School Governing Bodies - Public Interest Disclosure Act 1998

Procedure for Protected Disclosures ("Whistleblowing")

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1. Introduction

This procedure is intended to operate in accordance with the provisions of the Public Interest Disclosure Act 1998 (as amended) (hereafter known as 'the Act'). The Act gives protection to staff and workers who report colleagues they believe are doing something wrong or illegal, or who are neglecting their duties. The matters that come within scope of the Act and this procedure are set out in Step 2 of the procedure below.

The 'Whistleblowing' procedure has been developed for use in maintained schools and can also be adopted by, and used in, Academy schools. It is intended to enable staff to report wrongdoing in the school where it would be in the public interest to do so. The wrongdoing has to be such as to potentially affect the general public, rather than simply being a complaint of an individual nature, such as a personal grievance*, which is not normally covered under whistleblowing law. [*An individual personal grievance will normally need to be dealt with via other internal school procedures.]

The 'Whistleblowing' procedure provides for matters to be referred externally where necessary, ultimately to a 'prescribed person' (see Step 5.2 of the procedure below). However, the procedure encourages staff to raise their concerns initially within the school as a first priority, rather than to make a disclosure outside of the school. In the vast majority of cases this will enable matters to be dealt with much more efficiently and speedily.

The Act applies to all workers as well as staff and this procedure applies to all teaching and other staff, whether employed by the County Council or employed directly by the school, external contractors providing services on behalf of the school or the County Council, teacher trainees and other trainees, volunteers and other individuals who work for or provide services on behalf of the school. These individuals are collectively referred to in this procedure as staff or staff members.

2. Principles

The Governing Body of the school will treat all disclosures made under the procedure very seriously and allegations about such matters will be dealt with quickly and with appropriate confidentiality at all times.

The procedure gives protection from victimisation, discrimination or disadvantage to staff who make such a disclosure in the public interest. This protection applies in respect of such a detriment arising from an act, or a failure to act, either by the employer or by a fellow worker, whether the latter be with or without the employer's knowledge. The procedure also ensures that the person making the disclosure receives an appropriate response to their disclosure and is made aware of how they may pursue the matter outside of the school if the response given is not satisfactory.

This "Whistleblowing" Procedure should not be confused with others, such as individual or collective grievance procedures that exist to enable staff to raise concerns about their own employment. It is designed to deal with issues that fall outside of the scope of those procedures and therefore excludes all matters that are more appropriately covered by them.

3. Time limits

There are no time limits on raising concerns under this procedure, but they should be raised at the earliest opportunity. Where time limits are included within this procedure, they exist to ensure that disclosures are dealt with as quickly as possible, and to ensure 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.

4. Representation

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

5. Unfounded or improperly made allegations

- If an allegation is unfounded or unsubstantiated (i.e. there is no factual basis or evidence to support the allegation) but the staff member has made the allegation honestly and in the reasonable belief that it was in the public interest, no action will be taken against them.

- If an allegation is deemed to have been made falsely, maliciously, frivolously or for personal gain, then the person making the allegation may face disciplinary action. 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.

Step 1 - Raising a concern

Concerns under this procedure should initially be raised with the staff member's immediate line manager. If the staff member believes their manager is involved in the malpractice, they may raise their concerns with a more senior member of staff, including the Headteacher. If the staff member believes it is not appropriate to raise the matter with the Headteacher, he/she may approach the Chair of Governors. (In the event that the matter cannot be raised within the school, the staff member may raise their concerns in accordance with Step 5). The relevant manager is encouraged to take advice from Education Personnel Services who may involve other departments of Hampshire County Council or other relevant external organisations where appropriate.

Within ten working days of a concern being raised, the person receiving it will write to the staff member acknowledging receipt and indicating what initial steps will be taken to deal with it. Where possible an estimate will be given of the time it will take to provide a final response.

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

Staff may wish to make anonymous disclosures although it may be important for the investigating manager to know the source of information to enable a full investigation. The manager would also need to take into account the nature and credibility of an allegation before deciding to proceed with an investigation. However, staff 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 to anyone who makes a protected disclosure in good faith.

Step 2 – Determine whether the concern raised is a Protected Disclosure

Qualifying disclosures are disclosures of information where the staff member reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future:

- a criminal offence (e.g. fraud, corruption, sexual or physical abuse of pupils/students or others);
- a failure by a person to comply with any legal obligation to which he/she is subject;
- a miscarriage of justice;
- a danger to the health or safety of any individual;
- damage to the environment, or
- a deliberate attempt to conceal any of the above matters.

Following disclosure of one of the above matters, the person receiving the disclosure must determine whether it is a 'qualifying disclosure' under the Act, by considering the following:

- whether any factual information was actually disclosed, as opposed to opinion only, to the employer (or relevant person);
- whether the individual making the disclosure believed that the information tended to show that one of the matters above has occurred, is occurring or is likely to occur; and
- whether that belief was reasonable.

If the above criteria are met, the disclosure will qualify as a protected disclosure, and the remainder of this procedure will apply. If the criteria are not all met but the staff member's disclosure was made in good faith, investigations should still take place into the allegations and the staff member 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).

Step 3 - Investigation

A preliminary investigation will need to be undertaken to establish whether the alleged act or omission 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 alleged act or omission 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:.

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;
- referral to Social Services or the Police, or other relevant organisation;
- referral to Internal Audit or other County Council departments (for County Council maintained schools).

If the allegations are 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 staff member 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).

Step 4 - Communication

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

For reasons of sensitivity and confidentiality, all communications with a staff member 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 staff member 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 staff member to acknowledge that the concern has been received and indicate what further steps will be taken, 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 staff member of the outcome of this process on the same basis as required of the manager above.
Where appropriate, the Chair of Governors should also involve the relevant Diocese at an early opportunity.

In the event that the matter cannot be satisfactorily resolved within the school, the staff member 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

Staff should raise their concerns, in writing, with the following officers of the County Council, and in the following order:

a. Area Director for the relevant school
b. Director of Children's Services
c. Chief Executive of Hampshire County Council

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

If a staff member 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 above), they can raise the matter, as appropriate, with any of the following:

- an elected Member of the County Council;
- the Local Government Ombudsman;
- others as set out below.

5.2 Hampshire County Council Maintained and Academy and Independent schools

Staff in Hampshire County Council maintained schools who are dissatisfied after having raised concerns under 5.1 above, and staff in Academy and Independent schools, can also

raise their concerns, as appropriate, with any of the following, subject to the concern being a protected disclosure (see step 2 above):

- 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 whom can be found on the Gov.uk website under "Whistleblowing: list of prescribed people and bodies".

Staff 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 school, staff must ensure that, as far as possible, the matter is raised without personal information relating to other staff, or confidential information about unrelated matters, being disclosed. A staff member 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 staff member 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.