

STANDARDS COMMITTEE			
Report Title	ANNUAL REVIEW OF COMPLAINTS MADE UNDER THE COUNCIL'S WHISTLEBLOWING POLICY		
Ward			
Contributors	Director of Law		
Class	Open	Date	8 January 2020

1 **Summary**

This report sets out the referrals made under the Council's whistleblowing policy since the last annual review in November 2018 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 in November 2018

- 4.1 There have been 10 further referrals since the last review.

Cases W to AA have previously been reported to the Committee. However investigations were ongoing and this is the first opportunity to report the conclusions to the Committee

4.2 Case W

On 15th October 2018 an anonymous complaint was received by the Monitoring Officer alleging that placements were being made from Lewisham Hospital without social work or financial assessments. On the same day, the Monitoring Officer referred the matter to the Head of Corporate Resources.

An initial review by A-FACT, which was reported to the Monitoring Officer in January 2019, found no significant delays in the financial assessments process. The service area had been audited in February 2018 and received a substantial assurance opinion. The service was due to be audited again shortly and in discussion with the Head of Corporate Resources it was agreed that A-FACT would close the case unless the subsequent audit raised concerns. It was further agreed that the auditor be briefed to ensure that the issues raised would be included in the scope of the audit.

4.3 Case X

On 5th November 2018, an anonymous complaint was raised via a councillor in relation to allegations of unfair practices with contractors. The Monitoring Officer referred the matter to the Head of Corporate Resources for investigation.

A-FACT reported that they have not been able to substantiate the referral but in any event are planning a review of the in-house facilities management contract.

4.4 **Case Y**

On 8th November 2018, a complaint was received by the Monitoring Officer from a resident alleging improper use of a Council refuse lorry. The matter was referred to the Head of Corporate Resources for investigation.

The Senior Waste Manager carried out a full investigation into the complaint. Subsequent to the investigation the driver of the refuse lorry was dismissed for an unrelated incident. All crew members were formally spoken to by Senior Waste Manager and reminded of their authorised responsibilities as Council operatives.

The complainant was written to and advised that appropriate action was taken in response to his complaint.

4.5 **Case Z**

On 12th November 2018, the Monitoring Officer received a complaint, forwarded by a councillor, alleging improper activity by a member and senior officers concerning recent developments relating to the Council's former Chief Executive.

The Monitoring Officer using the email address provided wrote to the whistle blower who was purporting to be a current employee of the Council. On investigation the Monitoring Officer could not trace the whistle blower as a current employee on the Council's database, but responded to the whistle blower requesting specific details of the complaint and signposting all relevant Council procedures. The Monitoring Officer also took the opportunity of inviting the whistle blower to meet to discuss concerns.

The whistle blower responded confirming that they had used a pseudonym and proceeded to criticize the Monitoring Officer for making contact and requested that the Monitoring Officer make no further contact.

On the 13th November 2018 the Monitoring Officer responded to the whistle blower who had by that time written to two senior Council officers in a threatening manner. The Monitoring Officer requested that the complainant desist from any further threatening communications and confirmed that the matter had been referred to the police.

4.6 **Case AA**

This is an anonymous complaint referred initially to the Chief Executive and then referred on to the Monitoring Officer in November 2018, making allegations of a fraudulent statement in relation to ownership of land reputedly affecting planning permission. The allegation was that the application was made by an applicant which had gone into administration, and this had undermined the grant of planning permission.

The matter was investigated and it transpired the planning application referred to was withdrawn and permission on this application never granted. On further enquiry it transpired that there was a subsequent planning application for the site in question made by the administrator which was refused on 28th January 2019. This decision was appealed and the Council is currently awaiting the Planning Inspectorate's decision.

4.7 **Case A**

On 14th November 2018 a complaint was received by the Monitoring Officer in relation to the activities of a street cleaner. The matter was referred to the Corporate Complaints Team by the Monitoring Officer.

On 26 November 2018, Corporate Complaints referred the matter to the relevant Directorate who responded to the complainant confirming that the matter had been forwarded to the relevant cleansing managers who took appropriate action both by way of official warning and retraining.

No further correspondence has been received.

4.8 **Case B**

An email dated 10th December 2018 addressed to the Mayor was forwarded to the Monitoring Officer. The email made allegations of wrongdoing by two Council officers in relation to their involvement with a charitable organisation to support school children in the Caribbean. The complaint proceeded to allege that the reputation and community status of the Council was being used to "lend legitimacy to this fraud."

The Monitoring Officer wrote to the complainant advising that any allegations of wrongdoing in relation to the officers' involvement in the charity were not matters in which the Council had a role to play and that any such concerns should be properly referred to the Charity Commission. In respect of any allegations of a criminal nature such matters should be referred to the police.

In relation to the allegations about the reputation and community status of the Council being used "to lend legitimacy to this fraud", the Monitoring Officer requested some particular details of the actions which it is alleged amounted to the Council's reputation and status being used improperly. A link to the Council's whistleblowing policy was also sent to the complainant.

The complainant responded making reference to the charity's website which made various references to Lewisham Council and the previous Mayor. It was also apparent that the Lewisham Council logo was displayed on the charity's website. It transpired that the previous Mayor had sent a letter of introduction to the Mayor of Kingston, expressing support for the charity.

The Monitoring Officer carried out a comprehensive investigation which included interviews with relevant Council officers. She concluded that it was not appropriate for the Charity's website and publicity to use the Council's name and logo or any text referring to the Council without prior permission. It was recommended that all such references to the Council on the Charity's website be removed. They were removed.

The Monitoring Officer also referred the matter to the relevant line manager for information and for a decision to be made as to whether any further action was appropriate. The complainant was informed of the outcome.

4.9 Case C

An anonymous complaint was received in December 2018 making reference to fraud at a Charity based within the borough which provides services to vulnerable people. The complaint referred to a matter currently being investigated by the police and requested that the Council cooperate with any investigation.

As the matter appeared not to be a Council issue the Monitoring Officer confirmed that it was not a matter for her to deal with. She however reassured the complainant that the Council would cooperate with any police investigation and that she was available to provide any further advice should the need arise.

4.10 Case D

On the 2nd January 2019 the Monitoring Officer received a complaint from a resident alleging that the driver of a vehicle, who he believed to be a Lewisham employee, had honked his horn at him and made inappropriate and rude hand gestures to him.

The Monitoring Officer referred this matter to the Corporate Complaints Team and informed the complainant of this development and that the Corporate Complaints Team would contact him directly. It transpired following their investigation that the driver was not driving a Lewisham vehicle. The complainant was notified accordingly.

4.11 Case E

On 27th January 2019 the Interim Chief Executive and the Monitoring Officer received an email from Janet Daby MP on behalf of a constituent in relation to an obstruction to her property caused by the redevelopment of a neighbouring property. The constituent had been informed by the Council that this was a civil matter to be pursued via her legal advisers.

The Monitoring Officer responded to Janet Daby MP setting out the general position in relation to property rights and the granting of planning permission.

The matter was referred to the Head of Planning who prepared a response for the Interim Chief Executive to convey to the local MP.

4.12 Case F

On 26th May 2019 the Monitoring Officer received a whistleblowing referral from a Lewisham resident alleging that a manager in the Council's Housing Options service had been lying and not responding to official complaints.

The complainant was already pursuing this matter via the Council's Corporate Complaints Team. Notwithstanding this the matter was referred to the relevant Executive Director for his attention.

A response was sent to the complainant confirming that they had been adequately housed and that the referral for medical priority was not awarded. The complainant was further notified that if they wished for a further assessment to be completed they would need to provide additional new information.

4.13 Case G

An agency worker who had been dismissed by Legal Services complained that the management of a particular case and of the social care legal team was shambolic and that they had acted illegally. The Monitoring Officer, who has overall responsibility for all legal teams, recused herself from investigation of this matter and referred it to the Executive Director Community Services to investigate.

This was a long and complex investigation involving the perusal of a large amount of documents and interviews with 6 Council employees at length. It also involved lots of legal research by the Executive Director. The Executive Director left the Council's service though still completed her investigation after her last day of service. She left no stone unturned in her enquiries and did not find the allegation substantiated, though she did highlight some learning points for the service which have been taken on board.

The learning points were referred to Legal Services Management Team and have been implemented. In particular the Executive Director suggested a fuller induction for agency staff and even closer supervision.

4.14 Case H

On 10th August 2019 the Council's Corporate Complaints Team received a complaint from someone acting on behalf of a friend, in relation to a councillor's behaviour at an event being hosted in the borough. The complainant alleged that their friend had suffered intimidating and unnecessarily aggressive

behaviour by a councillor. However there were no specific details of the intimidatory and aggressive behaviour. The matter was referred to the Monitoring Officer as it appeared to relate to a member conduct issue.

The Monitoring Officer responded to the complainant confirming that if the person actually involved wished to make a complaint about the councillor they should contact the Monitoring Officer directly. A link to the applicable procedures was provided.

A referral was made under the relevant procedures and the details are reported elsewhere on this agenda.

4.15 Case I

On the 22nd July 2019 the Monitoring Officer received two complaints about the transparency and funding arrangements in relation to a community event in Deptford.

They referred to alleged misuse of public funds, victimisation of a Council officer, alleged improper use of Council resources and a failure to adhere to Council procedures and a disregard for health and safety by local ward councillors.

The Monitoring Officer met with a complainant to discuss the complaint. On receipt of all the relevant information from the complainant the Monitoring Officer referred the matter to the Council's AFACT Team and to the Executive Director for Community Affairs.

Investigations are currently ongoing.

4.16 Case J

On the 30 September 2019 a complaint was sent to various senior Council officers alleging fraudulent practices at an educational establishment. The matter was received by the Monitoring Officer on her return from annual leave.

In early October the Monitoring Officer spoke with the complainant who confirmed that they wished their identity to remain confidential. The Monitoring Officer instructed A-FACT to explore the issue and their work is currently progressing. The complainant has been notified that an investigation is ongoing and that they will be kept updated.

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.

- 5.2 Some amendment to the Policy to reflect recent staff changes will be made to the Policy.

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