

**DRAFT****Whistle Blowing Policy and Procedure****1. Introduction**

The Council is committed to the provision of high quality services and promoting the highest standards of openness, probity and accountability. Employees and others who have serious concerns about any aspect of the Council's work should be able to raise these concerns without fear of victimisation, discrimination or disadvantage.

It is in the interests of the Council, its employees and the public that wrongdoing is exposed and dealt with effectively. Members of staff are often the first to realise that there may be something seriously wrong within an organisation. In many circumstances it will be appropriate for staff to raise their concerns with their line manager and this procedure is not intended to discourage this. However, where staff may be cautious about expressing their concerns because they feel that speaking up would be disloyal to their colleagues or to their employer, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice. Alternatively, there may also be circumstances where a member of staff has reported their concern to their line manager and received an unsatisfactory response.

This policy and procedure are intended to ensure that suspicion of wrongdoing can be dealt with speedily and effectively. It seeks to balance safeguards for members of staff who raise genuine concerns about malpractice against the need to protect other members of staff or Members of the Council against uninformed or vexatious allegations, which can cause serious difficulty for innocent individuals.

**2. Aims of the Policy**

- To promote the Council's values to be honest and open and take responsibility throughout the Council by inviting all members of staff to act where necessary in order to uphold the reputation of the Council and maintain public confidence.
- To provide safeguards so that members of staff feel able to raise concerns about malpractice ('a disclosure') within the Council, without fear of adverse repercussions to the individual and a effective mechanism for investigation of those concerns.
- To provide feedback on action taken and advice on how to pursue those concerns further if the individual is not satisfied with the outcome.

“Malpractice” for the purpose of this policy, includes the following on the part of another member of staff of the Council or any other person or persons acting on its behalf:

- Abuse of clients, improper discrimination against or relationship with clients;
- Fraud or financial irregularity;
- Corruption, bribery or blackmail;
- Other criminal offences;
- Failure to comply with a legal or regulatory duty or obligation;
- Miscarriage of justice;
- Endangering the health or safety of any individual;
- Endangering the environment which results permanent damage;
- Improper use of authority or powers;
- Serious financial maladministration arising from the deliberate commission of improper conduct;
- Unethical or improper conduct or conduct which breaches Council policies or falls below the standards which the Council subscribes to;
- Concealment of any of the above.

### 3. Application of the Policy:

This policy is intended to tackle concerns of malpractice which are made in the public interest by:

- A member of staff of the Council;
- Agency staff and self employed staff employed on Council work; or
- The staff of Council contractors employed on Council work.

For the purposes of this policy an individual who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the Council is referred to as ‘the Discloser’. Members of the Council who are concerned about a particular matter should consult the **Council’s Statutory Monitoring Officer (the Solicitor to the Council)**.

#### 4. This Policy Does NOT Apply To

- The relationship between members of staff, their managers and the Council, for which the Employee Complaints Procedure or collective dispute procedures are more appropriate.
- Concerns and complaints by members of the public to which the Corporate Complaints Procedure will apply.
- Agency, self-employed or contract workers as an alternative to such dispute resolution procedures as are set out in their contract with the Council.
- Concerns or complaints about the behaviour of Members of the Council (Councillors) to which the Members Code of Conduct will apply.

#### 5. Designated Assessors

The Council's Monitoring Officer will designate at least five senior members of staff of appropriate experience and standing within the Council as "Designated Assessors"

On instruction by the Council's Monitoring Officer (or their Deputy), Designated Assessors are responsible for the preliminary investigation of disclosures and to make recommendations to the Council's Monitoring officer as to what further steps, if any, should be taken. The Monitoring Officer will co-ordinate the training of the Designated Assessors in the use of this procedure.

A Designated Assessor may decline to investigate a disclosure on reasonable grounds such as:

- Previous involvement or interest in the matter concerned;
- Incapacity or unavailability;
- If satisfied, after consulting the Monitoring Officer, that some other Designated Assessor would be more appropriate to consider the matter.

With the agreement of the Monitoring Officer (or their Deputy) a Designated Assessor may seek assistance from another officer where specialist knowledge or additional support which may be required for proper investigation of the disclosure.

The Monitoring Officer may revoke any such designation as necessary and appoint new Designated Assessors.

## 6. Making a Disclosure

An individual who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the Council and believes that the disclosure is in the public interest, may report these concerns to the Monitoring Officer (or their Deputy).

As soon as practicable the **Discloser** should communicate the disclosure through the Council's Monitoring Officer (or their Deputy) or confidential reporting facility provided by the Council - **Public Concern at Work (PCaW) Tel: 0207 404 6609 (advice line)** - who will provide advice and, **should the Discloser wish them to do so, also provide details of the allegations** to the Monitoring Officer (or their Deputy) who will refer it to a **Designated Assessor** to be dealt with in accordance with this procedure.

The initial disclosure should be made either:

- Wherever possible, in writing;
- Otherwise orally, e.g. by telephone or at interview with a **Designated Assessor**.

The **Discloser** should provide as much supporting written evidence as possible about the disclosure, the grounds for the belief of malpractice and indicate why they have not felt able to raise their concerns through normal management channels.

Where a disclosure is made through PCaW, if requested by the Discloser, full details of the allegations will be recorded and a report passed on to the Monitoring Officer (or their Deputy) for referral to one of the Designated Assessors. Disclosers are encouraged to give details of their identity. If, in making a disclosure to PCaW the Discloser provides details of their identity these will not be passed to the Monitoring Officer or any other Council employee without the Discloser's express consent (and see s.9 below).

Anonymous disclosures are much less powerful but may nevertheless be considered having regard to:

- The seriousness of the issues raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation through other suitable sources.

On receipt of the disclosure, where their identity is known, the Designated Assessor will offer to interview the Discloser in confidence. The interview should take place as soon as practicable after the initial disclosure but no later than within 3 weeks of the matter being referred to the Designated Assessor by the Monitoring Officer. The Discloser may be accompanied by a local trade union representative or work colleague. The Designated Assessor may be accompanied by another officer to

take notes. These notes will not identify the Discloser. For safeguards in relation to confidentiality, **see section 9 below**.

The purpose of the interview will be for the Designated Assessor to:

- Obtain as much information as possible from the Discloser about the grounds of the belief of malpractice including why the disclosure is considered to be in the public interest; and
- To consult with the Discloser about further steps which could be taken.

## **7. Enquiries and Report by Designated Assessor**

As soon as practicable after the interview (or after the initial disclosure if no interview takes place) and where possible, within 3 weeks of the interview or initial disclosure if no interview takes place, and after consultation with the Monitoring Officer (or their Deputy), the **Designated Assessor** will determine their recommendations as to the further steps that should be taken such as:

- A report to the police or other appropriate public authority;
- Investigation by the Council's Internal Auditor (this will be the usual course where there are allegations of financial irregularities);
- A full investigation either internally by the Council or externally e.g. by the Council's auditors or by investigators appointed by the Council;
- Action under the Council's Employee Complaints Procedure;
- Referral for consideration under other specific procedures (e.g. child protection);
- No further action (the basis for which see below).

The grounds on which the **Designated Assessor** may recommend no further action are as follows:

- If satisfied that the Discloser has not shown that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur;
- If satisfied that the Discloser is not acting in good faith e.g. after investigation it appears that the disclosure is wilfully malicious or vexatious, in which case it may be referred for disciplinary action;
- If the matter concerned is already the subject of legal proceedings, or has already been referred to the Police or other public

authority;

- If the matter is already, has already been, or should be, the subject of proceedings under one of the Council's other procedures relating to staff.

The Designated Assessor's recommendations will be made to the Council's Monitoring Officer and the Director Finance & Assets to decide whether or not they agree with them. They shall consider the recommendations and reach a decision on whether the recommendations are agreed, as soon as is reasonably practicable.

The recommendation will be made without revealing the identity of the **Discloser** except in the circumstances set in **Section 9** below.

Once it has been decided what further steps (if any) should be taken, the Designated Assessor or the Head of Legal Services (Corporate) will, where their identity is known, inform the Discloser of the decision. If no further action is proposed, the Designated Assessor will give the Discloser the reasons for this in writing.

If the **Council's Monitoring Officer and the Executive Director of Finance & Assets** decide not to implement fully any such recommendations, that decision, with reasons, will be reported in the next periodic report to the Ethics Committee. The Discloser shall also be advised of such an outcome and where in the opinion of the Monitoring Officer and the Director Finance & Assets, it will not conflict with any other need for confidentiality, the Discloser may also be notified of the reasons why the recommendations are not to be implemented.

## 8. External Disclosure

It is recognised that in exceptional circumstances, or if dissatisfied after using this procedure, an individual might wish to make a disclosure without using the Council's procedure. However, individuals considering such a step are advised to take legal advice before making an external disclosure.

They may make an external disclosure:

- On a confidential basis, directly with bodies such as the external auditor or other appropriate public authority or such person as may be prescribed by the Secretary of State under **Section 43F of the Public Interest Disclosure Act 1998**. Before taking any such action, the Discloser is encouraged to inform the Monitoring Officer or **Designated Assessor** where one is already undertaking an investigation;
- If they have reasonable grounds for believing that disclosure would lead to evidence being concealed or destroyed or that the Discloser will be subjected to a detriment as a result of making the disclosure.
- On a confidential basis for the purpose of taking legal advice.

## 9. Safeguards and Confidentiality

If a genuine concern is raised under this policy, the Discloser will not be at risk of losing their job or suffering any form of reprisal as a result. The Council will not tolerate the harassment or victimisation of anyone raising a genuine concern in the public interest and it would be considered a disciplinary matter to victimise anyone who has raised a genuine concern.

With these assurances, the Council hopes that a person will raise their concern of malpractice openly. However it is recognised that there may be circumstances when a person would prefer to speak to someone confidentially first regarding their concerns. If this is the case, the Discloser should inform, at the outset, the person they discuss their concern with. If the Discloser asks for their identity not to be disclosed, the Council will not do so without the Discloser's consent *unless required by law*. There may be times when a concern is not able to be resolved without revealing the Discloser's identity, for example where personal evidence is essential. **In such cases, how the matter can best proceed will be discussed with the Discloser.**

If the Discloser decide not tell us who they are (and therefore the concern is raised anonymously ) it will be more difficult for matter to be investigated thoroughly and the Council will not be able to protect the Discloser's position or to provide them with feedback. Accordingly the Discloser should not assume the Council can provide the assurances offered in the same way if they report a concern anonymously.

If a person is unsure about raising a concern independent advice can be obtained from [Public Concern at Work](#) Tel: 0207 404 6609 (advice line).

Therefore any document, report or recommendation prepared by the Designated Assessors in relation to the matter will not identify the Discloser, unless:

- The Discloser has consented to this in writing; or
- There are grounds to believe the Discloser has acted maliciously; or
- Where the Designated Assessor is under a legal obligation to do so; or
- Where the information is already in the public domain; or
- On a strictly confidential basis to the Designated Assessor's administrative assistant/administrative support; or
- On a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.

The [Designated Assessor](#) will ensure that all information relating to the disclosure (including that held electronically) is kept secure so that, as far as practicable, only the Designated Assessor shall have access to it.

Disclosers are under an obligation to use all reasonable endeavours to ensure that they and their representative or work colleague (if any) keeps this matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

The Discloser will not be required by the Council, without his or her consent, to participate in any enquiry or investigation into the matter established by the Council unless there are grounds to believe that the Discloser may have been involved in the misconduct or malpractice.

Where the Discloser participates in any enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis. The obligations of the Designated Assessor detailed above will remain in relation to the identity of the individual as the original Discloser of information.

## 10. Review

This policy and procedure may be amended from time to time by the Council following periodic review by the Ethics Committee. Any comments or suggestions about the policy and procedure should be referred to the **Council's Monitoring Officer**.

Further information:

London Borough of Croydon - Anti-Fraud and Corruption Policy  
Department for Business, Innovation and Skills

**For general advice on the procedure please contact:**

Gabriel Macgregor (Ext - 64036) - [gabriel.macgregor@croydon.gov.uk](mailto:gabriel.macgregor@croydon.gov.uk)  
Head of Corporate Law  
Chief Executives Department.