

Legal Briefing

Whistleblowing Update

Overview & Scrutiny Committee

(July 2015)



Legal & Democratic Services
10 Woodcock Street
Birmingham
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Background

In the 2014 report of Ian Kershaw into the issues arising from the 'Trojan Horse Letter', it was recommended that the Council should review the effectiveness of the management of its whistleblowing policy, consider how it can ensure a single point of receipt, and ensure there is a senior member of staff allocated responsibility for monitoring and reporting on the efficiency and effectiveness of the system.

This recommendation was later endorsed by Sir Bob Kerslake in his independent review of the Council, in which it was said the whistleblowing processes that are being put in place in Children's Services, should be mirrored across the Council.

Embracing these recommendations fully, the Council introduced a new Whistleblowing & Serious Misconduct policy earlier this year, which came into force on 12 January 2015.

Overview

The Policy applies to all services across the Council, but also makes specific, targeted provision for complaints from, or about, schools.

While serving as the Council's corporate whistleblowing policy for its workers (including those in schools), the Policy also provides a platform for members of the public (who might include parents, or non-staff governors in schools), to raise concern about suspected serious misconduct.

The Policy is not intended to deal with all complaints. Processes already exist for matters such as staff grievances, dignity at work, or general complaints or dissatisfaction with service provision. Instead, the Policy is intended to deal with concerns about serious misconduct within the Council's services or in its schools, such as breaches of a legal obligation, corruption or fraud.

System

In accordance with the recommendations of Ian Kershaw, the policy is operated and monitored centrally, by the Council's Legal Services department. A dedicated e-mail address, telephone number and postal address have been created, for workers or members of the public to raise concerns. David Tatlow, Director of Legal Services, is the single point of contact for each complaint at the point when it is reported. He is also the Monitoring Officer for the Council.

A central log of all complaints is maintained by Legal Services. Once a complaint is received, it will be acknowledged (within two working days). A decision letter will then be sent out (within a further 5 working days) confirming whether the complaint will be dealt with under the Policy, or if the nature of the complaint is such that it will instead be referred to another, more appropriate procedure (such as staff grievance), or referred to another body (such as the Education Funding Agency, in the case of complaints about academy schools). If more information is required before a decision can be made, the complainant will be informed at this point.

Where a complaint is dealt with under the Policy, it will then be referred to the relevant 'arm' of the Council for investigation (such as Audit, if there are concerns about fraud or financial irregularity).

Where appropriate, the Legal Services office will recommend a process for investigation. In any event, the Legal Services office will monitor and record the outcome for complaints which fall within the policy. Michael Day, Senior Solicitor, currently undertakes this role.

Schools Complaints

Whistleblowing complaints concerning schools in Birmingham are brought to the attention of both the Interim Executive Director for Education, Colin Diamond, and the Assistant Director for Education and Commissioning, Steve Nyakatawa, on a regular basis. Steve Nyakatawa has been nominated to have 'umbrella' oversight of all whistleblowing complaints concerning schools, received under the new Policy.

Separately, formal reporting to the Education Quartet is done each quarter, where a more in-depth analysis of complaints received within each three month period can be given, identifying any emerging trends or risks.

In the first quarter (January – March 2015) the Council received 28 complaints under the new Policy, about services across the Council. Of those 28 complaints, **16** concerned schools in Birmingham.

Of the 16 complaints about schools, **9** were about academies or free schools in Birmingham. The remaining **7** were about maintained schools in Birmingham

The Council has undertaken to record and respond to each complaint received. Therefore, while there were 16 complaints about schools in the first quarter, not all of these were genuine whistleblowing or serious misconduct concerns about schools within the city.

In fact, the majority of complaints about maintained schools have been outside the scope of the Policy. Just 2 of the 7 complaints about maintained schools in Birmingham have required further investigation. The remainder have been redirected to the appropriate body, or existing procedure (such as the employee grievance procedure) or concluded with the complainant where there has been no complaint to answer.

Of those two complaints, one concerned alleged injury to a child in a nursery. This matter has been investigated by the Multi Agency Safeguarding Hub (MASH) and the Local Authority Designated Officer (LADO), in conjunction with the Police and other partners. It was concluded that there were no concerns about the actions of the nursery. Additional support has been provided to the family.

The second of those complaints concerned allegations of nepotism in the appointment of staff at a maintained school, as well as allegations about maladministration for KS1 results. Investigation of those matters is still ongoing, by the governing body of the school in respect of staff appointment and by the Standards and Testing Agency in respect of the maladministration allegation.

In the second quarter (April – June 2015) the Council received 21 complaints under the new Policy about services across the Council. Of those 21 complaints, **14** concerned schools in Birmingham.

Of the 14 complaints about schools, **4** were about academies or free schools in Birmingham. The remaining **10** were about maintained schools in Birmingham.

Of the 10 complaints about maintained schools, most (8) are still undergoing investigation, either by the Governing Body, the Education service, or LADO, as may be appropriate for each complaint.

Examples of some of the concerns raised about schools in the second quarter include an allegation about teaching staff absence during term time, whilst on full pay, without apparent good reason, and an allegation about procedure not being followed for the appointment of a Deputy Head Teacher.

Academies and Free Schools

The Council has no legal power to investigate the complaints it receives about academies and free schools in Birmingham, unless the allegations concern safeguarding or Special Educational Needs. Therefore, each of those complaints (9 in the first quarter and 4 in the second quarter) has been referred to the Education Funding Agency ("EFA"), with recommendation that they be investigated.

The EFA is the central government agency with responsibility for funding and monitoring of academies.

One of the real success stories behind the Policy, is the emergence of a new centralised process for referral of complaints about academies or other schools which the DfE is responsible for, to the EFA, which has been devised by Legal Services. Complaints received about these schools are now referred to the EFA with recommendation that they be investigated and a request that the Council be informed about the outcome.

This is in keeping with the recommendations of Ian Kershaw and Peter Clarke around working together and information sharing between Birmingham and Central Government. Information sharing also has application in safeguarding, in the event of an incident at an academy where the Council is required to directly intervene, it is important to know if there is any link between that incident and a complaint previously raised with the EFA.

However, we have been disappointed to find that the EFA has not engaged fully with the Council in this regard. In the first quarter, the Council requested updates and to know the outcome of the EFA's investigations for each of the 9 complaints it had raised.

In response, the Council was informed the EFA "do not, as a matter of course, provide further information on the progress or outcome of cases we receive." It was also said "if we felt the outcome required the LA to be notified we would do so". This is contrary to the EFA's published policy, which states:

"Your complaint will be acknowledged in writing within 5 working days. Your complaint will be allocated to a named case officer who will write to you and consider your complaint in line with this procedure."

and

"Within 10 working days of acknowledging your complaint we will either:

- let you know you that your complaint will not be investigated, explain the reasons why and where possible give you helpful information about what to do next***
- let you know that we will investigate your complaint***
- ask you for further information to enable us to make an assessment"***

The Council did not receive any written communication from any named case officer at the EFA, in relation to the 9 matters it raised about schools in Birmingham in the first quarter.

This matter was raised on behalf of the Council by Sir Mike Tomlinson, following which, the EFA's Director for Academies and Maintained Schools wrote to the Council on 21 May 2015 in the following terms:

For each complaint received under the Policy which the Council raises with the EFA, it will:

- Formally acknowledge receipt and inform the Council of its planned course of action;

- Where a case is of common concern, the Council will be kept informed of the EFA's progress, and;
- At the point when an investigation is completed, or a decision is reached, the Council will be told what that decision is.

Finally, the EFA provided absolute assurance that allegations about the safety of a child in Birmingham will immediately be referred to the Council.

This positive message reflects a significant strengthening of the working relationship between the Council and the EFA, which is in keeping with the recommendations of Ian Kershaw and Peter Clarke around working together and information sharing. The EFA have stated that Birmingham is the only Local Authority to have this nationally unique agreement.

However, of the **13** complaints referred to the EFA during the first and second quarter, the Council has only been informed about the progress or decision for **3** of these.

One complaint concerned an allegation about staff bullying at a school. The EFA responded to confirm this matter had been dealt with under its academy complaints procedure. The Council were not informed of the outcome or decision.

One complaint concerned an allegation that staff had verbally abused a pupil at an academy. The EFA responded to say the complainant had not yet reached the end of the academy's formal complaint process, so they are unable to investigate at this stage. Incidentally, the Council also drew this incident to the attention of its LADO team.

Finally, one complaint concerned an allegation that an academy teacher had lied about where they resided, in an application for their own children, for a place at a maintained primary school in Birmingham. The EFA responded to confirm this matter had been referred to the National College for Teaching and Leadership (NCTL), to consider the actions of the teacher concerned. Incidentally, the NCTL have since contacted the Council separately, to confirm they are looking into the matter.

We still await contact from the EFA on the other **10** referrals made in the first and second quarter, which include allegations about academies, such as alleged discrimination towards Muslim students, attempts to manipulate a public consultation and misuse of public funds. However, a positive meeting was held earlier this month between the Council and the EFA, at which the EFA confirmed it will inform the Council about the progress and outcome for each of those complaints referred to date, as well as any future referrals.

Summary

The Policy is still in its infancy and so it remains to be seen whether the trends emerging in the first and second quarter around the levels of complaint for maintained schools (and academies), will continue forward.

Currently a planned review of the Policy is underway, in which overall layout and wording will be looked at, as well as the effectiveness and efficiency of its processes. However, overall the Policy has been well received and widely utilised and no changes of substance are proposed.

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