

STANDARDS COMMITTEE		
Report Title	ANNUAL REVIEW OF WHISTLEBLOWING POLICY AND REFERRALS	
Key Decision		Item: 6
Ward		
Contributors	HEAD OF LAW	
Class		Date: 24 JUNE 2010

1 Summary

This report sets out the referrals under the Council's Whistleblowing Policy since 5th May 2009 and the action taken in response.

2 Recommendations

To note the referral and the action taken.

3 Background

3.1 The Council issued a whistleblowing policy in 1998. It has been reviewed on 4 occasions since then, most recently in May 2008. A copy of the current policy appears at Appendix 1. It is not proposed to change this policy now. Its purpose is to provide a means by which complaints of malpractice or wrongdoing can be raised by those who feel that other avenues for raising such issues are inappropriate, whether because they fear repercussions or for some other reason. As members of the Committee will see, the policy confirms that so far as possible, those raising complaints will be treated confidentially should they so wish. Members will also note that complaints may be raised in relation to councillors, employees, contractors or suppliers.

3.2 The Head of Law, as the Council's Monitoring Officer, receives referrals under the procedure. She then either investigates personally or refers to another senior officer to investigate as appropriate, depending on the circumstances of the complaint.

4 Referrals

There has been only one referral under the policy. A summary appears below.

An email purporting to be from "The Parking Department Staff" sent to the Mayor, Chief Executive and Head of Transport and dated 7th October 2009 was received. It was referred to the Head of Law as the Whistleblowing

Officer to investigate as it contained allegations that “enormous pressure” was being brought to bear on Council and contractors to issue penalty charge notices where none ought to be issued in a bid to achieve unachievable targets. It was also alleged that the street furniture and lines need attention to avoid people getting “bad” tickets; and that this was being ignored. There were also allegations relating to a personnel matter which were referred to the appropriate manager to deal with and those claims are not dealt with here.

4.1 Responsibilities in relation to parking enforcement are split between the Council and a contractor.

4.2 Under a 5 year contract expiring in 2011, the contractor is responsible for the following:-

- Issuing parking control notices (PCNs)
- Providing a call centre and a parking shop
- Cash collection
- Handling applications for parking permits
- Maintaining pay and display machines
- Staffing Holbeach Road car park
- Monitoring and cleaning signage etc

4.3 The Council is responsible for:-

- Clienting and monitoring the contract
- Dealing with representations from the public in respect of PCNs
- Issuing notices in respect of unpaid PCNs and pursuing those
- Preparing responses to appeals to the Parking Appeals and Transport Service
- Recovery of debt once all challenges are exhausted

4.4 The allegations were serious and the Whistleblowing Officer conducted a thorough investigation. This was made more difficult by the fact that the identity of the complainant was not known. Though efforts were made to encourage the writer to come forward, with re-assurances that their complaint would be dealt with sensitively, nobody came forward. The email of 7th October did not come from a Council email address. All staff in the Parking Department say that they had no part in it.

4.5 In the course of her investigation which lasted several weeks, the Whistleblowing Officer interviewed 14 people, including managers, parking staff and contractor representatives. She also reviewed copious documentation. Her findings are summarised below:-

- (a) Basic payments to the contractor are calculated by reference to deployed hours. Issue rate does not affect this basic payment.
 - (b) In theory, the contractor can receive incentive payments if 95% of a basket of key performance indicators are met. One of these relates to the issue rate compared to a rate submitted by the contractor in their own tender submission. It is the London average and in any event has never been achieved by the contractor. In practice, the issue rate is aspirational.
 - (c) The Council has in the recent past requested additional coverage and paid for additional attendant activity. This does not seem consistent with “enormous pressure”.
 - (d) Pressure on Council staff to issue tickets could not result in additional issue rate as Council staff do not issue tickets.
 - (e) There is a very low rate of appeals to the Parking Appeals and Transport Service, and of those submitted only a very low number are upheld. This would not be expected if there was a high incidence of unjustified tickets being issued.
 - (f) Cancellations by the Council prior to the formal appeal stage were running at about 8%. However this included all cancellations (e.g. those cancelled for mitigating circumstances, DVLA details not matching etc). Those cancelled for parking attendant error are between 4 and 5%. These are issued by the contractor and do not necessarily indicate disingenuous intent. They include for example, tickets cancelled because of transposition of digits on licence plates by the parking attendant.
 - (g) There are lessons to be learned by the client about more effective contract procurement and management and these are to be put into practice when the contract is re-let in 2011. However these did not approach amounting to improper behaviour.
 - (h) It was accepted that some street furniture and signage requires attention, and efforts are made to do this when budgetary constraints allow.
5. In conclusion the Whistleblowing Officer did not find the allegations to have any substance, though improvements to practice were recommended.

6. The Whistleblowing Policy

The Whistleblowing Policy is attached at Appendix 1. Apart from minor amendments to update contacts, no further amendment is proposed at this stage. Members of the Committee are asked to note that the

policy appears on the Council's website, is referred to in the Council's Guide for Contractors and all new employees are informed about it in their induction process. Another article in Lewisham Life and Managers Guide is proposed for this year in addition to the existing publicity measures to keep the profile of the Policy high.

7. Legal implications

There are no specific legal or financial implications arising from this report.

APPENDIX 1

Whistleblowing Policy

The Council is committed to the provision of the highest quality services for local people and to full accountability for the services it provides. The Council is also committed to the highest standards of conduct and has in place detailed rules, regulations, quality standards and procedures to ensure that these standards are observed. However, sometimes malpractice and wrongdoing may occur. Lewisham is not prepared to tolerate any such malpractice or wrongdoing in the performance of its services.

The Council acknowledges that the greatest deterrent to malpractice or wrongdoing is the probability that it will be discovered, reported and investigated thoroughly and that those responsible will be held to account. This policy is intended to be a clear and unequivocal statement that whenever any malpractice or wrongdoing by the Council, its employees, contractors or suppliers is identified or reported to the Council, it will be promptly and thoroughly investigated and rectified. The Council will also investigate means of ensuring that such malpractice or wrongdoing can be prevented for the future.

The scope of the whistleblowing policy

The Principles

The policy is based upon the overriding principle that the public interest and the needs of service users must come first.

The whistleblowing policy complies with the requirements of the Public Interest Disclosure Act 1998.

What is covered?

It is intended that any significant concern which a member of staff, service user, Councillor or member of the public has about

- ◆ any aspect of service provision
- ◆ the conduct of officers or members of the Council, or
- ◆ the conduct of any other parties acting on behalf of the Council, which may be:
 - ◆ unlawful (including fraud or corruption)
 - ◆ against the Council's Standing Orders or policies
 - ◆ contrary to established professional or other standards, the Council's Member and Employee Code of Conduct or any other established Codes of Practice can be reported under this procedure

It is not intended however, that this procedure should replace existing processes such as the grievance or disciplinary codes. Instead it may be that

once the whistle has been blown, action under other processes (such as the disciplinary code) may ensue.

A supplement not a substitute

Anyone, including councillors, employees, service users and members of the public are encouraged to raise complaints or matters of genuine concern with the Council. There are already in existence a number of channels available to raise such concerns. Where an appropriate avenue exists to deal with that concern, people are urged to use it. This whistleblowing policy is intended to supplement, rather than replace the existing procedures wherever practicable.

These channels are:-

◆ **Service Managers/Directors**

Anyone with a complaint about Council services is encouraged to contact the manager directly responsible for that service or the relevant Executive Director. In most cases where there is concern this avenue will be the first point of reference. If a complaint relates to an Executive Director, it should be referred to the Chief Executive.

◆ **The Council's Complaints Procedures**

The Council has a corporate complaints procedure by which it invites any person to raise a complaint they may have about Council Services. Information about this procedure is available from the Advice and Information Service on extension 48761

◆ **Local Councillors**

Members of the public are encouraged to refer matters of concern to their local Councillor who can then either identify the best point of contact for them to report the matter or take up the issue on their behalf. Information about how to contact local councillors is available from Governance Support at Lewisham Town Hall on extension 49455

◆ **The Council's Grievance Procedure**

This deals with complaints relating to an individual employee's condition of employment. The whistleblowing policy is not intended to replace the grievance procedure and should not be used to deal with matters which relate to an individual's contract of employment. If a concern is raised through the whistleblowing policy which would be more properly dealt with through the grievance procedure, it will be referred to Andreas Ghosh, Head of Personnel and Development.

◆ **Anti-fraud Procedures**

The Council's Financial Regulations provide that any suspected fraud, corruption or other financial irregularity should be reported to the Special Investigations Manager who will conduct an investigation and recommendations for appropriate action. Further information about this procedure can be obtained from Carol Owen Ext. 47909

◆ **Housing Benefit Fraud**

The Council has a team which deals with Housing and Council Tax Benefit fraud.

Staff working in Housing Benefits have fixed procedures for dealing with fraud but anyone else suspecting Housing or Council Tax Benefit fraud should telephone the hotline, ext. 47311.

Further information is available from Carol Owen Ext. 47909.

◆ **Tenancy Fraud**

The Council has a dedicated Housing Investigations Team which investigate unauthorised tenancies and illegal subletting. Anyone suspecting a Council property is illegally occupied can contact the tenancy fraud hotline on ext. 49923.

All fraud can be reported on reportfraud@lewisham.gov.uk or by telephoning 0800 085 0119.

◆ **Statutory Officers**

In addition the officers who have particular responsibility for regulating the conduct of the Council and its activities. They are as follows:

Chief Executive **Barry Quirk ext 46444**
(Head of Paid Services - responsible for overall management of the workforce)

Executive Director for Resources **Janet Senior ext 48013**
(Chief Finance Officer - The Council's officer with responsibility for the financial management, audit and financial probity of the Council)

Head of Law **Kath Nicholson ext 47648**
(Monitoring Officer dealing with advising on the probity and legality of the Council's decision making)

The Head of Law, as Monitoring Officer, is the Council's Whistleblowing officer.

Employees with serious concerns about councillors should in the first instance raise them with the Head of Law.

The Head of Law may have to pass on concerns regarding councillors to Standards for England which is a national regulatory body or refer the matter to the Council Standards Committee.

◆ **The Standards Committee**

The Council has a Standards Committee made up of councillors and independent people. It is currently chaired by an independent person, Sally Hawkins. The role of the Standards Committee is to promote the highest standards of ethical conduct amongst members. It keeps the Member Code of Conduct under review and has been given power, by regulation, to investigate complaints of breach of the Member Code of Conduct referred to it by Standards for England.

In the First Place...

People are primarily encouraged to use any and all of the mechanisms for raising concerns as set out above. For councillors, public and staff it is likely that the majority of concerns will be dealt with by bringing the matter to the attention of management in the relevant Directorate. Such references are positively welcomed by the Council and once the issue is brought to light the manager will treat the complaint seriously, investigate it promptly and inform the complainant of the outcome. The investigation officer will be expected to interview both the individual raising the complaint and the person complained against, as well as any other individuals as appropriate. If no further action is proposed, the complainant will be given an explanation. If further action is proposed under a separate Council procedure (such as the disciplinary code) the complainant will also be informed.

If a concern is raised by a member of staff, it would be normal for their first reference to be to their direct line manager. However, depending on the nature and sensitivity of the issue, or the identity of the alleged wrongdoer, the line manager may not be the appropriate manager. In such cases it may be more appropriate to raise the issue with a Head of Service or other senior manager. A member of staff may be accompanied by a friend when meeting management to raise a concern. In short, managers within Directorates will adopt a flexible and open approach so that those having concerns feel confident that they may raise them.

But if the usual channels are not appropriate?

Circumstances may arise where none of the channels above are reasonably available. It may be that the whistleblower fears repercussions for example, or senior members of staff or Councillors may be implicated. Alternatively the whistleblower may have used those channels but still feel that there is real cause for concern, In such circumstances the whistleblower may refer their concern to the Head of Law directly.

The Head of Law will then ensure that the matter is dealt with by her either personally or by a whistleblowing officer nominated by her and operating under her supervision.

How will the whistleblowing officer respond?

Acting under the supervision of the Head of Law the whistleblowing officer will first receive and record the complaint in a register kept specially for the purpose. An initial assessment will then be made to decide what sort of investigation ought to take place.

In the most serious cases, it may be that a Police enquiry will ensue or an independent investigation may be called for. In some cases the issue will be referred for a management investigation, possibly by the Chief Executive or another officer nominated to act on his behalf. Allegations of fraud, corruption or financial irregularity will be referred to the Special Investigations Manager for investigation.

In other cases however, it may not be appropriate to conduct any further enquiry at all. People are encouraged to raise genuine concerns and do not have to prove them. Understandably they do need to demonstrate that there is a sufficient basis for investigation. This initial consideration will allow the Council to decide on the appropriate method of enquiry and to ensure that resources are not wasted where investigation would be inappropriate.

Unless the issue is raised anonymously then the whistleblowing officer will generally interview the whistleblower as part of this initial assessment. If the whistleblower requests that his or her identity remains confidential then all possible steps will be taken to respect that wish.

If an investigation is to ensue then the whistleblower will be informed of the fact and given an estimate of the time by when the investigation will be completed. Normally the investigation will be conducted within 28 days, though the time taken to conduct an enquiry will depend on the nature of the concern and its complexity. The whistleblower will be informed of the outcome and this will be noted in the register.

In appropriate circumstances the Head of Law and/or the whistleblowing officer will prepare a report for the Council and the Standards Committee dealing with the outcome of a particular investigation, the action taken to rectify the situation and prevent a recurrence.

Each year the Head of Law will prepare for the Standards Committee a report dealing with the application of the whistleblowing policy in the previous year, and making suggestions where necessary for changes to improve its efficiency.

Issues raised by Members of the Council or by the public shall be dealt with in a similar manner to those raised by employees, though serious concerns

about the conduct of Councillors should in all cases be referred to the Head of Law.

◆ **Some General Safeguards**

◆ **No Victimisation**

The Council recognises that the decision to blow the whistle can be a difficult one to make, not least because there is a fear of reprisal from those who may be perpetrating malpractice or others. The Council will not tolerate any victimisation of a person who raises a concern in good faith and will take appropriate steps to protect them, including where appropriate disciplinary action.

◆ **Confidentiality and Anonymity**

The Council will, wherever possible, protect the identity of the whistleblower who raises a concern and does not want his/her name to be disclosed. However, this may not be possible in all circumstances as the very fact of the investigation may serve to reveal the source of the information and the statement of the whistleblower may be needed as part of evidence against the perpetrator.

◆ **False and Vexatious Complaints**

Just as the Council will seek to protect those who raise concerns in good faith, so it will seek to protect those against whom claims are made which turn out to be unfounded. A concern which is made in good faith and sincerely expressed may transpire to have no basis in reality. In addition it is possible that vexatious or malicious claims may be made. The Council will take disciplinary action against any employee who makes a vexatious claim. In either case, where it turns out that the claim was without foundation, the Council will use its best endeavours to ensure that any negative impact on the person complained of is minimised. However, the Council acknowledges that it may not be able to prevent all such impact in every case.

Alternative methods of complaint

As well as the initial complaints and whistleblowing **procedures set out in this policy, any member of the public who wishes to make a complaint about the Council may contact one of the following organisations:**

- ◆ Local Government Ombudsman - who receives and investigates complaints of mal-administration against the Council. He can be contacted at 21 Queen Ann's Gate, London SW1H 9BU, telephone 020 7915 3210
- ◆ The District Auditor - who investigates complaints of financial irregularity or unlawful expenditure leading to financial loss by the Council. To contact the District Auditor write to him at Millbank Tower, 4th Floor, Millbank Road, London SW1P 4QP, telephone 020 7233 6400

- ◆ Standards for England - which considers allegations of breach of the Member Code of Conduct. Standards for England will only consider serious complaints relating to Members of the Council, (not employees). To contact Standards for England, write to Fourth Floor, 40 Lever Street, Manchester, M1 7BB

Further information about this whistleblowing policy can be obtained from Kath Nicholson ext 47648 or Helen Glass ext 49968.