

**CONFIDENTIAL REPORTING POLICY**

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**1. Purpose of Report**

- 1.1 To present the revised Confidential Reporting (Whistle Blowing) policy and procedure
- 1.2 To seek Committee approval to adopt this policy and procedure with immediate effect.

**2. Summary**

- 2.1 The policy and procedure on Confidential Reporting was adopted and approved at the Personnel Committee on 23 September 1997.
- 2.2 The Public Interest Disclosure Act, which the Council's policy anticipated, received Royal Assent in July 1998. The Order from the Secretary of State to bring the Act into force is expected by the beginning of July 1999.
- 2.3 The Local Government Management Board (LGMB) published, in January 1999, a Confidential Reporting Code which takes into account comments received as a result of its consultation with authorities and also the provisions of the Act.
- 2.4 The Council's policy and procedure have been amended to ensure they are in line with the Code

**3. Recommendations**

- 3.1 The Committee is asked to approve and adopt the revised policy and procedure for Confidential Reporting.

#### 4. **Background**

- 4.1 The Public Interest Disclosure Act, which received Royal Assent in July 1998, is to be followed by an Order from the Secretary of State to bring the Act into force. The Order is expected by the beginning of July 1999.
- 4.2 The Act protects employees from recrimination if they speak out and encourages employers to set up procedures that enable staff to voice their concerns. The Act protects whistleblowers from dismissal and victimisation, when they raise genuine concerns at work about crime, illegality, miscarriages of justice, dangers to health and safety or the environment. The Act covers employees, trainees, agency workers, contractors, self-employed people and homeworkers, all of whom have access to information about an organisation and its operations.
- 4.3 Whistleblowers are protected when they have an honest and reasonable suspicion of malpractice. If they have grounds to fear that disclosure to their employer will bring retribution, they can go to an outside regulator or the police. If victimised by their employer, whistleblowers can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on losses suffered.
- 4.4 The Council's Confidential Reporting Policy, approved by the Personnel Committee on 23 September 1997, anticipated the provisions of the Act.
- 4.5 On 1 January 1999 the LGMB, following consultation with authorities, published a Confidential Reporting Code, which takes account of the provisions of the Act. The Code is recommended by both the Local Government Association (LGA) and the LGMB.
- 4.6 The Council's policy and procedure has been revised in the light of the LGMB Code, by Human Resources and Internal Audit. The additions and amendments are set out in Section 5 Issues and Choices. The resulting changes are in bold in the final policy document in the **Annex** to this report.

#### 5. **Issues and Choices**

- 5.1 It is likely that the implementation of the Public Interest Disclosure Act will be combined with the additional rights to be introduced under the Employment Relations Bill, since compensation will be increased for whistle blowers alongside that for other unfair dismissal awards. The proposal is that there should be no limit to compensation pay outs for employees who lose their jobs unfairly after disclosing fraud or corruption. Claimants will also have the right to claim 'interim relief' for dismissals under the Act. This allows employees to obtain an order from an employment tribunal that their pay is continued (even though they are no longer employees owing to their dismissal), until the date of the tribunal hearing. If claimants lose their case, these sums are not repayable.
- 5.2 A clear internal disclosure procedure would enable the Council to claim that it was unreasonable for an employee to make a disclosure outside the organisation before following the authorised procedure. However, the procedure must be implemented and disclosure acted upon, as failure to do so would entitle the employee to claim it was

reasonable to go outside.

- 5.3 The Council's current policy on Confidential Reporting follows closely the main points in the LGMB Code. Certain additions and amendments have been made in line with the Code.
- 5.4 The Code encourages employees to feel confident in raising concerns and reassures them that they will be protected from possible victimisation, as long as they have a reasonable belief that the disclosure has been made in good faith. The additional wording has been included in points 2.1 and 3.4 and shown in bold print in the revised policy document.
- 5.5 The Code expands upon the nature of concerns, which may be reported, and these additions have been made in point 2.2 and shown in bold print in the revised policy document.
- 5.6 The Code provides for the trade union, professional association, or friend to be present during any meetings or interviews. The current policy states that staff may invite their trade union or professional association to raise a matter on their behalf and that staff have a right to be accompanied by a union or professional association representative or a friend.

Legal advice from the Institute of Personnel and Development is that any policy on Confidential Reporting should dovetail with existing disciplinary procedures. The provisions of the Employment Relations Bill are for a work colleague or trade union official to accompany an employee to a Disciplinary or Grievance hearing. If the Confidential Reporting policy is to be in line with the Council's Disciplinary and Grievance Procedures and the Employment Relations Bill, the word "friend" should be amended to "work colleague". The revised wording has been included in points 4.8 and 5.6 and shown in bold print in the revised policy document.

- 5.7 The Code encourages the individual to discuss their concerns first with a colleague or colleagues. This additional provision is given in point 4.7 of the policy document in bold print.
- 5.8 The Code provides for the individual raising the concern to be kept informed. The Code provides for information on support mechanisms to be supplied to the employee. These additions have been made in point 5.4 of the policy document in bold print. Whilst the Council's current policy sets a time limit of twenty eight days within which resolution is normally to be achieved, the Code and the revised policy do not stipulate timing, given that this depends on the length and complexity of the investigation. The revised wording has been included in point 5.4 and shown in bold print in the revised policy document.
- 5.9 The Council's current policy is to provide the employee with as much information as possible about progress and outcomes. However the Code does not provide for the outcome of the investigation to be made known. The Council will not necessarily let the employee know details of the outcome, in order to maintain confidentiality. The revised wording has been included in point 5.8 and shown in bold print in the revised policy document.
- 5.10 The Code emphasises that any investigation into allegations will not be influenced by any disciplinary or redundancy procedures already affecting the employee. This provides for an

avoidance of victimisation and reinforces fairness in the investigatory process. The additional wording has been included in point 3.1 of the revised policy document in bold print.

- 5.11 Whilst the Code indicates that all concerns will be treated in confidence, it encourages employees who raise concerns, to put their name to their allegation, wherever possible. This supports the process of a full and fair investigation whereby the source of the information may need to come forward as a witness and provide a statement. The additional wording has been included in points 3.2 and 3.3 of the revised policy document in bold print.
- 5.12 The Code indicates how the matter may be taken further and includes the external auditor as a possible contact point. The additional wording has been included in point 5.1 of the revised policy document in bold print.
- 5.13 The Code clarifies the role of the responsible officers in maintaining records and contributing to regular reports to Council. The revised policy sets out the roles of Strategic Directors and Internal Audit in more detail in point 8 of the revised policy document in bold print.
- 5.14 Fraud Watch was approved by the Contracts Committee in November 1997 and as part of an annual review in September 1998, the Standards Committee approved continuation of the service for a further year. The service was set up principally to provide the general public with a confidential and free route for raising concerns and allegations about the authority. The cost of this service is approximately £500 per annum, depending on the level of referrals received. However, the deterrent effect of such a service is not possible to quantify. This company is independent of the Council and passes to the Council details of allegations made to it concerning matters of fraud, corruption or other irregularity. The scheme is open to employees as well as to the general public. The company will not notify the Council of the source of the allegation without the permission of the individual complainant. Whilst the Council's procedure encourages employees to raise concerns with an appropriate level of line management, there may be occasions when the employee feels that he or she cannot disclose to anyone in the organisation. In these situations, the availability of 'Fraud Watch' will provide a contact for making a disclosure and ensure that any such disclosure is investigated by the Council. The revised policy sets out how an individual can make use of this service and the additional provision is given in point 4.9 in bold print.

## 6. **Implications**

### 6.1 Environmental

None.

### 6.2 Equalities

The policy on Confidential Reporting is to be applied to all employees. The procedure protects employees from possible reprisals and victimisation.

### 6.3 Financial

None.

6.4 Legal

The recommended amendments are in line with the LGMB Code on Confidential Reporting and are in accordance with the Public Interest Disclosure Act.

6.5 Staff and Accommodation

None.

7. **Conclusions**

7.1 The proposed amendments bring the Council's current policy and procedure in line with proposed legislative provisions and reflect the good practice outlined in the LGMB Code.

Background Papers: LGMB Confidential Reporting Code