

The Family of Learning Trust

Whistleblowing Policy



Version	12/19
Name of Policy Writer	EducateHR Ltd
Date Written	April 2013
Last Updated	December 2019
Next Review Due	December 2020

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1. Introduction

- 1.1 The Public Interest Disclosure Act 1998 inserted provisions into the Employment Rights Act 1996 to give protection against victimisation to employees acting as 'whistleblowers' (victimisation in such circumstances including being subjected to informal means of recrimination or retribution as well as formal disciplinary sanction up to and including dismissal).
- 1.2 Whistleblowing is defined as making a 'protected disclosure' as a means of raising concerns about serious malpractice at their place of work, provided the employee has acted in a responsible manner in dealing with the issues.
- 1.3 For the disclosure to be protected by the relevant legislation it must be made to the right person and in the right way. Staff must have a reasonable belief that:
 - any disclosure of information is in the public interest*
 - any disclosure of information is being made to the correct 'prescribed person' (further defined in Section 8 below)
 - any information disclosed is substantially true.

In this context, the precise meaning of 'public interest' is not defined within the relevant legislation and schools should be aware that interpretation of this point remains dependent on evolving case law. Recent rulings have indicated that this may conceivably include issues linked to an individual's terms and conditions of employment or own experiences at work and thus of interest to only a particular sub-section of the public (as opposed to the public as a whole). In other words, the school should **not (despite this being the intended express purpose of said amendment) rely on the 2013 amendment to the Public Interest Disclosure Act 1998 (which amended the wording to the effect that a qualifying disclosure must be made 'in the public interest', as opposed to the previous wording 'in good faith') as necessarily excluding matters relating solely to an individual's own contract or personal conditions of employment.*

2. Purpose and scope

- 2.1 It is important to draw a distinction between whistleblowing, which is relevant only to matters which are **in the public interest** (although the above caveat should be noted in this regard), and issues which are not relevant to the above legislation and do not qualify as whistleblowing, such as concerns relating to a personal grievance related to an issue such as (the perception of) discrimination, bullying, harassment etc.
- 2.2 Matters relating to a personal grievance are **not** covered by whistleblowing legislation (unless the particular circumstances of the case are deemed to be in the public interest) and should always be addressed in accordance with the appropriate policy (grievance, bullying and harassment etc) rather than invoking the whistleblowing procedure.
- 2.3 This policy may be used by all workers and staff members at the academy to raise concerns where the wellbeing of other parties, or that of the academy itself, is felt to be at risk, for instance in relation to the alleged commission of criminal offences or employment of practices endangering health and safety.

- 2.4 The terms 'worker' and 'staff member' in this policy broadly include the following: employees; contractors; agency workers; trainees; and any person who is subject to a contract to undertake work or services for the academy.
- 2.5 The policy encourages staff to feel confident in raising issues of consequence by questioning and, if necessary, taking further action in relation to any serious concerns they might have about practices within the academy. It aims to establish a fair and impartial investigative procedure and to ensure that staff receive an appropriate response to concerns which have been raised and are aware of how to pursue them if they are not satisfied by this outcome.
- 2.6 This policy enables the academy to comply with the Public Interest Disclosure Act 1998 and the Public Interest Disclosure (Prescribed Persons) Order 2014.
- 2.7 The whistleblowing procedure is intended to cover major concerns that may fall outside the scope of the academy's other procedures (such as health and safety or grievance process).
- 2.8 Such concerns could include (this list is not exhaustive):
- possible fraud and corruption
 - unauthorised use of school funds
 - failure to comply with school financial regulatory and compliance matters
 - failure to comply with codes of practice
 - conduct which is an offence or a breach of law
 - health and safety risks including risks to children, public and colleagues
 - damage to the environment
 - other unethical conduct.

3. Employer responsibility

- 3.1 As the employer of staff in the academy the Academy Trust has overall legal responsibility for ensuring that the academy has a whistleblowing policy. The governing body is responsible for the running of the academy and through academy management will maintain (in a format that will not compromise confidentiality) a comprehensive record of concerns raised and subsequent outcomes.
- 3.2 The academy recognises that the decision to report a concern can be a difficult one, not least because of fear of reprisals or recrimination from those responsible for the alleged failure or malpractice.
- 3.3 The academy does not tolerate harassment or victimisation and, being conscious of its vicarious liability for any employee's conduct should this amount to victimisation of a whistleblower, will take all necessary action to protect staff members when a concern is raised.

4. How to raise a concern

- 4.1 Concerns are most appropriately raised in writing.

- 4.2 Any submission should set out the background and history of the issue giving rise to concern, giving names, dates and places where possible.
- 4.3 The submission should also clarify the reason why there is felt to be particular concern about the situation and should include sufficient grounds to justify this concern. It is advised that the earlier a concern is raised the easier it is to take appropriate action.
- 4.4 Staff are encouraged to involve their trade union or professional association and may be accompanied by a recognised trade union representative or work colleague during any meetings related to this purpose, reasonable time off from work being permitted for this purpose.
- 4.5 A form for recording the whistleblowing concern is available for use at Appendix 1.
- 4.6 It should be noted that should any staff member making a disclosure under the terms of the whistleblowing policy already be subject to disciplinary, grievance or redundancy process, those procedures will not be halted as a result of any disclosure.

5. Untrue or malicious allegations

- 5.1 If an allegation is made in the public interest but is not confirmed by any subsequent investigation, no action will be taken against the staff member making the disclosure. However, malicious or vexatious allegations could potentially lead to disciplinary action, including proceedings for gross misconduct.

6. Confidentiality

- 6.1 Any individual raising a whistleblowing concern will be protected. The investigation process may, however, reveal the source of the information and a statement may be required as part of the evidence-gathering process. If the staff member does not wish to disclose their identity this could make it difficult to proceed further with the matter.
- 6.2 Anonymous allegations may be given consideration by the academy (and this will always be the case when they are of a serious nature) but such allegations carry less weight than those which are attributable to a named individual and are often more difficult to investigate effectively. Consequently, issues raised anonymously are, inevitably, significantly less likely to be fully explored.
- 6.3 Following discussions staff may consider raising a matter if there are two or more individuals who have had the same experience or share the same concerns. Care and judgement must, however, be exercised in all cases, with due consideration being given to whether there may be reasonable grounds for concern.

7. Raising a concern – internal procedure

- 7.1 A concern can be raised in writing or orally if preferred.
- 7.2 The staff member should raise their concern with the headteacher or line manager (as appropriate) or, if the complaint is about the headteacher, with the chair of governors.

- 7.3 If the concern relates to the governing body, it should be raised with the chair of the Academy Trust (or, if that is felt inappropriate, with the most relevant of the external bodies identified in paragraph 8.3).
- 7.4 The action taken by the headteacher (or chair of governors) or line manager will depend on the nature of the concern. The matters may be subject to:
- internal investigation
 - referral to external regulatory authorities
 - referral to the police
 - consideration of the academy's disciplinary procedure (should the concern relate to the conduct of one or more employees).
- 7.5 An initial assessment should be made to decide whether an investigation is appropriate and, if so, what form this should take. Concerns or allegations that fall within the scope of other specific procedures (such as child protection etc) will normally be referred for consideration under those procedures.
- 7.6 It may be possible to resolve some concerns by agreed action without any requirement for an investigation. Within ten working days of a concern being received, the headteacher (or chair of governors) or line manager will write to the staff member who has raised the issue to:
- acknowledge receipt of the concern
 - indicate how it is proposed to deal with the matter
 - indicate whether an initial enquiry has been made
 - indicate whether further investigation will take place (and, if so, give an estimate of length of time before a full response will be provided).
- 7.7 The amount of contact between the person dealing with the matter and the staff member raising the concern will depend on the nature of the matters raised, the complexity of the issue(s), and the clarity of the initial information provided. If necessary, further information may be sought from the individual raising the concern.
- 7.8 Subject to legal and confidentiality constraints, the staff member will receive information about the outcomes of any investigation.

8. Raising a concern – external procedure

- 8.1 In accordance with legal protection for whistleblowers, only certain (prescribed) authorities and individuals are to be regarded as legitimate bodies who may be contacted for the purpose of making a 'protected disclosure'.
- 8.2 Whistleblowing to an external body without initially going through the internal procedure is inadvisable without compelling reason. Examples of compelling reason could, for instance, include either concerns in relation to serious issues of health and safety or allegations that senior management had colluded in inappropriate conduct.
- 8.3 Should a staff member feel that it is appropriate to take the matter outside of the school, the following authorities (defined as 'prescribed persons') are the external regulators who, within an educational setting, are most likely (although the list is not exhaustive) to be approached by a whistleblower:

- Ofsted
- Ofqual
- National Audit Office

8.4 Members of Parliament also qualify as 'prescribed persons' according to the relevant legislation.

8.5 If a member of staff does not feel able to raise concerns in any of the ways outlined above, they should consult the Public Disclosure Act for information about other routes by which a disclosure may be made.

Appendix 1: Report Form to Be Used For Public Interest Disclosures

Name of School:

<p>Name: (staff member making report - not compulsory but you are encouraged to insert your name)</p>	
<p>Persons reported:</p>	
<p>Concerns reported: (give full details of the background to the concern including names, dates and places; reasons why you are concerned – attach separate sheet if necessary)</p>	
<p>Date:</p>	
<p>Signed: (if name appears above)</p>	