

Luton Borough Council Constitution

Section 6: Protocols and policies

Part 6 C: Whistle-blowing policy

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Section 6: Protocols and policies

Part 6 C: Whistle-blowing policy

The Policy

1. Introduction

- 1.1 Luton Borough Council is committed to the highest possible standards of openness, probity and accountability. This policy recognises that employees may sometimes have serious concerns about how the council conducts its business but feel unable to raise these in the normal way.
- 1.2 This policy is intended to provide employees with a means of making serious allegations about standards, conduct, financial irregularity or possible unlawful action in a way that will not be seen as being disloyal to their colleagues or to the council. This policy is also intended to provide “whistle-blowers” with protection from being victimised, discriminated against or disadvantaged for having made an allegation in good faith.
- 1.3 The policy applies to all individuals working at all levels of the organisation, including all Members, employees and contractors working for the council, for example, agency staff, builders and drivers. It also applies to suppliers and those providing services under a contract with the council in their own premises, for example, care homes. References in this policy to employees are to be read as also referring to those mentioned in this paragraph. Any protection or benefit available to an employee under this policy will also be available as far as reasonably practicable to those mentioned in this paragraph. This policy does not apply to schools or to employees based in schools as they have their own procedures.
- 1.4 This policy is in addition to the council’s complaints procedure and other specifically laid down statutory reporting procedures applying to some departments e.g. Social Services abuse procedures.
- 1.5 This policy takes account of the Whistleblowing Arrangements Code of Practice issued by the British Standards Institute and Public Concern at Work. This policy has the support of the relevant trade unions.
- 1.6 This policy is intended to ensure that the council complies with its duty under the Public Interest Disclosure Act 1998.

2. Aims and scope of this policy

- 2.1 This policy aims to:
 - (1) encourage employees to feel confident in making serious allegations;
 - (2) provide a means for employees to make those allegations and receive feedback on any action taken;
 - (3) ensure confidentiality if required;
 - (4) reassure employees that they will be protected from possible reprisals or victimisation, and;
 - (5) reassure employees that they will suffer no detriment or disadvantage from making allegations as long as they do so in good faith, genuinely believing their allegations to be valid.

- 2.2 This policy does not replace other council policies. In particular, if employees have a grievance about their manager and/or their working conditions they should use the council's Grievance Procedure or discuss the matter with their Trade Union representative. Similarly, if employees have concerns about the conduct of fellow employees in the working environment they should raise these with their line manager, or if that is not possible with a more senior manager, or, if a member of a Trade Union, discuss these with their Trade Union representative. This policy is not intended to cover conduct which may arise in any working environment and which can be dealt with through the council's normal mechanisms (e.g. the Disciplinary procedure, or the Procedure on Unfair Discrimination, Harassment and Bullying). This policy is intended to cover serious allegations that fall outside the scope of other council policies and procedures or where employees may lack the confidence or be too fearful to use those policies and procedures.
- 2.3 Whistleblowing is the disclosure of information that relates to suspected wrong doing or dangers at work. This may include:
- (1) conduct which is an offence or a breach of law i.e. criminal activity
 - (2) alleged miscarriages of justice
 - (3) health and safety risks, including risks to the public as well as to other employees;
 - (4) the unauthorised use of public funds
 - (5) possible fraud, bribery and corruption
 - (6) sexual, physical or verbal abuse of, or bullying or intimidation of customers or service users
 - (7) abuse of authority
 - (8) damage to the environment e.g. fly tipping
 - (9) failure to comply with any legal obligation or regulatory requirements
 - (10) conduct likely to damage our reputation
 - (11) unauthorised disclosure of confidential information
 - (12) other unethical conduct
 - (13) the deliberate concealment of any of the above matters
- 2.4 These are examples, the list is not exhaustive.
- 2.5 A whistle-blower is a person who raises a genuine concern relating to any of the above.
- 2.6 Anyone with genuine concerns related to suspected wrongdoing or danger affecting any of our activities (a whistleblowing concern) should report it under this policy. This may be:
- (1) a significant and serious departure from accepted standards, or the standards the council subscribes to;
 - (2) serious improper conduct, or;
 - (3) where someone appears to be vulnerable or at risk.
3. **Safeguards**
- 3.1 The council is committed to good practice and high standards and wants to be supportive of its employees. It aims to encourage openness and will support staff who raise genuine concerns under this policy, even if they turn out to be mistaken.

- 3.2 The council recognises that the decision to make a serious allegation can be a difficult one to make. However, employees who make serious allegations that are in the public interest will have nothing to fear because they are doing their duty to their employer and those for whom they are providing a service.
- 3.3 The council will take appropriate action to protect an employee who makes a serious allegation that is in the public interest from any reprisals, harassment or victimisation.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any other procedures to which the employee making the allegation may be subject, or may have instigated, e.g. disciplinary, grievance or redundancy procedures.
- 3.5 Staff must not suffer any detrimental treatment as a result of raising a concern unless it is subsequently established that the concern was raised maliciously or with a view to personal gain in which case the provision in section 6 will apply. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the council's Monitoring Officer immediately. If the matter is not remedied you should raise it formally using the council's Grievance Procedure.
- 3.6 Staff must not threaten or retaliate against a whistle-blower in any way. If you are involved in such conduct, you may be subject to disciplinary action. In some cases the whistle-blower could have a right to sue you personally for compensation in an employment tribunal.

4. Confidentiality

- 4.1 All allegations will be treated in confidence and every effort will be made not to reveal an employee's identity unless the employee otherwise requests. However, if the matter is subsequently dealt with through other council procedures such as the Disciplinary Procedure the complainant's identity may have to be revealed in accordance with that procedure if the matter is to be effectively dealt with.
- 4.2 In order to help employees decide whether or not an issue should be raised, they may, in the first instance wish to discuss it with their Trade Union representative. It may be that the person confided in may feel more comfortable taking the matter forward on behalf of the employee. It may also be easier to raise the matter if there are two (or more) people who have had the same experience(s).

5. Anonymous allegations

- 5.1 This policy encourages employees to put their name to an allegation whenever possible, as anonymous allegations may often be difficult to substantiate/prove.
- 5.2 Allegations made anonymously are much less powerful but allegations raised internally will be considered at the discretion of the council's Monitoring Officer.
- 5.3 In exercising discretion to accept an anonymous allegation the factors to be taken into account by the council's Monitoring Officer would include;
 - (1) the seriousness of the issues raised;
 - (2) the credibility of the allegation, and;
 - (3) whether the allegation can realistically be investigated from facts or sources other than the complainant.

6. Untrue and or vexatious allegations

- 6.1 No disciplinary or other action will be taken against an employee who makes an allegation in good faith genuinely believing it to be true even if the allegation is not substantiated by an investigation. However, disciplinary action may be taken against an employee who makes an allegation frivolously, maliciously or for personal gain.

7. How to make serious allegations

- 7.1 As a first step, an employee should if possible make a serious allegation with their immediate manager. However, this may depend on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if the employee believes that management is involved it would be inappropriate to raise the matter directly with them. For these reasons the following reporting methods have been put in place to help employees to raise the matter: Direct to the council's Monitoring Officer telephone 01582 546291 or e-mail: whistle@luton.gov.uk (Internal: LBC Whistle)
- 7.2 Serious allegations may be made orally or in writing. Whether a written or oral report is made it is important that relevant information is provided including;
- (1) the name of the person making the allegation and a contact point. As referred to above it will be more difficult for the council to pursue issues if allegations are made anonymously;
 - (2) the background and history of the allegation (giving relevant dates and names and positions of those who may be in a position to have contributed to the allegation), and;
 - (3) the particular reason for the allegation.
- 7.3 The earlier the allegation is made the easier it is to take action.
- 7.4 Although someone making an allegation will not be expected to prove the truth of any allegations, in order to assist management in any investigation to be carried out, they will need to provide information to the person contacted that there are reasonable grounds for the allegation.
- 7.5 Someone making an allegation may invite their trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the allegation.
- 7.6 The aim of this policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. In most cases it should not be necessary to alert anyone externally.
- 7.7 The law recognises that in some circumstances it may be appropriate to report concerns to an external body such as a regulator. It will very rarely if ever be appropriate to alert the media. The council strongly recommends that advice is sought before reporting a concern to anyone external. The independent whistleblowing charity, Public Concern at Work, operates a confidential helpline and if individuals are in any doubt they should contact them. Alternatively, Trade Union members may contact their Trade Union for advice.
- ## 8. How the council will respond
- 8.1 The council will respond in every case to an allegation made under this policy. The way in which the council will respond is set out below.

- 8.2 Where the allegation is made internally and not direct to the council's Monitoring Officer, the person with whom the allegation is first raised (e.g. line manager or other council officer) is the "**receiving officer**". The receiving officer will discuss the allegation with the complainant. If, following discussion, the complainant wants to proceed with the allegation the receiving officer will take the following steps:
- (1) The receiving officer will notify the council's Monitoring Officer by telephone or e-mail that the allegation has been made and give details to the Council's Monitoring Officer. This is so that the allegation can be registered in the Register of Whistleblowing Complaints. The Register is confidential.
 - (2) If the allegation relates to fraud or potential fraud or other financial irregularity the council's Monitoring Officer will notify the Service Director, Finance and Audit in writing.
 - (3) The council's Monitoring Officer will discuss with the receiving officer the best way of investigating the allegation. If the allegation relates to fraud or potential fraud or other financial irregularity the council's Monitoring Officer will also discuss this with the Service Director, Finance and Audit.
 - (4) The council's Monitoring Officer and the receiving officer will agree on the method of investigation. If the council's Monitoring Officer and the receiving officer cannot agree on the method of investigation the council's Monitoring Officer's decision will prevail. In the case of fraud, potential fraud or other financial irregularity the method of investigation will be determined by the Service Director, Finance and Audit after discussions with the receiving officer and the council's Monitoring Officer.
- 8.3 Where the complaint is made direct to the council's Monitoring Officer then the council's Monitoring Officer, after liaison with any other appropriate officer(s) will decide if and how the matter should be investigated and will follow the steps set out below.
- 8.4 If the allegation discloses evidence of a criminal offence the council's Monitoring Officer or the Service Director, Finance and Audit may decide to inform the Police.
- 8.5 Some allegations may be resolved by agreed action without the need for investigation.
- 8.6 Within 10 working days of an allegation being made, the council's Monitoring Officer will write to the person who raised the allegation (unless they have requested not to be contacted or to be contacted in a different way other than through a letter)
- (1) acknowledging that the allegation has been received
 - (2) indicating how the Council propose to deal with the matter
 - (3) giving an estimate of how long it will take to provide a final response
 - (4) indicating whether any initial enquiries have been made
 - (5) supplying information on employee support mechanisms, and
 - (6) indicating whether further investigations will take place and if not, why not.
- 8.7 Where the allegation has been made internally and anonymously, obviously the council will be unable to communicate what action has been taken.
- 8.8 The amount of contact between the officers considering the issues and the person making the allegation will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the council will seek further information from the person making the allegation.

8.9 The council will take steps to minimise any difficulties which may be experienced as a result of making an allegation. For instance, if an employee is required to give evidence in criminal or disciplinary proceedings the council will arrange for them to receive advice about the procedure and ensure that support mechanisms are made available where needed or desired.

8.10 The council accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform those making allegations of the outcome of any investigation.

8.11 The council will ensure that support is provided to those making allegations.

9. Confidentiality

9.1 The council will keep the identity of the complainant confidential at all times unless the complainant otherwise requests.

9.2 A receiving officer (see section 8.2. for the definition) will disclose the complainant's identity to the council's Monitoring Officer but to no other person. A receiving officer and the council's Monitoring Officer will endeavour not to reveal any facts which could lead to the disclosure of the complainant's identity. These may, depending on the circumstances, include the complainant's gender, position in the organisation or work area.

10. Register of allegations

10.1 The council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy. The council's Monitoring Officer will maintain a Register of Allegations made under this policy and the outcomes and will report as necessary to the council's Standards Committee. The recording and reporting procedure will be in a form that ensures confidentiality.