

Report to:	Audit and Governance Committee	Date of Meeting:	Wednesday 14 December 2022
Subject:	Review of Whistleblowing Complaints 2021 - 2022		
Report of:	Executive Director of Corporate Resources and Customer Services	Wards Affected:	(All Wards);
Portfolio:	Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	No		

Summary:

The report summarises all complaints received by the Council via its whistleblowing policy in the municipal year 2021 to 2022.

Recommendation(s):

(1) That the report be noted.

Reasons for the Recommendation:

To appraise the Committee of all complaints received by the Council via its whistleblowing policy in the municipal year 2021 to 2022 in accordance with the terms of reference of the committee and the terms of the policy.

Alternative Options Considered and Rejected: (including any Risk Implications)

None

What will it cost and how will it be financed?

(A) Revenue Costs None

(B) Capital Costs None

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):	
Legal Implications: Employment Relations Act 1996 Public Interest Disclosure Act 1998	
Equality Implications: There are no equality implications	
Climate Emergency Implications: The recommendations within this report will	
Have a positive impact	N
Have a neutral impact	Y
Have a negative impact	N
The Author has undertaken the Climate Emergency training for report authors	Y

Contribution to the Council's Core Purpose:

Protect the most vulnerable:
Facilitate confident and resilient communities:
Commission, broker and provide core services:
Place – leadership and influencer: Whistleblowing is important to safeguard the effective delivery of public services, and to ensure value for money. It serves to protect and reassure the workforce, and to maintain a healthy working culture and an efficient organisation.
Drivers of change and reform:
Facilitate sustainable economic prosperity:
Greater income for social investment:

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD 7051/22) and the Chief Legal and Democratic Officer (LD 5251/22) have been consulted and any comments have been incorporated into the report.

(B) External Consultations - None

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

There are no appendices to this report

Background Papers:

There are no background papers available for inspection.

1. Introduction

- 1.1 Whistleblowing has been defined as the act of an employee or worker making a qualifying disclosure, in the public interest, to an employer, regulator, legal adviser, minister, MP or other responsible or prescribed person about a criminal offence, breach of a legal obligation, miscarriage of justice, danger to health and safety, damage to the environment or deliberate concealment of any of those.
- 1.2 In these circumstances and subject to fulfilling certain criteria, it will be a 'protected disclosure' and the whistleblower will be protected from being dismissed or subjected to a detriment on grounds of that disclosure.

1.3 The principal objectives of a whistleblowing policy and procedure should be to:

- Convey the seriousness and importance that the employer attaches to identifying and remedying wrongdoing.
- Encourage workers to raise concerns internally as soon as possible and to give them the confidence to do so.
- Remind workers (often by cross-referring to other policies and codes of conduct) of the standards of behaviour expected of them.
- Ensure workers know whom to approach with a concern, and to enable them to bypass the person, management level or part of the organisation to which the concern relates.
- Outline the procedures for investigating disclosures and what steps might be taken if wrongdoing is uncovered.
- Make it clear what will happen to those who victimise genuine whistleblowers or abuse the system by making malicious allegations.
- Provide access to further sources of advice and guidance on whistleblowing.

1.4 The Council is committed to running the organisation in the best way and to facilitate this the Whistleblowing Policy was introduced to reassure staff that it is safe and acceptable to speak up and raise any concern about malpractice at an early stage and in the right way. The Government expects all public bodies to have written policies.

1.5 The Council's current Whistleblowing Policy was approved by Audit and Governance Committee at its meeting on 19th June 2019.

1.6 The Policy can be found on the Council's intranet and internet pages: Whistleblowing policy (sefton.gov.uk)

1.7 All employee policies and procedures should be easy to understand and operate. In general, whistleblowing policies should not be legalistic in their approach. A key measure of success will be whether the policy gives workers the confidence to come forward with their concerns. They are unlikely to do this if the policy is complex or unclear, or littered with legal jargon.

1.8 The concept of a qualifying disclosure in section 43B of Employment Relations Act 1996 requires the worker to have a reasonable belief that one of six specified situations has occurred, is occurring or is likely to occur.

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be, deliberately concealed."

- 1.9 One question for employers drafting a whistleblowing policy is whether to try to limit the coverage of the policy to the types of disclosure covered by the statutory regime. There is a strong argument that whistleblowing policies should cover more than just the matters potentially covered by a protected disclosure under ERA 1996. The statutory framework should ideally be seen as a backstop, not a replacement for a culture where all forms of inappropriate behaviour may be challenged.
- 1.10 Employers will likely also want to know about issues which do not strictly fall within the legal concept of a qualifying disclosure, particularly conduct which is "merely" unethical or a breach of professional conduct rules or internal procedures that do not have legal force. The policy may also encourage staff to raise issues or ask questions where they are unsure if their concern technically qualifies as whistleblowing, since this will help instil confidence in the procedure and its operation.

2 Referrals

- 2.1 Seven referrals were received in a municipal year 2020 to 2021 and seven referrals were received in the municipal year 2021 to 2022 and a summary of the seven referrals is outlined below.

3 Referral 1

- 3.1 The Council's Monitoring office received a telephone call and subsequent email from a man and wife about the operation of a 'Friends of' group in relation to a local park and the interaction with Green Sefton. It appears that the relationships between the volunteers had become acrimonious.
- 3.2 The Monitoring officer liaised with colleagues in Green Sefton who were aware of many of the issues. The matter was dealt with as a corporate complaint which progressed to Stage 2 of the process.

4 Referral 2

- 4.1 An employee in Children's Services contacted a senior manager wishing to invoke the whistleblowing procedure. The Senior Manager informed the Monitoring officer in accordance with our policy. The matter related to concerns about the qualifications a member of staff was purported to have and her working practices.
- 4.2 After preliminary investigations the matter was referred to the Council's Local Authority Designated Officer and the council commissioned an independent investigating officer to complete an investigation. Once the report was completed an allegation management review strategy meeting took place. It was agreed that the outcome of the allegation management process should be recorded as unsubstantiated.

5. Referral 3

- 5.1 The Monitoring Officer received an email from a member of staff expressing concern that another member of staff was showing favouritism towards a particular contractor. The Monitoring Officer undertook some preliminary enquiries

into the matter and liaised with Internal Auditor and determined there was no role for Internal Audit.

- 5.2 The matter was referred to the appropriate Assistant Executive Director who undertook an investigation and the outcome was that no evidence was found to evidence the behaviour / actions leading to an unfair advantage / gain by the contractor, or anything meriting further investigation. The member of staff has subsequently left the Council's employment (for unrelated reasons).
- 5.3 Prior to the receipt of the whistleblowing allegation Internal Audit had undertaken a review of procurement practices within the service, which identified some areas for improvement, but no concerns relating to these allegations.

6 Referral 4

- 6.1 The Monitoring Officer received a telephone call from a member of the public with information about the private life of a member of staff which they believed impacted on their ability to do their job. After discussions with HR and the person's service manager it was agreed that the information (even if true) would have no bearing upon their employment. The Monitoring Officer informed the member of the public of the outcome. The member of the public said that she was surprised with the outcome but thanked the Monitoring Officer for looking into the matter and getting back in touch with her.

7 Referral 5

- 7.1 The Monitoring Officer received an anonymous telephone call from a member of the public making allegations about a member of staff's previous employment which they believed meant they were unfit to hold the position they did in the Council. Following enquiries, it transpired that it was a case of mistaken identity. As the call was anonymous it was not possible to feedback to the member of the public.

8 Referral 6

- 8.1 A councillor received an anonymous letter making allegations against a member of staff. The matter was referred to HR and it transpired that they were aware of the matters raised and the member of staff was subject to HR processes. It was not possible to feedback to the member of the public.

9 Referral 7

- 9.1 An anonymous letter was received by the Mayor about the practices of an organisation contracted by the Council to provide services on its behalf. The allegations were considered by a senior officer in the contracting department and Internal Audit and a report was presented to the Monitoring Officer concluding that there was no substance to the allegations. It was not possible to feedback to the member of the public.