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Date: 13 March 2024

Dear Member

GOVERNANCE AND AUDIT COMMITTEE - TUESDAY, 19 MARCH 2024

I am now able to enclose, for consideration at next Tuesday, 19 March 2024 meeting of the Governance and Audit Committee, the following report that was unavailable when the agenda was printed.

Agenda Item No

8 Review of Whistle Blowing Policy (Pages 1 - 18)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Watts', is written over a faint circular stamp.

Benjamin Watts
General Counsel

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By: Stephen Fuller – Deputy HR&OD Manager
 Frances Killick - Senior HR Business Adviser

To: Governance and Audit Committee – 19th March 2024

Subject: **Policy Review:
 Whistle Blowing Policy and Procedure**

Classification: Unrestricted

Summary:

This report details:

- Updates to the Whistle Blowing Policy and Procedure following a review against changes in legislation and guidance.

Recommendation: To agree amendments to the Policies

Introduction

- 1.1 As part of Internal Audit & Counter Fraud corporate service, the biennial review of key Policies has been conducted.
- 1.2 The following provides a summary of changes to the Whistle Blowing Policy and Procedure, with the actual amended documents attached as Appendixes:

Policy	Key updates
Whistle Blowing Policy Appendix 1	<p><u>Introduction (page 1)</u></p> <p>The wording in the introductory sectioned has been amended to provide greater clarity regarding who the policy applies to. The policy now more clearly reflects that, in addition to KCC employees, it applies to agency workers, those who are on work placements and work experience, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and partners.</p> <p>Additional wording has been added about raising concerns on a confidential basis.</p> <p><u>Aim (Page 1)</u></p> <p>Additional wording has been added regarding concerns that are raised will be taken very seriously.</p> <p>Wording has also been added to reflect the changes made in the introductory wording regarding who the policy applies to.</p> <p><u>What is Whistleblowing (page 2)</u></p> <p>This section has also been amended to reflect the revised wording from the introductory section.</p>

	<p><u>Scope (page 2)</u></p> <p>As above, this section has also been amended to reflect the wording from the Introduction section regarding who the Policy applies to.</p> <p>Wording has been added regarding criminal offences and ‘waste/frivolous expenditure’.</p> <p>Revised wording regarding how to raise issues relating to health & safety matters.</p> <p><u>Protection of the whistle-blower (page 3)</u></p> <p>Correction made with regard to the reference made to the Public Interest Disclosure Act 1998 (PIDA) and additional wording has been included regarding the purpose of this legislation.</p> <p><u>Limitations (page 3):</u></p> <p>Additional wording included which identifies:</p> <ul style="list-style-type: none"> • The act of making a disclosure grants no valid claim of immunity from unrelated or pre-existing disciplinary proceedings. • Nor can a person making a disclosure which reveals their own complicity in misconduct claim immunity in their own case.
<p>Whistle Blowing Procedure Appendix 2</p>	<p><u>Introduction (page 1)</u></p> <p>This section has been amended to provide greater clarity regarding who the policy applies to.</p> <p>Wording has been added regarding criminal offences and ‘waste/frivolous expenditure’.</p> <p>Additional bullet point included regarding matters that could lead to raising a concern:</p> <ul style="list-style-type: none"> • Information relating to any concerns that is being or likely to be deliberately concealed. <p><u>Other Complaint’s Procedures (page 1)</u></p> <p>Revised wording regarding how to raise issues relating to health & safety matters.</p> <p><u>Step Two – How KCC will respond (page 3)</u></p> <p>Additional wording included which identifies:</p> <ul style="list-style-type: none"> • The act of making a disclosure grants no valid claim of immunity from unrelated or pre-existing disciplinary proceedings. Nor can a person making a disclosure which reveals their own complicity in misconduct, claim immunity in their own case. <p><u>Support (page 5)</u></p> <p>Additional wording has been added regarding concerns that are raised will be taken very seriously.</p>

	<p><u>False or Malicious Allegations (page 6)</u></p> <p>Amended wording regarding disciplinary action against individuals who make false, malicious or vexatious allegations.</p>
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Recommendations

1.3 To agree and approve the updates to the Policies.

Stephen Fuller – Deputy HR&OD Manager

03000 416118, stephen.fuller@kent.gov.uk

March 2024

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Whistleblowing Policy

Issued by the Human Resources & Organisational Development Team



If you require this policy in an alternative format please go to the end of this document for details.

Introduction

This Policy applies to all persons working for KCC or on our behalf, including members, employees at all levels whether permanent or temporary, directors, officers, agency workers, those who are on work placements and work experience, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and partners.

This Policy does not form part of any employee's contract of employment. It may be amended at any time and KCC may depart from it depending on the circumstances of any case.

All organisations face the risk of things going wrong or of unknowingly harbouring wrongdoing. By promoting a culture of openness within KCC, individuals are encouraged to raise issues which are of concern at work. By knowing about wrongdoing at an early stage, steps can be taken to safeguard the interests of all staff working for KCC or on our behalf and prevent fraud and corruption before it happens.

KCC is committed to the highest possible standards of openness, probity and accountability. If individuals have concerns regarding any aspect of our work we encourage them to come forward and speak up with their concerns. In some instances, concerns may need to be expressed on a confidential basis, such as where the concerns relate to an individual's Grandparent Manager or Head of Service.

Aim

This policy is intended to encourage individuals to raise serious concerns internally within KCC, without fear of reprisal or victimisation, rather than overlooking a problem or raising the matter outside.

This policy aims to ensure individuals:

- can feel confident in raising serious concerns knowing that these will be taken very seriously and to question and act upon concerns about practice
- are provided with avenues to raise concerns and receive appropriate feedback on any action taken
- receive a response to their concerns and are aware of how to pursue the matter further if they are not satisfied with the outcome
- can be reassured that they will be protected from reprisals or victimisation if they make a disclosure
- are aware that, in the case of KCC employees, a false or malicious disclosure will be addressed in accordance with the KCC Disciplinary Procedure.

What is whistleblowing?

A whistleblower is a person who is working for or with KCC as detailed in the introduction and raises a concern which relates to possible fraud, crime, danger or other serious risks which could threaten service users, customers, members of the public or the success and reputation of KCC.

Scope

This Policy applies to all persons working for KCC or on our behalf, including members, employees at all levels whether permanent or temporary, directors, officers, agency workers, those who are on work placements and work experience, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and partners.

Concerns that are raised will be addressed in accordance with the associated whistleblowing procedure and these can include matters such as:

- conduct which is, has been or is likely to be a criminal offence or breach of law
- conduct that has occurred, is occurring or is likely to occur the result of which KCC fails to comply with a legal obligation. For example, unauthorised or misuse of public funds, possible fraud and corruption, sexual or physical abuse of clients, or other unethical conduct and discrimination of any kind
- a concern that a KCC employee (or someone working with us) or a service user may be at risk of being drawn into extremism and terrorism (see below)
- disclosures related to past, current or likely miscarriages of justice
- past, current or likely health and safety risks, including risks to the public as well as other employees (see below)
- past, current or likely damage to the environment
- concerns about any aspect of service provision
- other concerns regarding the conduct (including breaches of known standards of officers or KCC Members or others acting on behalf of the KCC)
- Information relating to any concerns that is being or likely to be deliberately concealed

If individuals wish to raise any issues, concerns or complaints relating to health and safety and which are not confidential, they should follow the approach set out in the [Guidance for Raising and Resolving Safety Concerns & Complaints](#)

If employees wish to raise a concern regarding issues relating to their own employment, the KCC Resolution Policy and Procedure should be used. Further information on this procedure can be found on KNet.

Protection of the whistleblower

KCC is committed to the Whistleblowing Policy and individuals are encouraged to raise concerns about malpractice in the context of the policy. Concerns will be treated seriously and actions taken in accordance with this policy.

Individuals may be anxious that, by reporting genuine whistleblowing concerns their actions may leave them vulnerable. It is important to emphasise that KCC will not tolerate the victimisation, intimidation or penalisation of anyone raising a genuine concern, anyone involved in the subsequent investigation or anyone acting as a witness.

Anyone responsible for any such action against individuals making genuine disclosures will be the subject to a disciplinary investigation under the disciplinary policy.

It is automatically unfair to dismiss an employee if the reason, or main reason, is that they made a protected disclosure, i.e. a disclosure about a 'relevant failure' in the following areas:

- a criminal offence;
- breach of legal obligation;
- a miscarriage of justice;
- danger to an individual's health and safety;
- damage to the environment; or
- deliberate concealment of information relating to any of the above.

Whistleblowers receive protection under the Public Interest Disclosure Act 1998 (PIDA). This legislation seeks to safeguard staff in any organisation who challenge wrongdoing or misconduct. This policy seeks to integrate those statutory protections into a broader framework. Further information can be found at the end of the policy under Appendix 1.

Confidentiality

All concerns raised will be treated in confidence and every effort will be made not to reveal the individual's identity if this is their wish. However, in certain cases, it may not be possible to maintain confidentiality if the individual is required to come forward as a witness.

Anonymous Allegations

Concerns expressed anonymously are much less powerful than those that are attributed to a named individual. However, anonymous allegations will be considered and investigated at KCC's discretion. In exercising the discretion, the factors to be taken into account would include:

- the seriousness of the issues raised
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

Untrue Allegations

Persons who knowingly make false, malicious or vexatious allegations will be investigated and could be subject to disciplinary action under the disciplinary policy.

Limitations

The act of making a disclosure grants no valid claim of immunity from unrelated or pre-existing disciplinary proceedings.

Nor can a person making a disclosure which reveals their own complicity in misconduct, claim immunity in their own case.

Bribery Act 2010

KCC has a zero tolerance approach to acts of bribery and corruption. Any instances of suspected bribery and corruption must be reported. If you do not feel able to report your concerns to your line manager, the Whistleblowing Procedure can be used to confidentially raise this matter.

Counter-Terrorism & Security Act 2015 – Prevent duty for Local Authorities

The Counter-Terrorism & Security Act 2015 places a duty on Local Authorities to have due regard to the need to prevent people from being drawn into terrorism. If you have a concern that a KCC employee (or someone who works with us) or a service user is being drawn into extremism or terrorism you should raise this via the ['CHANNEL' referral process](#).

Additional Information

E-Learning module – 'Whistleblowing with Confidence'

Alternative Formats

This document is available in other formats. Call 03000 421553 or email alternativeformats@kent.gov.uk

Appendix 1

The Law

The [Public Interest Disclosure Act 1998 \(PIDA\)](#) applies to all employees and is in place in order to allow employees to raise legitimate concerns about matters that are of a public nature. These include situations where criminal offences, breaches of legislation and illegality occur. These are called "Qualifying Disclosures".

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 enough to form the basis of concerns. Some examples of this may be:

- Criminal offences.
- Fraud, bribery or financial mismanagement.
- Abuse of vulnerable groups of people.
- Practices that put the health and safety of employees or customers at risk.
- Failure to comply with legal obligations.
- Breaches of legislation, such as the Data Protection Act.
- Covering up medical negligence.
- Causing damage to the environment.
- Concealment of any of the above.

For a disclosure to be protected it should be made in the appropriate manner to a KCC manager. For example, disclosing a serious health and safety issue to a manager and / or the Health and Safety Officer is likely to be protected, but not if the concern was disclosed directly to the newspapers or media without having first attempted to make the organisation aware of the problem.

This policy provides guidance on what falls under the scope of the whistleblowing legislation, how any such issues may be raised in confidence within KCC and provides assurances that its employees will be protected from suffering from any detriment (i.e. victimisation, discrimination or dismissal) for raising any matters of public interest.

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Whistleblowing Procedure



Issued by the Human Resources & Organisational Development Team

If you require this procedure in another format please go to the end of this document for details.

Introduction

It is important for individuals (employees, agency workers, those who are on work placements and work experience, seconded workers, volunteers, interns, agents, external consultants, third-party representatives and partners and those contractors working on KCC premises) to have an appropriate means to raise concerns if they believe that something is seriously wrong within KCC.

You may become aware of, or directly witness, situations or conduct that makes you feel uncomfortable or you regard as inappropriate. The Whistleblowing Procedure provides a means for you to raise concerns about matters not related to your own employment or your work within KCC but which you feel need to be examined. Examples of the type of matters that could lead to you wishing to raise a whistleblowing concern are:

- conduct which is, has been or is likely to be a criminal offence or breach of law
- conduct that has occurred, is occurring or is likely to occur the result of which KCC fails to comply with a legal obligation. For example, unauthorised or misuse of public funds, possible fraud and corruption, sexual or physical abuse of clients, or other unethical conduct discrimination of any kind
- a concern that a KCC employee (or someone working with us) or a service user may be at risk of being drawn into extremism and terrorism
- disclosures related to past, current or likely miscarriages of justice
- past, current or likely health and safety risks, including risks to the public as well as other employees (see below)
- past, current or likely damage to the environment
- concerns about any aspect of service provision
- other concerns regarding the conduct (including breaches of known standards of officers or KCC Members or others acting on behalf of the KCC
- Information relating to any concerns that is being or likely to be deliberately concealed

This document outlines the process that will be followed in the event of a whistleblowing complaint being raised.

Other Complaints Procedures

If individuals wish to raise any issues, concerns or complaints relating to health and safety and which are not confidential, they should follow the approach set out in the [Guidance for Raising and Resolving Safety Concerns & Complaints](#)

Any investigation into allegations of potential malpractice under this procedure will not influence or be influenced by any disciplinary or redundancy procedures that already affect an individual.

If you wish to raise a concern regarding issues relating to your own employment, KCC has a Resolution Policy and Procedure that you can use. Further information on these documents can be found on KNet.

How to Raise a Concern

General

Concerns can be raised verbally or in writing. A concern raised in writing should:

- set out the background and history of the concern, giving names, dates and places where possible
- give the reason why you are particularly concerned about the situation.

The earlier a concern is raised the easier it is to take action. Although you are not expected to prove beyond doubt the truth of an allegation, you need to demonstrate to the person contacted that there are sufficient grounds for your concern. A trade union or professional association may raise a matter on your behalf.

If you intend to raise a whistleblowing concern, you are encouraged to include your name. If you specifically request for your name not be released during the examination of your concern, all efforts will be made for this information to remain confidential. However, if you are required to participate in the process as a witness, it may not be possible for your name to be withheld.

In the event of anonymous allegations being received, this should be sent to one of the Senior Management contact points and/or Internal Audit who will determine whether or not it is possible for the allegations to be examined.

Step One – Raising a Concern

Whenever possible you should raise your concern with your immediate manager or their manager, who can, if needed, seek guidance and advice from one of the Senior Management Contact Points. If this is not appropriate or you feel your concerns are not being addressed, you should approach the following officers and Senior Management contact points who support Corporate Directors according to the nature of the concern:

Directorate	Contact Name	Email
Chief Executive Department and Deputy Chief Executive Department	Rachel Chalmers-Stevens	Rachel.Chalmers-Stevens@kent.gov.uk 03000 410004
Growth, Environment & Transport	Theresa Warford	Theresa.warford@kent.gov.uk 03000 417 192
Children, Young People and Education	Dee Corbishley	Dee.Corbishley@kent.gov.uk 03000 423 185
Adult Social Care and Health	Sarah Denson	sarah.denson@kent.gov.uk 03000 410 740

Senior Management contact points	Paul Royel Director of HR & OD	paul.royel@kent.gov.uk 03000 416631
Senior Management contact points	Ben Watts – General Counsel	Benjamin.Watts@kent.gov.uk 03000 416814
Senior Management contact points	Jonathan Idle – Head of Internal Audit	Jonathan.Idle@kent.gov.uk 03000 417 840
Senior Management contact points	James Flannery - Counter Fraud Manager	James.Flannery@kent.gov.uk 03000 416 621

Recording Concerns

Each Directorate will be responsible for maintaining their own whistleblowing log. Managers who receive a concern should send details to their relevant directorate contact as above. The log will include the area of business that have been affected, a summary of the concerns being raised, action taken and the resulting outcome.

Internal Audit maintain a central record of whistleblowing concerns. Directorates will be required to provide a copy of their whistleblowing log on a quarterly basis to Internal Audit for inclusion into the central log to ensure a complete record is maintained.

Managers who receive Whistleblowing concerns must report the matter to the above departmental contacts and Internal Audit for inclusion on the central record by sending the details to internal.audit@kent.gov.uk with the subject line 'Whistleblowing'.

KCC has an [Anti-Fraud and Corruption Strategy](#) and all suspected financial irregularities must be reported to the Head of Internal Audit.

Whistleblowing Hotline

Internal Audit is independent and provides objective assurance and consulting activity, designed to add value and improve an organisation's operations. If you wish to raise any type of Whistleblowing concern directly with Internal Audit (anonymously if necessary), please call the Whistleblowing helpline on 03000 414 500 or e-mail internal.audit@kent.gov.uk.

Step Two - How KCC will respond

The action KCC takes will depend on the nature of the concern. The matters raised may:

- be investigated internally by management, Internal Audit or through the disciplinary or other internal process
- be referred to the Police
- be referred to the External Auditor
- form the subject of an independent inquiry

You will be written to within ten working days of your concern being raised:

- acknowledging that the concern has been received
- indicating how KCC proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- informing you if any initial enquiries have been made
- whether further investigations will take place and, if not, why not.

In order to protect individuals and KCC, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of specific procedures (e.g. child protection or discrimination issues) will normally be referred for consideration under those procedures.

An appropriate manager will conduct preliminary enquiries into the matters you have raised. In order to determine whether your concern needs to be formally investigated, the manager will seek advice from the [Human Resources & Organisational Development Team](#) and, where appropriate, safeguarding professionals, Internal Audit or the Counter Fraud Manager.

When any meeting is arranged, you have the right to be accompanied by a Trade Union representative, or a workplace colleague who is not involved in the area of work to which the concern relates.

The formal investigation will identify what, if any, action is required to address the concerns you identified via the Whistleblowing Procedure. This may involve disciplinary action against another KCC employee or the involvement of agencies such as the Police or the External Auditor. The act of making a disclosure grants no valid claim of immunity from unrelated or pre-existing disciplinary proceedings. Nor can a person making a disclosure which reveals their own complicity in misconduct, claim immunity in their own case.

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.

Protection from Reprisals and Victimisation

KCC does not tolerate reprisals, victimisation or harassment and will take all reasonable action to protect you if you raise a concern via the Whistleblowing Procedure. KCC will treat any reprisals, victimisation or harassment as a serious matter and if this involves a KCC employee it will be investigated in accordance with the Disciplinary Procedure. In the event of a disciplinary case being found, this could potentially result in the person's dismissal.

Public Interest Disclosure

Public Interest Disclosure Act 1998 gives employees two safeguards in respect of disclosures of information.

- An employee is entitled not be subjected to any detriment by virtue of having made a protected disclosure.
- The dismissal of any KCC employee directly due to the individual having made such a disclosure will automatically be unfair.

Support

KCC will take steps to minimise any difficulties you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, KCC will advise or arrange for you to have advice about the procedure.

KCC accepts that you need to be assured that concerns will be taken seriously, properly addressed and, subject to legal constraints, will provide information about the outcomes of any investigations.

Contact

The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought.

How the matter can be taken further

This procedure is intended to reassure you and provide clear information to help you raise concerns in confidence and directly with the Council.

KCC hope you will be satisfied with its response. If you are not, or if you feel for any reason, you can't raise the matter directly with the Council then possible alternative points of contact points are listed below.

Please be assured that we would rather you raised a matter with an appropriate regulator or outside body than not at all.

Contact Details (External Organisations)	Details
Grant Thornton The Council's external auditors	Address: 30 Finsbury Square, London, EC2A 1AG Tel no. 020 7383 5100
The Local Government and Social Care Ombudsman	Address: PO Box 4771, Coventry, CV4 0EH Web: www.lgo.org.uk Tel no. 03000 061 0614
The Equalities and Human Rights Commission	Address: Equality and Human Rights Commission Correspondence Unit Third floor Windsor House 50 Victoria Street London SW1H 0TL Email: whistleblowing@equalityhumanrights.com Web: www.equalityhumanrights.com Tel no. 0161 829 8100
The Health and Safety Executive (Regional Office)	Address: Health and Safety Executive, International House, Dover Place Ashford

	Kent TN23 1HU : Web: www.hse.gov.uk Tel no. 0300 003 1747
The Environment Agency (Regional Office)	Address: Matts Hill Lane, Rainham, Gillingham Kent ME9 7UY E-mail: PSCpublicresponse@environment-agency.gov.uk Web: www.consult.environment-agency.gov.uk Tel No. 0370 850 6506
Citizens Advice	Please refer to web for local information Web: www.citizensadvice.org.uk/
Police	Please refer to web for local information Web: www.kent.police.uk Tel No. non emergencies 101
Your local councillors (if you live in Kent)	Web site: www.Kent.gov.uk
Protect – Free Confidential Whistleblowing advice	Tel No: 020 3117 2520 Website: www.protect-advice.org.uk
Whistleblowing: List of prescribed people and bodies	Website: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies

Reporting

Anonymised information on the number of referrals, concerns and outcomes will be reported by the whistleblowing policy owner on a yearly basis to the Governance and Audit Committee. This is to provide assurance on the communication strategy and current awareness of whistleblowing across the organisation.

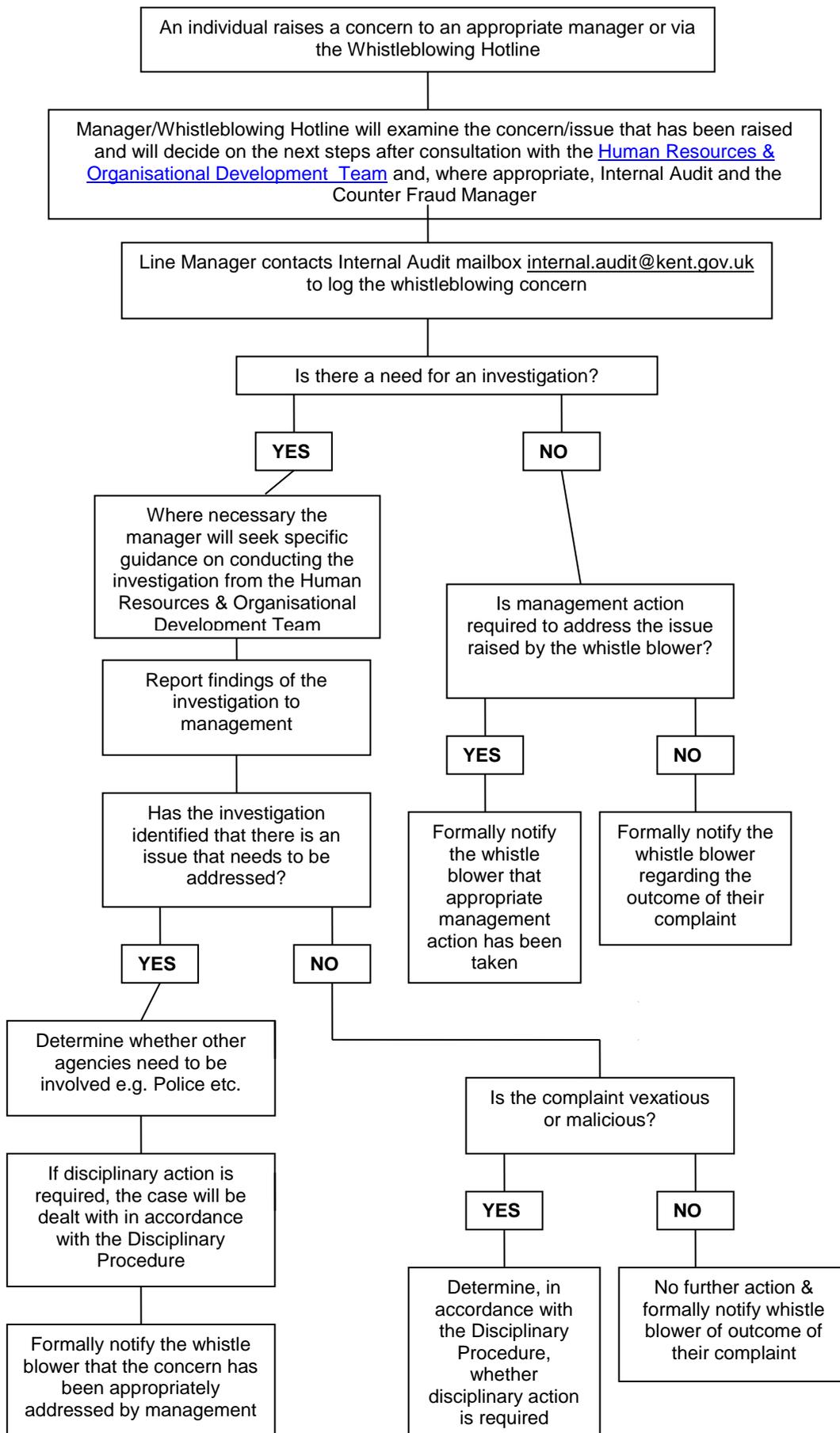
False or Malicious Allegations

Disciplinary action could be taken against individuals who make false, malicious or vexatious allegations.

Alternative Formats

This document is available in other formats. Call 03000 421553 or email alternativeformats@kent.gov.uk

Whistleblowing Procedure



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