

## **London Borough of Lambeth**

### **WHISTLEBLOWING POLICY**

#### **1 The policy**

- 1.1 The London Borough of Lambeth is committed to tackling fraud, abuse and other forms of malpractice. The council has therefore introduced this procedure to enable employees to raise their concerns about such malpractice at an early stage and in the appropriate way.
- 1.2 The Whistleblowing Policy gives you the opportunity to have your concerns heard and investigated in confidence and without fear of reprisal.
- 1.3 The Public Interest Disclosure Act 1998, the provisions of which are now incorporated into the Employment Rights Act 1996, confers a right on employees not to be victimised or suffer detriment as a result of a disclosure of particular types of information with a public interest dimension, e.g. relating to criminal or illegal activity, to a defined person such as the employer or the Audit Commission. In order to be protected the information needs to be disclosed in accordance with the Act.

#### **2 Objectives of the policy**

- 2.1 The policy aims to:
  - encourage employees to feel confident in raising serious concerns and to question and act upon any concerns about council practices;
  - provide avenues for employees to raise these concerns internally and receive feedback on any action taken;
  - demonstrate that all concerns are taken seriously and considered carefully to allow the council to properly assess what action should be taken;
  - deal consistently with disclosures in a fair, objective and discreet manner;
  - ensure that the Council continues to improve its services and operate best practices;
  - reassure employees that they will be protected from victimisation, subsequent discrimination or disadvantage for whistleblowing; and,
  - allow employees to take the matter further if they are dissatisfied with the Council's response.

# London Borough of Lambeth

## WHISTLEBLOWING PRACTICE NOTE

### 1. Whistleblowing referrals

1.1 The following list contains the type of referrals that may be suitable for whistleblowing.

- criminal offences or breach of any statutory requirement or legal obligation;
- inappropriate use of grants and public funds;
- tampering with tender documents to advantage a particular party;
- manipulation of accounting records and finances, including fraudulent claims and corruption;
- decision making for personal gain;
- infringement of the personal, human and basic rights of a person, whether an adult or a child. This may include harassment, bullying and prejudice, or abuse in such forms as physical abuse, sexual abuse, psychological or emotional abuse, financial and material abuse, discriminatory abuse, institutional abuse, and neglect and acts of omission;
- inappropriate use of Council assets;
- deception, within Council practices;
- abuse of position within the Council;
- health and safety of employees or service users, including risks to the public;
- serious failure to comply with appropriate professional standards (e.g. National Code of Local Government Conduct); or,
- breach of council or statutory codes of practice or the Council's standing orders and policies which have a public interest dimension.

1.2 It is important to note that personal issues relating to an employees employment may be more appropriately raised via the Grievance Procedure.

### 2. Safeguards to protect staff making referrals

2.1.1 The decision to report malpractice can be a difficult one for an employee, who may possibly fear subsequent victimisation or harassment. No action will be taken against an employee who has raised a genuinely held concern, even if that concern is seen to be unfounded after investigation.

2.1.2 This does not, however, mean that if an employee is already the subject of disciplinary or redundancy procedures, that these procedures will be halted as a result of that employee whistleblowing.

2.1.3 Victimisation or harassment of an employee who has raised a genuinely held concern, or any other attempt at reprisal either by an employee whose conduct is the subject of investigation or others; will be considered a disciplinary offence.

#### 2.2 Confidentiality

2.2.1 The Council will do its best to protect an employee's identity when they raise a concern and do not want their name to be disclosed. However, it must be understood that should the concern raised need to be addressed through another procedure, e.g. disciplinary procedure, the employee may be asked to provide a signed statement as part of the

evidence, thus revealing their identity. The council will make every effort to ensure that an employee's disclosure is corroborated with *prima facie* evidence thus reducing the need for the employee to produce their testimony. If the situation arises where we are unable to resolve the concern without revealing the identity (for instance because the evidence is needed in court), the council will discuss the issues with the employee to decide how to proceed.

## 2.3 Anonymous allegations

2.3.1 Employees are encouraged to put their name to an allegation.

2.3.2 Any allegation, including those received anonymously, which relate to the wellbeing and/or welfare of a child or children or vulnerable adult will be investigated.

2.3.3 Concerns expressed anonymously are much less powerful and are not so likely to be effective, but they will be considered at the discretion of the council. In exercising this discretion, the following factors will be taken into account the:

- seriousness of the issues raised;
- credibility of the concern; and,
- likelihood of confirming the allegation from attributable sources.

## 2.4 False allegations/defamation

2.4.1 Whistleblowers making malicious allegations which they know to be untrue may expose themselves to actions for libel or slander which together make up the civil wrong of defamation. This is a complex area of law. In essence a person puts themselves at risk of being sued for damages if, without justification, they publish or communicate a false statement about someone which may injure his or her reputation in the eyes of ordinary members of society.

2.4.2 However, a whistleblower will not generally be liable provided that they had a legal, moral or social duty or interest in making the statement to a person with a similar interest.

2.4.3 Advice on this is available from the Director of Corporate Affairs (Monitoring Officer) or the Head of Legal Services.

## 2.5 Malicious allegations

2.5.1 If an allegation is made or a concern is raised which is genuinely held, no action will be taken against the employee raising the concern. However, malicious, or vexatious allegations, or disclosures made for personal gain will be considered as disciplinary offences and are likely to result in disciplinary action being taken against the employee raising the vexatious concern.

## 2.6 Unfounded allegations

2.6.1 Following investigation, allegations may be confirmed as unfounded. The employee who raised the concern will be notified of this decision and informed that the Council deems the matter to be concluded and that it should not be raised again unless new evidence becomes available.

2.6.2 In respect of an unfounded allegation, all documents accumulated through the investigation process will be held separately from any individual employee's personnel file, and destroyed in accordance with the Council's Retention Policy, except in the

circumstances of the retention of necessary documents in respect of Child Protection issues, in which case they will be held on file as required by the relevant legislation, without precluding an individual employee's statutory rights.

2.6.3 Live investigation files and evidence will be securely retained in accordance with the appropriate retention periods. For example, the Criminal Procedures Investigation Act 1996 sets out the duty to retain material and the length of retention time according to the circumstances of the case. Non-criminal investigation documents will be subject to the council's Retention Policy.

2.6.4 Closed investigation files and evidence will be securely retained in line with the appropriate retention periods.

## 2.7 Support provided to employees

2.7.1 It is recognised that raising concerns can be difficult and stressful. Advice and support is available via an employee's line manager, a Human Resources Adviser or Trade Union representative. It must be recognised that employees who are subject to investigation following concerns being raised will also be entitled to support from the same sources, although not from the same individuals.

2.7.2 Employees may also wish to discuss their concerns with a specialist organisation before making a disclosure within the workplace. Public Concern at Work (PCAW) is an independent registered charity offering advice to assist employees raising concerns about poor practice at work. They can be contacted at [www.pcaw.co.uk](http://www.pcaw.co.uk) or by telephone on 020 7404 6609.

## 2.8 Vested interest

2.8.1 Any person or person's relative/friend who is the subject of complaint will not be involved in the handling of the complaint.

## 3. **How to raise a concern**

3.1 As a first step, an employee should normally raise concerns with their immediate line manager or their manager's superior. However, this depends on the seriousness and sensitivity of the issues and who is involved. For example, if an employee believes that management is involved, they could approach any strategic director, director or head of, a human resources officer or the Corporate Complaints Unit.

3.2 Any employee who suspects that a child (or unborn child) is suffering significant harm or may be at risk of suffering significant harm or that a child or young person has abused another child/young person should report their concerns and seek advice from the Referral and Assessment Team in Children's Services (Tel No: 020 792 66010), NSPCC or the Police.

3.3 Concerns are better raised in writing. An employee is invited to set out the background and history of the concerns, giving relevant names, dates and places where possible, and the reasons why they are particularly concerned about the situation.

3.4 If an employee is unable to put their concern in writing, they can telephone or meet the appropriate officer to whom they decide to report the concern. It is important that the employee makes it clear that they are raising the issues *via* the whistleblowing procedure.

3.5 Although an employee is not expected to prove that an allegation is true, they will need to demonstrate to the person contacted that there are sufficient grounds for the concern.

- 3.6 Advice and guidance on how matters of concern may be pursued can be obtained from:
- Director of Corporate Affairs (Monitoring Officer), [mhynes@lambeth.gov.uk](mailto:mhynes@lambeth.gov.uk) (020 7926 2209);
  - Head of Internal Audit and Counter Fraud, [dhughes@lambeth.gov.uk](mailto:dhughes@lambeth.gov.uk) (020 7926 9892);
  - Corporate Complaints Unit on 020 7926 9694; or,
  - Director of Human Resources and Organisational Development, [namoa-buahin@lambeth.gov.uk](mailto:namoa-buahin@lambeth.gov.uk) (020 7926 0068).

3.7 In some instances it may be appropriate for an employee to ask their trade union to raise a matter on their behalf or to ask a colleague or trade union representative to accompany them when they commence the procedure.

3.8 The Director of Corporate Affairs is the Council's Monitoring Officer. The Monitoring Officer is a statutory whistleblower and is under a duty to present a report to Council if it appears to them that an action or proposal is, or is likely to be, unlawful or likely to amount to maladministration.

3.9 The Strategic Director Enabling is responsible for the Council's financial affairs and is under a similar duty to 'blow the whistle' in relation to unlawful expenditure and/or illegal accounting practices.

#### **4. How Lambeth will respond**

4.1 The action taken by the Council will depend on the nature of the concern. The matters raised may:

- require more information or evidence from the individual raising the concern;
- be investigated internally as a potentially disciplinary matter;
- be referred to the Police;
- be referred to the External Auditor;
- form the subject of an independent inquiry; or,
- any combination of the above.

4.2 In order to protect individuals and the Council, initial enquiries (usually where possible, involving a meeting with the individual raising the concern) will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle, which the council will have in mind, is the public interest. Concerns or allegations that raise issues that fall within the scope of specific procedures, (e.g. child protection or discrimination issues), will normally be referred for consideration under those procedures.

4.3 Some concerns may be resolved simply, by agreed action or an explanation regarding the concern, without the need for further investigation.

4.4 Within ten working days of a concern being received, the person receiving the concern will write to the employee acknowledging that the concern has been received and;

- indicating how they propose to deal with the matter;
- advising whether any initial enquiries have been made;
- advising whether further investigations will take place, and if not why not;

- when possible giving an estimation of how long it will take to provide a final response;
- inform the individual of the final outcome of the inquiry where legally possible.

4.5 It may be necessary for the person receiving the concern to meet with the employee on more than one occasion depending on the nature of the concerns raised.

4.6 Where any meeting is arranged, employees may, if they wish, be accompanied by a colleague or recognised Trade Union Representative. Meetings will be arranged away from the workplace where appropriate.

## 5. The responsible officer

5.1 The Director of Corporate Affairs has overall responsibility for the maintenance and operation of this policy and will maintain a record of any concerns raised and the outcomes, but in a form that does not endanger an employee's confidentiality.

## 6. How the matter can be taken forward

6.1 This policy is intended to provide employees with a procedure for raising concerns and resolving these within the Council. All employees have a duty to raise any issues of concern. If an employee has any difficulty in raising an issue directly with their line manager or if an employee believes that no action appears to have been taken regarding their concerns, then at that point there are other routes that an employee may choose to take.

- Concerns regarding theft, fraud and misappropriation of funds may be raised either with David Hughes, the Head of Internal Audit and Counter Fraud (telephone 020 7926 9892, e-mail: [dhughes@lambeth.gov.uk](mailto:dhughes@lambeth.gov.uk)) or Guy Ware, Strategic Director Enabling (telephone 020 7926 9677, e-mail: [gware@lambeth.gov.uk](mailto:gware@lambeth.gov.uk)).
- Concerns regarding abuse of position, harassment etc. may be raised with the Nana Amoa-Buahin, Director of Human Resources and Organisational Development (telephone 020 7926 0068, e-mail: [namoa-buahin@lambeth.gov.uk](mailto:namoa-buahin@lambeth.gov.uk)) or a HR Adviser.
- Concerns about the legality of another employee's actions may be raised with the Mark Hynes, Director of Corporate Affairs (telephone 020 7926 2209, e-mail: [mhynes@lambeth.gov.uk](mailto:mhynes@lambeth.gov.uk)).
- Concerns about the safety and wellbeing of children and vulnerable adults may be raised either with the Strategic Director of Commissioning (telephone 020 7926 4737), Director of Adult Social Care (telephone 020 7926 4785), Director of Children's Social Care (020 7926 4787) or the Director of Corporate Affairs (telephone 020 7926 2209).

6.2 If an employee is unhappy with the process or outcome of an investigation and the Council's response, they may wish to raise the matter externally with:

- the independent charity 'Public Concern at Work' \* on 020 7404 6609;
- the Audit Commission on 0845 052 2646 for all matters relating to fraud, corruption or misuse of public money
- a recognised trade union;
- the Police;
- a solicitor;
- the Whistleblowing Helpline for NHS and Social Care on 08000 724725;
- the Care Quality Commission on 03000 61 61 61 or [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)).

- the Local Government Ombudsman.

6.3 If an employee does choose to take a concern outside the Council, then it is their responsibility to ensure that confidential information is not handed over (i.e. confidential information, in whatever format, must not be handed over to a third party, unless in line with the Data Protection Act 1998). If clarification is required on this, the advice of the Director of Corporate Affairs or Head of Legal Services should be taken.

## **7. Monitoring and review**

7.1 The Director of Corporate Affairs, in conjunction with, the Head of Internal Audit and Counter Fraud and the Director of Human Resources and Organisational Development will be responsible for monitoring the implementation and effectiveness of the policy and procedure.

7.2 The Director of Corporate Affairs, in conjunction with, the Head of Internal Audit and Counter Fraud and the Head of Human Resources and Organisational Development will submit reports to the Corporate Committee with reports as required to the Standards Committee.

7.3 The policy and procedure will be reviewed and its effectiveness evaluated regularly in the light of issues raised or identified as part of the monitoring process. Revisions to the policy will be agreed by Corporate Committee.

*\*Public Concern at Work is a registered charity that employees can contact for advice to assist them in raising concerns about poor practice at work. The charity also provides advice to employers as to the possible ways to address these concerns.*