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Definition

In these guidelines, the term 'whistle blowing' means the confidential raising of problems or concerns within an organisation by a member of staff. The proper name for whistle blowing is 'protected disclosure'. This is not 'leaking' information but refers to matters of impropriety, for example, a breach of law, school procedures or ethics.

Legislative background

The Public Interest Disclosure Act (PIDA) 1998

This provides the supporting legislation for a whistle blowing policy and is: 'An Act to protect individuals who make certain disclosures in the public interest to allow such individuals to bring action in respect of victimisation; and for connected purposes'.

The Enterprise and Regulatory Reform Act (ERRA) 2013

This Act made several changes to the Employment Rights Act 1996, which need to be reflected in any whistle blowing policy.

- Under section 43B of the Employment Rights Act 1996, a qualifying disclosure is any disclosure of information that, in the 'reasonable belief' of the employee, agency worker, trainee working in the school, self-employed worker or other person making the disclosure, is made in the public interest and one or more of the following has taken place:
 - A criminal offence.
 - A breach of legal obligation.
 - A miscarriage of justice.
 - A danger to health and safety.
 - Damage to the environment.
 - Deliberate concealing of an issue relating to the above.

The ERRA 2013 also made the following amendments:

- There is no longer any requirement for a policy to say that the whistle blower has acted in 'good faith'.
- Employees are precluded from being able to blow the whistle about breaches of their own employment contract. However, the school's own grievance procedure for staff can still be used. Whistle blowers are protected from suffering a detriment, bullying or harassment from another employee. Other employees should be instructed not to treat the whistle blower differently.

Other subsequent reports and recommendations about whistle blowing

Public concern at work 2013

In February 2013, the charity Public Concern at Work launched the Whistle Blowing Commission to review the efficacy of whistle blowing in the workplace. Its report was published in November 2013. The 25 recommendations of the review (the most important of which was the establishment of a statutory code of practice) have not yet been translated into legislation.

DFE non-statutory guidance

In August 2014, the DFE produced brief non-statutory guidance entitled 'Whistle blowing procedure for maintained schools', saying that every maintained school *should have* a whistle blowing procedure that 'protects staff members who report colleagues they believe are doing something wrong or illegal, or who are neglecting their duties'. The guidance goes on to say that governors of maintained schools are responsible for agreeing and establishing the school's whistle blowing procedures. It recommends that the school should appoint at least one specified person and at least one specified governor whom other members of staff can contact if they wish to report concerns. Governing board minutes should include:

- A record of the school's whistle blowing arrangements.
- The people inside and outside school that staff members can report concerns to. These could be:
 - The line manager.
 - The specified person or governor in school.
 - The union or professional association.

- A prescribed person or body – (e.g. Ofsted, Children’s Commissioner, NSPCC).
- Public concern at work (whistle blowing charity).

Every member of staff, including temporary staff and contractors, should be aware of the school’s whistle blowing arrangements.

Schools should be reminded that it is not appropriate for whistle blowing arrangements to be used for the raising of a grievance within the school (which should always be dealt with under the agreed staff grievance procedures).

Public concern at work 2015

In January 2015 Public Concern at Work, during a consultation about work practices in the foreign exchange industry, recommended that a code of practice should be promoted. There has not been any new government response to this recommendation.

‘Freedom to speak up’

In February 2015, a report was published entitled ‘The Freedom to Speak Up’. It was written by Sir Robert Francis QC and although it is concerned with the NHS, Sir Robert’s findings have been applied to other fields. This includes those organisations, including schools, covered by the government statutory guidance ‘Working together to safeguard children’ (2015).

Working together to safeguard children

Since this document applies to all schools, the wording of chapter 2, paragraph 4 means in effect that all state funded schools, whether maintained or academies, *must have* an agreed written whistle blowing procedure in place. However, there is still no statutory requirement for schools to have a whistle blowing policy per se. Some schools choose to cover this area in another policy, such as an anti-fraud and corruption policy, a bullying and harassment policy, or through the child protection procedures. This is still perfectly legal.

Academies financial handbook 2016

The academies financial handbook 2016, effective from 1 September 2016, now makes it requirement, rather than a recommendation, for academies to have a whistle blowing procedure.

Dismissal

Employees cannot be dismissed because of whistle blowing because this would be seen as unfair dismissal. Employees can go to an employment tribunal if they have been dismissed for whistle blowing. If the tribunal decides in their favour, they must be reinstated and paid compensation. A tribunal judge can subsequently reduce any compensation awarded by 25% if they find that the person has acted dishonestly. The member of staff can also bring a claim to the employment tribunal for bullying at work because they have whistle blown, either by their employer or other members of staff.

However, staff are *not* protected from dismissal if they break the law when they report something, for example, if they are contravening the Data Protection Act 1998.

MODEL WHISTLE BLOWING POLICY

Introduction

The staff and governors of Saint Cecilia's Church of England School seek to run all aspects of school business and activity with full regard for high standards of conduct and integrity. If members of school staff, parents, governors or the school community at large become aware of activities which give cause for concern, we have this whistle blowing policy. This acts as a framework to allow concerns to be raised confidentially and provides for a thorough and appropriate investigation of the matter to bring it to a satisfactory conclusion, under the school's disciplinary procedure. We are committed to tackling fraud and other forms of malpractice and treat these issues seriously. We recognise that some concerns may be extremely sensitive. We have therefore developed a system which allows for the confidential raising of concerns within the school environment but which also has recourse to an external party outside the management structure of the school.

Appropriate circumstances for whistle blowing

Individuals are encouraged to come forward with genuine concerns, knowing that they will be taken seriously. A whistle blower should ask themselves a few questions about their concern before taking action:

- Is it in the public interest?
- Is it, or do you believe it to be, illegal?
- Is it a criminal offence?
- Is the environment damaged or likely to be damaged?
- Is it, or do you believe it to be, against codes of practice issued by the school, the local authority (LA), the DFE or a professional body?
- Does it contradict what the employee has been taught, or should have been taught?
- Is it about an individual's behaviour or is it about general working practices?
- Has the whistle blower witnessed the incident?
- Does it constitute the covering up of wrongdoing?
- Does it concern actions that negatively affect the welfare of children?

If any individual raises malicious unfounded concerns or attempts to make mischief, this will also be taken seriously and may constitute a disciplinary offence or require some other form of penalty appropriate to the circumstances. The Headteacher will consider whether any disciplinary action is appropriate against the individual who made it. The police may be asked to consider whether any action might be appropriate against the person responsible, even if he or she was not a pupil or employee.

Examples of issues include:

- Manipulation of accounting records and finances.
- Inappropriate use of school assets or funds.
- Gross mismanagement of funds.
- Decision making for personal gain.
- Any criminal activity.
- Damage to the environment of the school, to property belonging to the school or to a member of the school community.
- Dangerous practices.
- Child protection issues including sexual, emotional or physical abuse of pupils or others.
- Abuse of position.
- Serious misuse or abuse of authority.
- A miscarriage of justice
- Fraud and deceit or corrupt practices.
- Serious breaches of school procedures which may advantage a particular party (for example, tampering with tender documentation, failure to register a personal interest).
- Other unethical conduct, including the circulation of inappropriate e-mails.
- A breach of any legal obligation.
- Suppressing information about anything listed above.

Whistle blowers are encouraged to put their name to an allegation. If confidentiality is requested, the governing board will do its best to protect the identity of any member of staff who raises concerns. It will not disclose the identity of the whistle blower to the person who is the subject of the disclosure or to others not involved in the investigation unless it is absolutely necessary to do so and only with the prior consent of the individual concerned.

There are, however, circumstances under which complete confidentiality may be difficult for the governors to maintain.

For example:

- If the matter leads to a legal procedure and evidence is required by the court.
- If the issue raised comes within the remit of another school procedure and the whistle blower is asked to provide a signed statement as part of the evidence, thus revealing their identity.
- When the safeguarding of children is the issue.

Anonymous allegations will only be considered if the issues raised are:

- Very serious.
- The credibility of the allegation is considered to be high.
- The likelihood of confirming the allegation is high.

Procedure

Stage 1

- As the first step, you should raise the matter with an appropriate level of line management which would normally be your own line manager or the member of staff designated to deal with initial whistle blowing. Much depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of malpractice. If you believe that your immediate manager(s) is involved, the Headteacher or chair of governors should be approached. If you work at small primary or special school, you would probably go straight to the Headteacher.
- Concerns may be raised orally or in writing, but it is preferable for an allegation to be set out in writing. An allegation may also be made by phone or email. It is important, however, that when the concern is raised, you make it clear that the issue is being raised under the whistle blowing policy.
- You will be asked to demonstrate to the person that you contact that there are sufficient grounds for concern.
- If the allegation is written, the background and history should be set out, giving names, dates and places wherever possible, and the reasons why the situation is a cause for concern. You should date and sign this statement.
- If the allegation is made orally, you can invite a work colleague or representative of a trade union/professional association to be present. It is also permissible for a trade union or professional association representative to raise the matter on your behalf.
- If you wish to raise the concern confidentially, this must be made clear to the person who is initially contacted.
- If you have raised the issue orally, you will be asked to put your concerns into writing, which you should date and sign.
- You will be told what steps the line manager intends to take to address the concern. He/she may be able to take the appropriate steps to investigate the matter raised. Alternatively, he/she may refer the matter to a member of the senior leadership team, the Headteacher or to the chair of governors.
- Once the issue has been raised, you will be contacted within five working days by the Headteacher or the chair of governors who will arrange to meet to discuss the matter. Again, a work colleague or trade union/professional association representative may accompany you for the purposes of giving support.
- Notes will be taken of the details of the concern and you will be asked to sign a copy of these notes.
- Depending on the gravity of the allegation, the Headteacher will consult with the appropriate body. It is at this point that it may become impossible to retain complete confidentiality, should the matter become an issue, for example for the school's disciplinary policy or even a matter for the police. The Headteacher should always consult the Legal and/or HR professional advisors of the Academy Trust.
- An initial response will be given within five working days. You will be informed of the progress of the investigation and if continued confidentiality is an issue.
- When the matter has been fully investigated and a conclusion reached, a formal written response will be sent to you.
- The line Manager/Headteacher will also notify the person who is the subject of the disclosure within five working days of the meeting. Upon receipt of the information, the individual will be able to appeal against any decisions by writing to the Headteacher or governing board.

Stage 2

- If you are dissatisfied with the school's response, you can raise the matter within 10 working days of the date of the school's response by writing to the Headteacher or chair of governors.
- The Headteacher/chair of governors will then write to you within five working days of receiving the letter to arrange a meeting to discuss the continuing concerns and why you are dissatisfied with stage 1. This meeting should take place promptly. Again, you may be accompanied by a work colleague or representative of your trade union/professional association.
- The Headteacher/chair of governors may then decide to investigate further and will need to decide what action to take. You will be updated with the outcome of the meeting within five working days.

Stage 3

- If you are dissatisfied with the outcome of stage 2, you may opt to take the matter to stage 3, by raising the matter externally within 10 working days of the date of the decision letter at stage 2, with any of the prescribed people or bodies recommended in the government publication 'Blowing the whistle to a prescribed person: a list of prescribed people and bodies' available from www.gov.uk.

In taking your concern outside the school, you should ensure that, as far as possible, the matter is raised without confidential information being divulged.

You are protected by law from dismissal, harassment, bullying or other detriment by your employer or other members of staff with whom you work. If this occurs, you have the right to take your case to an employment tribunal.

Unfounded, unsubstantiated or malicious allegations

If you make an allegation in good faith, but it is not upheld or confirmed by subsequent investigation, no action will be taken against you. If, however, it appears that you have acted frivolously, maliciously or in a vexatious manner, or for personal gain, then a disciplinary investigation may be undertaken into your conduct.

If you are already the subject of a disciplinary, redundancy, or other procedure, raising a concern under the whistleblowing policy will not necessarily halt these processes.

Allegations against the Headteacher

If an employee is concerned that the Headteacher is the wrongdoer or involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigation, this should be reported to the chair of governors. The governors may investigate the allegation themselves in the first instance but are recommended (if the school is a maintained school) to involve the head of the LA Human Resources or Legal Department. If the employee feels that the governors have not dealt appropriately with the issue then he/she may wish to appeal direct to the head of the LA Human Resources or Legal Department. Employees who feel unable to follow this route or who are employed in an academy have the option of contacting one of the prescribed persons as in stage 3 above or one of the following government departments as appropriate:

- HM Revenue and Customs.
- The Financial Services Authority.
- The Office of Fair Trading.
- The Health and Safety Executive.
- The Environment Agency.
- The Director of Public Prosecutions.
- The Serious Fraud Office.
- The Education Funding Agency.
- The Department for Education.
- The National College for Teaching and Leadership.

Monitoring and review

The Headteacher is responsible for monitoring the implementation and effectiveness of this policy. It will be reviewed by the governing board at agreed intervals.