

## REPORT OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

<b>WHISTLE-BLOWING PROGRESS REPORT</b>  <b>AUDIT COMMITTEE - 18 April 2018</b>	<b>Classification</b>  Public	<b>Enclosures</b>  <b>AGENDA ITEM No</b>
	<b>Ward(s) affected</b>  ALL	

### 1. INTRODUCTION

- 1.1 This report summarises the Council's corporate arrangements for Whistleblowing and provides members with an update of the cases received in 2017/18.
- 1.2 An effective whistleblowing hotline procedure is an essential part of the Council's corporate governance arrangements. It helps promote an open, honest and accountable culture amongst all workers where they can express their concerns without fear of victimisation or termination of employment.
- 1.3 The Audit Committee receives regular updates relating to whistle-blowing at its quarterly meetings as part of the Internal Audit Quarterly Update Report. This report is produced to provide members with an annual overview of whistleblowing arrangements within Hackney.
- 1.4 As part of the Council's whistle-blowing arrangements, a telephone hotline service is managed by the external provider Expolink, who operate a 24 hour, 7 day a week reporting service. This facility is advertised throughout Council buildings on staff notice boards as well as on the intranet. Details are also provided to all new recruits as part of their induction process.

### 2. SUMMARY

- 2.1 In keeping with previous years the level of whistleblowing referrals remains a low percentage of overall referrals to the Audit & Anti Fraud Investigations Team. Nevertheless, whistleblowing is an important component in the Council's reporting arrangements because it provides those who might otherwise be reluctant to do so with a process in which to raise their concerns.
- 2.2 A considerable number of referrals to Audit & Anti Fraud could fit the criteria for whistleblowing but in general, managers and staff tend to refer matters of concern under the requirements of the Council's Financial Procedure Rule 4.12 which states: -

*“All issues of potential fraud/financial irregularity will be investigated in accordance with the Council’s Anti-Fraud and Corruption Policy. Concerns should be reported at the earliest opportunity (to the Corporate Head of Audit, Anti- Fraud & Risk Management) who will have lead responsibility for any subsequent investigation, in certain circumstances investigations may be carried out in collaboration with individual Group Directors.”*

- 2.3 For clarity any member of staff referring irregularities to the Audit & Anti-Fraud Service could expect to be afforded the same protection as if they were claiming to be a whistleblower.

### **3. RECOMMENDATIONS**

- 3.1 That the Audit Committee note the contents of this report**

### **4. RELATED DECISIONS**

None

### **5. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES**

There are no financial implications arising from this report

### **6. COMMENTS OF THE DIRECTOR, LEGAL**

- 6.1 The law on whistleblowing is contained in the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998. Whistleblowers have a right not to be dismissed or suffer any detriment as a result of making a protected disclosure. To be protected, the whistleblower must make a disclosure of information and reasonably believe that the information tends to show that one or more of the following has occurred or is likely to occur: -

- (i) a criminal offence;
- (ii) breach of any legal obligation;
- (iii) a miscarriage of justice;
- (iv) danger to the health and safety of any individual;
- (v) damage to the environment; or
- (vi) the deliberate concealment of information about any of the above.

- 6.2 The whistleblower is protected if the disclosure is made in any one of the prescribed ways laid down by law, one of which is to the employer. The Employment Rights Act 1996, section 47B provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the worker has made a protected disclosure. A whistle-blowing policy is therefore recognised as essential to encourage and facilitate this.

- 6.3 The Council must satisfy itself that:-

- (i) that matters raised under the whistleblowing procedures are being properly dealt with and within reasonable timescales;
- (ii) that persons using the procedures are not in any way subject to reprisals for raising matters;

- (iii) that where complaints are substantiated that prompt and effective action is taken including the application of the Council's disciplinary procedures and any others of relevance;
- (iv) that where financial and other irregularities are uncovered that a prompt and robust review of systems and processes takes place to mitigate the risk or opportunities for re-occurrence;
- (v) that any compliance lessons for the Council from the reported cases are being captured, disseminated and implemented.

6.4 Consideration of this Report is within the role of the Audit Committee to monitor the Council's policies on 'Raising Concerns at Work' in respect of the anti-fraud and anti-corruption strategy.

## **7. BACKGROUND**

7.1 Whistleblowing occurs when an employee reports a genuine concern that is in the public interest to be resolved. The Council encourages issues of concern to be raised, providing this is done in good faith (i.e. not maliciously). There is a legal framework in place to support those who blow the whistle to help to ensure that they do not suffer a detriment from doing so. The following are some of the things that concerns may be raised about: -

- Fraud and corruption within or against the Council
- A danger in the workplace
- Deliberate neglect of people in care
- Dumping damaging material in the environment

These are wide-ranging areas of concern, and the expertise to deal effectively with them lies with different Council departments.

7.2 Anyone who works for the Council, or who has recently worked for the Council, can 'blow the whistle'. Whilst protection afforded to whistleblowing only covers issues where there is a degree of public interest in reality many reports received relate to disgruntled staff and often do not result in the allegation being upheld. A whistleblowing policy is in place which was most recently updated in April 2018, a copy is attached as Appendix 1 to this report.

7.3 The Whistleblowing Policy does not extend to members of the public or service users because the confidentiality and protection from reprisal issues either do not extend to these groups, or they operate in a very different way to how they affect staff. The Council has a complaints system through which the public and service users can report concerns. The public are also able to report concerns about fraud against the Council through the tenancy fraud and blue badge parking hotlines, or by reporting concerns directly to the Audit & Anti-Fraud Division.

7.4 Hackney Learning Trust staff are also covered by the Council arrangements following their reintegration, as are workers at the community maintained schools. Any investigations into allegations of fraud or irregularity arising from whistleblowing reports are carried out by the Council's Audit & Anti-Fraud Division.

7.5 Hackney Learning Trust staff also have access to Expolink as a means of reporting concerns, in addition to reporting to line management or Audit & Anti-Fraud.

7.6 There are no implications for the equalities policies of the Council as the whistleblowing policy is accessible to all staff and partners across the Council.

## 8. REFERRALS FOR THE PERIOD APRIL 2017 TO MARCH 2018

8.1 Whistleblowing reports to Expolink are reported as part of the quarterly Audit & Anti-Fraud Progress Reports. A specific summary of all whistleblowing activity was last reported to Members in April 2017. Table 1 below summarises Expolink activity in recent years.

	2014/15	2015/16	2016/17	2017/18
Fraud & Corruption referrals	4	2	0	2
Other referrals	2	0	1	3
Total referrals	6	2	1	5

Table 1

8.2 The Expolink concerns that have been reported during the last 12 months comprise two separate reports of the same instance of alleged bribery (fraud & corruption), a privacy issue, a concern about staff dismissals and an alleged breach of procedure (all 'other').

8.3 Concerns of fraud or corruption can be reported in a number of ways. In addition to the matters raised through the Expolink telephone hotline (see section 1.4), workers may raise whistleblowing concerns through alternative channels and still be entitled to the same degree of protection that would be afforded if they had used the telephone hotline. Of the 41 internal investigations referred in 2017/18, 10 have been raised in this way (i.e. one via Expolink, 9 by other whistleblowing routes). The following table shows all referrals by department and fraud type, with whistleblowing cases identified in brackets:

Description	Neighbourhoods	Children, Adults & Community Health		Finance & Resources	Chief Executives	Total
	& Housing	CACH	HLT			
Theft	1(1)	3	0	0	0	4(1)
Cheque/Credit card fraud	0	0	0	4	0	4
Immigration/ID issues	1	1	0	0	0	2
Employee issues	18(4+1E)	1(1)	0	3	2	24(5+1E)
Payments, contracts, procurement	2	0	0	0	0	2
Housing irregularities	2(2)	0	0	0	0	2(2)
Staff parking	0	0	0	0	0	0
Other	1(1)	0	0	2	0	3(1)
<b>Total</b>	<b>25(8+1E)</b>	<b>5(1)</b>	<b>0</b>	<b>9</b>	<b>2</b>	<b>41(9+1E)</b>

Table 2

8.4 Whistleblowing referrals investigated by Audit & Anti-Fraud are dealt with under normal investigative procedures and outcomes regularly include recommendations on appropriate disciplinary action, advice on measures to be taken to address system weaknesses, and referrals to internal audit for follow-up

action wherever more significant problems are identified. If concerns are more appropriately dealt with by another service (e.g. Human Resources) a referral is made. Outcomes of the 10 cases identified at section 8.3 (Table 2) are as follows:

- Two employees left as a result of the investigation
- Procedural recommendations arose from two investigations
- Three cases remain under investigation
- No further action arose following three investigations

8.5 In relation to the legal comments contained in this report, it should be noted that every effort is made to protect the identity of the whistleblower in order to guard against the possibility of reprisals. It is not always possible to keep the identity confidential, but it is clear in the policy that any detrimental retaliatory actions arising from a whistleblowing concern being raised (for example, threats, disciplinary action or dismissal) will be regarded as a serious disciplinary offence.

## **9. FUTURE DEVELOPMENTS**

9.1 The recently revised whistleblowing policy will be publicised to all staff to raise awareness of the reporting mechanisms available.

9.2 New staff will continue to be provided with information about relevant Hackney procedures as part of the induction process (e.g. The Anti-Fraud & Corruption Policy, Code of Conduct, Whistleblowing Policy), together with contact details and information about the Expolink hotline service.

9.3 Contact details for Expolink will continue to be advertised electronically and on staff noticeboards.

9.4 The Audit Committee will continue to receive quarterly progress reports and an annual report on whistleblowing arrangements and investigation outcomes.

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### **Background papers:**

Appendix 1 Whistleblowing Policy, April 2018



**LONDON BOROUGH OF HACKNEY**

**WHISTLEBLOWING POLICY**

Dated  
1 April 2018

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## 1. POLICY STATEMENT

- 1.1 London Borough of Hackney is committed to operating with honesty and integrity, and all staff and members of associated bodies, contractors and partners working with the Council are expected to maintain high standards in accordance with the Council's Code of Conduct and all applicable rules, regulations and legislation. However, all public authorities face the risk of things going wrong from time to time, or of unknowingly harbouring illegal or unethical conduct. A culture of openness and accountability is essential in order to prevent such situations occurring and to address them when they do occur.
- 1.2 The aims of this policy are:
- (a) To encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected;
  - (b) To provide staff with guidance on how to raise those concerns;
  - (c) To reassure staff that they can raise genuine concerns without fear of reprisals, even if they turn out to be mistaken.
- 1.3 This policy takes account of the Whistleblowing Arrangements Code of Practice issued by the British Standards Institute and Public Concern at Work.
- 1.4 This policy does not form part of any employee's contract of employment and it may be amended at any time.

## 2. WHO IS COVERED BY THIS POLICY?

This policy applies to all individuals working at and for all levels of the organisation, including senior managers, officers, directors, employees, consultants, contractors, trainees, homeworkers, part-time and fixed-term workers, casual and agency staff and volunteers (collectively referred to as **staff** in this policy). This policy also covers all staff working at the London Borough of Hackney's community maintained schools (but it does not extend to voluntary aided schools, academies or free schools, who should have their own arrangements in place).

## 3. WHAT IS WHISTLEBLOWING?

- 3.1 **Whistleblowing** is the disclosure of information which relates to suspected wrongdoing or dangers at work. This may include:
- (a) criminal activity;
  - (b) miscarriages of justice;
  - (c) danger to health and safety;
  - (d) damage to the environment;
  - (e) failure to comply with any legal or professional obligation or regulatory requirements;
  - (f) bribery;



- (g) financial fraud or mismanagement;
- (h) negligence;
- (i) breach of our internal policies and procedures (including the Council's Codes of Conduct for Employees and Members, Standing Orders, Regulatory Framework, Financial Regulations);
- (j) unauthorised disclosure of confidential information;
- (k) the deliberate concealment of any of the above matters; or
- (l) with regard to schools, the systematic failure to prioritise safeguarding where the appropriate procedures have not been followed.

- 3.2 A whistleblower is a person who raises a genuine concern relating to any of the above. If you have any genuine concerns related to suspected wrongdoing or danger affecting any of our activities (a **whistleblowing concern**) you should report it under this policy.
- 3.3 The decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing a service to the public and to the Council.
- 3.4 The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith. Any investigation into allegations of potential malpractice or wrong doing will not influence or be influenced by any disciplinary, capability, redeployment or redundancy procedures that apply to you.
- 3.5 We maintain a 'Whistleblowers' Hotline for staff provided by Expolink. To report a concern via the Whistleblowing Hotline please call **0800 374199**. Details of this number are also available from the Whistleblowing page on the Council's Intranet.
- 3.6 This policy should not be used for complaints relating to your own personal circumstances, such as the way you have been treated at work. In these cases you should use the appropriate HR policy, such as the Grievance Procedure or the Anti-Harassment and Bullying Policy.
- 3.7 Reporting safeguarding concerns, in relation to schools, should be dealt with under the London Child Protection Procedures and 'Working Together 2015' guidance. This policy may, however, be used for reporting alleged systematic failures to prioritise safeguarding where the appropriate procedures have not been followed.
- 3.8 If you are uncertain whether something is within the scope of this policy you should seek advice from the Audit and Anti-Fraud Service of the Council (contact details are provided at Section 11.)

#### **4. RAISING A WHISTLEBLOWING CONCERN**

- 4.1 Concerns that are expressed anonymously will be considered, however, in our experience there is a greater likelihood of a successful investigation if we are able to communicate directly with those who raise a concern.
- 4.2 It is hoped that in most cases you will be able to raise any concerns in the first instance with your line manager. You may tell them in person or put the matter in writing if you prefer. They may be able to agree a way of resolving your concern quickly and effectively. In some cases they may refer the matter to the Audit Investigations Team Manager who is the Council's designated Whistleblowing Officer (see Section 11).
- 4.3 However, where the matter is more serious, or you feel that your line manager has not addressed your concern, or you prefer not to raise it with them for any reason, you should contact one of the following: -
- (a) The Audit Investigations Team Manager
  - (b) Expolink (our confidential external telephone hotline)

Contact details are set out at the end of this policy.

- 4.4 Please note that under the Council's Code of Conduct, elected members should not be approached directly. Furthermore, concerns should not be reported to the press under any circumstances.
- 4.5 We may arrange a meeting with you to gain a thorough understanding of your concern. We will also aim to give you an indication of how we propose to deal with the matter.
- 4.6 School staff may choose to raise their concerns directly with the school – e.g., a member of the school's leadership team, the chair of governors or another appropriate/named governor. Where a school receives a direct whistleblowing referral (e.g., via the Headteacher or Chair of Governors), the school must inform Hackney Learning Trust's "Responsible Officer for Schools" (contact details at section 11). This allows LBH to provide the school with any support as required as well as to maintain corporate oversight of the concern raised.

#### **5. CONFIDENTIALITY AND ANONYMOUS COMPLAINTS**

- 5.1 We hope that staff will feel able to voice whistleblowing concerns openly under this policy. If you want to raise your concern confidentially, we will make every effort to keep your identity secret. You can contact the Audit and Anti-Fraud Division and appropriate measures can then be taken to preserve your confidentiality. However, there are limited circumstances when your identity may have to be revealed, for example, if the investigation results in legal proceedings.
- 5.2 Experience has shown that concerns are more likely to be resolved where a whistleblower is prepared to provide their identity to the investigating party, and for this reason we do not encourage staff to make disclosures anonymously. It is more difficult to establish whether allegations are credible

and it may be more difficult to deter any malpractice. Proper investigation may be more difficult or impossible if we cannot obtain further information from you, and we will be less able to provide assurance and feedback.

- 5.3 However, we do understand that whistleblowers may be concerned about possible repercussions if their identity is revealed and we would prefer that you report your concern anonymously rather than say nothing. If you are in any doubt you can seek advice from our confidential third-party hotline, Expolink. Contact details are included in Section 11.
- 5.4 In relation to determining whether an anonymous allegation will be taken forward, the following factors will be taken into account:
  - (a) The seriousness of the issue raised;
  - (b) The credibility of the concern;
  - (c) The likelihood of confirming the allegation from attributable sources, and obtaining necessary information.

## **6. EXTERNAL DISCLOSURES**

- 6.1 The aim of this policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. In most cases you should not find it necessary to alert anyone externally before first exhausting this internal procedure.
- 6.2 The law recognises that in some circumstances it may be appropriate for you to report your concerns to a designated external body, dependant on the area that your concern relates to, such as the Council's External Auditor, the Care Quality Commission or Ofsted. A full list can be found at <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>. It will never be appropriate to alert the media. We strongly encourage you to seek advice before reporting a concern to anyone external, and if you do so you must be careful not to reveal any confidential information unlawfully.
- 6.3 Whistleblowing concerns usually relate to the conduct of our staff, but they may sometimes relate to the actions of a third party, such as a customer, supplier or service provider. In some circumstances the law will protect you if you raise the matter with the third party directly. However, we encourage you to report such concerns internally first.

## **7. INVESTIGATION AND OUTCOME**

- 7.1 Once you have raised a concern, we will carry out an initial assessment to determine the scope of any investigation. We will inform you of the outcome of our assessment. You may be required to provide further information as part of this process.
- 7.2 In some cases we may appoint an investigator or team of investigators including staff with specialist knowledge of the subject matter. In the case of school based staff, it may be appropriate for the investigation to be conducted

by school governors. The investigation may make recommendations for change to enable us to minimise the risk of future wrongdoing.

7.3 We will aim to keep you informed of the progress of the investigation and its likely timescale. However, sometimes the need for confidentiality may prevent us giving you specific details of the investigation or any disciplinary action taken as a result. You should treat any information about the investigation as confidential.

7.4 If we conclude that a whistleblower has made false allegations and that these have been raised in bad faith (e.g. frivolously, maliciously, with a view to personal gain or for an ulterior motive) the whistleblower may be subject to disciplinary action. Furthermore, becoming a whistleblower does not guarantee immunity for any person who raises concerns about malpractice that they have been substantively involved in.

## **8. IF YOU ARE NOT SATISFIED**

8.1 While we cannot always guarantee the outcome you are seeking, we will try to deal with your concern fairly and in an appropriate way. By using this policy you can help us to achieve this.

8.2 If you are not happy with the way in which your concern has been handled, you can raise it with the Corporate Head of Audit, Anti-Fraud & Risk Management.

## **9. PROTECTION AND SUPPORT FOR WHISTLEBLOWERS**

9.1 It is understandable that whistleblowers are sometimes worried about possible repercussions. We aim to encourage openness and will support staff who raise genuine concerns under this policy, even if they turn out to be mistaken.

9.2 Staff must not suffer any detrimental treatment as a result of raising a genuine concern. 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 Whistleblowing Officer immediately. If the matter is not remedied you should raise it formally using our Grievance Procedure.

9.3 Staff must not threaten or retaliate against whistleblowers in any way. If you are involved in such conduct you may be subject to disciplinary action. In some cases the whistleblower could have a right to sue you personally for compensation in an employment tribunal.

## **10. RESPONSIBILITY FOR THE SUCCESS OF THIS POLICY**

10.1 The Council's Corporate Head of Audit, Anti-Fraud & Risk Management has overall responsibility for this policy, and for reviewing the effectiveness of actions taken in response to concerns raised under this policy.

10.2 The Audit Investigation Team Manager is the Council's designated Whistleblowing Officer and has day-to-day operational responsibility for this

policy, and must ensure that all managers and other staff who may deal with concerns or investigations under this policy receive regular and appropriate training.

- 10.3 All staff are responsible for the success of this policy and should ensure that they use it to disclose any suspected danger or wrongdoing. Staff are invited to comment on this policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Corporate Head of Audit, Anti-Fraud & Risk Management.

## 11. CONTACTS

<b>Organisation / Officer Designation</b>	<b>Contact Details</b>
<b>Whistleblowing Officer (Audit Investigation Team Manager)</b>	<b>Vinny Walsh</b> Tel. 0208 356 2536 Vinny.walsh@hackney.gov.uk
<b>Corporate Head of Audit, Anti-Fraud &amp; Risk Management</b>	<b>Michael Sheffield</b> Tel. 020 8356 2505 Email. Michael.sheffield@hackney.gov.uk
<b>Hackney Learning Trust – Responsible Officer for Schools</b>	<b>Frank O’Donoghue</b> Tel. 020-8820-7555 Email <a href="mailto:frank.odonoghue@learningtrust.co.uk">frank.odonoghue@learningtrust.co.uk</a>
<b>Whistleblowing Hotline (24 hour hotline)</b>	<b>Expolink</b> Tel. 0800 374199
<b>Public Concern at Work (Independent whistleblowing charity)</b>	Helpline: (020) 7404 6609 E-mail: <a href="mailto:whistle@pcaw.co.uk">whistle@pcaw.co.uk</a> Website: <a href="http://www.pcaw.co.uk">www.pcaw.co.uk</a>