

Whistleblowing and serious misconduct policy

Contents

1. Introduction
2. Exemptions
3. Disclosures made by Birmingham City Council employees, agency staff, and any other individuals working for the Council or Schools supported by the Council
4. Protecting an employee Whistleblower
5. Individuals employed or working in maintained schools
6. Academies/ Sixth Form Colleges / Free schools / FE Establishments
7. Advice to employees wishing to make a disclosure
8. Whistleblowing by members of the public
9. How to report an actual or suspected serious misconduct
10. How will the Council respond to a disclosure
11. Confidentiality and anonymity
12. Recording and monitoring complaints
13. Version Control

Schedule 1 - Nolan principles

Schedule 2 - Other organisations or bodies a whistleblowing disclosure can be made to.

Schedule 3 - Complaint flowchart

1. Introduction

- 1.1 Birmingham City Council (“the Council”) is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty, and accountability. However, we acknowledge that there may be occasions when things go wrong, or the Council may unknowingly harbour unethical conduct. We believe a culture of openness and accountability is es

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appropriate, will take disciplinary action against any employee responsible for such harassment, victimisation, or unfair treatment against a Whistleblower.

2. Exemptions

- 2.1 This policy will not apply where there is already an appropriate procedure in place for dealing with the concern. Specifically, this policy is not designed to be used:
- a) for raising or reconsideration of matters that clearly come under existing internal procedures following initial assessment e.g. Grievance, Disciplinary, Capability, Dignity at Work, or the Council's general complaints procedure; or
 - b) for allegations that fall within the scope of specific statutory procedures (for example child or vulnerable adult protection) which will normally be referred for consideration under the relevant process, unless the Whistleblower has good reason to believe that the appropriate process is not being followed or will not be followed effectively, in which case the provisions of this policy shall apply in relation to that allegation; or
 - c) as an appeal process from any complaint or grievance handled under any of the above procedures.
- 2.2 Where a disclosure falls outside the scope of this policy, the Council will advise the Whistleblower of this and consult with them in respect of taking the matter further, if appropriate. Wherever possible, the Council will comply with the reasonable views of the Whistleblower in relation to the disclosure of information, but there may be situations where the Council is legally required to pass on details of a disclosure, without the consent of the Whistleblower, such as in Police investigations or legal proceedings.
- 2.3 Likewise, if a disclosure made under a separate Council procedure falls under the remit of a "serious misconduct," the Council will notify the Whistleblower of this and investigate the allegation under this policy instead.

3. Disclosures made by Employees

The Public Interest Disclosure Act 1998 ("PIDA")

- 3.1 PIDA is designed to encourage and enable employees to make a disclosure about any suspected serious misconduct, illegal act, or a dangerous situation within the organisation.

- 3.2 This is called making a “Protected Disclosure” under PIDA, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from harassment or victimisation and will not be subject to any other detriment as a result of the disclosure.
- 3.3 The person making the disclosure does not have to be directly or personally affected by the serious misconduct but must believe that the disclosure is true, and the disclosure must be made in the public interest.
- 3.4 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 being or 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 they are subject;
 - c) a miscarriage of justice is occurring, has been or is likely to occur;
 - d) the health or safety of any individual has been, is being or is likely to be endangered;
 - e) the environment has been, is being or is likely to be damaged, or;
 - f) that information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.
- 3.5 PIDA will protect any employee 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).
- 3.6 If an employee does not feel comfortable making a disclosure to the Council, he/she shall be entitled to make a disclosure to other prescribed persons. For further information please see Schedule 2.

4. Protecting an employee Whistleblower

- 4.1 Employees are protected if:
- they reasonably believe that the information disclosed, and any allegations contained in it, are substantially true;
 - they think they are telling the right person; and
 - they believe that their disclosure is in the public interest.

c) the disclosure is about another school, or another service provided by the Council;

then the employee may make the disclosure directly to the Council.

5.5 Employees who make a disclosure to the Council about the school in which they work should set out why they feel unable to make the disclosure directly to the school.

5.6 In community schools, community special schools, voluntary controlled schools, pupil referral units and maintained nursery schools, the Council expects the disclosure to be made to the Head Teacher and/or Chair of Governors unless there are circumstances in which the employee 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 Council, in accordance with this policy, as set out in 5.4 above.

5.7 This policy requires the Head Teacher or Chair of Governors in a community school, community special, voluntary controlled, pupil referral unit or maintained nursery school to respond to a disclosure in the same way as the Council would respond, as referred to in section 10. The Head Teacher or Chair of Governors, 16 (a7 (e)10(a7 (e)10(a7 (oG)12 (ov)4 (er)7 (nor)7 (or)7 (or)2.1 (a .oG)1

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- 9.2 Council employees are also entitled to make a protected disclosure through their manager, if they feel confident in approaching their manager to report a disclosure of serious misconduct 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 9.1 above, and then confirm to the employee concerned, in writing or email, that this matter has been recorded.
- 9.3 In the event that an employee does not feel comfortable in making a disclosure to the Council, they are entitled to 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-

- 10.4 When a disclosure is considered to come under the whistleblowing policy the Council will appoint an investigator at its earliest opportunity. This may be an appropriate officer within the Council, or an independent investigator, dependent on the nature of the disclosure and at the reasonable discretion of the Council. Once the Council has assigned an investigator, he/she will be instructed to contact the Whistleblower at the first available opportunity and in any event no later than 10 working days from the date of their appointment, to advise them of the following:
- a) the name of the investigator appointed to undertake the investigation;
 - b) arrangements for confidentiality;
 - c) how the person making the disclosure will be expected to contribute to the investigation;
 - d) the outcome of any discussions which may have taken place over anonymity;
 - e) an estimate of how long the investigation is likely to take;
 - f) the right of an employee Whistleblower to representation by a recognised trade union or work colleague at any meeting; and
 - g) If they are a member of the public Whistleblower, to discuss whether it would be appropriate for them to bring support or representation to any meeting.
- 10.5 However, dependent on the nature of the disclosure or the reasonable wishes of the Whistleblower, it may instead be preferable, or more appropriate or convenient, for contact regarding the disclosure to remain with the Council's Professional Standards Team.
- 10.6 In any event, the Council will arrange to keep the Whistleblower updated throughout the process and, wherever possible, will seek to advise the Whistleblower of the outcome of the investigation. However, the Council is bound by the Data Protection Act 1998 and the Human Rights Act 1998 in respect of allegations relating to individuals and may not be able to disclose specific information in certain circumstances.
- 10.7 The use of this policy does not automatically amount to acceptance by the Council that the information provided by an employee is necessarily a protected disclosure.

11. Confidentiality and Anonymity

- 11.1 PIDA does not contain any specific provisions for confidentiality in relation to protected disclosures. However, the Council will seek to treat all disclosures in confidence as a means of preventing victimisation and will endeavour to avoid disclosing information identifying any Whistleblower, even if the Council considers that the disclosure by the Whistleblower falls outside the scope of a protected disclosure. Although, please be aware, there are situations where due to the circumstances of the alleged serious misconduct, it may be impossible to avoid disclosing information identifying any Whistleblower. In these circumstances, the Council will consult with the Whistleblower prior to the disclosure taking place.
- 11.2 The Council may also be required to disclose the identity of the Whistleblower to third parties, where necessary for the purposes of undertaking investigations, for example where the disclosure relates to criminal offences where the Council considers that the Police should investigate.
- 11.3 There may also be situations where the Council is obliged to disclose information, such as where there are legal proceedings following on from investigation of the disclosure. This may require the disclosure of witness statements or correspondence, and there is also the possibility that the Whistleblower may be expected to give evidence at any hearing. In these circumstances, the Council will discuss the implications for the Whistleblower and, where appropriate, discuss appropriate support arrangements.
- 11.4 Anonymous disclosures will always be considered but, depending on the information given and the credibility of the evidence, there may not be enough information or sufficient evidence to pursue an investigation without the investigator being able to contact the Whistleblower for further information.
- 11.5 The Council, as a public authority, is subject to the Freedom of Information Act 2000. This means there is a presumption that the 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.
- 11.6 The Freedom of Information Act 2000 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.

11.7 If the Council receives a request for information identifying a Whistleblower, it will contact the Whistleblower to seek their reasonable views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.

11.8 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:

- a) The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees or any other detriment on the part of the employee; and
- b) The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees.

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13. Version Control

| Version | Date | Notes |
|---------|-------------|-------|
| 2.0 | August 2019 | |
| 2.1 | May 2023 | |

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/404330/bis-15-43-blowing-the-whistle-to-a-prescribed-person-list-of-prescribed.pdf

Schedule 3

Complaint flowchart

