



Report of : Director of Corporate Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	21 October 2008	6	

Delete appropriate	as	Exempt	Non-exempt
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SUBJECT: REVIEW OF WHISTLEBLOWING POLICY

1 Synopsis

This report reviews the operation of the council's whistleblowing policy and seeks members' comments on a proposed revised policy.

2 Recommendations

- 2.1 That the Committee consider and comment upon the draft revised policy in Appendix 1.

3 Background

- 3.1 The Public Interest Disclosure Act 1998 was introduced to strike a balance between the competing interests of the employer that employees be expected to keep information about the employer confidential, the interests of employees and the wider public interest. It created protection for employees who wished to raise issues of public concern with their employers or, if concerns were not properly dealt with, with outside bodies.
- 3.2 The Council's whistleblowing policy has been in place since April 2003 and provides a route within the council for employees to raise such concerns. As it has been in operation for a number of years it is appropriate that its effectiveness be reviewed. This also provides an opportunity to update the procedure.
- 3.3 The procedure in the policy can also be used by non-employees to raise concerns about malpractice in appropriate cases, for example, employees of contractors who deliver services on behalf of the council.

3.4 The procedure applies to a report where it is the reasonable belief of the employee or other person making the report that it relates to:

- a criminal offence
- a failure to comply with a legal obligation
- a miscarriage of justice
- a danger to the health and safety of an individual
- damage to the environment
- a failure to comply with the Council's policies and procedures
- any conduct which may damage the Council's reputation
- deliberate concealment of information relating to any of the above

Review of current procedure

3.5 There were 9 reports under the current policy in 2006, one in 2007 and two so far this year. Investigations following these reports have not revealed any substantive malpractice but have led to the identification of procedures which could be improved. Although there have not been a large number of reports the existing policy has provided a route for some concerns to be raised.

3.6 It would be helpful to raise the profile of the policy and it is therefore proposed that once the revised policy has been approved by Audit Committee it should be publicised to staff through IC News and through the council's induction procedures. The policy will appear on the council's internet and intranet sites. On the intranet it will appear on the Human Resources page but there will also be a link to it from the Governance Page which is currently being developed.

4. Implications

4.1 *Legal Implications*

The Public Interest Disclosure Act 1998 (PIDA) provides protection to employees who in good faith disclose malpractice by their employer which they reasonably believe as occurred. There is no statutory requirement to have in place any particular type of Policy to enable employees to raise such concerns within the council. However, in the event that an employee made an application to an Employment Tribunal claiming that they were either dismissed or victimised as a result of making a disclosure protected by the PIDA, not having an accessible and effective procedure could put the council in a weak position.

4.2 *Financial Implications*

There are no financial implications arising directly from the report.

4.3 *Equality Implications*

The whistleblowing procedure provides a means for employees and others to raise concerns about the Council's equalities practices and those of its contractors.

Background papers:

None.

Final Report Clearance

Signed by

Director of Corporate Resources

Date

Received by

Head of Scrutiny and Democratic Services

Date

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Whistleblowing

The Whistleblowing Policy and Procedure

October 2008

BACKGROUND

1.1 OVERALL CONTEXT

The Council expects the highest standards of behaviour of all employees, councillors and its contractors.

The Whistleblowing Procedure is intended to encourage employees and others to report inappropriate action by any of the above which would not normally be revealed due to fears of victimisation or retribution.

The Procedure provides a framework to ensure that the Council and those who act on its behalf conduct themselves in a proper manner.

The Procedure reassures staff that they will be protected from reprisals or victimisation for making reports of malpractice in good faith which they reasonably believe to be true.

1.2 LEGAL CONTEXT

This Disclosure Policy has been devised in accordance with the provisions of the Public Interest Disclosure Act 1998.

1.3 SCOPE OF THE PROCEDURE

The procedure applies to a report where it is the reasonable belief of the employee or other person making the report that it relates to:

- a criminal offence
- a failure to comply with a legal obligation
- a miscarriage of justice
- a danger to the health and safety of an individual
- damage to the environment
- a failure to comply with the Council's policies and procedures
- any conduct which may damage the Council's reputation
- deliberate concealment of information relating to any of the above

in relation to the conduct of the Council's business, including activities carried out by contractors on its behalf.

1.4 MATTERS OUTSIDE THE SCOPE OF THE PROCEDURE

The procedure does not normally cover:

- Matters that concern day to day issues relating to an employee's terms and conditions of employment or a complaint about another employee which can usually be referred to their line manager, or if necessary be pursued using the Council's Grievance Procedure

- Matters that would normally be dealt with by the Council's collective bargaining arrangements with its recognised trade unions
- Matters relating to child abuse which should be reported to the Referral and Advice Team: Telephone 020 527 7400
- Matters relating to the Protection of Vulnerable Adults should be referred to the Information and Access Team from 9 am to 5 pm: Telephone 020 7527 2299 and the Emergency Duty Team outside office hours: Telephone 020 7226 0992
- Allegations which you would normally make to Internal Audit concerning fraud or financial irregularity which should continue to be made direct to Internal Audit by calling 020 7527 2688
- Complaints from the public that relate to standard of service delivered by the Council or its contractors which should be reported through the Council's Complaints procedure.

1.5 WHO IS COVERED BY THE PROCEDURE

All employees, contractors (and their staff), partner agencies (including the Health Authority and voluntary sector groups), agency workers, consultants, trainees and self employed people providing work for the Council may make reports under this procedure outlining any concerns.

MAKING A WHISTLEBLOWING REPORT

2.1 REPORTING A CONCERN WITHIN YOUR MANAGEMENT STRUCTURE OF YOUR OWN DEPARTMENT

In the first instance you should normally report any concerns to your line manager or their manager, preferably in writing. However, if you feel the matter is extremely serious or sensitive or involves your line manager or their manager, you may report the matter to the Director.

Before raising your concern you may wish to take advice on the matter from any of those listed in paragraph 4.5 of this procedure or discuss your concerns with a colleague first. It is advisable that you report your concern as early as possible. A significant delay in reporting the matter may make the subsequent investigation difficult to pursue.

In raising your concern in writing, you should give as much detail as possible, i.e. the background and history, giving names and relevant dates and the reasons why you are particularly concerned about the situation.

If you feel hesitant about putting your concern in writing at this stage you should telephone the manager to whom you wish to make the report and arrange to meet them. Do bear in mind you may be asked to put the details in writing later.

Managers receiving a report under this section must notify the whistleblowing officer of this within 24 hours.

2.2 REPORTING A CONCERN TO THE COUNCIL'S WHISTLEBLOWING OFFICER

The Council's Whistleblowing Officer is the Director of Corporate Resources

You may make a written report to the Council's Whistleblowing Officer if you:

- Have previously raised an issue to management within your Department and feel that it has not been dealt with properly or the matter involves your Director; or
- Fear that you will be victimised if the matter is raised within your management structure; or
- Fear that relevant information may be concealed or destroyed if the matter is raised within your management structure.

INVESTIGATION OF YOUR REPORT

3.1 WHAT WILL HAPPEN

You will be advised whether the referral is appropriate for this procedure.

Receipt of your report will be logged by the Whistleblowing Officer, following which you will normally be interviewed. You may be accompanied at the interview by a trade union representative or friend if you feel this would help. In most cases you will be asked to provide a written statement detailing the allegations following the interview.

You will receive a written acknowledgement of your report and will be informed of the action that will be taken to investigate your concern within 10 working days of receipt. You will also be given an estimate of the likely timescale of the investigation, although this cannot be guaranteed.

Wherever possible, you will be kept informed of the progress of the investigation, unless the Investigator considers that there is a risk of the investigation being prejudiced by disclosures of the process being taken. You may not receive full details of the progress or the outcome of the investigation if provision of details would be inconsistent with obligations of confidentiality in relation to others.

In some circumstances the matter may be referred to an external agency, such as the police if crime is involved. Wherever possible the Whistleblowing Officer will advise you of this before doing so.

If you are not satisfied with the response from the Whistleblowing Officer, you may report this in writing to the Chief Executive

3.2 CONCLUSION OF INVESTIGATION

If your allegation is not proven or there is insufficient evidence on which to base a conclusion, you will be advised accordingly. It will not be necessary in these cases for a report to be prepared as this could compromise your identity unnecessarily.

In cases where action is necessary as a result of your allegation, a report will usually be sent to the Director responsible for the area under investigation. The Director will be

responsible for implementing the recommendations in the report. You will be advised when the investigation is complete but it may not always be possible to tell you the details of the findings as this may be confidential.

If the investigation concerns inappropriate action by the Director, the report will be sent direct to the Chief Executive. If you are concerned about the Director receiving the report you should discuss this with the investigator.

GENERAL PROVISION

4.1 ANONYMOUS REPORTS

Whilst it is accepted that anonymous allegations do not carry the same weight, any such reports received by the Council will be considered at its discretion and where such a decision is made, appropriate investigations made as far as possible into the circumstances. In exercising this discretion account will be taken of the seriousness, credibility of the matters raised and the likelihood of confirming the allegation from the sources quoted.

4.2 ANONYMITY

During the initial stages of the investigation, if you so wish, the Council guarantees that your identity will only be disclosed to those directly involved in investigating the allegation. We will do our best to maintain your anonymity throughout the enquiry but this may not be possible as it may be obvious to those under investigation who has made the allegation or attempting to maintain your anonymity may hinder or frustrate the investigation. If we consider it is necessary to formally identify you we will always discuss this with you in advance.

In cases where disciplinary action is taken, it may be necessary for you to provide witness evidence. We will try to gather evidence to support your allegation without requiring your attendance at a hearing, but this may not always be possible. We may also need to disclose your identify to other investigating agencies but will discuss this with you before doing so.

4.3 STATUTORY PROTECTION

The Public Interest Disclosure Act 1998 provides individuals with protection from victimisation, dismissal or any other detriment provided they have a reasonable belief that what they have reported is true and the report is made in good faith.

4.4 PROTECTION TO COUNCIL EMPLOYEES

No action will be taken against you by the Council if you make a report in good faith even if it is not confirmed by the investigation.

The Council will treat any victimisation or harassment of an employee who has made a report in good faith under this procedure as a serious disciplinary offence.

If you consider that you have been, are being or are likely to be victimised, dismissed, made redundant or made to suffer some other detriment as a result of making a report under this procedure, you should report your concerns to the Whistleblowing Officer. The matter will then be dealt with as a new referral under this procedure.

Employees should not make reports which they do not reasonably believe to be true or which are malicious. Disciplinary action may be taken against an employee who makes an allegation frivolously, maliciously or for personal gain.

If you are already the subject of a disciplinary, capability or redundancy procedure, this will not normally be halted as a result of your report.

4.5 ADVICE

If you wish to receive advice from a relevant professional in the Council before making a report under this procedure, you should contact any of the following:

The Assistant Director Corporate Resources (Human Resources) (Tel: 020 7527 2014)
The Head of Law (Tel: 020 7527 6096)
The Director of Finance (Tel: 020 7527 2294)
Corporate Health & Safety Manager (Tel: 020 7527 2895)

Alternatively, you may wish to ask for confidential help from your trade union or professional organisation.

You may also contact any of the following organisations outside the Council for assistance with your concern:

- Audit Commission Public Interest Disclosure Act Hotline Tel: 020 7630 1019
- Public Concern at Work Tel: 020 7404 6609

4.6 REPORTING OUTSIDE THE COUNCIL

This procedure is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council following completion of the process set out earlier in this Procedure, the following are possible contact points:

- The Audit Commission;
- The Health & Safety Executive;
- The Environment Agency; or
- other appropriate regulatory body.

A report made externally, i.e. to the police, media or Member of Parliament, will only be protected under the Public Interest Disclosure Act if the following apply:

- If you honestly and reasonably believed the information and any allegation contained in it to be substantially true
- The allegation has not been made for personal gain

- The allegation has already been raised with the Council, unless you reasonably believed you would be victimised or that there may be a cover-up or that the matter is exceptionally serious.

4.7 REVIEW OF WHISTLEBLOWING PROCEDURE

The procedure and reports made under it should be reviewed at least annually by the Monitoring Officer who will make a report to the Standards and Audit Committees. The Standards Committee will receive a regular monitoring report on the use of this procedure.