

# Corporate Investigations Protocol



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## 1. Introduction

- 1.1 The Council recognises that there will be instances where allegations or complaints may be made against Council officers. These allegations and complaints can be made in a variety of formats and through various communications channels. It is essential therefore that the Council has a transparent and agreed framework in place to ensure that all such allegations, regardless of their source or subject, are fully considered and that the most appropriate process to address the matter is followed.
- 1.2 This **Corporate Investigations Protocol** sets out that framework and is intended to ensure that these matters can be dealt with transparently, fairly, proportionately and lawfully, and that all relevant legislation such as the General Data Protection regulations, the Data Protection Act 2018 and the Human Rights Act are strictly observed.
- 1.3 The decision on the best route to follow when considering an allegation will depend on key factors that relate to:
  - the identity and role of individual(s) who are the subject of the allegation; and
  - the nature of the allegation itself.

## 2. Allegations outside the scope of this protocol

- 2.1 There are a number of potential processes to follow when deciding on the best way to handle an allegation or complaint. General complaints about service provision should be handled under the Council's Corporate Complaints procedure and are not in the scope of this Protocol.
- 2.2 The list below sets out the type of allegations/concerns that fall outside of this Protocol, and outlines alternative processes to follow:
  - 2.2.1 **Allegations/concerns relating to elected members**
    - Should an allegation or concern be received in relation to an Elected Member then this should be brought to the attention of the Borough Solicitor and/or the Head of Democratic Services who will address the matter in accordance with established procedures.
  - 2.2.2 **Allegations/concerns relating to external contractors providing services to the Council**
    - Any allegation or concern raised in this category should be brought to the attention of the Head of Service responsible for procuring and monitoring the service provided and the Head of Procurement. If considered necessary, the allegation or concern should be escalated to the Corporate Director.
  - 2.2.3 **Allegations/concerns relating to an agency worker engaged by the Council**
    - Any allegation against an agency worker should be brought to the attention of the HR Resourcing Manager who will liaise with the agency that provides that worker to ensure concerns raised are suitably addressed. This includes an allegation relating to safeguarding that will then be handled under the agreed procedures for these circumstances.
  - 2.2.4 **Allegations/concerns relating to a member of the public**
    - The correct procedure to follow in this instance will depend upon the nature of the allegation. An allegation relating to claims that a resident is behaving fraudulently for example, and this protocol will not apply.
    - However, should it later come to light, following further investigation, that the person subject to the allegation is an employee of the Council, then this protocol will apply from that point forwards.

- The person handling that investigation must then immediately seek HR advice.

#### **2.2.5 Allegations/concerns from an employee which relates to their employment**

- Concerns raised by employees in relation to their employment are normally dealt with under the Council's grievance procedure.
- However, if the allegation is from an anonymous source in relation to an employment matter, then this Protocol will apply to ascertain if any further action is required.

### **3. Circumstances to which this Protocol applies**

- 3.1 If the allegation or concern raised relates to an employee of the Council then this Protocol applies, regardless of the nature of the allegation and must be followed from the outset.
- 3.2 The rest of this Protocol document assumes that the allegation being considered relates to an employee and does not fall into any of the other categories listed in section 2 of this Protocol.

### **4. Investigation procedure**

#### **Step 1 - Logging the allegation and agreeing next actions**

- 4.1 No matter which route the allegation has taken into the Council, the person who receives it should immediately inform the relevant Corporate Director and Head of Service who will request assistance from the Head of HR.
- 4.2 This restricted group will form an initial panel to consider the nature of the allegation and will agree if any further professional advice or disclosure to other officers is needed. This would include advising the Chief Executive, as Head of Paid Service, if a senior officer is the subject of the allegation (see Section 5 - Special Considerations).
- 4.3 HR will maintain a central record of all allegations made against employees, together with notes on agreed actions and final outcomes.
- 4.4 It is important that strict confidentiality is maintained and only limited officers are aware of any allegations in relation to staff. This is in order to maintain the Council's duty of care towards all of its employees.

#### **Step 2 - Assessing the allegation**

- 4.5 It is essential that a full risk based assessment of all allegations takes place before next steps are agreed. The nature of the allegation and the source are key factors to consider. Key questions to contemplate are:
  - Is the identity of the complainant known? If yes, should they be approached for further information?
  - If the allegation has been made anonymously, does it contain enough examples or specifics that could allow for further investigation? By their very nature, anonymous allegations carry less credibility as the reliability of the source is totally unknown.
  - Would the allegation be considered a 'protected disclosure' under the Public Interest Disclosure Act 1998 and therefore would the Council's Whistleblowing Policy apply to the allegation?
- 4.6 A template checklist for assessing the allegation is set out at **Appendix A**.

### **Step 3 - Informing the employee**

- 4.7 Part of a fair and transparent investigation process involves allowing the individual who is accused of wrong doing an initial "right of reply". In the vast majority of cases this is the approach that will be taken. The individual will be asked to attend a meeting with an appropriate manager who will advise them of the allegation and ask for their initial reaction. This is not an investigation meeting - simply an advisory one so the individual would not be questioned in any detail. They may have a very simple explanation that could have a bearing on the decision on next steps to take. The individual should be afforded an opportunity to make representations in writing.
- 4.8 In some very exceptional cases, where the nature of the allegation and the evidence available to support it, indicates that the individual could seriously impede an investigation if they were advised at the outset, a preliminary investigation could be commissioned to ascertain certain facts before the individual is informed. This would be decided during the assessment as per Step 2 at paragraph 4.5. In these circumstances the individual should be informed of the allegation as soon as is reasonably possible.

### **Step 4 - Reaching a decision**

- 4.9 At this stage the panel who have assessed the allegation will now decide on the most appropriate next steps. The options will be to:
  - commission a full investigation into the facts and consider whether suspension from duty is required; or
  - take no further action.
- 4.10 In both circumstances, the rationale behind the decision should be clearly documented.
- 4.11 If a full investigation is required then this will be carried out under the Council's disciplinary procedures and the correct disciplinary policy and procedure should then be followed. This includes setting terms of reference for the investigation and appointing a fact finder 'Lead Investigator'.
- 4.12 The employee concerned should be promptly advised of the outcome in writing in either circumstance.

## **5. Special considerations**

### **Confidentiality**

- 5.1 It is paramount that officers managing allegations against staff maintain strict levels of confidentiality. The senior manager handling the case will decide who should be advised and when; no-one who has been given access to the matter has authority to share information or discuss an allegation with anyone outside of the working group convened. Breach of this requirement can in itself lead to disciplinary proceedings.

### **Allegations against Senior Officers**

- 5.2 Where an allegation is made against a Corporate Director, Director, Deputy Director or Head of Service, the Chief Executive Officer, as Head of Paid Service, must be promptly informed. Unless para 5.7 applies, the Chief Executive Officer will consult, where appropriate, with other senior officers on the action to be taken.
- 5.3 If a full fact finding investigation is required, then this will be undertaken by an officer of suitable seniority, or an independent investigator, as appropriate.

- 5.4 The Council's standard Chief Officer Contract permits a preliminary investigation to be undertaken. Its purpose is to determine if a question of discipline exists which, if established, could not be resolved informally.
- 5.5 Unless the allegation made against the senior officer is very serious, consideration should be given to undertaking a preliminary investigation in the first instance. If there is a case to answer, the disciplinary should be heard by a Corporate Director who should only refer it to the Investigating and Disciplinary Sub-Committee if it is considered appropriate to do so.
- 5.6 Where the allegation involves an officer whose role is defined as Deputy Chief Officer or above, as per Schedule F of the Council's constitution, any disciplinary action is subject to procedures as set out within this schedule in addition to the Council's Disciplinary Policy and Procedure.
- 5.7 The above requirements do not apply to the Chief Executive, Corporate Director of Finance or Borough Solicitor who are all governed by special disciplinary rules which are set out in Schedule F, Section 11, of the Council's Constitution.

#### **Access to email or other computer records**

- 5.8 Whilst the Council maintains the right to have access to all employees work email accounts and other computer records at any time and without notice, exercising this right must be done reasonably and proportionately.
- 5.9 An investigator may require access to email accounts and this can only be approved by the relevant Corporate Director, or for senior officers as listed at paragraph 5.6, the Chief Executive. The Council's Acceptable ICT Usage Policy has been amended accordingly.
- 5.10 The terms of reference for an investigation will clearly set out what access has been granted and for what purpose. Access to emails and electronic records will be granted to help establish the facts linked to an allegation, and will not be used to 'fish' for other unspecified matters which may support other findings of possible misconduct.
- 5.11 ICT access will be for a time limited period only and will be carefully controlled and monitored.
- 5.12 ICT access to emails during disciplinary investigations will always in accordance with the Data Protection Act 2018 and the Council's Data Protection Impact Assessment - Email Monitoring During Disciplinary Investigations.

### **6. Allegations involving possible fraud or corruption**

- 6.1 The Business Assurance Counter Fraud Team (BACFT) is responsible for investigating allegations of fraud and criminality using an independent framework of risk assessment and intelligence grading. The BACFT are primarily focused on allegations of fraud and loss to the public purse, and the prosecution and sanction of offenders in line with the Counter Fraud Strategic Plan.
- 6.2 Where the allegation of fraud involves an employee, this Protocol will still apply and should be followed as with any other allegation against an employee. The relevant Corporate Director (and the Chief Executive, in allegations against a Senior Officer) must give special consideration to whether concurrent investigations under the disciplinary and counter fraud policies should be conducted. The BACFT will not conduct an investigation in these cases until advice and/or instruction has been obtained from the relevant Corporate Director and Head of HR. With the exception of the most serious allegations, the BACFT should not be involved in a staff investigation, unless the matter is suspected to involve an element of

fraud, corruption or criminality.

## 7. Other considerations

### Protected disclosures (Whistleblowing)

- 7.1 Where it appears during the assessment of an allegation that it may be a 'protected disclosure' under the Public Interest Disclosure Act 1998, the procedure set out in the LBH Whistleblowing Policy should be followed together with this Protocol (ref Appendix B).

### Allegations made against employees working with children

- 7.2 Allegations in this category must be investigated following the agreed safeguarding investigations procedures found at <http://hillingdonlscb.org.uk/professionals/useful-guidance/lado/>

### Allegations which are subject to Police investigations

- 7.3 Liaison with the Police as well as legal advice must be sought in any Police investigation cases. The objective is to avoid interfering with the Police investigation whilst at the same time protecting the Council's interests. This must be done before deciding when (and whether) the employee should be informed of an allegation, and before the decision to start a fact finding investigation.

### Suspension from duty

- 7.4 Any decision to suspend an employee from duty during the course of an investigation will be made in line with the Disciplinary Policy and Procedure.

## 8. Other Relevant Policies

- 8.1 Other relevant Council policies etc include:
- Counter Fraud Strategic Plan;
  - Whistleblowing Policy;
  - Surveillance Policy;
  - Anti-Bribery Policy;
  - Anti-Money Laundering Policy; and
  - Prosecutions and Sanctions Policy.

## 9. Review cycle of the Corporate Investigations Protocol

- 9.1 The Council's **Corporate Investigations Protocol** will be updated periodically (as and when required) and be subject to a detailed review every 3 years to ensure it is up to date with best practice in this area. The next detailed review is planned for December 2021.

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**CORPORATE INVESTIGATION PROTOCOL - TEMPLATE CHECKLIST FOR ASSESSING ALLEGATIONS**

<b>FACTOR FOR CONSIDERATION</b>		<b>✓</b>		<b>GUIDANCE NOTE</b>	<b>ASSESSOR'S NOTE</b>
1	Is the identity of the person making the allegation known?	YES		This key factor would enable an investigation	
		NO		An investigation would be more difficult in these circumstances	
2	Does the allegation indicate that this is a public interest disclosure (whistle blowing) allegation? See guidance	YES		This means that the allegation is very serious and an investigation would be preferred if possible	
		NO		If the identity of the person making the allegation is known an investigation may still be warranted If not it is likely to be unproductive.	
3	Does the allegation contain examples or evidence that can be checked and corroborated?	YES		This key factor would enable an investigation.	
		NO		An investigation would be more difficult in these circumstances.	
4	Have any similar allegations been made in the past?	YES		This indicates a potential pattern and would lean towards requiring an investigation	
		NO		An investigation may still be warranted depending on the rest of this assessment	
5	Does the allegation include possible witnesses?	YES		This key factor would enable an investigation.	
		NO		An investigation would be more	

FACTOR FOR CONSIDERATION	✓	GUIDANCE NOTE	ASSESSOR'S NOTE
		difficult in these circumstances.	

FACTOR FOR CONSIDERATION	✓	GUIDANCE NOTE	ASSESSOR'S NOTE
6 Does the person making the allegation appear to be a reliable source with a genuine and impersonal concern?	YES	If the allegation appears objective and provides a balanced belief of wrongdoing in some way and investigation is likely to be warranted.	
	NO	If the allegation mainly contains personal comments about the individual being complained of and contains gossip, rumour or conjecture then the reliability of the person making the complaint is in question.	
7 Once advised, has the individual subject to the allegation given any explanation or relevant additional information	YES	How plausible is the information given? This key factor would enable an investigation.	
	NO	An investigation may be warranted depending on the rest of this assessment.	
8 Given the answers to the questions above is it likely that a reasonable and proportionate investigation into the allegation could be conducted?	YES	The person completing this assessment must now reach a conclusion based on the factors that have been considered. The more YES answers to the factors in this check list ticked, the more likely an investigation is warranted.	
	NO		

ASSESSING A WHISTLEBLOWING ALLEGATION		
	Whistleblowing is the term used when a 'whistleblower' passes on information concerning wrongdoing.	
	To be covered by whistleblowing law the 'whistleblower' making the allegation must believe two things:	
	1. They are acting in the public interest (so not a personal grievance or complaint); and	<input checked="" type="checkbox"/>
	2. They have information which relates to any of the categories that would be considered a protected disclosure under the relevant legislation i.e.	
	<ul style="list-style-type: none"><li>– criminal offences (this may include, for example, types of financial impropriety such as fraud);</li><li>– failure to comply with an obligation set out in law;</li><li>– miscarriages of justice;</li><li>– endangering of someone's health and safety;</li><li>– damage to the environment; and/or</li><li>– covering up wrongdoing in the above categories.</li></ul>	