

Raising concerns (Whistleblowing) Policy and Procedure

The **Public Interest Disclosure Act** provides strong protection for workers who blow the whistle on – or raise a genuine concern about – malpractice. The protection is most readily available when the whistle is blown internally. Lambeth Council's whistleblowing policy and procedures are set out in this document and it tells you how you can safely raise a concern

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Raising concerns (whistleblowing) - policy and procedure

1. Scope

- 1.0 This policy applies to all employees and those contractors working for the council on council premises, e.g. agency staff, builders, etc. It also covers suppliers and those providing services under a contract with the council in their own premises, e.g. care home, etc.
- 1.1 This policy is in addition to the council's Complaints Procedure, Grievance Procedure, Code of Conduct, and other statutory reporting procedures which may apply within some departments of the council.
- 1.3 The use of this Policy will not directly result in disciplinary sanctions being imposed on employees. However a concern raised through the Policy may lead to the matter being investigated and subsequently dealt with *via* the disciplinary or another agreed procedure, if appropriate.

2. Purpose

- 2.1 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.
- 2.2 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 in good faith of particular types of information, 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.
- 2.3 The Act gives protection for workers who make a "protected disclosure"
- a right not to be victimised because a protected disclosure has been made
 - a right not to be dismissed or selected for redundancy because of having made a protected disclosure
- 2.2 What is a protected disclosure? There are two things that have to be satisfied:-
1. the disclosure must be of a certain type of information (called a "qualifying disclosure2)
- and
2. the disclosure must be made in a way which is described in the Act.
- (a) A qualifying disclosure:
This is a disclosure of information which in the reasonable belief of the worker making the disclosure tends to show one or more of the following:-
- a criminal offence
 - that there is a failure to comply with a legal obligation
 - miscarriage of justice
 - that the health or safety of any individual is endangered
 - damage to the environment
 - deliberate concealment of any of the above

(b) The manner of disclosure:

The Act says that a disclosure to one of the following persons is protected provided that it is made in good faith.

- to the employer (and a list is set out later in this document about how that can be done)
- if the complaint is about someone else not employed by the Council, to that person's employer
- if it is about an issue where another person or body (not the Council) is responsible for the issue then disclosure can be made to that other person or body
- to anybody else authorised by the Council (the list later in this document sets out who that is)
- for certain specific types of malpractice to an outside regulator. The appendix to this policy sets out that list and the matters which may be referred to them.

Here, you must also reasonably believe that the information you are disclosing is substantially true.

(c) Public disclosure:

The employee is protected in making a public disclosure if these things are satisfied:-

- the disclosure is made in good faith
- the employee believes that the information is substantially true
- the disclosure is not made for the purposes of personal gain
- that the employee believes that he or she will be subjected to victimisation by the employer if a disclosure is made to the employer **or** that evidence relating to the matter being complained about will be concealed or destroyed if a disclosure is made to the employer **or** that a previous disclosure has been made to the employer
- in all the circumstances of the case it is reasonable for the disclosure to be made (the legislation says that regard has to be had to the identify of the person to whom the disclosure is made, the seriousness of the failure, whether the failure is continuing, whether the disclosure is made in breach of a duty of confidentiality owed to a third party, any action which an employer has taken or might reasonably be expected to have taken, or whether the employee complied with any internal procedure for disclosures).

3. Background

3.1 The council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment employees and others with serious concerns about any aspect of the council's work are encouraged to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis.

3.2 Employees are often the first to realise that there may be something wrong within the council. However, they may not express their concerns because they feel that speaking out would be disloyal to their colleagues or to the council. They may also fear harassment or victimisation. In these circumstances, it may appear easier to ignore the concern rather than report what may just be a suspicion of malpractice.

- 3.3 This policy document makes it clear that employees can and should voice their concerns on any aspects of the council's work without fear of victimisation, subsequent discrimination or disadvantage. It is intended to encourage, enable, and require employees to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside.

4. Aims of the policy

- 4.1 This 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;
- ensure 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 in good faith; and
- allow employees to take the matter further if they are dissatisfied with the council's response.

- 4.2 There is an existing Grievance Procedure in place to enable employees to raise a personal concern relating to their employment. This Confidential Reporting Policy and Procedure is intended to cover major concerns that fall outside the scope of these other procedures.

- 4.2.1 Major concerns may include:-

- criminal offences or breach of any statutory requirement or legal obligation.
- physical, sexual, or emotional abuse of a child or any other person by another employee or any other person.
- 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 service users' personal, human and basic rights e.g. abuse (physical, emotional, sexual), harassment, bullying and prejudice.
- inappropriate use of council assets;
- deceit, 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); and
- breach of council or statutory codes of practice or the council's standing orders and policies (e.g. Lambeth's Managers' Charter etc).

- 4.3 Or anything that amounts to improper conduct as defined by the Council's policies.

- 4.4 Before initiating the procedure employees should consider the following:

- that responsibility for expressing concerns about unacceptable practice or behaviour rests with all employees;

- that employees should use supervision sessions, team meetings and other opportunities to raise questions and seek clarification on issues which are of concern; and
- that it can be difficult to raise concerns about the practice or behaviour of a colleague, but employees must act to prevent an escalation of the problem and to prevent themselves being potentially implicated.

4.5 All council employees have the right to raise concerns, which could be about the actions of other employees, private contractors and/or elected members.

5. Safeguards

5.1 For Employees Raising the Concern

5.1.1 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 concern in good faith, even if that concern is seen to be unfounded after investigation.

5.1.2 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.

5.1.3 Victimisation or harassment of an employee who has raised a concern in good faith, 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.

5.2 Confidentiality

5.2.1 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.

5.3 Anonymous Allegations

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

5.3.2 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.

5.3.3 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;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

5.4 Untrue Allegations/Defamation

- 5.4.1 Whistleblowers making untrue allegations 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.
- 5.4.2 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.
- 5.4.3 Advice on this is available from the Director of Legal and Democratic Services (Monitoring Officer) or the Head of Legal Services.

5.5 Malicious/Vexatious Allegations

- 5.5.1 If an allegation is made or a concern is raised in good faith, 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.

5.6 Unfounded Allegations

- 5.6.1 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.
- 5.6.2 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.
- 5.6.3 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.*
- 5.6.4 Closed investigation files and evidence will be securely retained in line with the appropriate retention periods.

5.7 Support to Employees

- 5.7.1 It is recognised that raising concerns can be difficult and stressful. Advice and support is available via an employee's line manager, Departmental 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.
- 5.7.2 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 or by telephone on 020 7404 6609.

5.8 Vested Interest

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

Annex a

1. Procedure for how to raise a concern

- 1.1 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 assistant director or chief officer, a human resources officer, the executive director or head of service, or the corporate complaints unit.
- 1.2 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 Intake & Assessment Team of Children's Services, NSPCC or the Police. Details of the child protection process for reporting concerns is also available from the Human Resource manager in Children's Services.
- 1.3 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.
- 1.4 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 whistle blowing procedure.
- 1.5 Although an employee is not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for the concern.
- 1.6 Advice and guidance on how matters of concern may be pursued can be obtained from:

Director of Legal & Democratic Services
Chief Internal Auditor
The Corporate Complaints Unit
Head of Human Resources
- 1.7 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.
- 1.8 The Director of Legal & Democratic Services 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.
- 1.9 The Executive Director of Finance and Resources is responsible for the council's financial affairs and is under a similar duty to whistle blow in relation to unlawful expenditure and/or illegal accounting practices.

2. How the council will respond

2.1 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.

(All issues will be collated centrally for record keeping purposes).

2.2 In order to protect individuals and the council, initial enquiries, (usually 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.

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

2.4 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, and
- inform the individual of the final outcome of the inquiry where legally possible.

2.5 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.

2.6 Where any meeting is arranged, employees, if they wish, may be accompanied by a colleague or recognised Trade Union Representative.

2.7 When appropriate, meetings will be arranged away from the workplace.

3. The responsible officer

3.1 The Director of Legal and Democratic Services 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.

4. How the matter can be taken forward

4.1 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 with either the Chief Internal Auditor (telephone 020 7926 9481) or the Executive Director of Finance and Resources (telephone 020 7926 9337).
- Concerns regarding abuse of position, harassment etc. may be raised with the Head of Human Resources (telephone 020 7926 0068) or an HR Adviser.
- Concerns about the legality of another employee's actions may be raised with the Director of Legal & Democratic Services (telephone 020 7926 2209).
- Concerns about the safety and wellbeing of children and vulnerable adults may be raised either with the Executive Director of Adults' and Community Services (telephone 020 7926 4786), Executive Director of Children and Young People's Service (telephone 020 7926 9771) or the Director of Legal & Democratic Services (telephone 020 7926 2209).

4.2 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;
- Police;
- voluntary organisation;
- a solicitor; or
- the Local Government Ombudsman.

4.3 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 Executive Director of Finance and Resources or Director of Legal & Democratic Services should be taken.

5. Monitoring and review

5.1 The Director of Legal & Democratic Services, in conjunction with, the Chief Internal Auditor and the Head of Human Resources will be responsible for monitoring the implementation and effectiveness of this policy/procedure.

5.2 The Director of Legal & Democratic Services, in conjunction with, the Chief Internal Auditor and the Head of Human Resources will submit regular reports to the Standards Committee, with reports as required to the Corporate Committee.

5.3 The policy/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/procedure will be made by Corporate Committee on the recommendation of Standards Committee and following consultation with the Senior Leadership Board and the recognised Trade Unions.

**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.*