

Third Party Whistleblowing Policy

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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. The Council is not prepared to tolerate improper practice and/or wrongdoing. In line with that commitment, we expect others that we deal with who have any serious concerns about any aspect of the council’s work to come forward and voice those concerns. Wherever possible, individuals are encouraged to use the Council’s Complaints Procedure to report issues about Council Services and activities. Members of the public can contact the Council using this Whistleblowing Policy to report any serious concerns over wrongdoing.
- 1.2 Unlike disclosures by employees and workers, the Public Interest Disclosure Act 1998 does not offer legal protection for disclosures made by members of the public. However, the Council will take reasonable and appropriate action to protect the anonymity of members of the public when they make a disclosure. The information passed on must always be more than a general assertion (or an un-particularised allegation), or mere opinion. In this policy, receipt of any such information will simply be referred to as a “**disclosure**.”
- 1.3 This Policy applies to an individual who would not fall within the scope of our internal whistleblowing policy and may include a member of the public, a governor in a school, the parent of a child at a school, or a person who uses Council services.
- 1.4 To this end, where this policy makes reference to a “**Whistleblower**”, it refers to any person not covered by the above policy who make a disclosure.
- 1.5 This policy is designed to provide guidance on how 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 is in addition to the Council’s Complaints Procedures and other statutory reporting procedures applying to some services. If asked, Council officers should make service users aware of the existence of these procedures.
- 1.7 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;
 - b) set out how the Council will handle and respond to disclosures and what you can do if you are not satisfied with the feedback received;

- c) reassure Whistleblowers that they will be protected from possible reprisals or victimisation if there is reasonable belief that the disclosure made is in the public interest; and
- d) ensure consistency and fairness in dealing with whistleblowing across the Council.

1.8 Where any individual reasonably believes:

- a) they are acting in the public interest; and
- b) that the disclosure shows past, present or likely future wrongdoing by the Council, City Councillors or officers of the Council, falling into one of more of the following categories:
 - 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;

these concerns should be reported and the Council will assess the disclosure and, where appropriate, investigate and take action accordingly.

1.9 The Council is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistleblowing, and may, where appropriate, take disciplinary action against any Council 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 (including the Council's Complaints Procedure or Code of Conduct Complaint). Specifically, this policy is not designed to be used:

- a) for raising or reconsideration of matters that clearly come under existing processes; 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 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 advise of an alternative route to raise the issue, 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 Third Parties

3.1 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.

3.2 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.

3.3 If an individual does not feel comfortable making a disclosure to the Council,

they may be entitled to make a disclosure to other prescribed persons. For further information please see Schedule 1.

4. Protecting a third party Whistleblower

- 4.1 The Council recognises that the decision to raise a concern can be difficult. Whistleblowers should be assured that the Council will not tolerate harassment or victimisation and will take reasonable appropriate action to protect individuals who raise concerns.
- 4.2 The proven victimisation or harassment by Council employees of members of someone who has made a disclosure under this policy would normally be considered to be:
- Gross Misconduct if done by an employee of the Council.
 - A reason for the Council to consider termination of a contract, if the harassment or victimisation is done by or at the request of a contractor.
 - A matter that would be referred to the Constitution & Ethics Committee if undertaken by or at the request of a Councillor.
- 4.3 Any person applying pressure upon officers to identify Whistleblowers shall be subject to the same provisions as outlined in 4.2 above.
- 4.4 The Council openly encourages whistleblowing done in good faith. Anyone who makes an allegation in good faith, which is not subsequently confirmed by the investigation, will continue to have protection under this policy from victimisation or harassment.

5. How to report a concern

- 5.1 A person who wishes to report any concerns to the Council should contact the Council either by:

Email: whistleblowing@birmingham.gov.uk

Post: Whistleblowing
c/o Professional Standards
Birmingham City Council
PO BOX 15992
Birmingham
B2 2UQ

Setting out the following information:

- Name (unless you wish to be anonymous)
- Contact details (unless you wish to be anonymous – although please note that it will not be possible to provide feedback on the concern if no contact details are provided)

- Who has committed the alleged serious misconduct?
- What is the nature of the alleged serious misconduct? (please include as much background and history (including dates) as possible and why you are concerned about the situation).
- That you are using the Whistleblowing Policy to raise the concern.
- 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?

6. How the Council will respond to a disclosure

- 6.1 The Council will acknowledge receipt of a disclosure 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 be made by the Council's Professional Standards Team.
- 6.2 The Council will 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 procedures. 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.
- 6.3 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.
- 6.4 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, they 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) an estimate of how long the investigation is likely to take;
 - e) to discuss whether it would be appropriate for them to bring support or representation to any meeting.
- 6.5 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.
- 6.6 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 but will not provide a copy of the investigators report. 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.
- 6.7 The Council shall treat all disclosures consistently and fairly.

7. Confidentiality and Anonymity

- 7.1 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. However, there may be 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.
- 7.2 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.
- 7.3 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.

7.4 Anonymous disclosures will be considered at the discretion of the Council taking into account the seriousness of the information given, the credibility of the evidence and the likelihood of confirming the allegation from attributable sources. 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.

8. Untrue Allegations

8.1 As set out in paragraph 3.1 above, if a Whistleblower makes an allegation which is believed to be true and in the public interest, but it is not confirmed by the investigation, no action will be taken against the Whistleblower. However, the Council will view very seriously any false or malicious allegations or allegations made for personal gain and appropriate action may be taken against the Whistleblower.

9. Recording and monitoring complaints

9.1 The Council is legally required to maintain a list of disclosures raised by third parties.

9.2 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 third parties, will be sent on a quarterly basis to the Heads of Service for the directorate to which the complaints relate and every six months to the Chief Executive and Deputy Leader of the Council.

9.3 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.

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

9.5 A report on the number of concerns will be provided to the Councils External Auditors annually. This report will not include any information identifying any Whistleblower.

10. Version Control

Version	Date	Notes
1.0	January 2024	

Schedule 1

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 2

Complaint flowchart

