

WHISTLEBLOWING POLICY 2018

1. Introduction

- 1.1 As an Academy, Cottesbrooke Infant and Nursery school is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty and accountability. However, we acknowledge that there may be occasions when things go wrong or the Academy may unknowingly harbour unethical conduct. We believe a culture of openness and accountability is essential in order to prevent such situations occurring or to address them if they do occur.
- 1.2 The term whistleblowing is generally used only with reference to workers (referred to in Law as making a protected disclosure) and has a specific legal definition pursuant to the Public Interest Disclosure Act 1998, i.e. a disclosure of information which, in the reasonable belief of the worker, is made in the public interest and tends to show serious misconduct. The information must always be more than an un-particularised allegation, or mere opinion. However, in a non-legal context, the term might also be used to describe a similar disclosure of information, by anyone who is not a worker. The Academy recognises that as a public body it might receive a disclosure of information not just from its workers, but from members of the public as well. In this policy, receipt of any such information will simply be referred to as a **“disclosure”**.
- 1.3 The term ‘worker’ includes an employee of the Academy, agency staff, contractor or consultant doing work for the Academy, collectively referred to in this policy as **“employees”**. A member of the public will be anybody not falling within the definition of ‘employees’ which might include the parent of a child at a school or a person who uses Academy services.
- 1.4 This policy applies to disclosures from employees but also sets out the Academy’s commitment to deal with disclosures from members of the public in the same way. To this end, where this policy makes reference to a **“whistleblower”**, it refers to both employees and members of the public who make a disclosure.
- 1.5 This policy is designed to provide guidance on how an employee or a member of the public should report any suspected serious misconduct as well as reassurance that any disclosure can be made safely.
- 1.6 This policy seeks to:
 - a) encourage whistleblowers and/or their representatives to feel confident in raising disclosures in the public interest about suspected serious misconduct in the Academy and its services without fear of reprisals or victimisation, even where the disclosures are not subsequently confirmed by an investigation
 - b) set out how the Academy will handle and respond to disclosures
 - c) give a clear message that disclosures are taken seriously

- d) ensure that where a disclosure proves to be well founded, the individuals responsible for such serious misconduct will be dealt with in an appropriate manner
- e) set out what whistleblowers can expect by way of confidentiality and protection when making a disclosure and
- f) identify independent support for employees who wish to make a whistleblowing disclosure (see section 7).

1.7 Where any individual, irrespective of whether that individual is either a school employee, a worker for a school contractor, or a member of the public, is aware of any serious wrongdoing, such as:

- breach of a legal obligation;
- any criminal activity, including incitement to commit a criminal act;
- corruption or fraud;
- a miscarriage of justice;
- a danger to the health or safety of any individual or damage to the environment;
- abuse of power or authority;
- failure to comply with professional standards, Academy policies or codes of practice/conduct;

committed by or related to the actions of:

- school employees;
- Governors; and/or
- contractors, agency staff, suppliers or consultants in the course of their work for the school;

and reports it, the Academy's Governing Body will investigate any such allegations and, where appropriate, take action. The Governing Body is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistleblowing, and where appropriate, will take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a whistleblower.

1.8 This policy seeks to set out how the Governing Body will handle and respond to any such allegations, made either by employees or members of the public.

1.9 Whilst the whistleblowing legislation offers protection to employees, the Governing Body considers that any such allegations of serious wrongdoing should be

investigated, whether they are made by an employee, a user of the school's services or any member of the public.

- 1.10 This policy is not designed to be used:
- a) for raising or reconsideration of matters that come under existing internal school procedures e.g. Grievance, Disciplinary, Capability, Dignity at Work or general complaints procedure; or
 - b) for allegations that fall within the scope of specific procedures (for example child protection) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or
 - c) as an appeal process from any complaint or grievance handled under any of the above procedures.
- 1.11 Where a disclosure made under this policy falls outside the scope of the policy, e.g. where the complaint falls outside the scope of “serious wrongdoing”, the Governing Body will advise the whistleblower of this and consult with the whistleblower in respect of taking the complaint further. Wherever possible, the Governing Body will comply with the views of the whistleblower, but there are situations where the Governing Body is legally required to pass on details of allegations, without the consent of the whistleblower, such as in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the school.
- 1.12 Likewise, if an allegation made under either of the other above complaints processes falls under the remit of a “serious wrongdoing”, the Governing Body will notify the whistleblower of this and investigate the allegation under this process.

2. Disclosures made by school employees, Agency Staff, and any other individuals working for our school

The Public Interest Disclosure Act 1998 (“PIDA”)

- 2.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the school) to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the school.
- 2.2 This is called making a “Protected Disclosure” under the Act, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from harassment or victimisation as a result of the disclosure.

- 2.3 The person making the disclosure does not have to be directly or personally affected by the serious wrongdoing, but the disclosure must be made in the public interest.
- 2.4 To be protected, the disclosure must be in the public interest and raise a concern that:
- a) a criminal offence (e.g. fraud, corruption or theft) has been/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 been/is likely to occur;
 - d) the health or safety of any individual has been/is likely to be endangered;
 - e) the environment has been/is likely to be damaged;
 - f) public funds are being used in an unauthorised manner;
 - g) The Academy Trust's Constitution (including the Education Funding Agency's (EFA) Academy's handbook, contract with the Secretary of State. school's Financial handbook etc.) has not been observed or is being breached by Governors or school employees;
 - h) sexual or physical abuse by any member of staff on pupils is taking place;
 - i) unlawful discrimination is occurring to any member of staff or pupil 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 (see guidance on Equality Act at <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/>);
 - j) any other form of improper action or conduct is taking place. This could include breaches of requiring school governors to “act with integrity, objectivity and honesty and in the best interests of the school”; (The Governing Body will adhere to the Nolan Principles of Public Life Appendix 1)
 - k) information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.
- 2.5 PIDA will protect any employee or worker making a Protected Disclosure, irrespective of whether or not the disclosure relates to information gained in the course of their employment (e.g. a protected disclosure made by an employee acting as a service user would still fall under the PIDA protection).
- 2.6 If an employee does not feel comfortable making a disclosure to the Governing Body, he/she may be entitled to make a disclosure to other prescribed persons. For further information please see Schedule 2.

3. Individuals employed or working in our school

- 3.1 Individuals employed in our school are normally expected to raise their concerns under this code to either the Head Teacher or the Chair of Governors.
- 3.2 Employees in schools are expected to use school procedures such as grievance and anti-harassment where appropriate.
- 3.3 Where the employee considers one or more incidents amount to a safeguarding incident, they should make a report under the School's Safeguarding policy.

4. Disclosures made direct to Birmingham City Council

- 4.1 Birmingham City Council has no legal powers to investigate a disclosure made in respect of our school, which is an academy (except for disclosures made in respect of safeguarding issues and Special Educational Needs), and upon receipt of such concerns, the Council will contact the whistleblower to discuss whether or not to refer the disclosure to the Education Funding Agency, (the Government Agency that has oversight of our school as an academy, and to whom complaints/ whistleblowing disclosures in respect of our school, as an academy, should be made. However, the Council may disclose information about the disclosure, without disclosing the identity of the whistleblower, without the whistleblower's consent, where the allegations raised are sufficiently serious enough to warrant it.
- 4.2 In respect of disclosures of serious wrongdoing relating to safeguarding children, and/or Special Educational Needs the Council has a legal obligation to investigate, and will do so, irrespective of the fact that our school is an Academy.
- 4.3 Birmingham City Council will work with the Education Funding Agency and the Department for Education to review the outcome of any complaint referred to them.
- 4.4. Where the Governing Body receives a Protected Disclosure by an employee, they will seek advice from their appropriate professional advisor(s) (School and Governor Support, Charlie Keane 0121 303 2620). If they are unable to obtain such advice, they can approach the Charity, Public Concern at Work (0207 404 6609) <http://www.pcaw.org.uk>, which may be able to assist.

5. Advice to employees wishing to raise a concern or make a disclosure

- 5.1 Employees who have major concerns arising from their employment may wish to seek advice from their union or the charity Public Concern at Work (0207 404 6609 – <http://www.pcaw.org.uk>), to see whether the information which they wish to report would meet the definition of a 'protected disclosure' and whether they should be using this procedure, or some other procedure.

6. Whistleblowing by members of the public

- 7.2 In the event that an employee does not feel comfortable in making a disclosure to the Governing Body, they are entitled to also make a Protected Disclosure to a number of other organisations. For further information as to whom, other than the Governing Body, a protected disclosure can be made, see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360648/bis-14-1077-blowing-the-whistle-to-a-prescribed-person-the-prescribed-persons-list-v4.pdf

8. How the school will respond to a disclosure

- 8.1 The Governing Body will acknowledge receipt of a disclosure, whether it has been made by a member of the public and/or an employee, within 2 working days. In some cases, if insufficient information is provided with the initial disclosure (in the reasonable opinion of the Academy), the whistleblower may be asked to provide further information and the procedure may not continue until this has occurred. All initial contact will usually be made by the Academy's Chair of Governors.
- 8.2 The Governing Body will then consider and decide whether the disclosure falls under the whistleblowing criteria and, if not, will, wherever possible, seek the whistleblower's consent as to how the disclosure will be investigated using the appropriate school procedure(s). The Governing Body's decision will be given to the person making the disclosure, wherever possible, as soon as possible after receipt of disclosure, and no later than 5 working days after acknowledging receipt of the disclosure.
- 8.3 The decision letter will state who will be handling the disclosure, how that person can be contacted, what action is likely to be taken and when the employee or worker might expect to hear the outcome of the disclosure. A further letter, summarising progress to date, will be sent within another ten working days, and if the matter has not been resolved at that time the letter will include an estimate of how long it is likely to be before a full response can be provided.
- 8.4 However, there are situations where the Governing Body is legally required to investigate, under separate procedures, without the consent of the whistleblower, such as investigating allegations of ill-treatment or abuse of children (safeguarding). In these circumstances, the Governing Body will, wherever possible, advise the whistleblower that the disclosure will be investigated under another process, but there may be situations where it is not appropriate to disclose the existence of these investigations.

- 8.5 When the disclosure is considered to come under the whistleblowing policy, and the Governing Body has assigned an investigator, he/she will contact the whistleblower, within a further 10 working days, to advise them of the following:
- a) the arrangements for confidentiality;
 - b) how the person making the disclosure will be expected to contribute to the investigation;
 - c) the outcome of any discussions which may have taken place over anonymity;
 - d) an estimate of how long the investigation is likely to take;
 - e) the name of the investigator appointed to undertake the investigation;
 - f) the right of an employee to representation by a recognised trade union or work colleague at any meeting; and
 - g) the right of any non-employee to seek support and representation at any meeting.
- 8.6 However, dependent on the nature of the disclosure or the reasonable wishes of the whistleblower, it may instead be preferable, or more appropriate or convenient, for contact regarding the disclosure to remain with the Academy's Chair of Governors.
- 8.7 The Governing Body, wherever possible, will seek to advise the whistleblower of the outcome of the investigation. However, the Governing Body is bound by the Data Protection Act and the Human Rights Act in respect of allegations relating to individuals, and may not be able to disclose information where legal proceedings are pending.
- 8.8 The use of this whistleblowing process does not automatically amount to acceptance by the Governing Body that the information provided is necessarily a protected disclosure.

9. Confidentiality and anonymity

- 9.1 Although the PIDA does not refer to the confidentiality of concerns raised in a protected disclosure, there is a widespread assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. The Governing Body will seek to avoid disclosing information identifying any whistleblower, even if the Governing Body considers that the disclosure, by the whistleblower, falls outside the scope of a qualifying disclosure. However, there are situations where, due to the circumstances of the alleged serious wrongdoing, it is impossible to avoid disclosing information identifying any whistleblower. In these circumstances, the Governing Body will consult with the whistleblower prior to the disclosure taking place and offer support.
- 9.2 There may also be situations where the Governing Body may be obliged to disclose information, such as where there are legal proceedings following on from the

investigation of the whistleblowing investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the whistleblower may be expected to give evidence at any hearing. In these circumstances, the Governing Body will discuss the implications for the whistleblower if he or she proceeds with the disclosure, and where appropriate, will discuss appropriate support arrangements.

- 9.3 The Governing Body may also be required to disclose the identity of the whistleblower to third parties, where necessary for the purposes of undertaking investigations e.g. where the allegations relate to serious criminal offences where the Governing Body considers that the Police should investigate.
- 9.4 Anonymous complaints will be considered but, depending on the information given and the credibility of the evidence, there may not be enough information for a proper investigation without the investigator being able to contact the whistleblower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation.
- 9.5 Cottesbrooke Infant and Nursery school as an academy supported by public funds, is subject to the Freedom of Information Act. This means that there is a presumption that the Governing Body discloses any information it holds, unless that information falls under one or more exemptions and, in most cases, that the application of that exemption is in the public interest.
- 9.6 The Freedom of Information Act contains exemptions that may be applicable to permit the withholding of information identifying the whistleblower, including:
- s.40 Personal Data.
 - s.41 Information which, if disclosed, would give rise to an actionable breach of confidence.
- 9.7 If the Governing Body receives a request for information identifying a whistleblower, it will contact the whistleblower to seek their views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.
- 9.8 The Governing Body is mindful, in reconciling the legal obligation to disclose information it holds under the Freedom of Information Act 2000, of its legal obligations under:
- a) The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and
 - b) The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees.

10. Protecting an employee whistleblower

10.1 Employees are protected if:

- they honestly think what they report is true;
- they think they are telling the right person; and
- they believe that their disclosure is in the public interest.

10.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistleblowing. The Governing Body has adopted this procedure in order to encourage early internal whistleblowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised because of blowing the whistle, he or she should make a further complaint under this whistleblowing procedure directly to the Chair of Governors.

10.3 An employee has the right to complain of victimisation as a result of any whistleblowing to an employment tribunal.

10.4 Any employee who victimises a whistleblower could:

- be subject to an internal school investigation and potential disciplinary action, including potential dismissal;
- face a civil claim personally, as the affected whistleblower could be entitled to directly issue a legal claim against the culprit.

11. Recording and monitoring complaints

11.1 The Governing Body is legally required to maintain a list of concerns raised by employees made under the Public Interest Disclosure Act. Inclusion in this list does not amount to acceptance that the communication amounts to a Protected Disclosure and any subsequent decision that the matter falls outside the Act will be added to the record on the list.

11.2 The Governing Body will also record all disclosures of serious wrongdoing made by members of the public.

11.3 For the purposes of investigating whether or not there are any systemic issues that need to be addressed, and to monitor the performance of any investigation, an anonymised summary of all disclosures of serious wrongdoing, made by employees or members of the public, will be reported on a termly basis to the Governing Body

- 11.4 The Governing Body will record details of all complaints made under this policy, anonymising the identity of the whistleblower and use this information for the purposes of identifying areas of concern, which may indicate further action is required, and where appropriate, share this information with other appropriate regulatory bodies.
- 11.5 Both lists are maintained in accordance with the Data Protection Act 1998.
- 11.6 A report on the number of concerns will be published annually as part of the Governing Body's performance arrangements . This report will not include any information identifying any whistleblower.

The Nolan Principles of Conduct Underpinning Public Life

1. **Selflessness** – Holders of public office should act solely in terms of the public interest.
2. **Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** – Holders of public office should be truthful.
7. **Leadership** – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Holders of public office are defined in law. They include local government Councillors, school governors and clerks to school governing bodies. They also include certain senior local government officers required to be appointed by law.