

<b>Committee</b>	<b>STANDARDS COMMITTEE</b>	<b>Item No</b>	<b>4</b>
<b>Report Title</b>	<b>ANNUAL REVIEW OF COMPLAINTS MADE UNDER THE THE COUNCIL'S WHISTLEBLOWING POLICY</b>		
<b>Ward</b>	n/a		
<b>Contributors</b>	<b>HEAD OF LAW</b>		
<b>Class</b>	<b>Open</b>	<b>Date</b>	<b>22 November 2018</b>

## 1 **Summary**

This report sets out the referrals made under the Council's whistleblowing policy since the last annual review in October 2017 and asks the Committee whether it wishes to amend the procedure 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 its inception. 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 if the complainant wishes. Members will also note that complaints may be raised in relation to the actions of Councillors or employees.
- 3.2 The whistleblowing policy was fundamentally reviewed by this Committee most recently in October 2015. Some of the key changes agreed then were that the Monitoring Officer or her deputy should personally conduct an initial review of all complaints, a requirement that complainants are regularly informed of progress where an investigation is not likely to be completed within the expected 28 day period and the refinement of a more formalised register of complaints to facilitate closer monitoring of the progress of investigations.

3.3 Subsequent to the review, the Monitoring Officer arranged with the then Head of Communications for additional publicity of the revised policy to be undertaken. The revised whistleblowing policy is highlighted on the Council's website and on the Council's intranet. Additionally the Head of Law/Monitoring Officer has delivered a briefing on the revised procedure to the Council's Executive Management Team and training to all service heads on the revised policy. It is particularly important that they be especially aware of the policy and procedure as they (and/or Executive Directors) may be called on to investigate on behalf of the Monitoring Officer. 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 Cases in progress since October 2017**

4.1 There have been 13 further referrals since the last review.

##### **4.2 Case O**

A complainant raised a complaint under the Member Code of Conduct in relation to being wrongly excluded from the Coordinating Committee of a local Neighbourhood Assembly. It took several months of correspondence with the complainant to refine his particular complaints and identify precisely who it was against. The matter was referred to the Executive Director for Customer Services who investigated and reported on it. The Monitoring Officer referred that report to the Executive Director Community Services for action to be taken further to the report of the Executive Director for Customer Services. This was reported to the Standards Committee in the course of the last review of the Member Code of Conduct.

The complainant subsequently complained about delay in this complaint being resolved.

The Monitoring Officer responded to the complainant and confirmed that the complaint was thoroughly investigated and that of necessity the matter took a long time to be properly responded to. Once the nature of the complaint had been clarified, the investigation was completed over a period of four months. It required personal interviews to be undertaken by the Executive Director for Customer Services with the complainant, a councillor and several officers.

The matter is now concluded.

##### **4.3 Case P**

In February 2018, this complaint was raised by a contractor in relation to the behaviour of a member of management of the Council's Technology and Transformation Team. The complainant raised issues of lax management of

that Team and alleged a waste of Council funds on Information Technology projects.

The Monitoring Officer met with the complainant at length to clarify the complaint and engaged in lengthy correspondence to ascertain the specific allegation being made. The matter was then referred to the Head of Crime Reduction and Supporting People to investigate. She examined very large quantities of documents, interviewed twelve people and prepared a detailed report which she referred to the Monitoring Officer. The Monitoring Officer referred the report back to the Head of Crime Reduction and Supporting People for clarification on a number of points.

On receipt of such clarification and the final investigation report, the Monitoring Officer wrote to the Executive Director for Customer Services recommending that the Technology Transformation programme be reviewed and suspended pending that review. That review is ongoing. The Monitoring Officer also recommended that the Executive Director for Customer Services consider whether disciplinary action was required in respect of the member of staff against whom the complaint was made.

The initial recommendation was accepted and the programme suspended. The second recommendation proved unnecessary as the member of staff concerned left the Council's employment.

#### 4.4 **Case Q**

In April 2018, a referral was received from a member of the public about alleged inaction by the Council in relation to an unregulated tenancy. It was raised under the Council's Whistleblowing Procedure and the Monitoring Officer referred it to the Council's Corporate Complaints Team for response as it was a complaint about service provision.

The matter was subsequently closed by the Corporate Complaint Team and was concluded.

#### 4.5 **Case R**

On 23<sup>rd</sup> April, a complaint was received about the opening times at Downham Swimming Pool and specifically access for child swimming. The Monitoring Officer acknowledged the complaint and referred it to the relevant Service Manager. On investigation the Service Manager wrote an apology to the complainant and offered five free family swimming sessions. The matter was concluded on 4<sup>th</sup> May 2018.

This is a matter raised under the Whistleblowing Procedures which should properly have been raised as a service complaint under the Council's complaints procedures but was directed to the appropriate process by the Monitoring Officer.

#### 4.6 **Case S**

An anonymous complaint was received in February 2018 by the Monitoring Officer, raising allegations in relation to the head teacher of a Lewisham maintained school. The Monitoring Officer referred the matter to the Executive Director, Children and Young People, who referred the complaint to the Chair of Governors at the school.

The school subsequently sought Human Resource advice and set clear standards for the behaviour of the staff member concerned. As this is a school related issue, decisions as to the appropriate action, if any, are for the governing body.

#### 4.7 **Case T**

In late March 2018, a complaint was received from a member of the public who was in dispute with a fellow director of a private company. The fellow director is also a Council employee. The complainant and the director complained about were in financial dispute and were both represented by solicitors. Initially the specifics of the complaint were unclear. Consequently the Monitoring Officer had a long conversation with the complainant and in the course of that conversation the complainant alleged long term benefit fraud by the fellow director, and failure by them to declare interests under the Council's Employee Code of Conduct.

The Monitoring Officer caused investigations at Companies House to be carried out in relation to the Council employee and it transpired that the person had resigned from the private company several months before the complaint was received. The matter was also referred to the Council's Special Investigations to conduct an investigation.

Special investigations reported that there was no breach and no evidence of fraud against the Council. The Monitoring Officer advised the complainant that the Council's investigation revealed no record of fraud, and she also advised the complainant to consider approaching the police if they wished to continue to pursue the allegation that any other body had been defrauded.

#### 4.8 **Case U**

A complaint was received from two complainants in relation to the proposed development at Beckenham Place Park. The complaint was very lengthy ( 9 pages). The Monitoring Officer referred the complaint to the Service Group Manager, Capital Programmes, who carried out a very thorough and detailed investigation. He interviewed the complaints and looked at voluminous documentation. He did not uphold the complaint. The Monitoring Officer reported the findings of the investigation to the complainants.

The complainants were dissatisfied and then immediately referred their complaint to the Chief Executive who responded that the complainants should pursue their complaint via the Council's Corporate Complaints Procedure. In accordance with that advice the complainants pursued their complaint under the Council's Corporate Complaints Procedures, such complaint being escalated to the Independent Adjudicator.

The Monitoring Officer has very recently heard from the Independent Adjudicator who confirmed in November 2018 that the complaints have not been upheld.

#### 4.9 **Case V**

In April 2018, a complaint was brought under the Council's Whistleblowing Procedure in relation to matters similar to those considered at Case U above.

This complaint was also referred to the Service Group Manager, Capital Programmes, who after conducting a very thorough investigation did not uphold the complaint. The complainant subsequently referred her complaints under the Council's Corporate Complaints Procedure. The Council's Independent Adjudicator did not uphold the complaint.

#### 4.10 **Case W**

On 15<sup>th</sup> October, an anonymous complaint was received by the Monitoring Officer alleging that placements were being made from Lewisham Hospital without social work or financial assessment. On the same day, the Monitoring Officer referred the matter to the Head of Corporate Resources.

The matter is currently ongoing.

#### 4.11 **Case X**

On 5<sup>th</sup> November, an anonymous complaint was raised via a councillor in relation to allegations of unfair practices with contractors. The Monitoring Officer has acknowledge the complaint and has referred the matter to the Head of Corporate Resource for investigation.

The matter is currently under investigation.

#### 4.12 **Case Y**

On 8<sup>th</sup> November, a complaint was received by the Monitoring Officer from a resident alleging improper use of a Council refuse lorry. The complaint has been acknowledged and the matter referred by the Monitoring Officer to the Head of Corporate Resources.

The matter is currently ongoing.

#### 4.13 **Case Z**

On 12<sup>th</sup> November, the Monitoring Officer received complaint, forwarded by a councillor, alleging improper activity by a member and senior officers concerning recent developments relating to the Council's Chief Executive.

The Monitoring Officer has acknowledged receipt. This matter is currently ongoing.

#### 4.14 **Case AA**

An anonymous complaint referred initially to the Chief Executive and referred to the Monitoring Officer in November 2018, making allegations of a fraudulent statement in relation to ownership of land reputedly affecting planning permission.

The matter is currently under investigation.

### 5. **Review of the Policy and Procedure**

Generally, officers are of the view that the policy and 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.

### 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 public sector equality duty (the equality duty or the duty). It covers the following 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 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 8.5 above.
- 7.7 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 7.8 The Equality and Human Rights Commission has 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

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

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

7.10 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7.11 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