# Whistleblowing and Serious Misconduct Policy

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## 1.0 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 essential in order to prevent such situations occurring or to address them if they do occur.

1.2 The term whistleblowing is generally used only with reference to workers (referred to in Law as making a protected disclosure) and has a specific legal definition pursuant to the Public Interest Disclosure Act 1998, i.e. a disclosure of information which, in the reasonable belief of the worker, is made in the public interest and tends to show serious misconduct. The information must always be more than an un-particularised allegation, or mere opinion. However, in a non-legal context, the term might also be used to describe a similar disclosure of information, by anyone who is not a worker. The Council recognises that as a public body, it might receive a disclosure of information not just from its workers, but from members of the public as well. In this policy, receipt of any such information will simply be referred to as a "disclosure."

1.3 The term 'worker' includes an employee of the Council, agency staff, contractor or consultant doing work for the Council, collectively referred to in this policy as "employees." A member of the public will be anybody not falling within the definition of 'employees,' which might include a governor in a school maintained by the Council, the parent of a child at a school, or a person who uses Council services.

1.4 This policy applies to disclosures from employees, but also sets out the Council's commitment to deal with disclosures from members of the public in the same way. To this end, where this policy makes reference to a "Whistleblower", it refers to both employees and members of the public who make a disclosure.

1.5 This policy is designed to provide guidance on how an employee, or a member of the public should report any suspected serious misconduct as well as reassurance that any disclosure can be made safely.

1.6 This policy seeks to:

a) encourage Whistleblowers and/or their representatives to feel confident in raising disclosures in the public interest about suspected serious misconduct in the Council and its services, without fear of reprisals or victimisation, even where the disclosures are not subsequently confirmed by an investigation;

b) set out how the Council will handle and respond to disclosures;

c) give a clear message that disclosures are taken seriously;

d) ensure that where a disclosure proves to be well founded, the individuals

responsible for such serious misconduct will be dealt with in an

appropriate manner;

e) set out what Whistleblowers can expect by way of confidentiality and

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protection when making a disclosure; and

f) identify independent support for employees who wish to make a whistleblowing disclosure (see section 7).

1.7 Where any individual, irrespective of whether they are an employee or a member of the public, is aware of any serious misconduct, such as:

- failure to comply with a legal obligation;
- a criminal offence;
- a miscarriage of justice;
- a danger to the health or safety of any individual or damage to the environment, or;
- information tending to show that any of the above matters is being deliberately concealed;

committed by or related to the actions of:

- the Council (including a school maintained by the Council);
- City Councillors; and/or
- contractors, agency staff, suppliers, or consultants of the Council in the course of their work for the Council;

and reports it, the Council will investigate any such disclosure and, where appropriate, in the reasonable opinion of the Council, 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, will take disciplinary action against any employee responsible for such harassment, victimisation, or unfair treatment against a Whistleblower.

## 2.0 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.

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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.

## 3.0 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

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(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

## 4.0 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.

4.2 Any employee who makes a 'protected disclosure' which meets the definition in PIDA is legally protected against victimisation and shall not be subject to any other detriment for whistleblowing. The Council has adopted this policy 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 for making a disclosure, he or she should make a further complaint under this whistleblowing procedure directly to the City Solicitor.

4.3 An employee has the right to complain of victimisation as a result of any whistleblowing to an employment tribunal.

4.3 Any allegation that an employee has victimised a Whistleblower will be taken seriously by the Council and managed appropriately. In particular, the employee alleged to have caused the victimisation could:

• be subject to an internal Council investigation and potential disciplinary action, including dismissal;

• face a civil claim personally, as the affected Whistleblower could be entitled to directly issue a legal claim against the offender.

## 5.0 Individuals employed or working in maintained schools

**Community Schools, Community Special Schools, Voluntary Controlled Schools, Pupil Referral Units and Maintained Nursery Schools**

5.1 Individuals employed by the Council in community schools, community special schools, voluntary controlled schools, pupil referral units and maintained nursery schools are covered by this policy but are generally expected to raise a disclosure within the school in the first instance , unless paragraph 5.4 applies.

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

5.3 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.

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

a) their disclosure will not be managed properly within the school, or;
b) that he/she will be exposed to victimisation or any other detriment as a result of making the disclosure; or
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, as the case may be, is expected to seek advice as necessary from the Council.

**Foundation and voluntary-aided schools**

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

5.9 In a foundation or voluntary-aided school, it is for the governing body to decide how, within its policy, employees 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.

5.10 The Council will acknowledge disclosures in respect of foundation or voluntary-aided schools and deal with those disclosures having regard to the legal position of the governing bodies of those schools (as employer) and to its own position as the maintaining authority for those schools.

5.11 Employees in foundation or voluntary-aided schools, who wish to make a disclosure about other schools or about Council services outside the school where they work,

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should report the disclosure directly to the Council under this policy, as a member of the public.

## 6.0 Academies/Sixth Form Colleges/Free Schools/FE Establishments

6.1 Although the Council does not maintain academies, sixth form colleges, free schools, or further education establishments and although these institutions need to adopt their own procedures, the Council will acknowledge any disclosures revealed to it about these organisations. If those concerns do relate to the functions of the Council, they will be dealt with under section 10 of this policy.

6.2 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). Upon receipt of such disclosures, the Council will contact the Whistleblower to discuss referral of the disclosure to the Department for Education or 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/ disclosures in respect of these institutions should be made). However, the Council may refer information disclosed to it directly to the Department for Education or the Education Funding Agency, without disclosing the identity of the Whistleblower, without the whistle-blower's consent, where it is deemed appropriate to do so.

6.3 In respect of disclosures of serious misconduct 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.

6.4 The Council will work with the Education Funding Agency and the Department for Education to review the outcome of any disclosure referred to them.

6.5 It is recommended that where an academy, sixth form college, free school or further education establishment receives a protected disclosure, 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), which may be able to assist

## 7.0 Advice to employees wishing to make a disclosure

7.1 Employees who have major concerns arising from their employment may wish to seek independent advice from their union or the charity Public Concern at Work (0207 404 6609), to see whether the information which they wish to report would meet the definition of a 'protected disclosure' and whether they should be using this policy, or some other procedure.

7.2 For any person employed and managed by the Council, confidential support is also available via the Employee Assistance Programme, which can be accessed via People Solutions.

7.3 For employees in schools that have also purchased the Employee Assistance Programme service, please contact your manager for access details.

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## 8.0 Whistleblowing by a Member of the Public

8.1 Unlike disclosures by employees, PIDA does not offer legal protection for disclosures made by members of the public. However, the Council will take reasonable and appropriate action to protect members of the public when they make a disclosure.

8.2 The Council considers that any disclosure made by members of the public in respect of serious misconduct should be handled in the same way as disclosures made by employees.

8.3 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 PIDA and the provisions of section 10 shall apply.

## 9.0 How to report an actual or suspected serious misconduct

9.1 A person who wishes to report any suspected serious misconduct ("a disclosure") to the Council should contact the Council either by

e-mail to **whistleblowing@birmingham.gov.uk;**

post to:- **Whistleblowing**

**c/o the City Solicitor**
**Birmingham City Council**
**PO BOX 15992**
**Birmingham**
**B2 2UQ**

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 misconduct?
- What is the nature of the alleged serious misconduct?
- Is the person making a disclosure employed by Birmingham City Council?

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- If not, does that person work in a school (if so, which one)?
- Is the person a service user/member of the public?

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 made.

## 10.0 How will the council respond to a disclosure

10.1 The Council will acknowledge receipt of a disclosure, whether it has been made by a member of the public or an employee, within 2 working days. In some cases, if insufficient information is provided with the initial disclosure (in the reasonable opinion of the Council), the whistleblower may be asked to provide further information and the procedure may not continue until this has occurred. All initial contact will usually be made by the Council's Professional Standards Team.

10.2 The Council will then consider and decide whether the disclosure falls under the criteria within this policy and, if not, wherever possible, it will recommend how those concerns can instead be taken forward using appropriate existing council procedure(s) (such as the 'Your Views' process of the Council). The Council's decision will be given to the person making the disclosure, wherever possible, as soon as possible after receipt of the disclosure and usually within 5 working days after acknowledging receipt of the disclosure. The decision notification will state whether or not the disclosure is considered to fall under the policy and how it will be dealt with.

10.3 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 or any further details.

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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 Legal Services office.

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 2018 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.

10.8 The Council shall treat all disclosures consistently and fairly.

## 11.0 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

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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.

## 12.0 Recording and Monitoring Complaints

12.1 The Council is legally required to maintain a list of disclosures raised by employees made under PIDA. Inclusion in this list does not amount to acceptance that the

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communication is a Protected Disclosure and any subsequent decision that the matter falls outside PIDA will be added to the record on the list.

12.2 The Council will also record all disclosures of serious misconduct made to it 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 misconduct, made by employees or members of the public, will be sent on a quarterly basis to the Heads of Service forthe directorate to which the complaints relate and every six months to the Chief Executive and Deputy Leader of the Council.

12.4 The Council will record details of all disclosures 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 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.

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## 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

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

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