

<b>Committee</b>	<b>STANDARDS COMMITTEE</b>	<b>Item No</b>	
<b>Report Title</b>	<b>ANNUAL REVIEW OF COMPLAINTS MADE UNDER THE COUNCIL'S WHISTLEBLOWING POLICY</b>		
<b>Ward</b>			
<b>Contributors</b>	<b>HEAD OF LAW</b>		
<b>Class</b>	<b>Open</b>	<b>Date</b>	<b>26 March 2014</b>

## 1 **Summary**

This report sets out the referrals made under the Council's whistleblowing policy since the last annual review in May 2013 and invites the Committee to make any comments on whether the whistleblowing policy ought to be amended in any way.

## 2 **Recommendations**

- 2.1 To note the referrals under the Council's whistleblowing policy set out in this report and the action taken in relation to them.
- 2.2 To consider whether any changes to the current whistleblowing procedure are appropriate.

## 3 **Background**

- 3.1 A copy of the Council's current whistleblowing policy appears at Appendix 1. There has been a whistleblowing policy in place for several years and it has been reviewed by this Committee on an annual basis since 2000. The purpose of the policy 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 under the whistleblowing policy will be treated confidentially. Members will also note that complaints may be raised in relation to the actions of Councillors or employees.
- 3.2 Referrals under the policy are made to the Head of Law as the Council's Monitoring Officer. Investigations are either conducted personally by the Head of Law or referred by her for investigation to another senior officer with a report back to her.

#### 4 **Referrals Since April 2013**

There have been 6 referrals to the Head of Law in this period. They are as follows:

##### Case A

- 4.1 This case was referred in April 2013, by a member of Council staff who identified themselves to the Monitoring Officer, but who preferred their identity not to be made known to the parties about whom they were complaining. As it was possible to investigate the complaint thoroughly without revealing the identity of the complainant, (the subject of the allegations was a matter detailed in correspondence and Council records) the Monitoring Officer protected his/her identity and confidentiality was maintained.
- 4.2 The allegation related to the treatment of a minor with complex needs. For the purposes of this report the young person is referred to as W. In 2010, the Council agreed with K, his mother, that W should be found a residential school placement from September 2012. In late 2011, a placement was offered but K did not agree that it was acceptable. In January 2012, she asked W's social worker to consider an alternative. Between January and June 2012 no replies were received to correspondence from, and on behalf of, K. In May 2012, K telephoned and spoke to W's social worker's line manager who promised to call back. No call was received.
- 4.3 In June 2012, the social worker told K that a Panel had refused her request for alternative placement. Instead, as W would be 18 years old in May 2013, K was offered a meeting to discuss transition to Adult Services.
- 4.4 In October 2012, K submitted a complaint under the statutory complaints procedure applying in respect of looked after children, and children in need. It related to the unsuitability of the offer for W and the manner in which K had been treated by social workers.
- 4.5 The Complex Needs Service Manager investigated the complaint and accepted that the lack of action from Council staff was unacceptable. He informed K of her right to an appeal procedure, commonly known as Stage 2, if she remained unhappy with his decision. In November 2012, K confirmed in writing that she wished to proceed to Stage 2.
- 4.6 In December 2012, a Complaints Officer offered K a meeting with a Service Manager, on the basis that this would be the swiftest way to address her concerns. The letter stated that her complaint "did not require independent investigation" but did require that she be provided with further information. K rejected this, reiterating that she sought a Stage 2 appeal, but this was again refused in writing.

- 4.7 The statutory procedure clearly provides for a Stage 2 investigation to be carried out by an independent person in such circumstances as this case, and this statutory right was wrongly refused to K.
- 4.8 Following investigation by the Monitoring Officer, the Service Manager with responsibility for the Complaints Team accepted that an error had occurred in this case, an apology was given and K was offered a Stage 2 appeal. K however did not wish to pursue the matter, as an acceptable offer had been made by Adult Services. K was invited to participate in training for transition planning for children with complex needs and complaints handling.
- 4.9 In the course of this investigation, a review of practice in similar cases was conducted by the Service Manager and it was found that in 6 other cases in the preceding 12 months, similar inappropriate action had been taken. These cases were re-opened and in all of them, access to the Stage 2 procedure was offered.
- 4.10 The Service Manager took further remedial action, including additional training, apologies in all of these cases and an overhaul of standard correspondence. She undertook to monitor the actions of the relevant staff closely. A copy of the Monitoring Officer's report was sent to the appropriate director and the complainant was informed of the outcome.

#### Case B

- 4.11 This referral came anonymously by email to the Monitoring Officer's inbox in April 2013. It alleged that a person who is employed by the Council was stealing stock from "the housing and maintenance department stores" for use in his own business. Because of the nature of the allegations, the Monitoring Officer referred the matter for investigation by the Special Investigations Team (SIT). Notwithstanding that the complaint was anonymous, there was sufficient information in the email upon which an investigation might be based.
- 4.12 As the Council no longer has housing and maintenance depots, this matter was referred by SIT to the ALMO, Lewisham Homes, who carry out the housing management contract on behalf of the Council. They conducted an internal investigation. It was discovered that the employee concerned has openly declared his business interests and there was no conflict with his work duties. His managers were aware of his activity and it was not deemed a breach of the ALMO's employee code of conduct. An investigation into the specific allegation took place and it was found that the employee concerned did not commit the act complained of in the anonymous referral.

#### Case C

- 4.13 A woman, P, telephoned the Council to say that people had been coming to her home looking for Q, who, they said, had told them he could move them up the housing list if they gave him money to pay to councillors. The matter had been referred to the police by P and was referred to the Special Investigations Team by the Monitoring Officer.

- 4.14 The SIT reviewed the evidence available already and examined tenancy records. They established that Q had lived in the same block as P, but they could not uncover any further evidence at that point. They had no more information available to them than the police had and so formed the view that further action was not possible at that time. The information was filed, so that if any more allegations were to be received, further investigation could ensue. The complainant was informed.

#### Case D

- 4.15 In late May 2013, S, a former employee of the Council raised a complaint under the whistleblowing policy that a reference provided for him by his former line manager was unfair, the ratings given for his work were mistaken or based on wrong information, and her management approach was heavy handed. Because of the nature of the complaint, the Monitoring Officer could see no reason why it ought not to be investigated by the relevant Service Head and so asked her to investigate on her behalf.
- 4.16 She conducted a thorough investigation, interviewing the parties concerned and examining relevant paperwork. She found copious evidence to support the action taken by the manager, and that the view expressed by the manager was a reasonable one in all the circumstances. The complainant was informed of the outcome in writing.

#### Case E

- 4.17 In June 2013, an anonymous allegation was received by email by the Service Manager for Adults with Learning Difficulties, alleging that a service user at a Council day centre, C, had assaulted a person, F, working there. B, another worker at the centre, it was alleged, had intervened by assaulting C. The Service Manager referred the matter to the Monitoring Officer and the police immediately. The Monitoring Officer advised that the Service Manager's actions in reporting the matter to the police under the Pan London Safeguarding Vulnerable Adults procedures was entirely appropriate. She advised that it was correct for the usual management action to be taken, and referred the Service Manager to the Council's employment lawyer for advice as to what action ought to be taken in respect of the employee concerned if necessary.
- 4.18 Two police officers attended the centre the next day and interviewed the relevant people at the Centre, without notice, and found no evidence to support the anonymous allegation.
- 4.19 Though this case was not one which needed to be referred to the Monitoring Officer under the procedure, it is perhaps encouraging that the Service Manager was keen to ensure that the allegation she received was handled with transparency and integrity. Her referral was rather to seek assurance that in the circumstances of a very unusual and alarming allegation, she had done everything she ought to do. Because the Service Manager specifically

referred to the allegation as a whistleblowing complaint, it has been reported as such in this report.

### Case F

- 4.20 In September 2013 a former employee of a school, which now no longer exists, raised a series of allegations about the management of the school at which she had been employed. The Monitoring Officer made some preliminary enquiries and discovered that a number of the issues raised had already been thoroughly investigated by the school governing body and others related to grievances which had been thoroughly investigated by the school. None of the resultant decisions had been made in the whistleblower's favour. As the whistleblower did not make any complaint that the previous investigations had not been properly conducted, the Monitoring Officer wrote to the whistleblower to inform her that she did not intend to re-open them.
- 4.21 However, the Monitoring Officer did not know of one of the allegations made, which referred to financial impropriety at the school. The Monitoring Officer informed the whistleblower that she would refer those matters to the SIT for investigation as these appeared to be new allegations. However she also pointed out that, without prejudging the outcome of the SIT investigation, as the school was no longer in existence, it may be difficult to conduct a thorough enquiry.
- 4.22 SIT met the whistleblower in October 2013, even though in fact all of the allegations, including those of financial impropriety, had previously been looked into while the school had been in existence and found to be without substance. SIT put this to the whistleblower who accepted it. SIT informed the whistleblower that they would review the information available to them but informed her they felt it unlikely to produce anything further. The whistleblower accepted this. Though it may have been co-incidence, the whistleblower raised an issue about her reference with Human Resources at the same time (or thereabouts) as she referred other matters to the Monitoring officer. Before her interview with SIT took place, the reference dispute was resolved.

## **5 Review of the Procedure**

- 5.1 Generally, officers are of the view that the procedure is fit for purpose. Investigations are conducted under it and findings made, on occasion with recommendations for amending practice. The number of referrals this year alone demonstrates that people are aware of it and are using it. However, officers are not complacent about the possibility always for improvement and would welcome any comments which members of the Standards Committee may have for changes to it.
- 5.2 At a previous Standards Committee meeting in November 2013, members asked, in particular, that officers consider the provisions of the policy relating to anonymity and confidentiality and their application in practice.

Currently the policy states:-

*“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 the evidence against the wrongdoer”*

## **6. Confidentiality**

- 6.1 In addressing the question of confidentiality of the whistleblower, on the one hand, there is a need to promote confidence in potential whistleblowers that, if they blow the whistle, they will not suffer repercussions as a result of raising concerns. The very fact that they are contemplating the use of the whistleblowing procedure may mean that they are concerned about using other channels to report an allegation. On the other hand, it is essential that an allegation, once made, can be properly investigated. Because of this, though steps will be taken to protect the identity of a whistleblower where that is feasible, it is not possible to guarantee confidentiality in all cases, particularly where the allegation is serious.
- 6.2 For example, were an employee to come forward to say that they had witnessed physical abuse of a vulnerable person in the Council’s care, it may not be possible to be categorical that the complainant’s identity will be protected, particularly if they are the only witness to the alleged event. The Council would have no choice but to investigate. As the policy currently states, it may not be possible for the Council not to disclose identity in such a case.
- 6.3 There is a careful balancing act to be done. In each case the question to be addressed is whether the need to disclose the identity of the person making the referral outweighs the desire to protect it if possible. In a case such as an allegation of physical abuse of a vulnerable person, the Council would be failing in its statutory duties if it did not conduct the most thorough investigation.
- 6.4 In practice the question of confidentiality is addressed on a case by case basis, by reference to whether a full investigation is necessary, possible and in the public interest, without divulging the whistleblower’s identity. Case A above is a case in point. A full investigation was necessary, possible and in the public interest without that disclosure. Whilst it is appreciated that in other cases this may be a more difficult decision to make, the same tests would be applied.
- 6.5 To provide reassurance to potential whistleblowers, the policy as currently drafted recognises that the decision to blow the whistle can be a difficult one to make, not least if there is a fear of reprisal from those who may be perpetrating malpractice, or others. The policy is explicit that the Council will

not tolerate any victimisation of a person raising a concern in good faith and will take appropriate steps to protect them including, where appropriate, disciplinary action.

- 6.6 Officers are of the view that the policy as drawn reflects this difficult balancing act and is applied as sensitively as possible on a case by case basis

## **7 Anonymity**

- 7.1 Anonymity is not the same as confidentiality. Where a whistleblower reveals their identity to the Monitoring Officer, they may ask for it to be kept confidential if possible. By contrast, anonymous allegations are made by someone who does not reveal their identity at all.
- 7.2 When an anonymous allegation is made, the same questions need to be addressed. Is it necessary, possible and in the public interest to investigate despite the fact that the identity of the whistleblower is not known?
- 7.3 Our procedure requires that the first step is usually to interview the whistleblower, and by definition it is not possible to do this if we do not know who or where they are. When an anonymous allegation is received, if it contains sufficient information on which to base an investigation, attempts are made to follow up this information to find out whether the claim is substantiated even though we do not know who made it. However, it has to be acknowledged that this is likely to be more difficult where referrals are made anonymously, though they are nonetheless pursued if possible. Case B above is a case in point, where it was possible to investigate properly despite the claim being made anonymously.
- 7.4 It is acknowledged that there may be those who seek to make false or malicious claims and that this is easier to do anonymously. However, the Monitoring Officer is of the view that anonymous claims cannot be ignored. Even allegations made by those with an ulterior motive may prove to be true. Further, the whistleblower may be using the procedure anonymously because they fear repercussions. The policy also recognises that sometimes allegations made in good faith can be unfounded and that in such cases no action will be taken against anyone raising an allegation in good faith, even if it is not well founded. By contrast, it also recognises that there can be a negative impact on a person falsely accused of malpractice. For this reason, it is clear in the whistleblowing policy that the Council will take action against anyone making malicious or vexatious claims.

## **8. Financial Implications**

There are no specific financial implications arising from this report.

## 9. **Legal Implications**

- 9.1 The existence and application of the Council's whistleblowing procedure is consistent with the Council's overall fiduciary duty to exercise proper custodianship of the Council's funds and assets.
- 9.2 The promotion of the Code is also consistent with the Council's duty under Section 27 Localism Act 2011 to promote the highest standards of conduct by its members.
- 9.3 The Public Interest Disclosure Act 1998 affords certain protection to employees who blow the whistle on wrongdoing, for example by providing for dismissal as a result of doing so to be unfair, giving rise to compensation and possible reinstatement.
- 9.4 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.5 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 9.6 The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for members bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 9.7 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:  
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

9.9 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

9.10 A whistleblowing policy which protects the whistleblower in so far as possible probably encourages those who are less confident in dealing with bureaucracy to come forward if they suspect wrongdoing.

## **10. Crime and Disorder**

Section 17 of the Crime and Disorder Act 1998 requires the Council when it exercises its functions to have regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The promotion of a whistleblowing policy provides a conduit to bring any allegation of wrongdoing to the attention of the Council for investigation and if appropriate to the attention of the police.

## **11. Best Value**

Under S3 Local Government Act 1999, the Council is under a best value duty to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. It must have regard to this duty in making decisions in relation to this report.

## **12. Environmental Implications**

Section 40 of the Natural Environment and Rural Communities Act 2006 states that: 'every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. No such implications have been identified in relation to the reductions proposals.

**13. Integration with health**

Members are reminded that provisions under the Health and Social Care Act 2012 require local authorities in the exercise of their functions to have regard to the need to integrate their services with health.

**14. Conclusion**

Members are asked to note the referrals under the existing policy and to advise whether they are of the view that any changes ought to be made to the existing policy appearing at Appendix 1.

For further information about this report please **contact Kath Nicholson**, Head of Law on 0208 314 7648