

## **Public Disclosure by Academy Employees: 'Whistle-blowing' Policy**

### **Advice and Instructions for Staff**

**(should be read in conjunction with the Academy Safeguarding policy)**

The term "whistle-blowing" has no legal definition within EC or UK law; however, it has been used to describe incidents where an employee publicly discloses some alleged wrongdoing or dangers within an organisation.

The Public Interest Disclosure Act 1998 aims to promote greater openness in the workplace and, by amending the Employment Rights Act 1996, protects "whistle-blowers" from detrimental treatment, i.e. victimisation or dismissal, for raising concerns about matters they believe to be in the public interest.

This statement sets out the Academies' Policy and provides in some detail advice and guidance to staff on the scope of the Policy. It explains that any member of staff who has a reasonable belief that there is serious malpractice relating to any of the protected matters specified in the Policy may raise a concern under the procedure agreed by the Governing Body and which is described in this statement. There is also information about the rights of staff to raise the matter externally if they are not satisfied with the Academies' response and the protection afforded to them if they choose to do this after the internal procedures have been exhausted.

### **Introduction**

1. All persons employed by the Academies are under an obligation implied in their contract of employment to give honest and faithful service to their employer. This includes an obligation not to disclose to external sources any trade secrets or confidential information acquired during the course of employment or act in a manner that will undermine the mutual trust and confidence on which the employment relationship is based. The Public Interest Disclosure Act 1988 complements those obligations by providing protection to employees for disclosure made of certain specific confidential information to a third party in defined circumstances. These are outlined below in paragraph 3. The purpose of this policy is to provide a means by which staff are enabled to raise concerns with the appropriate Academies' authorities if they have reasonable grounds for believing there is serious malpractice, wrongdoing or dangers within the Institution. The governing body encourages staff to raise matters of concern responsibly through the procedures laid down in this policy statement.

### **Scope of the Policy**

2. The policy is designed to deal with concerns raised in relation to the specific issues detailed in paragraph 3 below, and which fall outside the scope of other Academies' policies and procedures. The policy will not apply to personal grievances concerning an individual's terms and conditions of employment, or other aspects of the working relationship, complaints of bullying or harassment, or disciplinary matters. Such complaints will be dealt with under existing procedures on grievance, bullying and harassment, discipline and misconduct. Details of these procedures will be found in the relevant policy documents.

3. The policy may deal with specific concerns which may include:

- a criminal offence
- failure to comply with legal obligations
- financial or non-financial maladministration or malpractice or impropriety or fraud
- academic or professional malpractice
- a risk to the health or safety of any individual
- environmental damage
- a miscarriage of justice
- improper conduct or unethical behaviour
- attempts to suppress or conceal any information relating to any of the above.

If, in the course of investigation any concern raised in relation to the above matters, it appears to the investigator to relate more appropriately to grievance, bullying or harassment, or discipline, those procedures will be invoked.

### **Who can raise a concern?**

4. Any member of staff who has a reasonable belief that there is serious malpractice relating to any of the protected matters specified in paragraph 3 above, may raise a concern under the procedure detailed in paragraph 6 below. The issues raised under the protected list may relate to another member of staff or to a group of staff. The individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The Academies will ensure that any member of staff who makes a disclosure in such circumstances will not be penalised or suffer any adverse treatment for doing so. However, a member of staff who does not act in good faith or makes an allegation without having reasonable grounds for believing it to be substantially true or makes it maliciously or vexatiously may be subject to disciplinary proceedings.

5. In view of the protection afforded to a member of staff raising a bona fide concern, it is preferable if that individual puts his/her name to any disclosure. The identity of the person raising the matter will be kept confidential, if so requested, for as long as possible provided that this is compatible with a proper investigation. Anonymous complaints are not covered by this procedure, but may be reported, investigated or acted upon as the person receiving the complaint sees fit (including the use of this procedure), having regard to the seriousness of the issue raised, the credibility of the complaint, the prospects of being able to investigate the matter, and fairness to any individual mentioned in the complaint.

### **Procedure**

#### **6. Initial step**

Normally any disclosure about a protected matter should be made in the first instance to:

- **The Principal or**
- **Executive Principal, or**
- **The Chairman of Governors or**
- **The Chairman of Trustees**

If the disclosure is about either of those Officers, the member of staff may raise the concern with the nominated member of the governing body.

The person to whom the disclosure is made will decide whether the matter should be dealt with under this procedure. If he or she considers that the matter should be dealt with under a different procedure, s/he will advise the person making the disclosure as to the appropriate steps which should be taken.

## **Process**

7. The person to whom the disclosure is made will normally consider the information and decide whether there is a prima facie case to answer. He or she will decide whether an investigation should be conducted and what form it should take. This will depend on the nature of the matter raised and may be

- investigated internally
- referred to the Auditors
- the subject of independent enquiry

Some matters following investigation will need to be referred to the relevant outside body, e.g. the Police, DfE, local Safeguarding Children's board. If the person to whom the disclosure is made decides not to proceed with an investigation, the decision will be explained as fully as possible to the individual who raised the concern. It is then open to the individual to make the disclosure again to another of the persons specified in the paragraph above.

## **Investigation**

8. Any investigation will be conducted as sensitively and speedily as possible. The employee will be notified of the intended timetable for the investigation. The person to whom the disclosure is made may authorise an initial investigation to establish the relevant facts. The investigation may be conducted by the auditor in the case of a financial irregularity, or by another person. The investigator will report his or her findings to the person to whom the disclosure was made, who will then decide if there is a case to answer and what procedure to follow. This may include taking steps with the competent authority to set up a special internal independent investigation or reference to some external authority, such as the police, for further investigation. The decision may be that the matter would be more appropriately handled under existing procedures for grievance, bullying and harassment, or discipline. Where disclosure is made the person or persons against whom it is made will be told at an early stage of it and of the evidence supporting it (where appropriate), and they will be allowed to respond. The individual making the disclosure will be informed of what action is to be taken. Should an investigation or referral lead the appropriate Academies' authority to conclude there has been a breach of discipline, the member or members of staff responsible may, in addition to any civil or criminal proceedings, be subject to disciplinary action in accordance with the appropriate disciplinary procedures for the relevant category of staff.

## **Records**

9. An official written record will be kept of each stage of the procedure (see also paragraph 10 below).

## **Reporting of outcomes**

10. A report of all disclosures and subsequent actions taken will be made by the persons deciding on the issues. This record should be signed by the Investigating Officer and the person who made the disclosure, and dated. Where appropriate the formal record need not identify the

person making the disclosure, but in such a case that person will be required to sign a document confirming that the complaint has been investigated. Such reports will normally be retained for at least five years. In all cases a report of the outcome will be made to the full Governing Body, which will refer the report on appropriately if necessary.

### **Advice for staff raising a concern**

**11.** The Academies acknowledge the difficult choice a member of staff may have to make in raising a concern. As the issues that prompt the concern are likely to be complex, how the member of staff proceeds with his or her concern will vary from situation to situation. The following advice is recommended if a member of staff wishes to make a disclosure:

- make any objections to illegal, unsafe or unethical practices promptly so as to avoid any misinterpretation of the motives for doing so;
- focus on the issues and proceed in a tactful manner to avoid unnecessary personal antagonism which might distract attention from solving the problem;
- be accurate in his/her observations and claims and keep formal records documenting relevant events.

Members of staff may also wish to seek independent legal advice.

### **Complaints of retaliation as a result of disclosure**

**12.** The Academies accept that it has an obligation to ensure that staff who make a disclosure without malice and in good faith are protected, regardless of whether or not the concern raised is upheld. A member of staff who has made a disclosure and who feels that, as a result, he or she has suffered adverse treatment should submit a formal complaint under the grievance procedure as set out in the staff policy detailing what has been done to him or her. If it appears that there are reasonable grounds for making the complaint, the onus will be on the person against whom the complaint of adverse treatment has been made to show that the actions complained of were not taken in retaliation for the disclosure.

**13.** Where it is determined that there is a prima facie case that a member of staff has suffered adverse treatment, harassment or victimisation as a result of his or her disclosure, a further investigation may take place and disciplinary action may be taken against the perpetrator in accordance with the relevant procedure.

### **External disclosure**

**14.** If, having exhausted this procedure, a member of staff is not satisfied with the Academies' response and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true, he or she is at liberty to take the matter further by raising it with certain bodies or persons such as

- DfE
- a member of Parliament
- a legal adviser
- other bodies or persons (if any) prescribed by the Secretary of State under Section 43F of the Employment Protection Act 1996, as amended by Section 1 of the Public Interest Disclosure Act 1998

**15.** In some circumstances the law will protect whistleblowers if they raise the matter with a third party, such as those listed at paragraph 14 above, directly.