



Standards Committee 14th November 2005

Report from the Director of Human Resources & Diversity

For Action

Wards Affected:
ALL

Whistleblowing Procedure

Forward Plan Ref:

1.0 Summary

- 1.1 This report sets out the reasons for developing the new Whistleblowing Procedure and summarises the main changes. The report also seeks the approval from the Standards Committee to implement the new procedure as set out in the recommendations.

2. Recommendations

The Standards Committee is recommended to agree:

- 2.1 the revised Whistleblowing Procedure and its implementation.

3. Detail

- 3.1 The Council's Confidential Reporting Code was previously agreed by the Standards Committee and has been in place since January 2001.
- 3.2 As the procedure has been in operation now for a number of years it is appropriate that its effectiveness be reviewed. This provides an opportunity to update the procedure and to expand its coverage. This will in turn assist the authority's aim of achieving an Excellent rating in the CPA assessment for 2006. One aim of the review is to ensure the Council publicises its procedure and by demonstrating its commitment to providing support to those who use the procedure increases confidence in it.
- 3.3 The procedure recommends that in most cases employees report any concerns about inappropriate conduct through their line management.

However, where the employee considers that the matter has not been dealt with appropriately, fears retribution if the matter is dealt with within the management structure above them or they fear that information may be concealed or destroyed if raised within the line management structure, employees have the option of using the Code.

- 3.4 The Code provides that matters can be reported to the Chief Executive or the Head of Audit and Investigations (the Council's Whistleblowing Officer).
- 3.5 The Code also emphasises that the Council's grievance procedure and not the Code should be used where employees are aggrieved about their own situation.
- 3.6 The Code takes into account the provisions of the Public Interest Disclosure Act 1998 (PIDA). The PIDA introduced specific rights for employees not to be victimised or dismissed if they disclose information about an alleged wrong doing in defined circumstances.

4. Review of current procedure

- 4.1 Since its implementation in 2001 there have been 13 cases reported through the Confidential Reporting Code. These are categorised below:

Improper conduct	7
Fraud	3
Discrimination	1
Health and Safety	1
Victimisation	1

(1 report was also received from a contractor's employee although the existing Code does not specifically provide for this)

- 4.2 Investigations have been completed on 10 referrals, only one of which was upheld/proven and resulted in disciplinary action. The remainder were either not proven or insufficient evidence was available upon which to reach a conclusion.
- 4.3 The remaining 3 referrals are still active investigations.
- 4.4 Included in these referrals are 3 cases where staff claimed victimisation as a result of making a disclosure under the Code or a previous complaint to management. Two of these cases were not upheld and the remaining case has yet to be concluded.
- 4.5 As set out under the Code, employees receive a report of progress and the outcome, although this is not always in writing.
- 4.6 During this period Audit and Investigations have also received anonymous reports not covered by the Code from staff concerning financial irregularities. These investigations are handled in the same way as other referrals. The information received is evaluated on the strength of the evidence available.

5. New procedure

- 5.1 Following consultation with the Head of Audit and Investigations, the Strategic Human Resources Group and the Corporate Management Team, a revised Whistleblowing Procedure is attached for approval. The new procedure takes account of the Model Confidential Reporting Code produced by the former Local Government Management Board.
- 5.2 The new Whistleblowing Procedure will apply to reports where it is the reasonable belief of the person making the report that it relates to:
- A criminal offence
 - A failure to comply with a legal obligation
 - A miscarriage of justice
 - A danger to the health and safety of an individual
 - Damage to the environment
 - A failure to comply with the Council's policies and procedures
 - Conduct which damages the Council's reputation
 - Deliberate concealment of information relating to any of the above
- 5.3 The main changes to the procedure are set out below:
- A more simplified structure in the document itself
 - Provision for contractors (and their staff), partner agencies (including the Health Authority and voluntary sector groups), agency workers, consultants, trainees and self-employed people to use the procedure as well as Council employees in accordance with the provisions of the PIDA
 - Provision for reporting concerns outside the Council in certain circumstances
 - An explanation of the protection arrangements for employees under the PIDA for reporting a concern externally to the police, the media or a Member of Parliament
 - An explanation of how anonymous reports will be handled
 - A list of organisations outside the Council who offer advice
- 5.4 The Standards Committee are asked to approve the new Whistleblowing Procedure..
- 5.5 The Director of Human Resources and Diversity intends to consult with the Council's recognised trade unions on the revised arrangements and their operation over the next few months. The revised procedure provides for an annual review of the operation of the procedure so a report will be brought to the Standards Board after the new Code has been in operation for one year, or earlier than that if any issues arise out of the consultation or the operation of the Code.

6. Consultation with trade unions

Consultation has been carried out with the Council's recognised trade unions covering all staff employed by the Council, including the

teaching unions. The attached Whistleblowing Procedure incorporates the amendments agreed with the unions.

7. Financial implications

- 7.1 In the longer term there may be as yet unquantifiable costs associated with investigation of confidential reports.

8. Legal Implications

- 8.1 Prior to The Public Interest Disclosure Act 1998 (PIDA) becoming law an employee who found misconduct on the part of his employer was in a difficult situation. The duties that the employee owed were of good faith and loyalty to the employer, the wider public interest was not generally a consideration and an employee who 'whistleblew' was at risk of disciplinary action for breaching their duties to the employer.
- 8.2 The PIDA was introduced to strike a balance between the competing interests of the employer, the employee and the wider public interest and created protection for employees who wished to raise issues of public concern with their employers or eventually, outside bodies. The protection and the provisions of the Act are mandatory and so the Council needs to have an appropriate internal procedural framework to ensure that the purposes for which the Act was established are adhered to.
- 8.3 There is no statutory requirement to have in place any particular type of policy. However, not having such an internal framework would have considerable adverse legal implications in the event that an employee made an application to an Employment Tribunal claiming that they were either dismissed or victimised as a result of making a disclosure protected by the Act. An Employment Tribunal would expect for an employer the size of the Council to have a workable procedure in place to ensure that allegations are investigated and the proper protections are afforded to relevant employees. Not having such an easily accessible and workable procedure would be likely to lead to an increased chance of negative findings in such cases.
- 8.4 Also, having such a procedure in place is in line with the general development of the law in local government towards achieving a greater level of transparency in the way in which local authorities work and the attempt to increase the public's confidence in the system, by being seen to increase the levels of probity throughout the system.

9. Diversity implications

The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

10. Staffing implications

- 10.1 The revised policy will have the following benefits to staff:

The new procedure

- is in a more simplified format
- provides information on external organisations that offer advice to employees
- sets out the protection arrangements under the PIDA for reporting concerns to the Police, the media or a Member of Parliament

and in this way should encourage staff to make use of the procedure in appropriate circumstances.

11. Background papers

Public Interest Disclosure Act 1998
Confidential Reporting Code
LGMB Model Confidential Reporting Code

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