

Committee: Standards and General Purposes

Date: 5 November 2020

Wards:

Subject: Whistleblowing Policy review

Lead officer: Caroline Holland- Director of Corporate Services

Lead member: Chair of Standards and General Purposes Committee

Contact officer: Margaret Culleton Head of Internal Audit

Margaret.culleton@merton.gov.uk

Recommendation:

The Committee comments upon and approves the revised Whistleblowing policy and comments on the Whistleblowing process.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The attached Whistleblowing policy has been reviewed and updated for approval by the Standards and General Purposes Committee. This policy forms part of the Councils Anti-Fraud and Anti-Corruption arrangements.
- 1.2 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.

2 DETAILS

- 2.1 A Whistleblowing commission was established in February 2013 by the charity Protect to review the effectiveness of existing arrangements for workplace Whistleblowing and make recommendations for change.
- 2.2 They issued a report in November 2013 with recommendations to the secretary of state and a recommended Code of Practice. This code sets out practical guidance for the raising, handling, training and reviewing Whistleblowing arrangements.
- 2.3 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; and
- Clear whistleblowing arrangements are likely to help with a defence under the Bribery Act 2010.

2.4 CIPFA's guide on Delivering Good Governance, recommends the following is considered as part of its Annual Governance Statement

- 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.

The Public Interest Disclosure Act 1998

2.5 Employees who blow the whistle on wrongdoing at work are protected from harassment and victimisation 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.

2.6 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.

2.7 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 and Anonymous allegations

2.8 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.

2.9 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.

2.10 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.

3 Whistleblowing review

- 3.1 An Internal Audit review has been conducted across the 5 councils in the partnership (Merton, Sutton, Kingston, Richmond and Wandsworth). This has included a review of the Whistleblowing policy and the process followed when a concern is raised. The outcome of the review for Merton is detailed below.

Whistleblowing policy

- 3.2 Guidance from Cipfa 'Delivering Good Governance' recommends that Whistleblowing policies are reviewed regularly.
- 3.3 A review of Merton's Whistleblowing Policy has previously been undertaken on a regular basis, it was last reviewed in 2018. A review of the policy has been included in the wider review of the whistleblowing process during 2020/21, this has included checking the policy against best practice and other partnership Councils policies. The proposed changes to the policy are detailed below. (See Appendix A for revised policy).
- Section 6- The stages to follow when raising a concern has been made clearer, i.e. initial concern with your line manager.
 - Section 10 –This section details what to do if they have raised the concern but feel it haven't been resolved or the matter is too serious there are named officers to contact.
 - Section 11- details the process and contacts for referrals outside the Council.
 - The amendments above have removed the need to have an appeal process, which has been removed from the policy.

Process

- 3.4 The review of the process followed by the Council found that there is an effective process in place, since the last review, this has been further enhanced by:-
- Monthly whistleblowing meetings attended by the Monitoring Officer, Head of Internal Audit, Head of HR, Legal and the Head of the SWLFP to discuss each new allegation as well as progress of current cases.
 - Internal Audit have prepared a process flowchart (see Appendix B) to support the policy. This flowchart sets out the stages to follow from initial assessment, communication with the whistleblower at each stage of the process and consideration of action, including timescales.

Recording and investigation

3.5 A review of the monitoring, recording and investigation process in the Council found this to be effective. The Council has the following arrangements:-

- A Whistleblowing Register of all allegations, held by the Head of Internal Audit. This register records a summary of the original allegation, date received and the actions taken.
- Merton's Whistleblowing Register respects and reinforces confidentiality. No details of the whistleblower are held on the register, it only states whether the allegation is anonymous.
- The Whistleblowing Register is reviewed monthly at the review meetings mentioned above.
- Regular checks have been undertaken on settlement arrangements with employees names matched against the list of names held by Internal Audit on whistleblowers. No matches have previously been found. A check is currently being undertaken for recent cases. The new monthly meetings will assist in highlighting any potential matches at an earlier stage.

Communication.

3.6 The review looked at how the policy is communicated. This has found that the policy is available on:-

- the website and intranet. There is a dedicated page on the Councils website, called Whistleblowing, which provided a brief summary, contact details and a link to the Councils policy.
- Leaflets and posters have been made available to schools
- notice boards within the Councils Civic Centre

Training

3.7 The review looked at the arrangements in place to provide training to officers and managers in the Council.

- Training has been provided to officers in the Council, recent training has been attended by HR. Other specific training can be provided to managers by the audit and fraud partnership.
- On line fraud training is provided to all employees, this includes information on the Councils whistleblowing arrangements.

Reports to committee

3.8 The review included whether the number of cases and the outcome are reported to committee. At Merton, it was found that:-

- The number of Internal Corporate fraud cases are reported annually at Standards and General Purposes Committee in the Head of Internal

Audit Annual Report. The figures reported include all numbers logged on the whistleblowing register.

Details from the last 2 years previously reported and current details for 2020/21.

Corporate Internal Fraud cases and outcome

	2018/19	2019/20	2020/21 (to Oct)
Disciplinary (dismissed)	1	1	0
Resigned	0	2	2
Prosecutions in progress	1	2	3
No further action	5	3	7
In progress	7	10	6
Total	14	18	18

- 3.9 The review has found that Merton's Whistleblowing arrangements are robust, the policy has been reviewed and updated for Committee approval, the monitoring of cases has been enhanced with regular meetings and cases are reported to Committee. Communication of the revised policy will be included in the staff bulletin and the updated policy made available on the Councils website and Intranet.

4 Alternative options

- 4.1 None for the purposes of this report.

5 Consultation undertaken or proposed

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

6 TIMETABLE

This does not apply.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

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

8 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.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 9.1. 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.
- 9.2. 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.
- 9.3 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.

10 CRIME AND DISORDER IMPLICATIONS

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

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

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

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

- Appendix A - Whistleblowing Policy
- Appendix B- Process flowchart

13 BACKGROUND PAPERS

- 13.1. Whistleblowing Policies and register