

<b>STANDARDS COMMITTEE</b>		
<b>Report Title</b>	ANNUAL REVIEW OF COMPLAINTS MADE UNDER THE THE COUNCIL'S WHISTLEBLOWING POLICY	
<b>Key Decision</b>	No	Item No.
<b>Ward</b>	All	
<b>Contributors</b>	Head of Law	
<b>Class</b>	Part 1	Date: 20 May 2015

## 1 **Summary**

This report sets out the referrals made under the Council's whistleblowing policy since the last annual review in March 2014 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 2 referrals to the Head of Law in this period. They are as follows:

##### Case A

- 4.1 In late October 2014 the Monitoring Officer received a telephone call from a complainant requesting advice on making a complaint about a school that the complainant was employed at. On the 6<sup>th</sup> November 2014 the complainant provided the Monitoring Officer with a copy of their resignation letter which stated the reasons for the resignation was “not being prepared to work in a school with corruption, deceit, lack of equal opportunities and discrimination , with the majority being the Leadership Group and Heads of Department.”
- 4.2 On the 7<sup>th</sup> November 2014 a further email was sent on behalf of the Monitoring Officer to the complainant requesting that the complainant provide some specific allegations in writing to enable the Monitoring Officer to consider the matter. On the 9<sup>th</sup> November 2014 the complainant responded and confirmed that they would provide information to the Monitoring Officer.
- 4.3 On receipt of further details the Monitoring Officer referred the matter to the relevant Executive Director so that the matter would be dealt with in accordance with the Directorate’s procedures.
- 4.4 The letter setting out the detailed complaints was forwarded by Schools’ Human Resources to the Chair of Governors of the school when it was received.. The Head teacher was also requested by Schools’ Human Resources whether he wished for an exit interview to be arranged with the complainant. The head teacher failed to respond.
- 4.5 Unfortunately Schools’ Human Resources did not follow this up with the Chair of Governors and it appears that this complaint was overlooked during the difficult period at the school resulting in the governing body being dissolved and an Interim Executive Board being constituted.

##### Case B

- 4.6 On the 16<sup>th</sup> December 2014, the Monitoring Officer received an email from a complainant who wished to raise serious concerns about a school where the complainant was working. The Complainant expressed a wish to remain anonymous. On the same date the Monitoring Officer arranged for a response to be sent requesting that the complainant specify in writing the nature of the concerns and that

upon receipt of such information the Monitoring Officer would be in further contact.

- 4.7 The complainant responded later that day indicating that the concerns related to safeguarding and care provision at a school as well as the safety and well being of staff. Beyond that general description the complainant preferred not to detail the concerns any further until there was some form of clarification as to how the concerns would be addressed.
- 4.8 On the 18<sup>th</sup> December 2014 the Monitoring Officer responded to the complainant and again requested written details of the serious concerns the complainant wished to raise and confirmed that the Monitoring Officer would then consider the next step under the Council's Whistleblowing policy.
- 4.9 The Monitoring Officer sent a further email to the complainant on the 18<sup>th</sup> December confirming that she would do all she could to protect the complainant's identity but also explained that without specific allegations it would be extremely difficult to investigate the concerns. The Monitoring Officer invited the complainant to come and meet with her if this was preferred.
- 4.10 To date no request for a meeting has been received and the Monitoring Officer has been unable to progress this matter.

## **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. Despite the limited number of referrals this year it is clear that people are aware of the policy and do use it. Officers 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 March 2014, members asked, that in future the review should include some feedback from complainants on the application of the policy and their satisfaction with the process.
- 5.3 A whistleblowing satisfaction questionnaire has been produced and is sent to complainants on the conclusion of enquiries into their complaint. Unfortunately no review forms have been returned.

## **6. Financial Implications**

There are no specific financial implications arising from this report.

## **7. Legal Implications**

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 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/>

7.8 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

7.9 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/>

7.10 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.

## 8. **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.

## 9. **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.

## 10. **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.

**11. 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.

**12. 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