

071 Whistleblowing - Independent Reporting of Concerns at Work Policy

Responsibility: BS
Date: September 2018
Next Review: September 2019

Aim of this Policy

This policy provide a means for employees in the school or workers assisting the school to raise major concerns over any wrong-doing within the school relating to unlawful conduct, financial malpractice or dangers to persons or the environment.

Principles

Our employees will often be the first to notice if there is something seriously wrong within their workplace. Sometimes it may seem difficult to speak up because of feelings of disloyalty, or because of a fear of harassment or victimisation.

We expect the highest standards of behaviour and all employees have a responsibility to voice any concerns they have, normally with their line manager.

This Whistleblowing procedure is independent and confidential. It can be anonymous if you wish. We will make sure that you will not be victimised or suffer disadvantage if you report your genuine concerns.

It allows employees to bring to the attention of those who can make a difference any practice which they believe or suspect:

- is unlawful
- is a serious breach of the council's policies, procedures and rules (for example, the Contract Procedure rules)
- falls substantially below established standards of practice
- amounts to improper conduct

It is difficult to come up with a complete list of issues which might cause concern, but you should report known or strongly suspected fraud, corruption, bribery, theft or financial irregularities; the physical, mental or sexual abuse of any members of the school community; unfair discrimination; abuse of power; dangerous practices; criminal conduct; serious damage to the environment; negligence; unprofessional behaviour ; evasion of statutory responsibilities or where you believe that an activity is taking place which involves gross waste or mismanagement of funds.

The malpractice might be carried out by council employees, contractors, consultants, or councillors.

This procedure is not to be used if you are generally dissatisfied at work or as a replacement to your existing employment rights with the council. If you make any allegations maliciously or for personal gain, you may be disciplined.

This policy is endorsed by all the trade unions representing council employees.

Core Roles and Responsibilities

Staff

- Raise major concerns, using the appropriate procedures e.g. child protection; grievance; anti-harassment or whistleblowing
- Concerns raised with the Headteacher in the first instance or, if inappropriate or refers to the Headteacher, raised with the Chair of Governors

Headteacher

- Determine which procedure is appropriate for further investigation and, if appropriate, delegate to the appropriate senior member of staff
- Ensure investigation completed in accordance with procedure, and determine whether a "qualifying disclosure"
- Communicate with the person raising the disclosure to advise of action to be taken and likely timescales

Governors

- Respond to and investigate concerns which are either inappropriate for Headteacher to investigate and/or where the Headteacher requests support from Governing Body
- The Chair of Governors will respond to and investigate concerns which refer to the Headteacher
- Ensure investigation in accordance with procedure, referring to Local Authority for advice if required.

Introduction

This procedure enables employees or workers in the school or workers assisting the school to raise concerns about any suspected malpractice at an early stage and in accordance with **Public Interest Disclosure Act 1998** (See Appendix 1). It is primarily for concerns where the interests of others or of the organisation itself are at risk. Employees or workers are expected to use other appropriate procedures where these are available, particularly child protection procedures. These are designed to expedite specialist investigation and will offer support to the person raising the concern; they include provision for the employee or worker to approach the designated person in the local authority directly where necessary. Employees in school are also expected to use school procedures such as grievance and anti-harassment where appropriate.

Specific examples of matters appropriate to the whistle-blowing procedure are:-

- A criminal offence (e.g. fraud, corruption or theft) has been/is likely to be committed
- A miscarriage of justice has been/is likely to occur
- The health or safety of any individual has been/is likely to be endangered
- The environment has been/is likely to be damaged
- Public funds are being used in an unauthorised manner
- The School's governance arrangements have not been or are not being observed or have been or are being breached by pupils, staff employed in or those working with or assisting Holmfirth High School
- Sexual or physical abuse of any employee or service recipient is taking place (although in the case of children the Child Protection Procedure should be used)
- Unlawful discrimination is occurring to any member of staff or service recipient in relation to the legally protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.
- Any other form of improper action or conduct is taking place

- Information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.

The legal background – what is a qualifying disclosure?

The legal definition of a qualifying disclosure is complex. Some guidance is given in the appendix, but this should not be taken as definitive. Each case must be determined according to its own circumstances. Initiation of this whistle blowing procedure does not amount to acceptance that the information provided is a qualifying disclosure. A decision as to whether it is a qualifying disclosure will be taken after due investigation.

Confidentiality

Although the legislation does not refer to the confidentiality of concerns raised in a qualifying disclosure, there is a widespread assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. The issue of confidentiality should be raised when a disclosure is first made, both by the employee or worker and by the person receiving the disclosure. If the initial disclosure is made orally the employee or worker should say at the beginning of the conversation whether he or she expects it to be received in confidence and a written disclosure should be marked confidential. The person receiving the disclosure should explain that there may be limits to confidentiality and what those limits are, including the possibility of the employee or worker being interviewed during an investigation and even the possibility of having to present evidence in court, and discuss the implications for the employee or worker if he or she proceeds with the disclosure. Anonymous complaints will be considered, but, depending on the information given and the credibility of the evidence, there may not be sufficient information for a proper investigation and such complaints may not therefore be pursued.

How to raise a concern

- a) Through the Headteacher
Normally you should first speak to the Headteacher. If you feel that you cannot do this – for example if you believe that they are involved – then you should speak to the Chair of Governors. If you feel that you cannot discuss this with anyone within the school, you can contact the Local Authority Assistant Director who has overall responsibility for Whistleblowing – who is Julie Muscroft, Assistant Director of Legal, Governance and Monitoring (who can be contacted by way of the council's main switchboard 01484 221000 or Julie.muscroft@kirklees.gov.uk)
- b) Through a councillor
You may find it helpful to contact a councillor
- c) Through your trade union or another representative
You could contact your trade union representative, or someone who you trust to advocate on your behalf.
- d) Through the Whistleblowing route
If you do not feel able to contact any of these people you should call the council's Whistleblowing answerphone – ring 860 5030 or 01484 225030 or email whistleblowing@kirklees.gov.uk

You should give as much information as you can, including names, dates, places, history and why you are concerned. You are encouraged, but not required, to leave your name and contact details – it is much easier to investigate a concern if we can speak to you directly and confidentially.

All messages on the answerphone and email will be heard and seen only by the council's Corporate Customer Standards team. They will then review all messages confidentially, and contact either the Head of Audit and Risk or the Head of HR.

How your concerns will be dealt with

All allegations will be investigated: how and by whom depends on how serious they are and who they involve. The investigation may be handled internally, or referred to an external agency such as the council's external auditor or the police. Internal investigations will be undertaken by an appropriate department, such as Internal Audit or HR, or in some instances by senior management within the service. The Corporate Customer Standards Officer retains overall responsibility for ensuring that all concerns are properly considered and dealt with appropriately.

If you raise your concerns under this policy then we will write to you within 10 working days saying:

- what we intend to do
- how long we think this will take
- whether any more information is required from you

We will let you know the outcome of the investigation, so that you can see that the matter has been properly addressed.

The council's Corporate Governance and Audit Committee will receive regular reports summarising all concerns raised under this policy.

If you make a Whistleblowing complaint, you have a right not to be bullied, harassed or mistreated as a consequence of this. If you believe that you are suffering detriment as result of your complaint you should report this to the Corporate Customer Standards Officer.

Any person who treats a whistle blower in a detrimental way as a result of their whistleblowing will be liable to disciplinary action.

Raising your concerns elsewhere

This Whistleblowing policy has been drawn up so that you can have your concerns dealt with properly, independently and confidentially by the council. But if you have no faith in this process, then you may consider contacting:

- the council's external auditor – KPMG, 1 The Embankment, Neville Street, Leeds LS1 4DW or phone 0113 231 3148
- the police – phone 101 from any phone (9 then 101 from council phones)
- Public Concern at Work – an independent authority on whistleblowing at www.pcaaw.co.uk or phone 020 7404 6609
- An appropriate regulatory body, that the government believes may be appropriate to receive whistleblowing concerns as set out in;
- Department of Business Innovation & Skills 15/298; Blowing the Whistle to a Prescribed Person; List of Prescribed Persons & Bodies

Council employees have a responsibility not to undertake any action which might bring the council into disrepute. If you do decide to report your concerns outside the council, you must ensure that you have a good reason for doing so and you must not disclose confidential information. Provided that your behaviour is appropriate you may retain the statutory protection offered to Whistle-blowers.

Appendix 1 - GUIDANCE ON THE PUBLIC INTEREST DISCLOSURE ACT

1. The Public Interest Disclosure Act 1998 was enacted to protect workers from suffering a detriment, or being dismissed by their employers for raising concerns about serious misconduct or malpractice that threatens the public interest. This reflected recognition that they may have duties beyond those owed to an employer, for example where criminal acts, actions endangering health and safety or acts damaging to the environment are committed.
2. The Act applies to "workers", a much broader category than employees. It has been extended to cover independent contractors, agency workers, police officers, trainees and all professionals in the NHS. It is yet to cover volunteers. The Act operates by inserting sections 43A-43L, 47B and 103A into the Employment Rights Act 1996.
3. No minimum period of service is required to receive the protection of the Act but a disclosure must be a "qualifying disclosure", that is, "any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:
 - a. a criminal offence has been committed, is being committed or is likely to be committed
 - b. a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"
 - c. a miscarriage of justice has occurred, is occurring or is likely to occur
 - d. the health or safety of any individual has been, is being or is likely to be endangered
 - e. the environment has been, is being or is likely to be damaged, or
 - f. that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."Section 43B(1)
4. A qualifying disclosure is made "if the worker makes the disclosure in good faith (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person." However, "a worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer." Section 43C
5. An employer may therefore provide a procedure for an employee to make a qualifying disclosure to another person. This recognises that there are circumstances in which an employee might be reluctant to make the disclosure to his employer, for example, when he or she is uncertain as to the extent of the malpractice and whether the employer is complicit.
6. A qualifying disclosure can also be made to a person other than the employer (Section 43G) if:
 - a. the worker makes the disclosure in good faith,
 - b. he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - c. he does not make the disclosure for purposes of personal gain,
 - d. any of the conditions in subsection (2) is met, and
 - e. in all the circumstances of the case, it is reasonable for him to make the disclosure."

The conditions in subsection 2 are

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F [i.e. to a prescribed person], (b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or (c) that the worker has previously made a disclosure of substantially the same information to his employer or in accordance with section 43F." The law gives some guidance on reasonableness, including the identity of the person to whom the disclosure is made, the seriousness of the relevant failure, whether the failure is continuing or is likely to occur in the future, whether a breach of confidentiality owed by the employer is involved, whether the worker has complied with any procedure authorised by the employer.

7. Given the various tests of reasonableness, employees who are unsure whether to use this procedure or are unwilling to disclose information to their employer are advised to consult their trade union or professional association or the independent charity Public Concern at Work (0207 404 6609) before seeking to make a disclosure to other persons, to ensure that they are covered by the Act.
8. The other persons, with relevant functions, to whom a disclosure can be made under Section 43G are listed on the Government's website.
9. In order for a disclosure to be made in good faith it is not necessarily enough that the worker believes it to be true; a true disclosure for another motive, such as personal antagonism, may not be in good faith and might be challenged in employment tribunal.
10. Persons making a qualifying disclosure as defined in the Act are protected against victimisation and have the right to complain to an employment tribunal.