

Guidance for Schools

Whistleblowing Policy and Procedure

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Contact: HR Consultancy for Schools -
01905 676500 (Option 1, Option 4)

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1. INTRODUCTION

This policy applies to all employees of the school regardless of whether they are on a permanent, fixed/temporary or casual contract.

People working within organisations are often the first to realise that there may be something seriously wrong in the place in which they work. The school is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we encourage employees who have serious concerns about the school to come forward and voice those concerns about specified matters:

Part IV A of the Employment Rights Act 1996 provides protection for employees who raise legitimate concerns about specified information in specified ways. Such concerns are called "protected disclosures" in the Act. The protection offered is against (a) dismissal and (b) other detriments suffered in the employment context, as a result of the employee making a protected disclosure. Employees may make claims to the Employment Tribunal in relation to such dismissals and other detriments.

It is important to note that this policy is closely linked to safeguarding procedures within our school federation and should be viewed alongside the following policies:

- Managing allegations of abuse against staff
- Safeguarding
- Anti-radicalisation
- Code of Conduct
- Complaints procedure
- E-Safety Policy
- Data Protection
- Grievance procedures
- Health and Safety
- Intimate care
- Positive Handling
- School Complaints

All staff are responsible for safeguarding in our settings and are obliged to follow the relevant policies accordingly.

What are "protected disclosures"?

This is complex but in essence the Act says they are "qualifying disclosures" made by the employee in accordance with SS43 C to H of the Act.

So, firstly one has to ask what is a "qualifying disclosure"? This is defined in S43B as being any disclosure of information which, in the reasonable belief of the employee, is made in the public interest and tends to show one or more of the following:-

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

- (d) that the health and safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any of a) to e) above has been or is likely to be deliberately concealed.

Secondly, one then has to ask in what circumstances the law will treat a "qualifying disclosure" as a "protected disclosure". This is largely about the persons to whom an employee may make a "qualifying disclosure", turning it into a "protected disclosure" by so doing. Slightly simplified, these are the relevant persons for this purpose:

- (i) To the employee's employer.
- (ii) To another person who has legal responsibility for the person(s) who has allegedly failed to act appropriately under a) to f) above (assuming that is not the employer).
- (iii) To a legal adviser in the course of the employee taking legal advice.
- (iv) A list of other people prescribed by an Order made by the Secretary of State - see the Public Interest Disclosure (Prescribed Persons) Order 2014 as amended.

There are certain other complex provisions which may make "qualifying disclosures" to other people into "protected disclosures" in certain prescribed circumstances (refer to section 5 for further information).

It is not necessary for an employee to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The employee has no responsibility for investigating the matter - it is the school's responsibility to ensure that an investigation takes place.

The governing body is responsible for ensuring the operation of this policy with regard to matters relating to this school. The governing body will work in partnership with HR Consultancy for Schools in dealing with concerns about malpractice and will immediately contact HR Consultancy for Schools on receiving such information.

This procedure is not designed to be a substitute for the school disciplinary or grievance and harassment procedures. If the matter relates to yourself or to a breach of your own contract of employment, you should make use of the school's Grievance and Harassment Procedures.

2. GUIDING PRINCIPLES

Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Employees should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.

An instruction to cover up wrongdoing is in itself a disciplinary matter. If you are told not to raise or pursue any concern, even by a person in authority, you should not agree to remain silent. You should report the matter in accordance with section 3 of this policy.

2.1 Harassment or victimisation

The School recognise that the decision to report a concern can be a difficult one to take, not least because of the fear of reprisal from those responsible for the malpractice or from the school. The school will not tolerate any such harassment or victimisation and will take appropriate action to protect those that raise a concern in good faith. In addition the Public Disclosure Act offers protection to employees from suffering a detriment and dismissal when they have 'blown the whistle'.

2.2 Confidentiality

The School undertakes to protect your identity and won't disclose it without your consent. If the situation arises where it is not possible to pursue your concern without revealing your identity (e.g. the need to give evidence in court or at a disciplinary hearing), the Investigating Officer will discuss this with you and whether it is possible to proceed.

2.3 Safeguarding issues

If the concern relates to a safeguarding issue you should inform the Headteacher or Chair of Governors, if the Headteacher is involved. They should then immediately contact the Senior Adviser, Safeguarding Children in Education. However if the Headteacher or Chair of Governors fails to contact the Senior Adviser or you are still concerned about the situation then you should contact the Access Centre on 0845 607 2000.

2.4 Anonymous allegations

Concerns expressed anonymously, may be considered under this whistleblowing procedure, especially those relating to the welfare of children. The school, when determining whether an anonymous allegation will be investigated further, will take the following factors into account:

- (i) The seriousness of the issue raised
- (ii) The credibility of the concern
- (iii) The likelihood of obtaining the necessary information in order to confirm the allegation.

2.5 Deliberately false or malicious allegations

The school will consider any deliberately false or malicious allegations it receives as a disciplinary matter.

2.6 The role of the Trade Unions

Trade Unions recognised by HR Consultancy for Schools are committed to the effective use of this policy. If you are considering raising concerns using this procedure you may wish to seek advice from your trade union representative (if applicable) before doing so.

3. HOW IS A CONCERN RAISED?

If wrongdoing in the workplace is suspected:

- **Do not** approach or accuse the individual directly;
- **Do not** try to investigate the matter;
- **Do not** convey such suspicions to anyone else other than those with the proper authority but do raise your concern (see below).

As a first step raise the issue with the Headteacher or in the absence of the Headteacher, the person responsible for the school at that time. However if you believe that the Headteacher is involved in the matter of concern you should contact the Chair of Governors. It is expected that the investigating officer will either be the Headteacher or the Chair of Governors, however they do have the discretion to delegate the investigation to another person if they feel this is appropriate.

Although concerns may be raised verbally, they are better put in writing. When setting out your concern in writing you should include as much detail as possible, for example, set out the background and history of the concern; giving names, dates and places and explaining the reasons for your concerns. If you feel unable to raise the issue directly with the Headteacher or Chair of Governors you can also ask your trade union or professional association to raise the matter on your behalf or support you in raising the concern.

4. HOW THE SCHOOL WILL RESPOND

Initially the investigating officer will consider the matter raised and decide whether an investigation is appropriate and if so, what form it should take. It may be appropriate for the investigating officer to initially consider other procedures such as the Allegations of Abuse against Teachers and other Staff (in cases of safeguarding) and immediately contact the Senior Adviser, Safeguarding Children in Education for advice. If the concern is unrelated to a qualifying disclosure then the investigating officer should halt the use of this procedure and instead refer the employee to the grievance and harassment or other relevant procedure.

4.1 Written acknowledgement

Once the investigating officer has considered the issue(s) they will write to you within 10 working days of the concern being raised:

- (a) acknowledging that the concern has been received;
- (b) indicating how they propose to deal with the matter;
- (c) giving an estimate (so far as is reasonably practical) of how long it will take to provide a final response;
- (d) advising whether any initial enquiries have been made;
- (e) advising whether further enquiries will take place;
- (f) informing you of any support available whilst matters are investigated;
- (g) maintaining confidentiality where possible, but explaining that it may not be possible that you remain anonymous.

4.2 The investigation process

The investigating officer may decide it is necessary to meet with you to seek further information or for clarification purposes. Where a meeting is arranged you have the right to be accompanied by a trade union representative or a colleague who is not involved in the matter(s) of concern. The investigating officer may also feel it is necessary to collect further evidence and interview witnesses as part of the investigation process.

During the investigation process the investigating officer may feel it is appropriate to refer matters to:

- Head of Audit, due to concerns about financial loss or irregularity;
- the Police due to concerns of a criminal nature;
- the Senior Adviser, Safeguarding Children in Education in relation to child safeguarding concerns;
- the Head of Legal & Democratic Services or Chairman of the County Council Standards and Ethics Committee due to the conduct of a County Councillor or to the working relationship between an officer and a County Councillor.

The investigation process would aim to be completed within 20 working days of the matter being raised with the investigating officer, however enquiries may extend beyond this timescale in some more complex cases.

4.3 Possible outcomes

Following the investigation process the investigating officer will write up their findings and recommendations and present them, in the form of a report, to the Headteacher and the Chair of Governors if either the Headteacher or Chair of Governors has not completed the investigation so that they can determine what further action (if any) is required. It may be necessary to refer the matter to other nominated governors to agree actions if the Headteacher and the Chair of Governors are already involved in the issue(s) or investigation.

The investigating officer will determine that either:

- (i) there is no evidence to support the matters raised and no further action is required, or
- (ii) allegations have been proven and that it is appropriate to take action in accordance with the disciplinary procedure or other relevant action, or
- (iii) the outcome is currently unknown because matters have been referred to other parties for further investigation e.g. police, audit, social services, legal, DBS or NCTL (National College for Teaching and Leadership), or
- (iv) the allegation is found to be malicious and will be investigated as a conduct issue under the disciplinary procedure.

The school will take appropriate steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the school will arrange for you to receive advice about the procedure.

The school recognises that you need to be assured that the matter has been properly addressed. Therefore, subject to legal constraints, you will receive a copy of the report.

5. HOW CAN THE MATTER BE PURSUED FURTHER?

This policy is intended to provide employees of the school an avenue in which to raise concerns within the school and it is hoped that this will be the option in the first instance.

5.1 County Council

However, if you feel that you are unable to discuss matters with the Headteacher or Chair of Governors or you feel that they have not investigated your concerns sufficiently, then you may wish to raise the matter with Officers of the County Council, for example:

- Director of Children, Families and Communities or appropriate Group Manager;
- the Chief Executive;
- Monitoring Officer (the Head of Legal & Democratic Services);
- Head of Audit;
- Corporate Health & Safety Manager.

These Officers can be contacted by writing via County Hall, Worcester or by telephoning the main switchboard on 01905 763763.

5.2 External Bodies

You are strongly advised to seek independent advice before you raise any issue outside of the school or County Council. Advice is available from your trade union (if applicable) or 'Public concern at Work' which is an independent charity who provide confidential advice to workers who are unsure whether or how to raise a public interest concern (telephone 0207 404 6609 or www.pcaw.co.uk)

You can also raise your concern with the proper external regulator. The legislation sets out a number of bodies to which qualifying disclosures may be made. The Department for Business, Innovation and Skills has published guidance detailing the list of the prescribed persons and bodies to whom employees can make a disclosure. This includes, amongst other bodies:

- The Secretary of State for Education (since 2015)
- The Audit Commission
- The Health and Safety Executive.

For the full list of see "*Whistleblowing: list of prescribed people and bodies*" at www.gov.uk.

An employee can make a disclosure (and still retain protection under the Employment Rights Act 1996) to a non-prescribed person (for example, the police or Ofsted) if certain conditions are met, namely: the worker reasonably believes the information is substantially true; the worker is not making the disclosure for personal gain; and, in all the circumstances, it is reasonable for the worker to make the disclosure. The worker must also: reasonably believe that he or she would be subject to a detriment by the employer if he or she made the disclosure directly to the employer or a prescribed person; reasonably believe that the employer would conceal or destroy evidence if the disclosure were put directly; or have previously made the same disclosure to the employer or a prescribed person to no avail.

The school encourages employees to raise their concerns in accordance with this procedure in the first instance. If, having read this policy, you are uncertain about whether it is the appropriate policy or how to proceed, please feel free to seek informal advice from Human Resources.