

Committee: General Purposes Committee

Date: 10th March 2016

Agenda item:

Wards: All Wards

Subject: Whistleblowing Policy

Lead officer: Caroline Holland- Director of Corporate Services

Lead member: Chair of General Purposes Committee

Forward Plan reference number:

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Recommendation:

A The Committee comments upon and approves the revised Whistleblowing policy

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. In May 1995 the Nolan Committee issued a report on the Standards in Public Life: Local Public Spending Bodies. This report made a number of recommendations, some sector specific and others more general in nature. The Nolan Committee recommended that Local Authorities should institute Codes of Practice on Whistleblowing, which would enable concerns to be raised confidentially inside and if necessary outside the organisation. Merton's first policy was agreed at the Policy Strategy and Quality Committee on the 8th March 2000.

2 DETAILS

WHISTLEBLOWING POLICY

2.1 The councils whistleblowing policy has always encouraged staff to raise concerns and assurance given that these would be treated in confidence. The policy has clearly stated the action that is taken when a whistleblowing allegation is received.

2.2 A review of the whistleblowing policy was carried out by Merton in 2014, following the publication of the code of proactive by the whistleblowing commission; these changes were approved by committee in September 2014. These changes included, that employees raising a concern:-

- Will be told how and by whom the concern will be handled
- Be given an estimate of how long the investigation will take
- Be told, where appropriate, the outcome of the investigation

- Be told that if the worker believes that he/she has suffered a detriment for having raised a concern, he/she should report this and
- Be told that he/she is entitled to independent advice

2.3 Following high profile cases of whistleblowing in the NHS, an independent review on Whistleblowing was carried out in the NHS. This review was concluded in November 2014 and made the following recommendations:-

- workers can raise concerns in the public interest with confidence that they will not suffer detriment as a result
- appropriate action is taken when concerns are raised by workers
- where whistleblowers are mistreated, those mistreating them will be held to account

2.4 The review considered independent mediation and appeal mechanisms to resolve disputes on whistleblowing fairly.

2.5 The review engaged closely with individual NHS workers who said they have suffered detriment as a result of raising legitimate concerns, as well as with employers, trade unions, professional and system regulators and professional representative bodies.

2.6 The first bullet 3 points above are covered by the Merton's whistleblowing policy and were strengthened in the review carried out previously (September 2014).

2.7 Consideration for mediation and dispute resolution has now been added to the policy in paragraph 4.5, 16.4 and 16.5 and the current address for Public Concern at Work has been updated.

2.8 The NHS independent review stated that workers should not suffer a detriment to their employment once they have raised a concern. In Merton where staff have disclosed their names, these were kept confidential.

Effective Whistleblowing Policy

2.9 The Council should demonstrate a commitment to high standards of conduct and maintain public confidence, by establishing an effective policy whereby staff can properly raise concerns without prejudice to their personal position. An effective policy on Whistleblowing allows employees and members of public the opportunity to raise their concerns, either internally to the Internal Audit or Senior Officers of the Council or externally to outside bodies.

2.10 An effective and positive whistleblowing culture has the following advantages:

- Detects and deters wrongdoing;
- Provides information to managers so they can make decisions and contain the risk;

- Demonstrates to stakeholders that Merton is serious about good governance;
 - Reduces the chance of anonymous or malicious leaks;
 - Reduces the chance of Legal claims against the Council.
 - Clear whistleblowing arrangements are likely to help with a defence under the Bribery Act 2010.
- 2.11 CIPFA's guide on delivering good governance recommends the following is considered as part of its Annual Governance Statement
- 2.12 Ensure that effective arrangements for Whistleblowing are in place to which officers, staff and all those contracting with or appointed by the authority have access. That a Whistleblowing policy exists and is reviewed on a regular basis. The policy is made available to members of the public, employees, partners and contractors.
- 2.13 A copy of the Council's policy is attached as Appendix 1.

THE PUBLIC INTEREST DISCLOSURE ACT 1998

- 2.14. Employees who blow the whistle on wrongdoing at work are protected from victimisation and dismissal under the Public Interest Disclosure Act 1998. This Act aims to promote greater openness in the workplace between employers and workers in dealing with wrongdoing that might arise.
- 2.15. Under the Act, workers are initially required to resolve these concerns with their employer. Employees are protected from victimisation if in the last resort they have to take their concerns to an outside body.
- 2.16. A disclosure to a manager or the employer will be protected if the whistleblower has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. The whistleblower will also be protected if they make their disclosures to an external body as long as they honestly and reasonably believe that the information and any allegations are substantially true.

CONFIDENTIALITY

- 2.17. An important issue addressed in the context of investigating allegations and dealing with complaints from an informant is that of respecting the anonymity of the informant, where appropriate or where requested.
- 2.18. Nolan considered it appropriate that anyone should be able to whistleblow confidentially if they so wish. As long as their complaint appears to have been made in good faith, their wish for confidentiality should be respected. Without this guarantee there is a risk that matters of concern could escape investigation, as people with genuine concerns might be deterred from bringing these concerns to the attention of the council.

- 2.19. This approach is further supported by decisions of the court. They have recognised in certain circumstances the identity of the persons who have made the complaints or given information to the public or other bodies should not be revealed (in the course of legal proceedings, for example). They recognise that disclosure could discourage others from making complaints or giving information to the proper authorities. It is important to note, however, that a cast iron guarantee of confidentiality cannot be given to a whistleblower if a court or other tribunal directs otherwise.
- 2.20. Merton's whistleblowing policy respects and reinforces this concept of confidentiality.

REPORTING

- 2.21. The Head of Internal Audit maintains a central register of all whistleblower allegations. This register records a summary of the original allegation and the actions taken. Where an allegation has been received by other departments in the council and involves a non-financial issue, an appropriate manager will be appointed to investigate the issue; this will be reported to Internal Audit when the original allegation is made and at the conclusion of the investigation. Fraud concerns are passed to the South West London Fraud Partnership to investigate.

PUBLICITY

- 2.22. It is important that all members of staff, contractors and members of the public are provided with details of the policy. These initiatives have continued to take place or are planned to promote the policy:
- Leaflets sent out to all Departments, partners and schools .
 - Intranet Links on the Procurement site and the CHAS website on the Internet
 - The policy is available on the Intranet and the Internet.
 - Confidential hotline

3 ALTERNATIVE OPTIONS

- 3.1. None for the purposes of this report.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Other Local Authorities' Whistleblowing Policies have been reviewed in the past for the purposes of updating Merton's Policy.
- 4.2. Human Resources, Legal Services and Directors were also consulted in respect of the policy review in earlier years.

5 TIMETABLE

- 5.1. This does not apply.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The costs of dealing with Whistleblowing allegations and the publication and promotion of the policy is usually met from within existing budgets.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. These are contained within the report and reflect the requirements of the Public Interest Disclosure Act 1998 and the Bribery Act 2010.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Human Rights implications are considered in the conduct of all whistleblowing investigations. For example if directed surveillance is felt necessary this will be carried out in accordance with the Regulation of Investigatory Powers Act 2000.
- 8.2. In addition the Whistleblowing Policy provides a mechanism where concerns regarding the welfare of clients can be raised and therefore helps protect their Human Rights.
- 8.3. Whistleblowing investigations will take into consideration Equality and Diversity implications. Investigations may reveal weaknesses in financial management and other monitoring systems, e.g. ethnic monitoring. Ensuring action is then taken in respect of these weaknesses plays a role in ensuring that Council Resources are used to enable fair access to quality services.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The Whistleblowing Policy allows for staff to come forward and report their concerns without the fear of reprisals in any form.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Each allegation is considered on a risk basis as to the amount of resources that should be employed in the investigation.
- 10.2. Some allegations involve Health and Safety matters and these are referred to the appropriate Council Section for investigation.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Whistleblowing Policy – March 2016

12 BACKGROUND PAPERS

- 12.1. Whistleblowing Policies and register
- 12.2. Internal Audit Papers

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