement Plan which is reported to Elected Members.
- The Petitioner suggests that an independent hotline would cost each Council upto £20,000 per annum. At a time of significant budgetary pressure this is a luxury which can be ill afforded.
- To extend Whistleblowing to include mismanagement without amending the Public Interest Disclosure Act 1998 would not provide whistleblowers with protected employment status, causing confusion and risk to whistleblowers.
- The Petitioner provides no evidence as to the extent of mismanagement which would justify the petition.

Conclusion

Whistleblowing complaints and allegations of mismanagement require to be treated seriously. This Council has robust procedures in place, overseen by Audit Scotland through its annual Assurance and Improvement Plan. The Petition is flawed as it confuses Public Interest Disclosures/Whistleblowing with allegations of mismanagement. In seeking to expose a whistleblower to the oxygen of party politics, the petition if adopted would result in less whistleblowers coming forward.