Hampden House PRU

Whistleblowing Policy

Adopted by the Management Committee: June 2019

Signed: Date:

Chair of Management Committee

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Member of staff responsible for review: Headteacher

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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 subsequent Enterprise and Regulatory Reform Act, which was enacted in June 2013. 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 whistleblower suffers as a result of having made a disclosure, if the detriment was done by another worker in the course of employment (even if 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 whistleblower, 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?

The County Council is committed to promoting and maintaining the highest standards in the management and administration of its affairs. It recommends that governing bodies of all maintained schools should adopt this procedure and make all staff under their control aware of it.

Adopting a whistleblowing procedure is essential to the principles of accountability, transparency and probity, which underpin good governance.[1] For more information on the Code, go to: http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx

By the adoption and publication of this procedure Hampden House PRU demonstrates 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

This procedure applies to all teaching and support staff at Hampden House (including those seconded to other schools or organisations).

An employee working within Hampden House PRU 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 at Hampden House in making that disclosure. It sets out to whom malpractice (or suspected malpractice) should be reported, and how it should be reported.

The procedure also sets out the safeguards that Hampden House PRU and the County Council 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?

Whistleblowers 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 Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013 protect workers who make qualifying disclosures from any detriment as a result of making a disclosure.

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/academy, 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 Hampden House PRU.

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.

If a tribunal believes a successful disclosure was made in bad faith, compensation can be reduced by up to 25%. In practice this means workers may now bring claims maliciously or for personal gain but still be protected, if they are able to meet the public interest criteria. To be afforded protection, workers must also raise their concerns in the proper way (see section 5 for specific guidance for schools 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 whistleblowers 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

The Suffolk LMS Handbook and its supplementary instructions set out the standards of good practice in school management and administration by which the County Council will judge whether or not school governors and workers have acted properly.
This is not intended to substitute for other 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.

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 Headteacher, the Chair of the Management Committee or, for unattached teachers, the relevant Head of Service. This is appropriate where the concern is about the conduct or practice of colleagues: a concern that Hampden House PRU's policies and procedures are not being properly or fairly applied. This enables the issue to be addressed at school level.

5.2 For local authority schools, including Pupil Referral Units

Where a worker wishing to make a disclosure (the "whistleblower") believes that s/he cannot approach the Headteacher or the Chair of the Management Committee, the concern should be raised with the Strategic Manager in the Education and Learning Service. This will be appropriate if the disclosure concerns the conduct of the Headteacher or the Management Committee, 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 the whistleblower may approach the Assistant Director for Education and Learning, or the Service Director for Children and Young People. This will normally only be appropriate if s/he reasonably believes that the Strategic Manager is involved in the malpractice or would for some other reason be unwilling to investigate it. If the whistleblower reasonably believes that the senior officers of Children and Young People's Services are themselves implicated, s/he should report the matter to the County Council's Monitoring Officer.

5.3 For unattached teachers

Where a worker wishing to make a disclosure (the "whistleblower") believes that s/he cannot approach the Head of Service, the concern should be raised with the relevant Assistant Director. This will be appropriate if the disclosure concerns the conduct of the Head of Service, 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 the whistleblower may approach the Service Director for Children and Young People. This will normally only be appropriate if s/he reasonably believes that the relevant Assistant Director is involved in the malpractice or would for some other reason be unwilling to investigate it.

If the whistleblower reasonably believes that the senior officers of Children and Young People's Services are themselves implicated, s/he should report the matter to the County Council's Monitoring Officer.

5.4 Process of disclosing

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

A whistleblower raising a concern verbally will normally be expected to support and substantiate those concerns in writing, unless there are special circumstances indicating that this is inappropriate. If the whistleblower 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.

The whistleblower 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.

It is not necessary for a whistleblower to produce conclusive evidence to support his/her disclosure. Suspicion may be valid grounds for raising a concern. However, the whistleblower should normally have direct information about, or knowledge of, the malpractice alleged, or know where such evidence is located. The whistleblower'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.

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 whistleblowers make disclosures following the reporting lines set out above.

6. Responding to a disclosure

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

Allegations may be:

- investigated within Hampden House PRU or the Directorate for Children and Young People;
- referred to the internal or external auditors (for LA maintained schools, the Council's Audit Services can assist);
- referred to the police;
- referred to another independent form of enquiry;
- or any combination of the above.

Hampden House PRU 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 whistleblower's concern falls within the scope of an alternative procedure, s/he will be advised to pursue it through that procedure.

A whistleblower 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 Hampden House PRU 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 whistleblower 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 whistleblowers 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 or relevant officer keep the whistleblower updated on the progress of the investigation, as silence may lead them to become suspicious of inaction, and make a disclosure externally.

Where a whistleblower is unwilling to identify him/herself, any person receiving a complaint about malpractice should log the incident and consult the Strategic Manager of the Learning Improvement Service, or seek advice from Schools' HR, to consider whether any investigation should be undertaken.

7. Safeguards for whistleblowers (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, whistleblowers 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 whistleblowers 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 whistleblowers and, especially in serious cases, whistleblowers may be required to give evidence, either by Hampden House PRU, the County Council, or the police. Any person subject to disciplinary action or prosecution has access to all the evidence.

Hampden House PRU, or the Director for Children and Young People as appropriate, will take all reasonable steps to minimise any difficulties whistleblowers may experience as a result of raising a concern. Whistleblowers from Hampden House PRU who are required to give evidence in disciplinary or criminal proceedings may seek advice from the Strategic Manager - Education and Learning, or, in certain circumstances, the county council's Monitoring Officer, on procedural aspects of this obligation. Hampden House PRU will consider sympathetically requests from whistleblowers for special leave, counselling or other support.

8. Improper disclosures

No action will be taken against a whistleblower if a concern is raised in the proper way, which the whistleblower reasonably believes to be in the public interest. However, if allegations are not raised in the proper way, and/or the whistleblower 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 provider individuals with an avenue to raise concerns with their school and, in some circumstances, Suffolk County Council. If the whistleblower is not satisfied, and feels it is right to take the matter further, the following are possible contact points:

- Audit Commission 0303 444 8330
- Recognised trade union
- Elected Suffolk County Council member
- The Health and Safety Executive 01245 706222
- Information Commissioner 0303 123 1113
- The Pensions Regulator 0845 600 7060
- Local Government Ombudsman 0300 061 0614
- OFSTED 0300 123 3155
- A solicitor
- The Police

If the matter is taken outside Suffolk County Council, the whistleblower 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. Advice

For further advice on this procedure, please contact:
Schools' HR Duty Casework on 01473 265440 or hr@schoolschoice.org