

WHISTLEBLOWING AND SERIOUS MISCONDUCT POLICY 2015

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BIRMINGHAM CITY COUNCIL

WHISTLEBLOWING POLICY 2015

1. Introduction

- 1.1 Birmingham City Council is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty and accountability.
- 1.2 The term whistleblowing has a specific legal definition, i.e. a disclosure or allegation of serious wrongdoing made by an employee, and a wider public definition, i.e. any disclosure or allegation of serious wrongdoing made by anyone.
- 1.3 This policy document seeks to cover both disclosures and allegations of serious wrongdoing made by employees and members of the public, and to this end, where this policy makes reference to a whistleblower; it refers to any individual (including Birmingham City Council employees and/or members of the public) who is making a disclosure or allegation of serious wrongdoing.
- 1.4 Where any individual, irrespective of whether that individual is either a Birmingham City Council employee, a worker for a Council contractor (including seconded council employees) or a member of the public, is aware of any serious wrongdoing, such as:
- breach of a legal obligation;
 - any criminal activity, including incitement to commit a criminal act;
 - corruption or fraud;
 - a miscarriage of justice;
 - a danger to the health or safety of any individual or damage to the environment;
 - abuse of power or authority;
 - failure to comply with professional standards, Council policies or codes of practice/conduct;

committed by or related to the actions of:

- Birmingham City Council employees;
- City Councillors; and/or
- contractors, agency staff, suppliers or consultants of Birmingham City Council in the course of their work for the Council;

and reports it, the Council will investigate any such allegations and, where appropriate, take action. The Council is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistleblowing, and where appropriate, take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a whistleblower.

- 1.5 This policy seeks to set out how the Council will handle and respond to any such allegations, made either by Council staff or members of the public.
- 1.6 Whilst the whistleblowing legislation offers protection to employees, the Council considers that any such allegations of serious wrongdoing should be investigated, whether they are made by an employee, a user of Birmingham City Council services or any member of the public.
- 1.7 This policy has specific sections relating to:
 - a) employees of Birmingham City Council (which include individuals employed in community schools, community special schools, voluntary controlled schools and maintained nursery schools, agency staff and contractors; and
 - b) members of the public.
- 1.8 This policy seeks to:
 - a) encourage employees and members of the public and/or their representatives to feel confident in raising concerns or allegations in the public interest about suspected serious wrongdoing in the Council and its services without fear of reprisals or victimisation even where the concern or allegations are not subsequently confirmed by the investigation;
 - b) give a clear message that allegations of serious wrongdoing or impropriety are taken seriously;
 - c) ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions;
 - d) set out what employees and members of the public can expect by way of confidentiality and protection when making a whistleblowing disclosure; and
 - e) identify independent support for employees who wish to make a whistleblowing disclosure (see section 6).

- 1.9 This policy is not designed to be used:
- a) for raising or reconsideration of matters that come under existing internal Birmingham City Council procedures e.g. Grievance, Disciplinary, Capability, Dignity at Work or Birmingham City Council's general complaints procedure; or
 - b) for allegations that fall within the scope of specific procedures (for example child or vulnerable adult protection) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or
 - c) as an appeal process from any complaint or grievance handled under any of the above procedures.
- 1.10 Where a complaint made under this policy falls outside the scope of the policy, e.g. where the complaint falls outside the scope of "serious wrongdoing", Birmingham City Council will advise the whistleblower of this and consult with the whistleblower in respect of taking the complaint further. Wherever possible, the Council will comply with the views of the whistleblower, but there are situations where the Council is legally required to pass on details of allegations, without the consent of the whistleblower, such as in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the Council.
- 1.11 Likewise, if an allegation made under either of the other above complaints processes falls under the remit of a "serious wrongdoing", the Council will notify the whistleblower of this and investigate the allegation under this process.

2. Disclosures made by Birmingham City Council employees, Agency Staff, and any other individuals working for the Council or Schools supported by the Council

The Public Interest Disclosure Act 1998 ("PIDA")

- 2.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the Council or school supported by the Council) to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the organisation.
- 2.2 This is called making a "Protected Disclosure" under the Act, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from harassment or victimisation as a result of the disclosure.
- 2.3 The person making the disclosure does not have to be directly or personally affected by the serious wrongdoing, but the disclosure must be made in the public interest.

2.4 To be protected, the disclosure must be in the public interest and raise a concern that:

- a) a criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed;
- b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- c) a miscarriage of justice has been/is likely to occur;
- d) the health or safety of any individual has been/is likely to be endangered;
- e) the environment has been/is likely to be damaged;
- f) public funds are being used in an unauthorised manner;
- g) Birmingham City Council's Constitution (including Standing Orders, Financial Regulations etc.) has not been observed or is being breached by a City Councillor(s) and/or a Council Officer(s);
- h) sexual or physical abuse by any member of staff on service user is taking place;
- i) unlawful discrimination is occurring to any member of staff or service recipient in relation to the legally protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation (see guidance on Equality Act at <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/>);
- j) any other form of improper action or conduct is taking place. This could include breaches of the regulation requiring school governors to "act with integrity, objectivity and honesty and in the best interests of the school" (The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013) and breaches of the 'Nolan Principles of Conduct Underpinning Public Life' (Schedule 1);
- k) information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.

2.5 PIDA will protect any employee or worker making a Protected Disclosure, irrespective of whether or not the disclosure relates to information gained in the course of their employment (e.g. a protected disclosure made by an employee acting as a service user would still fall under the PIDA protection).

2.6 If an Employee does not feel comfortable making a disclosure to the Council, he/she may be entitled to make a disclosure to other prescribed persons. For further information please see Schedule 2.

3. Individuals employed or working in schools

3.1 Individuals employed in schools falling under the Council's whistleblowing scheme (community schools, community special schools, Pupil Referral Units, Voluntary

Controlled Schools and maintained nursery schools) are normally expected to raise their concerns within the school.

3.2 Employees in schools are expected to use school procedures such as grievance and anti-harassment where appropriate.

3.3 Where the Employee working in a school considers one or more incidents amount to a safeguarding incident, they should make a report under the Schools Safeguarding policy.

3.4 However, if the employee has good reason to believe that

- a) the complaint or whistleblowing will not be managed properly within the school, or
- b) that he/she will be exposed to victimisation as a result of the complaint; or
- c) the concern is about another school or another service provided by Birmingham City Council;

then the employee may make the complaint directly to Birmingham City Council.

People who make a complaint to Birmingham City Council about the school in which they work should set out why they feel unable to make the complaint directly to the school.

3.5 In community schools, community special schools, voluntary controlled schools, Pupil Referral Units and maintained nursery schools, the City Council expects the disclosure to be made to the Head Teacher and/or Chair of Governors unless there are circumstances in which the employee or worker feels that disclosure in this way is not appropriate or has or will not have been dealt with satisfactorily, in which case disclosure may be made directly to the City Council, in accordance with this policy, as set out in 3.4 above.

3.5 This policy requires the Head Teacher or Chair of Governors in a community, community special, voluntary controlled or maintained nursery school to respond to a disclosure in the same way as the City Council would respond. The Head Teacher or Chair of Governors, as the case may be, is expected to seek advice as necessary from the City Council.

4. Foundation and voluntary-aided schools

4.1 In foundation and voluntary-aided schools that are also maintained (i.e. funded) by the City Council, the governing body, not the Council, is the employer. It is therefore the responsibility of the governing body to adopt a whistleblowing policy. Birmingham City Council recommends its own policy to the governing bodies of foundation and voluntary-aided schools.

- 4.2 In a foundation or voluntary-aided school, it is for the governing body to decide how, within its policy, employees and workers may make a qualifying disclosure which they do not feel able to share with the Head Teacher or Chair of Governors. For example, a church school may wish to have discussions with the appropriate diocesan authority.
- 4.3 The City Council will acknowledge concerns in respect of foundation or voluntary-aided schools and deal with those concerns having regard to any legal obligations on the school. However, the Council's ability to investigate disclosures of serious wrongdoing made against a foundation or voluntary-aided school is considerably less than disclosures made against schools falling under the Council's whistleblowing scheme, and as such, the Council has limited legal powers to investigate a disclosure made in respect of foundation and/or voluntary aided schools (except for certain types of allegation, including Safeguarding, Special Educational Needs and/or financial mismanagement allegations).
- 4.4 Employees who have major concerns about other schools or about City Council services outside the school where they work should report those concerns directly to the City Council under this policy, as a member of the public.

5. Academies/ Sixth Form Colleges / Free schools

- 5.1 Although the City Council does not maintain academies sixth form colleges and/or free schools and although these institutions need to adopt their own procedures, the City Council will acknowledge any concerns disclosed to it by employees of these organisations. However, if those concerns relate to the functions of the City Council they will be dealt with under section 8 of this procedure.
- 5.2 The Council has no legal powers to investigate a disclosure made in respect of academies, sixth form colleges, further education establishments and/or free schools (except for disclosures made in respect of safeguarding issues and Special Educational Needs), and upon receipt of such concerns, the Council will contact the whistleblower to discuss whether or not to refer the disclosure to the Education Funding Agency, (the Government Agency that has oversight of academy, sixth form colleges, further education establishments and free schools, and to whom complaints/ whistleblowing disclosures in respect of academies, sixth form colleges, further education establishments and free schools should be made. However, the Council may disclose information about the disclosure, without disclosing the identity of the whistleblower, without the whistleblower's consent, where the allegations raised are sufficiently serious enough to warrant it.

- 5.3 In respect of disclosures of serious wrongdoing relating to safeguarding children or vulnerable adults, and/or Special Educational Needs the Council has a legal obligation to investigate, and will do so, irrespective of the status of the school.
- 5.4 Birmingham City Council will work with the Education Funding Agency and the Department for Education to review the outcome of any complaint referred to them.
- 5.5 It is recommended that where the academy / free school receives a Protected Disclosure by an employee, they seek advice from their appropriate professional advisor(s). If they are unable to obtain such advice, they can approach the Charity, Public Concern at Work (0207 404 6609) <http://www.pcaw.org.uk>, which may be able to assist.

6. Advice to employees wishing to raise a concern or make a disclosure

- 6.1 Employees who have major concerns arising from their employment may wish to seek advice from their union or the charity Public Concern at Work (0207 404 6609 – <http://www.pcaw.org.uk>), to see whether the information which they wish to report would meet the definition of a ‘qualifying disclosure’ and whether they should be using this procedure, or some other procedure.
- 6.2 Alternatively, for council employees, confidential support is also available via the Employee Assistance Programme, which can be accessed via People Solutions.
- 6.3 For employees of schools that have purchased this Employee Assistance Programme service, please contact your manager for access details.

7. Whistleblowing by members of the public

- 7.1 Unlike disclosures by employees, the Public Interest Disclosure Act does not cover disclosures by members of the public.
- 7.2 However, the Council considers that any disclosures or allegations made by members of the public in respect of serious wrongdoing should be handled in the same way as disclosures made by employees.
- 7.3 Once a disclosure from a member of the public has been received by the Council, it will be handled in the same way as a disclosure made by an employee under the Public Interest Disclosure Act.

8. How to report an actual or suspected serious wrongdoing

8.1 A person who wishes to report any suspected serious wrongdoing (“a disclosure”) to the City Council should contact the City Council either by e-mail to whistleblowing@birmingham.gov.uk;

post to:- Whistleblowing
c/o the Director of Legal Services
Birmingham City Council
PO BOX 15992
Birmingham
B2 2UQ

or

telephone:- 0121 303 7602 , setting out the following information:

Name (unless they wish to be anonymous)

Contact details (unless they wish to be anonymous)

Who has committed the alleged serious wrongdoing?

What is the nature of the alleged serious wrongdoing?

Is the person making a disclosure employed by Birmingham City Council?

If not, does that person work in a school (if so which one)?

Is the person a service user/member of the public?

8.2 Council employees are also entitled to make a Protected Disclosure through their manager, if they feel confident in approaching their manager to report a concern or allegation of serious wrongdoing that falls under this policy. The manager must follow the obligation of confidentiality, but must, as soon as possible, and no later than 2 working days after receiving the Protected Disclosure, log the disclosure in accordance with 8.1 above, and then confirm to the employee concerned, in writing or email, that this matter has been recorded.

8.3 In the event that an employee does not feel comfortable in making a disclosure to the Council, they are entitled to also make a Protected Disclosure to a number of other organisations. For further information as to whom, other than the Council, a protected disclosure can be made, see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360648/bis-14-1077-blowing-the-whistle-to-a-prescribed-person-the-prescribed-persons-list-v4.pdf

9. How the Council will respond to a disclosure

- 9.1 The Council will acknowledge receipt of a disclosure, whether it has been made by a member of the public and/or an employee, within 2 working days.
- 9.2 The Council will then consider and decide whether the disclosure falls under the whistleblowing criteria and, if not, will, wherever possible, seek the whistleblower's consent as to how the disclosure will be investigated using the appropriate council procedure(s) (such as the 'Your Views' process of the City Council). The Council's decision will be given to the person making the disclosure, wherever possible, as soon as possible after receipt of disclosure, and no later than 5 working days after acknowledging receipt of the disclosure.
- 9.3 The decision letter should state who will be handling the disclosure, how that person can be contacted, what action is likely to be taken and when the employee or worker might expect to hear the outcome of the disclosure. A further letter, summarising progress to date, should be sent within another ten working days, and if the matter has not been resolved at that time the letter should include an estimate of how long it is likely to be before a full response can be provided.
- 9.4 However, there are situations where the Council is legally required to investigate, under separate procedures, without the consent of the whistleblower, such as investigating allegations of ill-treatment or abuse of children or vulnerable adults (safeguarding). In these circumstances, the Council will, wherever possible, advise the whistleblower that the disclosure will be investigated under another process, but there may be situations where it is not appropriate to disclose the existence of these investigations.
- 9.5 When the disclosure is considered to come under the whistleblowing policy, and the Council has assigned an investigator, he/she will contact the whistleblower, within a further 10 working days, to advise them of the following:
- a) the arrangements for confidentiality;
 - b) how the person making the disclosure will be expected to contribute to the investigation;
 - c) the outcome of any discussions which may have taken place over anonymity;
 - d) an estimate of how long the investigation is likely to take;
 - e) the name of the investigator appointed to undertake the investigation;

- f) the right of an employee to representation by a recognised trade union or work colleague at any meeting; and
- g) the right of any non-employee to seek support and representation at any meeting.

9.6 Birmingham City Council, wherever possible, will seek to advise the whistleblower of the outcome of the investigation. However, the Council is bound by the Data Protection Act and the Human Rights Act in respect of allegations relating to individuals, and may not be able to disclose information where legal proceedings are pending.

9.7 The use of this whistleblowing process does not automatically amount to acceptance by the City Council that the information provided is necessarily a qualifying disclosure.

9.8 For monitoring purposes the City Council keeps a list of communications received from people using this whistleblowing process. This information is used for monitoring purposes and to detect if there are areas where there is a high incidence of alleged serious wrongdoing.

10. Confidentiality and anonymity

10.1 Although the PIDA does not refer to the confidentiality of concerns raised in a qualifying disclosure, there is a widespread assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. Birmingham City Council will seek to avoid disclosing information identifying any whistleblower, even if the Council considers that the disclosure, by the Whistleblower, falls outside the scope of a qualifying disclosure. However, there are situations where, due to the circumstances of the alleged serious wrongdoing, it is impossible to avoid disclosing information identifying any whistleblower. In these circumstances, Birmingham City Council will consult with the whistleblower prior to the disclosure taking place and offer support.

10.2 There may also be situations where the Council may be obliged to disclose information, such as where there are legal proceedings following on from the investigation of the whistleblowing investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the whistleblower may be expected to give evidence at any hearing. In these circumstances, the Council should discuss the implications for the whistleblower if he or she proceeds with the disclosure, and where appropriate, discuss appropriate support arrangements.

10.3 Birmingham City Council may also be required to disclose the identity of the whistleblower to third parties, where necessary for the purposes of undertaking

investigations e.g. where the allegations relate to serious criminal offences where the Council considers that the Police should investigate.

- 10.4 Anonymous complaints will be considered but, depending on the information given and the credibility of the evidence, there may not be enough information for a proper investigation without the investigator being able to contact the whistleblower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation.
- 10.5 Birmingham City Council, as a public authority, is subject to the Freedom of Information Act. This means that there is a presumption that Birmingham City Council discloses any information it holds, unless that information falls under one or more exemptions and, in most cases, that the application of that exemption is in the public interest.
- 10.6 The Freedom of Information Act contains exemptions that may be applicable to permit the withholding of information identifying the whistleblower, including:
- s.40 Personal Data.
 - s.41 Information which, if disclosed, would give rise to an actionable breach of confidence.
- 10.7 If Birmingham City Council receives a request for information identifying a whistleblower, it will contact the whistleblower to seek their views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.
- 10.8 The Council is mindful, in reconciling the legal obligation to disclose information it holds under the Freedom of Information Act 2000, of its legal obligations under:
- d) The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and
 - e) The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees.

11. Protecting an employee whistleblower

- 11.1 Employees are protected if:
- they honestly think what they report is true;
 - they think they are telling the right person; and
 - they believe that their disclosure is in the public interest.

- 11.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistleblowing. The City Council has adopted this procedure in order to encourage early internal whistleblowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised because of blowing the whistle, he or she should make a further complaint under this whistleblowing procedure directly to the Director of Legal Services.
- 11.3 An employee has the right to complain of victimisation as a result of any whistleblowing to an employment tribunal.
- 11.4 Any employee who victimises a whistleblower could:
- be subject to an internal council investigation and potential disciplinary action, including potential dismissal;
 - face a civil claim personally, as the affected whistleblower could be entitled to directly issue a legal claim against the culprit.

12. Recording and monitoring complaints

- 12.1 Birmingham City Council is legally required to maintain a list of concerns raised by employees made under the Public Interest Disclosure Act. Inclusion in this list does not amount to acceptance that the communication amounts to a Protected Disclosure and any subsequent decision that the matter falls outside the Act will be added to the record on the list.
- 12.2 The Council will also record all disclosures of serious wrongdoing made by members of the public.
- 12.3 For the purposes of investigating whether or not there are any systemic issues that need to be addressed, and to monitor the performance of any investigation, an anonymised summary of all disclosures of serious wrongdoing, made by employees or members of the public, will be sent on a monthly basis to:
- a) the Head of Service for the area to which the complaint relates; and
 - b) the Deputy Leader of Birmingham City Council.
- 12.4 The Council will record details of all complaints made under this policy, anonymising the identity of the whistleblower and use this information for the purposes of identifying areas of concern, which may indicate further action is required, and where appropriate, share this information with other appropriate regulatory bodies.
- 12.5 Both lists are maintained in accordance with the Data Protection Act 1998.

12.6 A report on the number of concerns will be published annually. This report will not include any information identifying any whistleblower.

Schedule 1

The Nolan Principles of Conduct Underpinning Public Life

1. **Selflessness** – Holders of public office should act solely in terms of the public interest.
2. **Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** – Holders of public office should be truthful.
7. **Leadership** – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Holders of public office are defined in law. They include local government Councillors, school governors and clerks to school governing bodies. They also include certain senior local government officers required to be appointed by law.

Schedule 2

List of other bodies a whistleblowing disclosure can be made to.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360648/bis-14-1077-blowing-the-whistle-to-a-prescribed-person-the-prescribed-persons-list-4.pdf