

## Whistleblowing Policy

### 1. Introduction

- 1.1 Birmingham City Council is committed to ensuring that it, and the people working for it, comply 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 wrong doing made by an employee, and a wider public definition, i.e. any disclosure or allegation of serious wrong doing made by anyone.
- 1.3 This policy document seeks to cover both disclosures or allegations of serious wrong doing made by employees and members of public, and to this end, where this policy makes reference to a Whistle-blower, it refers to any individual (including Birmingham City Council Employee and/or members of the public) who is making a disclosure or allegation of serious wrong-doing.
- 1.4 Where any individual, irrespective of whether that individual is either a Birmingham City Council employee, is a worker for a Council contractor (including seconded council employees) or a member of the public, is aware of any serious wrong-doing, such as:-

- Breach of a legal obligation;
- 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 fully 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.

- 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 wrong-doing 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

## St Paul's School for Girls

- a) Employees of Birmingham City Council (which include individuals employed in community schools, community special, voluntary controlled and maintained nursery schools), agency staff and contractors; and
- b) members of the public.

1.8 Information applying solely to employees will have a dark grey background; and Information applying solely to members of the public will have a light grey background;

1.9 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 wrong-doing 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 wrong-doing or impropriety are taken seriously
- c) Ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrong-doing will be held accountable for their actions

1.10 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;
- b) By individuals to challenge decisions properly taken by Birmingham City Council; or
- c) 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 not followed effectively.

and should not be used as an appeal process from any complaint or grievance handled under any of the above procedures.

- 1.11 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 whistle-blower of this and transfer the complaint to the appropriate complaints process. 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 whistle-blower of this and investigate the allegation under this process.

## **2 Disclosures made by Birmingham City Council employees, Councillors, 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 and others connected with the employer to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the organization.
- 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, a worker 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 Constitution (including Standing Orders, Financial Regulations etc.) have or are not being observed or are being breached by a member(s) and/or officers
  - h) Sexual or physical abuse of any member of staff or service user is taking place. [ Please see safeguarding policy.]
  - 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' – see appendix.[ ]
  - 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 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. INDIVIDUALS EMPLOYED OR WORKING IN SCHOOLS**

- 3.1 Individuals employed in schools falling under the Council's whistleblowing scheme, (community, community special, voluntary controlled 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 However, if the employee has good reason to believe that the complaint will not be managed properly within the school, or the concern is about another school or another service provided by the 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 will be asked to explain why they do not feel able to make the complaint directly to the school.
- 3.4 If other procedures are not appropriate the employee or worker should normally raise the concern with the Head Teacher and/or the Chair of Governors, unless the circumstances are such that the employee or worker may make a "Protected Disclosure" to another party. In a community, community special, voluntary controlled or maintained nursery school, 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 not been dealt with satisfactorily, in which case disclosure may be made directly to the City Council, in accordance with this policy.
- 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 whistle-blowing 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. However, the City Council will acknowledge concerns raised by employees in 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.

## St Paul's School for Girls

4.3 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 / FREE SCHOOLS

5.1 Although the City Council does not maintain academies and/or free schools and although academy trusts and free schools need to adopt their own procedures, the City Council will acknowledge any concerns disclosed to it by employees of academies and Free Schools. However, if those concerns relate to the functions of the City Council they will be dealt with under section 7 of this procedure.

5.2 However, the Council has no legal powers to investigate a disclosure made in respect of academies and/or free schools (except for safeguarding issues), and upon receipt of such concerns, we will contact you to discuss whether to refer your concerns to the Education Funding Agency, which is the Government Agency that has oversight of academy trusts and free schools, and to whom complaints/ whistleblowing disclosures in respect of academies and free schools should be made.

5.3 In respect of disclosures of serious wrongdoing relating to safeguarding children or vulnerable adults, 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>, who 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, or asking their union to raise concerns on their behalf.

6.2 Alternatively, for council employees, as opposed to staff employed in schools, confidential support is also available via the Employee Assistance Program **[insert link]**

### 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 wrong doing 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 PIDA disclosure made by an employee.

## 8. HOW TO REPORT AN ACTUAL OR SUSPECTED SERIOUS WRONGDOING

- 8.1 A person who wishes to report any suspected serious wrong doing (“a disclosure”)to the City Council MAIL ADDRESS] or post [INSERT POSTAL ADDRESS] or telephone [INSERT TELEPHONE NUMBER], 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), if not  
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.
- 8.3 The manager must be mindful of 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 should contact the City Council either by e-mail to [INSERT E-employee concerned, in writing or email, that this matter has been logged.
- 8.4 Once the disclosure has been logged, it will be acknowledged. The Council will then consider and decide whether the disclosure falls under the ‘whistleblowing’ criteria and, if not, how the disclosure will be investigated using other approved procedures (such as those for protecting children or vulnerable adults or 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.
- 8.5 When the disclosure is considered to come under the whistle-blowing policy, and the Council has assigned an investigator, it will contact the ‘Whistle-blower’ to advise them of the following:-
- a) how the person making the disclosure will be expected to contribute to the investigation;
  - b) the arrangements for confidentiality;
  - 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; and
  - f) the right to representation by a recognised trade union or work colleague at any meeting.
- 8.6 Birmingham City Council, wherever possible, will seek to advise the whistle-blower of the outcome of the investigation. However, the Council is bound by the Data Protection Act in respect of allegations relating to individuals, and may not be able to disclose information where legal proceedings are pending.

## St Paul's School for Girls

- 8.7 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.
- 8.8 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.

### **9 Confidentiality and anonymity**

- 9.1 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, as far as is possible, seek to avoid disclosing information identifying the 'Whistle-blower'. However, there are situations where, due to the circumstances of the alleged serious wrongdoing, it is impossible to avoid disclosing information identifying the 'Whistle-blower'. In these circumstances, Birmingham City Council will consult with the 'Whistle-blower' prior to the disclosure taking place.
- 9.2 There may also be limits to confidentiality and what those limits are, including the possibility of the employee or worker being interviewed during an investigation and even the possibility of having to present evidence at a hearing, court or a tribunal, and should discuss the implications for the employee or worker if he or she proceeds with the disclosure.
- 9.3 Birmingham City Council may also be required to disclose the identity of the 'Whistle-Blower' 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.
- 9.4 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 Whistle-blower for further information, and in these circumstances, there may not be sufficient evidence to pursue an investigation.
- 9.5 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.
- 9.6 The Freedom of Information Act contains some exemptions that may be applicable to permit the withholding of information identifying the Whistle-blower, including
- s.40 Personal Data; and
- s.41 Information, which if disclosed, would give rise to an actionable breach of confidence.
- 9.7 If Birmingham City Council receives a request for information identifying a Whistle-blower, it will contact the Whistle-blower 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.

## St Paul's School for Girls

### 10. Failure to protect an employee Whistle-blower

#### 10.1 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

10.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistle blowing. The City Council has adopted this procedure in order to encourage early internal whistle blowing 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 whistle-blowing procedure directly to the Director of Legal Services.

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

10.4 Any employee who victimises a whistleblower could

- a) be subject to an internal council investigation and potential disciplinary action, including potential dismissal;
- b) could face a civil claim personally, as the affected whistle-blower could be entitled to directly issue a legal claim against the culprit.

### 11. Recording and monitoring complaints

11.1 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.

11.2 The Council will also record all disclosures of serious wrong-doing made by members of the public .

11.3 An anonymised summary of all disclosures of serious wrong doing, made by employees or members of the public, will be sent on a monthly basis to

- a) the Head of Service for the area which the complaint(s) relates to; and
- b) the Deputy Leader of Birmingham City Council,

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.

11.4 The Council may also share such anonymised summaries of disclosures with third parties for the purposes of investigating any systemic issues that need to be addressed

11.5 Both lists are maintained in accordance with the Data Protection Act 1998.

## St Paul's School for Girls

11.6 A report on the number of concerns will be published annually. This report will not include any information identifying any Whistle-blower.

### **APPENDIX – 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.