

MILLWOOD SCHOOL, BURY

POLICY: CONFIDENTIAL REPORTING - "WHISTLE-BLOWING"

DATE: DECEMBER 2017

DATE ADOPTED BY GOVERNING BODY: January 2015

Introduction

Designated Officer – Helen Chadwick, Headteacher

Designated Officer on governing body – Dilon Hilton, Chair of Governors

The Bury Safeguarding Children Board has developed these procedures to ensure all staff working in partner agencies have the opportunity to raise concerns should they have a reasonable suspicion that malpractice or wrongdoing is occurring, has occurred, or is likely to occur. This can include unlawful conduct, financial malpractice or dangers to the public or the environment. Millwood School has adopted this policy.

The Nolan Committee on Standards in Public Life made clear that local authorities and other statutory agencies should adopt such procedures, also referred to as 'whistle-blowing' procedures, and the Public Interest Disclosure Act 1998 gave protection to 'whistleblowers' who are subsequently treated unfairly.

Additionally, the Whistle-blowing Commission, established in 2013, developed a Code of Practice for effective whistle-blowing arrangements. The BSCB's Policy complies with this Code of Practice. The policy applies to all staff working for the agencies that are members of the BSCB, and is aligned with the policies of each of those individual agencies.

Employees are often the first to realise that there may be something seriously wrong within their workplace. However, they may choose not to express their concerns if they feel that by speaking out it would be disloyal to their superior(s), colleagues or to the organisation, or if they fear harassment or victimisation.

The BSCB is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, employees and others with serious concerns about any aspect of their organisations work are encouraged to voice them. In so doing it is recognised that in certain cases they will have to proceed on a confidential basis.

This policy makes it clear that staff should be encouraged and enabled to raise serious concerns within Millwood School without fear of reprisal. It is intended to help build an environment of openness within the school.

Aims and Objectives

The policy aims to:

Provide an avenue for all those to whom the policy applies to raise concerns and receive feedback on any action taken;

Allow them to take the matter further if they are dissatisfied with the response received;

Reassure them that they will be protected from reprisals or victimisation for confidential reporting an incident where the employee has a reasonable belief that the matter is in the public interest. Such an act will be covered by "protected disclosure".

(Definition of Protected disclosure – a source of information that the worker reasonably believes tends to show malpractice. It does not have to be true, as long as the worker reasonably believes it to be true).

Part IV of the Employment Rights Act 1996 – The Public Interest Disclosure Act – sets out a framework for staff to make disclosures about various categories of wrongdoing, provided they reasonably believe it to be in the public interest to do so:

- a criminal offence
- failure to comply with statutory or legal obligations
- improper or unauthorised use of public or other funds
- a miscarriage of justice
- endangering health and safety
- damage to the environment
- maladministration, misconduct or malpractice
- deliberate concealment of any of the above

An employee is protected when making a disclosure if they have followed their Millwood's internal procedures and is making the disclosure under specified circumstances:

- Disclosure to a legal advisor;
- Disclosure to the employer;
- Disclosure to a Government Minister (where the employer is appointed by a Minister);
- Disclosure to a 'prescribed person', (usually regulatory body such as Health & Safety Executive);
- Disclosure to a person unconnected with the Organisation (eg. Local Safeguarding Board);
- There is provision for a disclosure of an exceptionally serious failure to any person or body.

The overriding concern should be that it would be in the public interest for malpractice to be corrected and, if appropriate, sanctions applied.

The Public Interest Disclosure Act makes it unlawful for an employer to dismiss or subject a worker to a detriment for having made a 'protected disclosure' of information. The protection provided by the Act is not subject to any qualifying period of employment and so is referred to as a 'day one' right in employment law. By contrast under ordinary unfair dismissal, there is a two year qualifying period. (This means a member of staff making a disclosure cannot be dismissed or treated unfairly as a consequence of whistle-blowing so long as they have acted reasonably and in good faith in bringing forward their concern.)

Making a disclosure

As a first step, employees should normally raise concerns with their immediate manager or superior. However, much depends on the seriousness and sensitivity of the issues involved, and who is believed to be involved in the malpractice. Each agency will have its own procedures that sets out which Officers can be approached in confidence, to raise a specific concern or to obtain advice and guidance on how matters of concern may be pursued. An employee can also contact their trade union. At Millwood School, this person would be the headteacher, Helen Chadwick. If the concern is about the headteacher, the person to be approached in confidence would be the chair of the governing body, Debi Walker. In their absence, Caroline Henley (deputy head) and Caroline Rawstron (vice-chair of governing body) could be approached in confidence.

Whilst concerns are best raised in writing they can also be expressed verbally through a telephone call. Where a concern is expressed verbally an employee can also ask for a meeting with an appropriate person. This could be the same person approached in confidence as described in the previous paragraph. It could, however, be by someone else depending on the context of the concern raised.

In any event, as much information as possible should be given and this should include:

- the background to the concern;
- names of individuals, dates and places where applicable;
- the reasons why there are concerns;

The earlier that concerns are expressed the easier it is for action to be taken.

Although employees are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for their concern.

Workers who have made external disclosures will normally be protected only if they have previously raised the matter with the employer or prescribed person, providing they have made the disclosure in good faith and, also, that they have not acted for personal gain.

The organisation will not tolerate the harassment or victimisation of anyone raising a concern under this procedure. Should such treatment be detected and proven the matter would be dealt with in accordance with the Disciplinary Procedure. Formal disciplinary action (including dismissal) may follow.

In any case where false allegations appear to have been made maliciously and in bad faith, the organisation's staff disciplinary procedures will be instigated in order that appropriate action is taken.

Responding to a disclosure

Following a disclosure an investigation may need to be carried out under the terms of strict confidentiality i.e by not informing the subject of the complaint until (or if) it becomes necessary to do so.

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- be investigated internally
- be referred to the Police
- be referred to the Audit Commission
- form the subject of an independent inquiry.

Ill-treatment and safeguarding

In certain cases, such as allegations of ill treatment of service users, suspension from work may have to be considered immediately. Protection and safety of children is paramount in all cases.

Concerns or allegations that fall within the scope of specific procedures will normally be referred for consideration under those procedures. Allegations relating to child abuse or safeguarding for example will be dealt with in accordance with Millwood's Child Protection Procedures.

Communication

The Designated Officer, Helen Chadwick, will offer to keep the whistle-blower informed about the investigation and its outcome.

If the result of the investigation is that there is a case to be answered by any individual, the Millwood Code of Conduct and Disciplinary Policy of the organisation will be used.

Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the Designated Officer should ensure that the employee suffers no reprisals.

Only where false allegations are made maliciously, will it be considered appropriate to act against the whistle-blower under the terms of the Millwood Code of Conduct and Disciplinary Policy.

Designated officers

A Designated Officer will be nominated within each organisation. The Designated Officer will have direct access to the most senior person within that organisation. The Designated Officer at Millwood is Helen Chadwick.

Complaints about the most senior person in the organisation.

If exceptionally the concern is about the most senior person in the organisation, this should be made to the Chair of the governing body who will decide on how the investigation will proceed. This may include an external investigation.

Following the investigation

The Designated Officer will be briefed as to the outcome of the investigation. The Designated Officer will then arrange a meeting with the whistleblower to give feedback on any action taken. (This will not include details on any disciplinary action, which will remain confidential to the individual concerned). The feedback will be provided within one month of the completion of the investigation.

If the whistleblower is not satisfied with the outcome of the investigation, the organisation recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive, the Audit Commission, or the utility regulators)

Safeguards

The BSCB recognises that the decision to report a concern is not an easy one to make, not least because of the fear of reprisal from those reported for the malpractice. The Council will not tolerate harassment, bullying or victimisation based upon race, religion or belief, gender, gender reassignment, sexual orientation, disability and age from employees, managers or governors, and will take appropriate action, including the application of the Disciplinary Procedure, to protect an employee who raises a concern that they reasonably believe to be "in the public interest".

In accordance with Part IV of the Employment Rights Act 1996 - The Public Interest Disclosure Act - an employee cannot be dismissed or selected for redundancy as a result of making a disclosure that they reasonably believe to be "in the public interest". In addition, an employer cannot withhold a pay rise, object to a promotion or not give training. Other examples that will not be tolerated where a member of staff is disadvantaged because they blew the whistle could include (but is not limited to) ostracism, closer monitoring, blocking access to resources, unrequested re-assignment or re-location, demotion, suspension, failure to provide an appropriate reference and failure to investigate subsequent concern

This does not mean that if an employee is already the subject of disciplinary or redundancy procedures that those procedures will be halted as a result of confidential reporting.

Confidentiality

The Council will respect confidentiality and all steps will be taken to ensure that confidentiality is maintained throughout the process. However, it must be appreciated that the investigation process may reveal the source of the information. Any statement made by the whistle-blower may be required as part of the evidence.

Anonymous Allegations

Millwood School would encourage employees to put their name to allegations because concerns expressed anonymously are much less powerful. However, the school also recognises that some employees would not wish to do this. Where a concern is expressed anonymously it will be considered at the discretion of the Designated Officer and in exercising this discretion the factors to be taken into account would include:

- the seriousness of the issue(s) raised
- the credibility of the concern
- the likelihood of confirming the allegation from attributable sources.

Untrue allegations

If an employee makes an allegation that they reasonably believe to be “in the public interest” but it is not confirmed by the investigation no action will be taken. If however, an employee makes a malicious or vexatious allegation, disciplinary action may be taken.

If, at any stage, an employee is unsure whether to use this procedure, or decide that they need independent advice, they may seek advice from the independent charitable body '**Public Concern at Work**'. This organisation operates a help-line and a mediation service and can be contacted on **0207 404 6609**. They can give free, confidential advice at any stage of the process.

If an employee does take the matter outside the employing organisation, then they need to ensure that they do not disclose confidential information, or that disclosure would be privileged. (Confidential or privileged information may be information that identifies a child or information from court proceedings that haven't been made public. In this context, a member of staff may have access to privileged information by virtue of their role but it should not be disclosed to a third party.)

If concerns are raised through professional bodies, or trade unions, then it is expected that the professional body/trade union representatives will act in accordance with this policy, and with the Public Interest Disclosure Act, with regard to the information disclosed. Such a disclosure made by an employee will not be treated as grounds for disciplinary proceedings.

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