

London Borough of Bexley – Whistleblowing Policy and Procedure

1. Introduction

Employees are well positioned to know when something wrong is taking place within the Council or is a cause for concern. They may not express their concerns, however, because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, they may find it easier to ignore their concern rather than report the matter with a view to remedying the situation. This Policy provides a framework for employees to raise concerns, that are in the public interest, ‘in-house’ and without fear of victimisation, subsequent discrimination or disadvantage.

The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment the Council encourages employees and others with serious concerns about any aspect of the Council’s work to come forward and voice those concerns. The Council recognises that certain cases will have to proceed on a confidential basis so that the position of the ‘whistleblower’ can be protected. This Policy is intended to encourage and enable people to raise serious concerns within the Council rather than overlooking a problem or “blowing the whistle” outside.

This Policy has been the subject of consultation with the relevant trade unions and has their support.

2. Aims of this Policy

This Policy aims to:

- a) encourage employees to feel confident in raising concerns and to question and act upon their concerns
- b) provide avenues for employees to raise these concerns and receive feedback on any action taken
- c) allow employees to take the matter further if they are dissatisfied with the Council’s response; and
- d) reassure employees that they will be protected from reprisals or victimisation for whistleblowing in the public interest in accordance with this procedure

3. Application and Scope

This Policy applies to all employees and those contractors working for the Council. Employees include staff working for the Council on a temporary basis, casual or sessional workers and trainees. It also covers agency workers and suppliers and those providing services under a contract with the Council in their own premises. Foster carers and adoptive parents are similarly covered.

This Policy is in addition to and distinct from the Council’s Complaints Procedure that provides a facility to those not employed by the Council (e.g. service users, advocates, family members and members of public) to raise any concern.

This Policy is not intended to cover concerns that can be progressed under existing Human Resources procedures. There are existing procedures in place to enable employees to lodge a grievance relating to their own employment. Where employees’ concerns relate to their own employment, either in terms of the treatment afforded to them or their terms and conditions of employment these should normally be raised through either the Fair Treatment at Work or Grievance procedures.

Some departments of the Council have separate procedures specifically relating to departmental functions. For example, Education and Social Care have adopted multi-agency child protection procedures and procedures for the protection of vulnerable adults. All acts of whistleblowing can be raised under this Whistleblowing procedure and employees shall have the full protection of this policy. Where the matter for investigation is covered by separate procedures, however, these will be applied as appropriate.

This Policy is intended to cover serious concerns that may fall outside the scope of other procedures, and include the following:

- a criminal offence has been committed or is likely to be committed
- failure to comply with a legal obligation to which a person is subject (this may include breaches of statutory codes of practice)
- conduct that is contrary to the Council's Standing Orders or Policies (this may include conduct that falls below established standards or practice)
- disclosures relating to possible miscarriages of justice
- conduct that endangers the health and safety of other employees and/or members of the public (this would include abuse - whether physical, verbal or sexual - or ill treatment of any service user, family member, friend or advocate)
- conduct that involves damage to the environment
- the unauthorised use of public funds
- information has, or may be, deliberately concealed that may demonstrate that one of the above matters has occurred

The above does not represent an exhaustive list of areas covered by this Procedure. Any serious concerns that employees may have about any aspect of service provision or the conduct of Officers or Members of the Council or others acting on behalf of the Council can be reported under this Procedure.

4. Safeguards against harassment or victimisation

The Council is committed to good practice and high standards and wants to be supportive of all its employees.

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the matter that gives rise to the concern. If concerns are raised in the public interest, there will be nothing to fear because employees will be doing their duty to the employer and to those for whom they are providing a service.

Whistleblowers raising matters of concern internally are protected from harassment, victimisation, disciplinary action or dismissal or any other disadvantage at work as a result of raising the concern (even if their disclosure of any wrongdoing or malpractice is not substantiated after investigation), provided they raise/disclose issues in the reasonable belief that they are doing so in the public interest. A person would not be protected from disciplinary action if, for example, they raised a concern they knew to be false or malicious.

The Council will not tolerate harassment or victimisation and will take such action as is necessary to protect employees when they raise concerns in the public interest under this Procedure.

5. Confidentiality

The Council will use its best endeavours to protect an employee's identity when he/she raises a concern and does not want his/her identity disclosed. A strictly confidential record of the names of complainants will be kept for monitoring purposes.

If whistleblowers are required to give evidence in criminal or disciplinary proceedings, the Council will arrange for them to receive advice and support.

6. Anonymous allegations

Allegations made anonymously cannot be subject to the protections afforded by this procedure as the protections are specifically designed to protect those persons, who fall within the scope of the Policy, making allegations. Anonymous allegations will, however, be considered by the Council if it decides to exercise its discretion. In exercising the discretion, the Council will take account of all relevant factors which will include:

- the seriousness of the issues raised
- the credibility of the concern
- the likelihood of confirming the allegation from other attributable sources

7. Rights and responsibilities of employees

All employees are required to report any issue of concern regarding the provision of services or management of those services. In the majority of cases, this will be done through the usual line management arrangements.

Employees are expected to report concerns as soon they arise and to avoid any unnecessary delay in doing so.

To gain protection under this procedure, the employee must reasonably believe that the disclosure is made in the public interest. Employees are not otherwise required to 'prove' the truth of any allegation. Complainants will, however, need to demonstrate that there are reasonable grounds for the concern, and will be expected to co-operate with any investigation that takes place.

When any meeting or interview is arranged, employees may, if they so wish, be accompanied by a trade union official or a workplace colleague.

8. How to raise concerns

Concerns should normally be raised through the completion of a MyView form which will be forwarded to your Director for investigation. This may, however, depend on the seriousness and sensitivity of the issues involved and who is thought to be involved in the alleged wrongdoing or malpractice. As an alternative, the concern may be raised directly with the Director of the relevant department, the Chief Executive, the Head of Internal Audit & Risk or the Head of Legal Services, who is also the Council's Monitoring Officer.

Whether raised via MyView or not, concerns should be raised in writing without undue delay setting out the background and history of the concern, giving names, dates and places where possible, and the reason for the employee's particular concern. If an employee feels that he/she is not able to raise the concern in writing at this point, he/she may personally raise the matter with the appropriate Officer. However, at some stage the concern will need to be put in writing and recorded on MyView although this may be done through his/her representative or relevant manager.

Employees can obtain advice and guidance on how matters of concern may be pursued from:

- Head of Legal Services and Monitoring Officer
- Deputy Director of HR and Corporate support
- The HR Service

9. How the Council will respond

The Director or his representative will write to the employee, where practicable within fourteen calendar days:

- acknowledging that the concern has been received
- indicating how it proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- informing the employee whether any initial enquiries have been made
- informing the employee whether further investigations will take place, and if not, why not

Employees will also be provided with details of support available which will include access to counselling facilities.

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

- be investigated internally
- be referred to the Police
- be referred to the external auditor
- form the subject of an independent inquiry

In order to protect individuals and those accused of possible wrongdoing or malpractice, initial enquiries will be made by the relevant senior officer to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of any other specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures. The overriding principle which the Council will have in mind is the public interest.

Some concerns may be resolved by agreed action without the need for formal investigation. If urgent action is required this will be taken before any investigation is conducted.

The amount of contact between the officers considering the issues and the complainant employee will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided.

The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For instance, if it becomes necessary to give evidence in criminal or disciplinary proceedings, the Council will provide the necessary advice about the procedure and give whatever practical support that is possible.

The Council accepts that employees need to be assured that the matter has been properly addressed and will ensure this happens.

Subject to legal constraints, employees will normally receive feedback about the outcomes of any investigations.

The Head of Legal Services, in conjunction with the Director who has responsibility for the relevant department of the Council, and HR will be responsible for monitoring the outcome of the concerns raised through this Policy.

10. Taking the concerns externally

This Procedure is intended to provide employees with an avenue to raise concerns within the Council. The Council hopes that employees will be satisfied with any action taken.

There may be circumstances where an employee considers that he/she needs to raise the matter externally. This may be because, for example, there is a need to involve the appropriate external regulatory body, or the employee considers that the matter has not been properly addressed, or that an employee reasonably believes that the matter will be covered up.

If employees feel it is right to take the matter outside the Council, the following are possible contact points:

- Local council member (if the employee lives in the London Borough of Bexley)
- the external auditor (see below)
- employee's relevant professional bodies or regulatory organisation
- employee's trade union
- employee's solicitor
- the Police
- a relevant voluntary organisation
- Public Concern at Work (see below)

The external auditor contact details are as follows:

Janet Dawson, Partner
Ernst & Young LLP
jdawson1@uk.ey.com

If an employee is unsure whether or how to raise a concern or wants confidential advice, contact can be made with the independent charity Public Concern at Work on 020 7404 6609 or at helpline@pcaw.co.uk. Their lawyers can provide free confidential advice on how to raise a concern about serious malpractice at work.

In circumstances where an employee decides to raise the matter externally, he/she will only be protected under this Policy, and under employment law, where the disclosure is made in accordance with Section 43 of the Employment Rights Act as amended by the Enterprise and Regulatory Reform Act 2013. This means that the disclosure must fall under one of the categories listed in Section 3 (above) and must be made in one of the following ways:

- a) in the course of obtaining legal advice:
- b) to a prescribed regulatory body - link as follows:
<http://www.legislation.gov.uk/uksi/2014/2418/schedule/made>, provided the disclosure is made in the reasonable belief that it is in the public interest and the employee reasonably believes the prescribed body is responsible for the matter of concern and that the information and allegation/s are substantially true
- c) to other third parties (including the media) where the employee makes the disclosure:
 - in the reasonable belief that it is in the public interest and that the information and allegations are substantially true, and
 - does not make the disclosure for personal gain, and
 - has already raised the matter with the Council or prescribed regulator, unless the employee reasonably believes that he/she will suffer a detriment, or there is no prescribed regulator

- and he/she reasonably believes that evidence will be concealed or destroyed if he/she makes the initial disclosure to the Council, and
- in all of the circumstances it is reasonable to make the disclosure
- d) the disclosure is of an exceptionally serious nature and the Whistleblower makes the disclosure:
- in the reasonable belief that it is in the public interest and, that the information and allegations are substantially true, and
 - does not make the disclosure for personal gain, and
 - in all of the circumstances it is reasonable to make the disclosure

When considering whether it is reasonable for the worker to make the disclosure, regard will be had particularly to the identity of the person to whom the disclosure is made.

11. The Officer responsible

The Head of Legal Services, who is the Council's Monitoring Officer, has overall responsibility for the maintenance and operation of this Policy. A record of all concerns raised and the outcomes will be maintained. The Head of Legal Services will report as necessary on the operation of the Policy, but not on individual cases, to the Council's General Purposes Committee.