

Procedure for Protected Disclosures (“Whistleblowing”)

Introduction

This procedure has been designed to operate in accordance with the provisions of the Public Interest Disclosure Act 1998 (as amended) (hereafter known as ‘the Act’), which gives protection to people who disclose reasonable concerns about serious misconduct or malpractice at work. This is sometimes known as **Whistleblowing**.

The procedure applies to all staff in the school and is intended to encourage staff to raise concerns within the school as a first priority, rather than make a wider disclosure outside of the school.

Principles

The Governing Body of the school will treat all matters of malpractice very seriously and allegations about such matters will be dealt with quickly, seriously and with appropriate confidentiality.

In order to meet the requirements of the Act, in addition to staff in schools, the procedure is applicable to agency staff, students on placements, supply staff, volunteers, contractors and suppliers operating under contract to the school. The term “worker” in this procedure is intended to cover all of these categories of people.

This procedure should not be confused with other existing procedures such as the individual or collective grievance procedures that exist to enable workers to raise concerns about their own employment. It is designed to deal with major issues that fall outside of the scope of those procedures. Therefore, any matter which is more appropriately covered by those procedures is excluded from being considered under the “Whistleblowing” procedure.

Examples of the type of issue that would fall within the scope of this procedure are:

- Conduct which is a criminal offence or a breach of the law
- Sexual or physical abuse of pupils or others
- Major health and safety risks – to staff or members of the public
- Fraud and/or corruption
- Other unethical conduct of a serious nature.

The Act also covers issues relating to miscarriages of justice and environmental damage.

The procedure gives protection to people who, in good faith, make such a disclosure, from victimisation, discrimination or disadvantage. It also ensures workers receive an appropriate response to their disclosure and are aware of how they may pursue the matter outside of the school if this response is not satisfactory.

Disclosures made under this procedure are likely to be of a sensitive nature and all parties should preserve confidentiality at all times.

Representation

Workers are entitled to representation by a professional association/ trade union representative or a work colleague at any meetings or interviews that are held in relation to the disclosure made. Workers should specify that they are making a disclosure under this procedure.

The individual manager hearing the disclosure is encouraged to take advice from Education Personnel Services who may involve other departments of Hampshire County Council or external relevant organisations where appropriate.

Time limits

There are no time limits on raising concerns under this procedure, but they should be raised at the earliest practicable opportunity, since delays in making a disclosure may prevent a full investigation from taking place. Where time limits are included within this procedure, they are there to ensure that disclosures are dealt with as quickly as possible, and to ensure that there is a prompt initial response from management.

The investigation that takes place after a disclosure is made is not time limited, but will be conducted as quickly as possible within the circumstances of the disclosure.

Unfounded allegations

If an allegation is found to be unfounded, i.e. no evidence or proper basis that supports the allegation being made, but the worker has made the allegation in good faith; no action will be taken against the worker. However, workers who make allegations maliciously, frivolously or for personal gain may face disciplinary action.

- **Unsubstantiated**: An unsubstantiated allegation means that there is insufficient identifiable evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Malicious**: The term 'malicious' implies that an allegation, either wholly or in part, has been made with a deliberate intent to deceive or cause harm to the person subject to the allegation. For an allegation to be classified as malicious, it will be necessary to have evidence to prove the intention to cause harm. Care should be taken in dealing with such allegations as some facts may not be wholly untrue. Some parts of an allegation may have been fabricated or exaggerated but elements may be based on truth.

The Procedure

Step 1 - Raising a concern

In the first instance, concerns under this procedure should be raised with the worker's immediate line manager, who should then deal with the problem as quickly as possible. If the worker believes that their immediate line manager is involved in the malpractice, they may raise their concerns with a more senior member of staff, including the HoTaL or Executive Headteacher. If the worker believes it is not appropriate to raise the matter with the HoTaL or Executive Headteacher, he/she may approach the Chair of Governors.

Within ten working days of a concern being raised, the person who has received the concern will write to the worker to acknowledge that the concern has been received. They should also indicate what initial steps they intend to take to deal with the matter and, where possible, provide an estimate of the time it will take to provide a final response.

Concerns may be raised orally or in writing, although written submissions are preferred wherever possible. These disclosures should provide as much information as possible about the matter, including dates, individuals involved, other possible sources of information, etc. Workers must be able to demonstrate to the person hearing the disclosure that there are reasonable grounds for making the allegations.

Although workers who wish to make an anonymous disclosure may do so, it may be important for the investigating manager to know the source of the information for a full and appropriate investigation to be possible. Furthermore, the manager would need to take into account the nature and credibility of an allegation before deciding whether to proceed with an investigation. However, workers should be re-assured that all disclosures will be treated in confidence and every effort will be made to preserve anonymity. The Act provides protection against victimisation of anyone who makes a protected disclosure in good faith.

Step 2 – Determine whether it is a Protected Disclosure

Following a disclosure made under this procedure, the person who has received the concern must determine whether the disclosure is a ‘qualifying disclosure’ under the Act, by considering the following:

- Whether any information was actually disclosed, as opposed to opinion only, to the employer (or relevant person)
- Whether the worker believed that the information tended to show that one of the matters in the Act has occurred, is occurring or is likely to occur (see below)
- Whether that belief was reasonable.

If the above criteria are met, the disclosure will qualify as a protected disclosure, and the following procedure will apply. If the criteria are not all met, the disclosure will not meet the conditions of the Act, but if the worker’s disclosure was made in good faith, investigations should still take place into the allegations, and the worker should not be discriminated against because they have raised such an allegation. If it is found that the disclosure was made for malicious purposes or for personal gain, the school should deal with this under the disciplinary procedure, where relevant (guidance on disciplinary issues can be found in the Manual of Personnel Practice: www3.hants.gov.uk/eps-discipline.htm).

The following is a list from the Act showing qualifying disclosures, which, if a person discloses them having reasonable belief of their validity, would be a protected disclosure under the Act.

- that a criminal offence has been committed, is being committed or is likely to be committed

- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
- that a miscarriage of justice has occurred, is occurring or is likely to occur
- that the health or safety of any individual has been, is being or is likely to be endangered
- that the environment has been, is being or is likely to be damaged
- that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Step 3 - Investigation

A preliminary investigation will need to be undertaken to establish whether the allegation could actually have occurred, be occurring or be likely to occur in the future. The investigation is not, at this stage, to determine whether the allegation has actually occurred, but to determine the facts of the case (e.g. was the alleged individual actually where they were purported to be, what does the evidence show?). More about investigations can be found in the Manual of Personnel Practice:

www3.hants.gov.uk/eps-discipline.htm

Allegations that have some foundation to them should be followed up with a full internal investigation, which may result in one or more of the following:

- No case to answer
- Disciplinary action taken against the alleged individual (Disciplinary guidance can be found in the Manual of Personnel Practice – link as above)
- Referral to Social Services or the Police, or other relevant organisation
- Referral to Internal Audit or other County Council departments.

If the allegations are found to be unfounded (no evidence or proper basis that supports the allegation), or unsubstantiated (can neither be proven nor disproven), no action need be taken by the school, although it would be pertinent to determine why the worker felt the need to raise the allegation in the first place, e.g. is there a training need within the school?

If it is found that the allegation was made for malicious purposes or for personal gain, the school should deal with this under the disciplinary procedure (guidance on disciplinary issues can be found in the Manual of Personnel Practice – link as above).

Step 4 - Communication

Subject to legal constraints and the need to protect the rights of individuals, the worker raising the concern will be informed of the outcome of any investigation at the earliest practicable opportunity, to reassure them that appropriate action has been taken. Such information will not include confidential details about formal action taken against another worker.

For reasons of sensitivity and confidentiality, all communications with a worker who takes action under this procedure will be sent to their home address, unless an alternative arrangement has been mutually agreed.

Step 5 - Taking the matter further

In the event that a worker feels that their concerns have not been resolved through the above process, they may write to the Chair of the Governing Body, if he/she has not already been involved, outlining their concern, the action taken to date and the reasons for their dissatisfaction.

Within 10 working days of a concern being raised, the Chair of Governors will write to the worker to acknowledge that the concern has been received and indicate what steps will be taken to deal with the matter, as well as providing an estimate of the time it will take to provide a final response. The Chair of Governors may decide to set up a small group of governors, where appropriate, to investigate the concerns. The Chair of Governors will then inform the worker of the outcome of this process on the same basis as required of the manager above.

In the event that the matter cannot be satisfactorily resolved within the school, the worker may escalate their concerns further. How they do this will depend on the status of the school, as follows:

5.1 Hampshire County Council maintained schools

Workers should raise their concerns, in writing, within the County Council's Children's Services Department, in the following order:

- with the Area Director
- with the Director of Children's Services
- with the Chief Executive

These officers will follow the same basic procedure outlined above in the same timescales and will feed back the outcome to the worker. The address for all of the above is: Children's Services Department, Hampshire County Council, Elizabeth II Court East, The Castle, Winchester, SO23 8UG or childrens.services@hants.gov.uk.

If a worker is dissatisfied with the response of the Governing Body and the County Council, and subject to the concern being a protected disclosure (see step 2), they can raise the matter, as appropriate, with any of the following:

- An elected Member of the County Council
- A local Member of Parliament
- The Local Government Ombudsman
- A relevant professional body or inspectorate (e.g. Ofsted or Health & Safety Executive)
- A 'prescribed person' as designated by the Act. A full list of 'prescribed persons' can be found here:
www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821 - under 'Blowing the whistle to a prescribed person'.

Workers can only make a disclosure to a prescribed person if they:

- Make the disclosure in good faith
- Reasonably believe the information is substantially true
- Reasonably believe they are disclosing the issue to the appropriate person or body (e.g. Health and Safety issues to the HSE).

In taking their concern outside of the County Council, workers must ensure that, as far as possible, the matter is raised without personal information relating to other workers, or confidential information about unrelated matters, being disclosed. A worker who approaches an accredited legal advice centre, e.g. Public Concern at Work:

0207 404 6609 or www.pcaw.org.uk or Citizens Advice Bureau, must not breach the duty of confidence in this procedure to the Governing Body nor the County Council.

5.2 Academy and Independent schools

Workers can raise their concerns, as appropriate, subject to the concern being a protected disclosure, with any of the following:

- A local Member of Parliament
- A relevant professional body or inspectorate (e.g. Ofsted or Health & Safety Executive)
- A 'prescribed person' as designated by the Act. A full list of 'prescribed persons' can be found here:
www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821 - under 'Blowing the whistle to a prescribed person'.

Workers can only make a disclosure to a prescribed person if they:

- Make the disclosure in good faith
- Reasonably believe the information is substantially true
- Reasonably believe they are disclosing the issue to the appropriate person or body (e.g. Health and Safety issues to the Health and Safety Executive).

In taking their concern outside of the school, workers must ensure that, as far as possible, the matter is raised without personal information relating to other workers, or confidential information about unrelated matters, being disclosed. A worker who approaches an accredited legal advice centre, e.g. Public Concern at Work (0207 404 6609 or www.pcaw.org.uk) or Citizens Advice Bureau, must not breach the duty of confidence in this procedure to the Governing Body.

6. Failure to follow this procedure

Any worker who unreasonably and without justification raises such issues on a wider basis, such as with the press, without following the steps and advice in this procedure may be liable to disciplinary action.