



**COLMERS FARM  
PRIMARY SCHOOL  
WHISTLEBLOWING  
CODE**

Spring 2017

To be reviewed Spring 2018

**LA CODE 2012 ADOPTED BY THE GOVERNING BODY**

**BIRMINGHAM CITY COUNCIL**

**PUBLIC INTEREST DISCLOSURE ACT**

**WHISTLE BLOWING IN SCHOOLS - 2012**

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**Introduction**

This procedure has been prepared in consultation with the recognised trade unions, including the teachers' associations, and with the support of the City Council's Legal Services, in order to assist with implementation of the Public Interest Disclosure Act 1998. It has been adopted by the City Council in respect of its employees and other workers in community, community special, voluntary controlled and maintained nursery schools. It is commended to the governing bodies of voluntary aided and foundation schools for adoption and may also be used by academies and free schools.

In either case this procedure provides a means for employees in the school or workers assisting the school to raise major concerns over any wrong-doing within the school relating to unlawful conduct, financial malpractice or dangers to persons or the environment.

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### **Aims of the procedure**

The procedure aims to:

- encourage employees in or working with or assisting Birmingham Schools to feel confident in raising serious concerns and to question and act upon their concerns;
- provide ways for employees in or working with or assisting Birmingham Schools to raise those concerns and get a response to their concerns, including appropriate information on any action taken as a result;
- ensure that employees in or working with or assisting Birmingham Schools are aware how to pursue their concerns and the appropriate steps to take if they are not satisfied with any action;
- reassure employees in or working with or assisting Birmingham Schools that if they raise any concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals, victimisation or retribution.

This procedure enables employees or workers in the school or workers assisting the school to raise concerns about any suspected malpractice at an early stage and in accordance with the Act. It is primarily for concerns where the interests of

others or of the organisation itself are at risk. Employees or workers are expected to use other appropriate procedures where these are available, particularly the child protection procedure and the position of trust (POT) procedure. These are designed to expedite specialist investigation and will offer support to the person raising the concern; they include provision for the employee or worker to approach the designated person in the local authority directly where necessary. Employees in schools are also expected to use school procedures such as grievance and anti-harassment where appropriate.

Specific examples of matters appropriate to the whistle-blowing procedure are:-

- a criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed
  
- a miscarriage of justice has been/is likely to occur
  
- the health or safety of any individual has been/is likely to be endangered
  
- the environment has been/is likely to be damaged
  
- public funds are being used in an unauthorised manner
  
- the School's governance arrangements have not been or are not being observed or have been or are being breached by pupils, staff employed in or those working with or assisting Birmingham Schools

- sexual or physical abuse of any employee or service recipient is taking place (although in the case of children the Child Protection Procedure should be used)

- 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.

- any other form of improper action or conduct is taking place

- information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.

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### **Persons covered by this procedure**

All employees or workers in or working with or assisting the school may use this procedure. This includes permanent and temporary employees, agency workers, and, insofar as their relationship with the school is concerned, self-employed people or contractors.

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### **The legal background – what is a qualifying disclosure?**

The legal definition of a qualifying disclosure is complex. Some guidance is given in the appendix, but this should not be taken as definitive. Each case must be determined according to its own circumstances. Initiation of this whistle blowing procedure does not amount to acceptance that the information provided is a qualifying disclosure. A decision as to whether it is a qualifying disclosure will be taken after due investigation. For monitoring purposes the City Council keeps a list of communications received from people declaring that they are blowing the whistle, but inclusion on this list does not amount to acceptance that the communication falls within the Public Interest Disclosure Act.

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### **Confidentiality**

Although the legislation 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. The issue of confidentiality should be raised when a disclosure is first made, both by the employee or worker and by the person receiving the disclosure. If the initial disclosure is made orally the employee or worker should say at the beginning of the conversation whether he or she expects it to be received in confidence and a written disclosure should be marked confidential. The person receiving the disclosure should explain that there may 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 in court, and discuss the implications for the employee or worker if he or she proceeds with the disclosure.

Anonymous complaints will be considered, but, depending on the information given and the credibility of the evidence, there may not be sufficient information for a proper investigation and such complaints may not therefore be pursued.

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### **Procedure for raising and responding to a concern**

Employees or workers are expected to use other procedures where appropriate, particularly the child protection procedure and the position of trust (POT) procedure. These two procedures are designed to expedite specialist investigation and will offer support to the person raising the concern; they include provision for the employee or worker to approach the designated person in the local authority directly where necessary.

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

If other procedures are not appropriate the employee or worker should raise the concern with the Head Teacher and/or the Chair of Governors, unless the circumstances are such that the employee or worker may lawfully make a *qualifying disclosure to another party*, as set out in the definition of a qualifying disclosure. In a foundation or voluntary aided school, where the governing body is the employer, it is for the governing body to decide how, within its procedure, 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.

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 Strategic Director for Children, Young People and Families. Such a communication should be marked personal and confidential. If the Strategic Director is not available to take a telephone call, his or her personal assistant should first explain where a letter should be sent or, if the caller insists on speaking directly to a responsible person, refer the call to the appropriate Service Director.

The employee or worker and also the person receiving the qualifying disclosure should follow the advice on confidentiality given in this procedure.

The disclosure may be made orally or in writing and should give information on the background to the disclosure and the reason for the concern.

If the disclosure is made orally the person receiving the disclosure will normally ask the employee or worker to confirm the information in writing and may also ask for any suggestions as to how the matter might be resolved. If it is appropriate for the employee or worker to use another procedure, particularly the child protection procedure and the position of trust (POT) procedure, the person

receiving the disclosure will explain that the disclosure is being passed to the person responsible under that other procedure. The person receiving the disclosure will also acknowledge the disclosure in writing promptly, usually within two or three working days. The acknowledgement 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.

The action may be a simple internal enquiry or a more formal investigation or even referral to an outside organisation such as the police. Whilst the employee or worker will be given as much information on the outcome as can reasonably be divulged, the amount of information may be restricted by the nature of the action to be taken and the duty of confidentiality to other parties.

If the person making the qualifying disclosure is dissatisfied with the outcome he or she may take the matter further by contacting the Director of Legal and Democratic Services, David Tatlow.

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### **Alleged victimisation**

An employee who makes a disclosure which meets the definition in the 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 follow the appropriate procedure within the school (such as the grievance procedure or anti-harassment procedure). That procedure provides for an investigation into the alleged victimisation which would be separate from the investigation of the qualifying disclosure. The employee also has the right to complain to an employment tribunal.



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### **Recording and monitoring**

The City Council, through its Legal Services, maintains a list of concerns raised by people declaring that they are blowing the whistle. Inclusion in this list does not amount to acceptance that the communication falls within the Public Interest Disclosure Act, and any subsequent decision that the matter falls outside the Act will be added to the record on the list.

The list is maintained in accordance with the Data Protection Act. A report on the number of concerns is published annually and does not include the employee's or worker's name or other information identifying him or her and the school concerned.

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### **APPENDIX - GUIDANCE ON THE PUBLIC INTEREST DISCLOSURE ACT**

1. The Public Interest Disclosure Act 1998 was enacted to protect workers from suffering a detriment, or being dismissed by their employers for raising concerns about serious misconduct or malpractice that threatens the public interest. This reflected recognition that they may have duties beyond those owed to an employer, for example where criminal acts, actions endangering health and safety or acts damaging to the environment are committed

2. The Act applies to "workers", a much broader category than employees. It has been extended to cover independent contractors, agency workers, police officers, trainees and all professionals in the NHS. It is yet to cover volunteers. The Act operates by inserting sections 43A-43L, 47B and 103A into the Employment Rights Act 1996.

3. No minimum period of service is required to receive the protection of the Act but a disclosure must be a "qualifying disclosure", that is, "any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following-

“(a) a criminal offence has been committed, is being committed 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 he is subject”

“(c) a miscarriage of justice has occurred, is occurring 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 tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.” Section 43B(1)

4. A qualifying disclosure is made “if the worker makes the disclosure in good faith (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.” However, “a worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.” Section 43C

5. An employer may therefore provide a procedure for an employee to make a qualifying disclosure to another person. This recognises that there are circumstances in which an employee might be reluctant to make the disclosure to his employer, for example, when he or she is uncertain as to the extent of the malpractice and whether the employer is complicit.

6. A qualifying disclosure can also be made to a person other than the employer (Section 43G) if

“(a) the worker makes the disclosure in good faith,

“(b) he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

“(c) he does not make the disclosure for purposes of personal gain,

“(d) any of the conditions in subsection (2) is met, and

“(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.”

The conditions in subsection 2 are

“(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F [i.e. to a prescribed person], (b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or (c) that the worker has previously made a disclosure of substantially the same information to his employer or in accordance with section 43F.” The law gives some guidance on reasonableness, including the identity of the person to whom the disclosure is made, the seriousness of the relevant failure, whether the failure is continuing or is likely to occur in the future, whether a breach of confidentiality owed by the employer is involved, whether the worker has complied with any procedure authorised by the employer.

7. Given the various tests of reasonableness, employees who are unsure whether to use this procedure or are unwilling to disclose information to their employer are advised to consult their trade union or professional association or the independent charity Public Concern at Work (0207 404 6609 ) before seeking to make a disclosure to other persons, to ensure that they are covered by the Act.

8. The other persons, with relevant functions, to whom a disclosure can be made under Section 43G are listed on the Government's website.

9. In order for a disclosure to be made in good faith it is not necessarily enough that the worker believes it to be true; a true disclosure for another motive, such as personal antagonism, may not be in good faith and might be challenged in employment tribunal.

10. Persons making a qualifying disclosure as defined in the Act are protected against victimisation and have the right to complain to an employment tribunal.

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**Accepted by FGB:**

Signed ..... *Valerie Seyff* ..... Chair of Governors

Date ..... *15/2/17* .....

**To be reviewed February 2018**