

Forest Academy

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Elveden Church of England Primary
Academy



Confidential Reporting Policy

'Whistleblowing'

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Model Whistleblowing Procedure

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1. Introduction

Every school governing body has a responsibility to ensure that its school is managed to the highest standards of probity, and that its decision making and administration is conducted in such a way as to be above any suspicion of malpractice.

Clear policies, standards and procedures for making decisions, particularly those which entail significant expenditure, or decisions which significantly affect employment at the school are essential elements in creating and sustaining an atmosphere of openness and trust in school management. Such an atmosphere is the best way of forestalling suspicion or complaint.

Staff who raise concerns about malpractice within their place of work have statutory protection against victimisation for making such a disclosure, under the Public Interest Disclosure Act 1998, and the Enterprise and Regulatory Reform Act, enacted in June 2013 along with Section 71 of the Serious Organised and Police Crime Act 2005¹. The worker must reasonably believe the disclosure to be in the public interest, and it must otherwise qualify as a protected act (see section 4 for more detail on the criteria.)

This procedure has been subject to consultation with all recognised trade unions.

1.1 Liability

Employers are now liable for any detriment a whistle-blower suffers as a result of having made a disclosure, if the detriment was done by another worker in the course of employment (even if it was without the employer's knowledge), or by an agent of the employer (with the employer's authority). This is balanced by the new ability for an employer to defend itself by showing that it took all reasonable steps to prevent the detriment from occurring. This includes having a policy on whistleblowing, ensuring staff are aware of it, and that it is followed when cases arise.

Individuals can also be found legally liable for detriment they caused a whistle-blower, unless they can show they have acted in response to a statement from the employer, which it was reasonable to rely upon.

1.2 What is the benefit of having a policy on whistleblowing?

Forest and Elveden are committed to promoting and maintaining the highest standards in the management and administration of its affairs.

Academies, as listed companies, have obligations under the UK Corporate Governance Code to maintain a sound system of internal control. Adopting a whistleblowing procedure is essential to the principles of accountability, transparency and probity, which underpin good governance.

By the adoption and publication of this procedure a school may demonstrate its commitment to high standards of conduct in its affairs and establish a basis on which any worker can properly raise concerns without prejudice to his/her personal position.

2. Scope

¹ Assistance by offender: immunity from prosecution (1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution they may give the person a written notice under this subsection (an 'immunity notice').

This procedure applies to all employees of Forest and Elveden Academies.

An employee working within the school but employed on another organisation's terms and conditions of employment should have the matter managed under their appropriate policy/procedure.

3. Purpose of the procedure

The purpose of this procedure is to encourage any worker who has a concern that practices in their school do not meet the required standards of probity to raise that concern at an appropriate level and in an appropriate manner.

This procedure is also intended to guide any worker who has a disclosure to make about malpractice in their school in making that disclosure. It sets out to whom malpractice (or alleged malpractice) should be reported, and how it should be reported.

The procedure also sets out the safeguards that the school will offer to any worker who makes a disclosure in the recommended way.

4. Definitions and exclusions

4.1 Who do the protections apply to?

Whistle-blowers do not need a qualifying period of service to bring a claim of unfair dismissal: in other words, staff are protected as soon as they join the organisation. Tribunals are also not restricted by the usual upper limit on compensation. These two facts can mean that sometimes whistleblowing claims are used tactically.

Protection is afforded to workers as well as employees; this includes staff on casual contracts, freelance workers, seconded workers, trainees and agency workers.

Protection from detriment also applies to ex-employees making disclosures after the termination of their employment.

Furthermore, the Government has indicated the protections may be extended to job applicants, which will prevent organisations from blacklisting applicants because they have made protected disclosures against previous employers. This is dependent upon the outcome of a Call for Evidence by the Government.

4.2 What should a concern be about, in terms of the criteria for qualifying disclosures?

The term "malpractice" may cover a broad range of acts, omissions, or practices. Workers will usually report specific instance(s) of wrongdoing by individual(s). In certain circumstances, workers may report bad practice which, if it were to continue, would be likely to lead to wrongdoing

The aim of the Public Interest Disclosure Act, effected 1999 and the Enterprise and Regulatory Reform Act 2013, is to ensure that information in the public interest is brought to the attention of the appropriate person in order wrongdoing can be dealt with speedily. It encourages disclosure of information by giving statutory protection against victimisation and unfair dismissal to individual who make 'protected' disclosures in good faith about certain acts of wrongdoing or dangers in the workplace.

A qualifying disclosure must relate to:

- a criminal offence;
- a failure to comply with any legal obligation;
- a miscarriage of justice;
- danger to health and safety of any individual;
- damage to the environment;
- an attempt to cover up any of these.

In a school, concerns may often (but by no means always) centre upon appropriate use of funds. For instance, the following would normally be an inappropriate use of budget:

- disregard of proper tendering procedure for contracts;
- manipulation or falsification of accounting records;
- making decisions for personal gain;
- inappropriate (e.g. private) use of school assets

Other, non-financial, concerns may include inappropriate use of school premises or inappropriate professional relationships which potentially affect the good management of the school.

Wrongdoing is the term applied to one or more of the following (not exhaustive).

- A criminal offence.
- A miscarriage of justice.
- Breaches of a legal obligation.
- Malpractice.
- Dishonesty.
- Bullying and/or harassment.
- Discriminatory sexual or racial behaviours.
- Unethical behaviours.
- Breaches in the standards of professional behaviour for school workers.
- Deliberate concealment of information of the above.

In making a disclosure, you must 'reasonably' believe that the information tends to show one or more of these matters listed above. The belief need not be correct, but you must be able to show that you held that belief and that it was a reasonable belief in the circumstances at the time of the disclosure.

The Enterprise and Regulatory Reform Act introduces the need for disclosures to be "in the public interest", removing the need for them to have been made in good faith. However, as there is no legal definition of "public interest", it will remain to be decided in individual cases. Disclosures relating to the worker's own contract will usually fall outside of whistleblowing, and should instead be followed up via grievance procedures.

To be afforded protection, workers must also raise their concerns in the proper way (see section 5 for specific guidance on process). Usually, in the first instance, this should be via internal processes. In certain cases the Act also protects disclosure to "prescribed regulators" such as the Audit Commission.

The Act only protects wider disclosure (e.g., to the media, an MP, etc.) if:

- the worker reasonably believed they would be victimised if they had raised the matter internally or with a prescribed regulator;
- there was no prescribed regulator and they reasonably believed the evidence would be concealed;
- the concern had already been raised with the employer or prescribed regulator;
- the concern was exceptionally serious;
- and no payment was accepted for the story.

4.3 What kinds of detriment are workers protected from?

The kinds of detriment that could be suffered by whistle-blowers will depend on whether they are job applicants, existing members of staff, or ex-members of staff. Some examples of detriment linked to a protected disclosure are:

- harassment and bullying,
- inappropriate disciplinary action,
- loss of work or pay,
- damage to career prospects,
- providing poor references,
- defamation,
- inappropriately referring them to external organisations for audit or scrutiny,
- not considering them for a role if they re-apply,
- dismissal or selection for redundancy because of making a qualifying disclosure.

4.4 Other relevant guidance and procedures

Complaints by workers about their personal treatment or the way in which employment policies and practices have been applied to them should be raised via the grievance procedure or other appropriate procedure. Complaints about the protection of children should normally be raised under the separate procedures designated for that purpose, unless those procedures have not been sufficiently enacted.

4.5 The obligation to report

The Schools acknowledge that the majority of workers are entire trustworthy, and carry out their duties with integrity. However, actions of workers: who commit wrongdoing, that are dishonest, unethical or contravene the Schools' 'Code of Conduct' are reported. Such types of behaviour can have serious consequence. These matters should be reported regardless of the fact that it may be out of character for the individual concerned.

All workers have a responsibility to report suspected wrongdoing by Schools' workers. Cultural pressures, misguided loyalties and friendship should not actively discourage staff from reporting wrongdoing.

School workers have an obligation to report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour expected.

4.6 Confidentiality

Both Elveden and Forest Schools encourage open reporting, reports may also be made confidentially by any worker. If the school is unable to resolve the concern without revealing your identity, the matter will be discussed with you. All workers should be aware that the legal rules governing disclosure would apply to cases under this procedure as they apply to all other cases.

When direct reporting to the Head Teachers is chosen, an agreement will be made with you on the degree of confidentiality that is relevant. Reporting direct also provides an element of independent and objective assessment of the information provided at the earliest stage.

Where concerns are expressed anonymously, by nature they become much less powerful and such information will be treated with caution and corroboration sought at the earliest opportunity. Anonymous reports will need to take account of:

- The seriousness of the issue raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation from an attributable source.

5 Procedure for making a disclosure

The means of making a disclosure will depend to some extent on the nature and seriousness of the concern, the sensitivity of the issues and the individual(s) thought to be involved in the malpractice reported.

5.1 Lines of reporting

As a general rule, a worker wishing to make a disclosure should raise the concerns in the first instance with the Head teacher or the Chair of Governors. This is appropriate where the concern is about the conduct or practice of colleagues: a concern that the school's policies and procedures are not being properly or fairly applied. This enables the issue to be addressed at school level.

Where a whistle-blower believes that s/he cannot approach the Head teacher or the Chair of Governors, the concern should be raised with the Trust of the academy. This will be appropriate if the disclosure concerns the conduct of the Head teacher or the Governing Body, or if a disclosure has already been made to them and no discernible or timely action has been taken to address the situation.

In exceptional circumstances a whistle-blower may approach the Secretary of State, who will refer it back to the Education Funding Agency. This will normally only be appropriate if s/he reasonably believes that the Trust is involved in the malpractice or would for some other reason be unwilling to investigate it.

5.2 Process of disclosing wrongdoing

There are a number of ways in which you can report wrongdoing. In this procedure the terms 'open' and 'confidential' are used. Open reporting refers to disclosures where the identity of the

individual reporting in known; Confidential reporting, by its nature, means that individual has chosen not to reveal their identity.

A disclosure may be made verbally (e.g. by telephone) or in writing. The whistle-blower should normally identify him/herself and should make it clear that s/he is making a disclosure within the terms of this procedure.

A whistle-blower raising a concern verbally will be expected to support and substantiate those concerns in writing, unless there are special circumstances indicating that this is inappropriate. If the whistle-blower feels unable to commit their concerns to writing s/he will normally be asked to meet with an appropriate senior officer, who will compile a written note of the disclosure.

Head teachers, or on referral, the Governing Body will assess, grade and record all confidential disclosures, whether written or oral. Minor confidential uncorroborated allegations will not usually be acted upon, especially where the disclosure is judged to be of poor quality. Serious credible allegations, in particular those indicating criminal conduct, corruption or other forms of gross misconduct, will always be acted upon overtly and/or covertly.

Where it is believed that a confidential report of wrongdoing has been made, a risk assessment will inform any future disclosure decisions. The Health & Safety of workers are of paramount importance. Head teachers, or the Governing Body may invoke a 'harm test' to limit or preclude any disclosure that may result in an unmanageable risk to a person or property. Disclosure will be managed in a way that protects the integrity of these procedures.

The whistle-blower may be accompanied by a trade union representative or appropriate workplace colleague at meetings that are held for the purpose of formally discussing or investigating the disclosure. Additionally, Trade Unions can offer independent advice to you on whether a particular case merits formal reporting.

It is not necessary for a whistle-blower to produce conclusive evidence to support his/her disclosure. Suspicion may be valid grounds for raising a concern. However, the whistle-blower should normally have direct information about, or knowledge of, the malpractice alleged, or know where such evidence is located. The whistle-blower's concern should be based on more than hearsay, gossip, or the reports of others. The disclosure should usually include specific examples of unacceptable behaviour.

After making an open report, appropriate support will be given to you from the outset of the case and will continue until the issue has concluded. This includes proactive management support to all those concerned, involvement of a Trade Union and advice and access to other support networks. It is vital that immediate and positive feedback is given to you when you have reported wrongdoing.

Disclosures should not be made to the press, radio, television or other media. The recommended internal reporting channels should be used. Workers have certain rights to report malpractice to specified external agencies, e.g. a worker who suspects that a criminal act has been committed may inform the police. However, it is expected that whistle-blowers make disclosures following the reporting lines set out above.

6. Responding to a disclosure

The response to a whistle-blower's disclosure will depend on a number of factors such as the seriousness and complexity of the allegations made.

Allegations may be:

- investigated within the school;
- referred to the internal or external auditors;
- referred to the police;
- referred to another independent form of enquiry;
- or any combination of the above.

The school may wish to consider using external independent investigators, though this will in part depend on the complexity of the case.

Disclosures will be subject to initial enquiries in order to decide whether a full investigation is necessary and, if so, what form it should take, who should conduct it, and whether any reference to another agency is necessary or desirable. Some concerns may be resolved through agreed action without the need for further investigation.

If the whistle-blower's concern falls within the scope of an alternative procedure, s/he will be advised to pursue it through that procedure.

A whistle-blower who presents his/her disclosures in writing will, wherever possible within ten working days, receive:

- an acknowledgement that the concern has been raised;
- an indication of how the school proposes to deal with the matter;
- an estimate of how long it will take to provide a final response;
- an indication of any initial enquiries that have been made; and
- an indication of whether further investigations will take place and, if not, why not.

The whistle-blower will be informed of the outcome of any investigation insofar as this is compatible with any duty of confidentiality on the employer. The extent of the information given to whistle-blowers will depend upon a number of factors, e.g. whether the investigation is referred to the police and leads to criminal prosecution. Where an investigation is protracted, it is recommended that the school keeps the whistle-blower updated on the progress of the investigation, as silence may lead them to become suspicious of inaction, and make a disclosure externally.

Where a whistle-blower is unwilling to identify him/herself, any person receiving a complaint about malpractice should log the incident and seek advice from Schools' HR, to consider whether any investigation should be undertaken.

7. Safeguards for whistle-blowers (see also section 4.3)

7.1 Internal procedures

The decision to report malpractice can be a difficult one for staff, who may possibly fear subsequent victimisation or harassment. No action will be taken against staff who raise a concern in the proper way, and which they reasonably believe to be in the public interest, even if that concern is subsequently discovered to be unfounded after investigation.

However, whistle-blowers who are already the subject of investigation or action under a formal procedure (e.g. discipline, capability or harassment) should not expect the procedure to be discontinued as a result of the disclosure, unless there is good reason for doing so.

7.2 Other protections

To harass, bully, or otherwise subject a person to detriment because they have made a whistleblowing disclosure, or assisted in the investigation of one (for example as a witness), will be considered a disciplinary offence.

Where whistle-blowers do not wish to be identified to others in the course of an investigation that wish will be respected in so far as it is reasonably practicable. However anonymity cannot be guaranteed. The process of investigation may reveal the identity of whistle-blowers and, especially in serious cases, whistle-blowers may be required to give evidence, either by the school or the police. Any person subject to disciplinary action or prosecution has access to all the evidence.

The school will take all reasonable steps to minimise any difficulties whistle-blowers may experience as a result of raising a concern. The school will consider sympathetically requests from whistle-blowers for special leave, counselling or other support.

Once you have made a report, the schools have an obligation to maintain professional support to you. The ethos under-pinning this policy is that where individuals report suspected wrongdoing they will be valued and supported through the process.

Head teachers will also consider the following:

- The level of support provided to minimise the likelihood of victimisation
- Whether there is a need for a temporary or permanent re-deployment or a change in role.
- Arrangements for keeping you informed of progress.
- Arrangements for debriefing you at the conclusion.

8. Improper disclosures

No action will be taken against a whistle-blower if a concern is raised in the proper way, which the whistle-blower reasonably believes to be in the public interest. However, if allegations are not raised in the proper way, and/or the whistle-blower cannot show that they reasonably believe it to be in the public interest, disciplinary sanctions may occur. This is particularly likely if it is believed that the disclosure was also malicious, vexatious, or made for personal gain.

9. How the matter can be taken further

This procedure is intended to provide individuals with an avenue to raise concerns with their school. If the whistle-blower is not satisfied, and feels it is right to take the matter further, the following are possible contact points:

- Audit Commission
- Recognised trade union
- The Health and Safety Executive
- Information Commissioner
- The Pensions Regulator
- Local Government Ombudsman
- OFSTED
- A solicitor
- The Police

If the matter is taken outside the school, the whistle-blower must take all reasonable steps to ensure that confidential or privileged information is not disclosed (i.e. confidential information, in whatever format, must not be handed over to a third party).

10 Dissatisfaction.

A worker who believes that they have been adversely affected or are dissatisfied by any decision in connection with this policy can use the extant grievance procedures and/or at any stage seek a confidential interview with the Chair of Governors.