

Learning Opportunities Whistleblowing Policy



If you have any questions about this policy or any other aspects of school life at Learning Opportunities please contact me at the school.

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LEARNING OPPORTUNITIES

WHISTLEBLOWING POLICY

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The Whistleblowing Policy has been written and approved by a team with a range of experience, and will be reviewed 3 yearly.

Previous Review Date: September 2019

Next Review Date: September 2022

Designated Safeguarding Leads (DSLs): Lesley Buss / Simon Graydon

Deputy DSL: Paul Smith

Policy Statement

Whistleblowing is the disclosing of a concern within the workplace that has come to the attention of an employee during the course of their work, about a danger, risk, malpractice or wrongdoing, which affects others and is in the public interest.

Concerns may include, but are not limited to:

- Conduct which is, has been or is likely to be an offence or breach of law;
- Conduct that has occurred, is occurring or is likely to occur - as a result of which the School fails to comply with a legal or professional obligations, or regulatory requirements;
- Acts or potential acts of fraud / corruption or the misuse of public funds / resources;
- Miscarriages of justice;
- Past, current or likely health and safety risks;
- Concerns about any aspect of service provision;
- Concerns of a safeguarding / child protection nature;
- Failure to have due regard to the need to prevent people from being drawn into terrorism (the 'Prevent Duty');
- Unethical or unprofessional conduct that causes concern;
- The deliberate concealment of information relating to concerns listed above.

Excluded Issues

This policy and procedure cannot be used to raise concerns relating to employment matters where more appropriate procedures are available and where there is no public interest element. For example:

- grievances or matters relating to alleged breaches of the employee's terms and conditions of employment - these will be addressed under the schools HR policy and procedures;
- child protection matters should be reported in line with the school's child protection/safeguarding policy and procedures;
- bullying and harassment.
- Complaints - will be dealt with under the schools complaints policy and procedures.

Introduction

Learning Opportunities is committed to the highest possible standards of conduct, openness, honesty and integrity, and accountability. We expect all employees to maintain high standards in accordance with their contractual obligations and the school's policies and procedures.

The Public Interest Disclosure Act 1998 protects workers who raise concerns from victimisation or harassment. In accordance with that Act and our commitment to the highest standards of service delivery, Learning Opportunities will encourage staff with serious concerns about any aspect of our work to come forward and voice those concerns. In return we will provide a structure which is safe and acceptable, recognising that certain cases will have to proceed on a confidential basis.

This procedure is not a substitute for normal line management processes but an addition to them. Staff should always first consider using normal line management for raising concerns. This procedure is only for the purpose of raising concerns about wrongdoing and

is not a substitute or alternative for existing procedures such as the Grievance, Disciplinary Procedures for staff or the complaints procedure.

What is the difference between a grievance and whistleblowing?

Whistleblowing is the term used when a worker raises a concern about a possible fraud, crime, danger or other serious risk that could threaten a vulnerable adult, child, young person, service user, colleague or the organisation's own reputation. The person blowing the whistle is usually not directly or personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others. For this reason, the whistleblower is not expected to prove the malpractice.

By comparison, a grievance will usually concern an employee personally. For example, the individual may have a complaint about his or her pay or working hours, the amount of work that he or she is expected to do or their working conditions. The person raising the grievance therefore, has a vested interest in the outcome and, for this reason, is expected to be able to evidence their case.

Aims and Scope of this Policy

The aim of this policy is to improve our service delivery by providing employees, and other workers, with a procedure for reporting genuine concerns about unlawful conduct, malpractice or wrongdoing at work, without any fear of comeback. The policy is designed to encourage and enable employees to raise concerns as soon as the issue arises, rather than staying silent and waiting until something more serious happens. Learning Opportunities takes concerns seriously and ensures that any matter raised is dealt with promptly and fairly.

This policy applies to all employees and other workers including volunteers, agency workers, contractors and consultants whilst engaged on Learning Opportunities business. It should be read in conjunction with other Safeguarding and Employment policies including:

- Safeguarding & Child Protection;
- Online Safety;
- Equality & Diversity;
- Health & Safety;
- Complaints;
- Anti-bullying.

This policy aims to:

- encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected;
- provide staff with guidance as to how to raise those concerns;
- reassure employees that they will be protected from possible reprisals or victimisation and from suffering a detriment in their employment (including dismissal) if they have a reasonable belief that they have made any disclosure in good faith and in the public interest, even if they turn out to be a mistaken;
- provide opportunities for employees to take the matter further if they are dissatisfied with the School's response to their concerns by identifying ways to report concerns to the appropriate regulator or outside body.

Roles & Responsibilities

The Proprietor will:

- provide challenge to the Head Teacher to ensure the school promotes high standards of educational achievement;
- create a climate of trust and openness;
- ensure the school is committed to the highest standards of openness, probity and accountability;
- abide by all relevant legislation and, in particular, will not discriminate on grounds of race, colour, ethnic origin, religion, belief, gender, marital status, sexual orientation, disability, trade union membership or age;
- encourage employees, who have serious concerns about any aspect of the school, to disclose those concerns;
- have overall responsibility for the maintenance and fair operation of this policy and procedure;
- maintain a record of the concerns raised and the outcomes in a format which would not endanger confidentiality;
- take action to protect any employee when they disclose a concern;
- ensure an employee does not suffer any detriment in connection with their employment with the school when they have a reasonable belief that it is in the public interest to disclose a concern;
- ensure that an employee will not face retribution if the concern they disclosed proves to be unfounded.

The Head Teacher will:

- communicate the expected standards of behaviour;
- implement the school's policies and procedures to define the level of practice employees are expected to perform;
- ensure that all employees are aware of their duty to disclose any concern of a whistleblowing nature;
- receive any concern responsibly, openly and professionally;
- support any employee who discloses concerns about the school;
- deal with all whistleblowing disclosures effectively in line with this policy and procedure; undertake investigations without undue delay;
- maintain confidentiality

Employees will:

- treat all people with courtesy and respect and be aware how their behaviour and practices can be interpreted by others;
- perform at the level defined by the school's policies and procedures;
- recognise their duty to disclose any concern;
- fully engage in any and all meetings needed to complete investigations into a whistleblowing disclosure.

Record Keeping

Whistleblowing disclosures will be held on a confidential, secure file within the school along with a record of the outcome and any records of meetings held or other documents compiled during the process.

Details of all whistleblowing disclosures and investigations are retained for 6 years plus the current year from the close of the case, except where separate retention rules apply, e.g. child protection records.

The Procedure

Employees are often the first to realise that there may be something seriously wrong within the school. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the school, or they may fear harassment or victimisation. In these circumstances employees may feel that it is easier to ignore the concern rather than report what may be a suspicion of unacceptable behaviour or malpractice.

It is in everyone's best interest to ensure that employees are confident that any concerns disclosed will be dealt with appropriately.

Disclosing a Whistleblowing Concern

The Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013, protects workers who make a "qualifying disclosure" from dismissal, selection for redundancy or from being subjected to any other detriment in employment as a result of making that "qualified disclosure".

A "qualifying disclosure" is a concern which falls into one of six categories of wrongdoing set out in the legislation, provided that the specific requirements for that category of wrongdoing are met in that the concern is raised in the correct manner to the proper person or organisation. These categories are:

- Criminal offences - e.g. theft, fraud, corruption, sexual or physical abuse of pupils;
- Failure to comply with legal obligations - e.g. a breach of a statutory duty, Standing Orders or Financial Regulations and other statutorily required policies;
- Miscarriage of justice;
- Risks to Health & Safety including those to pupils, employees and the public;
- Damage to the environment;
- Deliberately covering up any of the above.

The specific requirements for each of these categories of wrongdoing are different for each category. Further information about these requirements is set out in the Qualifying Disclosure Guide at Appendix A.

How to Raise a Concern

All staff have a duty to report any concerns about the safeguarding and welfare of students. For other concerns that do not relate to the safety and welfare of students, staff are encouraged to report their concerns internally first before using an external 'prescribed person or body'. The earlier concerns are expressed, the easier it is to take action.

If something is concerning you, please tell us straight away.

The employee should disclose their concern, with the head teacher, either orally or in writing, as soon as is possible. The earlier the concern is expressed, the easier it is for the school to take action. If the concern is put in writing, the employee should include:

- the background, history and detail of their concern;
- names, dates and places where possible;
- the reason why they are concerned about the situation.

It is important to make it clear that the declaration is being made as a 'Whistleblow' and as such will be treated in accordance with this policy.

Where an employee feels unable to disclose the concerns to the Head Teacher due to the seriousness or sensitivity of the concern or where the head teacher is implicated, they should contact the Proprietor.

Employees can ask their trade union representative to accompany them when disclosing the concern or to disclose the concern on their behalf if they feel unable to do this themselves.

The employee will not be expected to prove the truth of their concern. However, they will need to demonstrate to the person contacted that there are reasonable grounds for the concern.

Raising a concern about students (Refer to Safeguarding Policy)

If you have any safeguarding concerns about children you should contact the Designated Safeguarding Leads (DSLs) or in their absence the Deputy DSL without delay:

- Lesley Buss - Proprietor (DSL)
- Simon Graydon - Head Teacher (DSL)
- Paul Smith - School Curriculum Forest School Lead (Deputy DSL)

Alternatively if you are worried about the safety of a child or young person please contact the Front Door Service on 03000 41 11 11 to make a referral.

If you need to contact outside of normal office hours, for example during the night, call 03000 41 91 91.

If you think someone is in immediate danger, the best thing to do is call 999 for the emergency services.

Radicalisation

All concerns about students who show signs of vulnerability or radicalisation must be passed to the Designated Safeguarding Lead using the usual methods for reporting other safeguarding concerns.

Learning Opportunities will also investigate concerns under this Policy which relate to improper conduct falling below established standards and practices. Whilst concerns of this nature may not fall within the definition of a "qualifying disclosure" the School will provide the same level of support and protection to employees raising such concerns as it would to employees making a "qualifying disclosure".

Confidentiality and Anonymity

It is recognised that the purpose of a whistleblowing policy is to allow staff to make protected disclosure with the protection being against any reprisals or victimisation for disclosures made honestly and in good faith. It is very difficult for some people to come forward and make a disclosure and the prospect of having to identify yourself can make the action of whistleblowing all the more daunting. You are encouraged to give your name when raising concerns.

If confidentiality is requested, all reasonable efforts will be made to avoid revealing the employee's identity, unless disclosure is a requirement by law. However, it may not be

possible to keep an employee's identity confidential whilst carrying out a thorough investigation and they may need to be identified as a witness at an appropriate time. If it becomes necessary to reveal the employee's identity the Head Teacher will inform the employee in writing prior to completing the investigation report. The employee will also be informed of the reasons why it is necessary to identify them.

Anonymous Allegations

Staff can, if they prefer, raise concerns anonymously.

Concerns expressed anonymously are less powerful and more difficult to investigate. However, they may be considered at the discretion of the Headteacher. In exercising this discretion, the factors to be taken into account will include:

- the seriousness of the concerns disclosed;
- the credibility of the concerns;
- the evidence base; ▫ the difficulty of the investigation;
- the likelihood of confirming the concerns from other named sources.

Responding to a Whistleblowing Concern

The person who receives the concern will make initial enquiries seeking to establish the facts of the matter and assess whether the concern meets the definition of whistleblowing and therefore should be formally investigated.

It may be determined that some concerns do not meet the definition and therefore may be resolved by agreed action without the need for an investigation or fall within the scope of other existing policies and procedures.

Where disclosures fall within the definition the action taken by the school will depend on the nature of the concern. The school may:

- investigate internally;
- appoint an independent person to investigate the concern;
- refer the concern to the Police;
- report the concern to the DfE; or
- any combination of the above.

The Head Teacher will write to the employee (if they have disclosed their identity) within 10 days, confirming how they propose to investigate the concern and the timescale for providing a final response.

The Head Teacher will then carry out a thorough investigation in order to obtain all the relevant facts and will not make any assumptions. This will usually involve taking a comprehensive record of any meetings that occur and obtaining relevant documentary evidence.

As part of the investigation further information may be sought from the employee disclosing the concern. If a meeting is arranged the employee has the right to be accompanied by a trade union representative, or work colleague who is not involved in the area of work to which the concern relates. The Head Teacher will give careful consideration to the time and location of the meeting and how these arrangements are communicated to the employee. The employee and their representative must respect the need to maintain confidentiality.

At the conclusion of the investigation the Head Teacher will provide a report outlining the findings and make recommendations to the Proprietor for consideration and implementation. The school will then confirm in writing to the employee who disclosed

the concern information about the outcome of the investigation unless this is not possible for legal reasons.

If referred to the Police, an internal investigation will be delayed pending the outcome of the Police investigation.

Where it is established that the complaint involves issues of bullying or unlawful discrimination, it will be necessary to involve the school's Human Resources consultancy service.

Subject to legal or contractual constraints, staff will be informed of the outcome of any investigation. It might not be possible to give full details of the outcome if it contains personal details of a third party, because we have a duty to protect personal information under the Data Protection Act. A written record of the conduct, established facts and outcome of the inquiry will be kept.

Upon completion of an investigation, the Proprietor will seek assurance that controls will be introduced such that similar cases do not occur.

Taking the Disclosure Further

If the employee is not satisfied with how their concern has been investigated or with the outcome, or feel it is right to take matters outside the school in the first instance, they are able to disclose their concerns externally. The school would rather an employee disclose a concern with the prescribed external body/appropriate regulator, than not disclose it at all.

Raising a concern outside of Learning Opportunities

We recognise that in certain circumstances staff may not be able to approach Learning Opportunities about their concerns, and feel it to be more appropriate to take the matter outside the school.

The NSCPP Whistleblowing helpline is available for staff who do not feel able to raise concerns internally.

Tel: 0800 028 0285 (8am - 8pm Mon - Fri)

Email: help@nspcc.org.uk

Additional contact points include:

- **Public Concern at Work** is an independent charity which specialises in providing individuals, employers and schools, free, confidential and practical advice about raising concerns at work. They can help identify how to raise the concern while minimising any risk to you and maximising the opportunity for any wrongdoing to be addressed.

An adviser will talk through how to safely and effectively raise a concern or help if unsure whether to raise a concern or not. Their key advice is to remember that staff are a witness not a complainant.

Tel: 020 7404 6609

Email: whistle@pcaw.org.uk

Website: www.pcaw.co.uk

- OFSTED Whistle Blowing Hotline
Tel: 0300 123 3155 (8am - 6pm Mon - Fri)
Email: whistleblowing@ofsted.gov.uk
- Audit Commission: Tel 0303 444 8300 www.audit-commission.gov.uk
- Public Disclosure hotline 0845 0522 646
- Care Quality Commission 0300 0616 161: www.cqc.org.uk
- Environment Agency: www.environment-agency.gov.uk
- Food Standards Agency: Tel 020 7276 8000 www.food.gov.uk
- The Health and Care Professions Council: Tel (0)20 7840 9814
- Freephone (in the UK): 0800 328 4218 ftp@hcpc-uk.org
- Health and Safety Executive Tel 08701 54500 www.hse.gov.uk
- Ofsted Tel 0300 123 4666 www.ofsted.gov.uk
- The Police

Employees who do take a concern outside of the school should ensure that they do not disclose confidential information.

Protection for Whistleblowers

If an employee makes a disclosure and they have reasonable belief that the concern is real, the employee will not suffer any detriment, even if after investigation it is concluded the concern is unfounded. The school will not tolerate the harassment or victimisation of any employee raising a genuine concern, this may include the harasser being subject to disciplinary action.

Subjecting an employee to a detriment means subjecting them to any disadvantage because they blew the whistle. This could include (but is not limited to) any of the following:

- failure to promote;
- denial of training;
- closer monitoring;
- blocking access to resources;
- demotion;
- disciplinary action including suspension;
- victimisation, bullying or harassment;
- failure to provide an appropriate reference;
- failing to investigate a subsequent concern disclosed.

If an employee believes that they are suffering a detriment for having disclosed a concern they should report this immediately either orally or in writing to the Proprietor as they have overall responsibility for this policy and procedure.

Untrue or Malicious Allegations

If there are clear grounds that the employee may have made a malicious or vexatious disclosure, this will be taken seriously and appropriate action, including disciplinary action, may be taken against the employee. If the Head Teacher believes the disclosure is malicious or vexatious they will include this in their report and the Proprietor will determine what, if any, appropriate action is to be taken.

In addition, disciplinary action will be taken against any member of staff who tries to stop another employee from raising a concern or who is responsible for any act of retribution or victimisation against an employee who raises a concern.

Where an employee may have been party themselves to an act of possible gross misconduct on which they are now 'blowing the whistle' this could be considered in mitigation. They are not, however, exempt from disciplinary action.

Implementation, Monitoring, Evaluation & Review

The Proprietor will monitor the operation and effectiveness of the school's whistleblowing policy and procedure to ensure that employees' have trust and confidence in the school.

It is a non-contractual policy and does not form part of an employee's contract of employment.

A copy of the Whistle Blowing policy is available in the main office and on our website www.learningopps.org

This policy will be reviewed and publicised at least annually and, if necessary, more frequently in response to significant incidents or new developments in national, local and organisational policy, guidance and practice.

Whether a whistleblowing disclosure made by an employee is a “qualifying disclosure” under the Employment Rights Act 1996 (as amended by the Protection from Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013) depends upon the following:

1. Whether that whistleblowing disclosure is made in the public interest;
2. Whether the employee has a reasonable belief that the information disclosed tends to show that suspected wrongdoing has occurred, is occurring or is likely to occur in the future;
3. Whether the information disclosed falls into one of the six categories of wrongdoing set out in the Act;
4. Whether the employee has complied with the specific requirements for that category of wrongdoing;
5. The person or organisation the employee contacts to raise their concern.

The Six Categories of Wrongdoing and their Specific Requirements for Raising a Concern

- **Crime** The employee must have a reasonable belief that their concern tends to show that a criminal offence has been committed, is being committed or is likely to be committed.
- **Failure to Comply with Legal Obligations** The employee must have a reasonable belief that their concern tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject. The legal obligation must actually exist - it is not enough that the employee merely thinks the legal obligation exists.
- **Miscarriage of Justice** The employee must have a reasonable belief that their concern tends to show that a miscarriage of justice has occurred, is occurring or is likely to occur.
- **Risks to Health & Safety** The employee must have a reasonable belief that their concern tends to show that the health and safety of any individual has been, is being or is likely to be endangered.
- **Damage to the Environment** The employee must have a reasonable belief that their concern tends to show that the environment has been, is being or is likely to be damaged.
- **Deliberately covering up any of the above** The employee must have a reasonable belief that their concern tends to show that information tending to show any of the above has been, is being or is likely to be deliberately concealed.

Notes

If, by raising their concern, an employee commits an offence, their whistleblowing disclosure is not a “qualifying disclosure”.

The Person or Organisation an Employee Contacts to Raise Their Concern

- **Their Employer** The employee must make the disclosure in the public interest and have a reasonable belief that the information disclosed tends to show that suspected wrongdoing has occurred, is occurring or is likely to occur in the future. The employee must meet the requirements noted above for the relevant category of wrongdoing.
- **Other Responsible Person** The employee must make the disclosure in the public interest and have a reasonable belief that the information disclosed tends to show that suspected wrongdoing has occurred, is occurring or is likely to occur in the future.

The employee must meet the requirements noted above for the relevant category of wrongdoing.

The employee must reasonably believe that their concern relates solely or mainly to either the conduct of the Other Responsible Person as opposed to their employer or to any other matter for which the Other Responsible Person as opposed to their employer has legal responsibility.