



LEARNING OPPORTUNITIES WHISTLEBLOWING POLICY

Contents

Page Number

2. Introduction
 - Aims
 - What is the difference between Grievance and Whistleblowing?
3. Definition of Whistleblowing
 - Excluded Issues
 - Responsibilities
4. Disclosing a Whistleblowing Concern
 - Raising a Concern
5. Raising a Safeguarding Concern
 - Low Level Concerns
6. Confidentiality & Anonymity
7. Responding to a Whistleblowing Concern
8. Record Keeping
 - Taking the Disclosure Further
9. Protection for Whistleblowers
10. Untrue or Malicious Allegations
 - Implementation, Monitoring, Evaluation & Review
11. Appendix A Qualifying Disclosure

The Whistleblowing policy has been written and approved by a team with a range of experience.

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Proprietor: Lesley Buss

Designated Safeguarding Leads (DSLs): Simon Graydon / Kevin Dunk / Catherine Graydon

Introduction

Learning Opportunities is committed to achieving the highest possible standards of probity and integrity, regarding its practices. 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.

Aims

This policy aims to:

- Encourage individuals affected to report suspected wrongdoing as soon as possible in the knowledge that their concerns will be taken seriously and investigated, and that their confidentiality will be respected.
- Let all staff know how to raise concerns about potential wrongdoing in or by Learning Opportunities
- Set clear procedures for how Learning Opportunities will respond to such concerns.
- Let all staff know the protection available to them if they raise a whistle-blowing concern.
- Assure staff that they will not be victimised for raising a legitimate concern through the steps set out in the policy, even if they turn out to be mistaken (though vexatious or malicious concerns may be considered a disciplinary issue)

This policy does not form part of any employee's contract of employment and may be amended at any time. The policy applies to all employees or other workers who provide services to Learning Opportunities in any capacity including self-employed consultants or contractors who provide services on a personal basis and agency workers.

What is the difference between a grievance and whistleblowing?

Whistleblowing is the term used when a concern is raised about danger or illegality that affects others. As the person raising the concern you will not necessarily be directly 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 complaint or 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, and will be entitled to seek redress for themselves.

Definition of Whistle-blowing

Whistle-blowing covers concerns made that report wrongdoing that is “in the public interest”. Examples of whistle-blowing include (but are not limited to):

- Criminal offences, such as fraud or corruption
- Students’ or staff health and safety being put in danger
- Failure to comply with a legal obligation or statutory requirement
- Breaches of financial management procedures
- Attempts to cover up the above, or any other wrongdoing in the public interest
- Damage to the environment

A whistle-blower is a person who raises a genuine concern relating to the above.

Excluded Issues

Not all concerns about the school count as whistle-blowing. For example, personal staff grievances such as bullying, or harassment do not usually count as whistle-blowing. If something affects a staff member as an individual, or relates to an individual employment contract, this is likely a grievance.

When staff have a concern, they should consider whether it would be better to follow our staff grievance or complaints procedures.

Matters relating to Child Protection should be reported in line with the school’s child protection/safeguarding policy and procedures.

Complaints - will be dealt with under the schools complaints policy and procedures.

Responsibilities

The proprietor has overall responsibility for the operation of this policy, whilst the effective implementation of arrangements and training lies with the Headteacher. Learning Opportunities has a responsibility to:

- foster a culture where employees can feel confident in raising concerns.

- ensure concerns are fully considered, investigated as necessary and action taken as appropriate.
- ensure that employees raising concerns receive feedback on any action taken where appropriate.
- make employees aware how they can take matters further if they are not satisfied.
- reassure employees that they will be protected against detriment and reprisal should they raise a concern.

Employees (including the proprietor, visitors, volunteers and contractors) have a responsibility to:

- raise concerns only where there is a reasonable suspicion for doing so not to knowingly raise a false allegation with malicious or vexatious intent
- engage with internal / external actions to address any concerns - by attending meetings and / or participating in any investigation.

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; or
- 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.

Raising 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. Concerns may be raised verbally or in writing. Details should include names of those committing wrongdoing, dates, places and as much evidence and context as possible. Staff raising a concern should also include details of any personal interest in the matter.

For clarity it would be helpful for the employee to state that they wish their concerns to be addressed under the whistleblowing procedure.

Wherever possible employees should initially raise concerns openly with the Headteacher.

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.

Should the Headteacher have concerns - these should be raised with the Proprietor in the first instance.

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 validity of their concern. However, they will need to demonstrate to the person contacted that there are reasonable grounds for the issue raised.

Raising a Safeguarding concern (Refer to Safeguarding Policy)

If you have any safeguarding concerns about children you should contact the Designated Safeguarding Leads (DSLs) or Proprietor without delay:

- Lesley Buss - Proprietor
- Simon Graydon - Head Teacher (DSL) / Kevin Dunk - Deputy Headteacher (DSL) / Catherine Graydon (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.

Low Level Concerns (Refer to safeguarding policy)

The term 'low-level' concern is any concern - no matter how small - that an adult working in or on behalf of the school may have acted in a way that:

- Is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and
- Does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the designated officer at the local authority.

Examples of such behaviour could include, but are not limited to:

- Being overly friendly with children
- Having favourites
- Taking photographs of children on their mobile phone contrary to school policy
- Engaging with a child on a one-to-one basis in a secluded area or behind a closed door
- Humiliating students

Learning Opportunities recognise the importance of creating a culture of openness, trust and transparency to encourage all staff to confidentially share low-level concerns so that they can be addressed appropriately.

Low level concerns should be reported to the Headteacher or where the concern relates to the Headteacher, to the Proprietor.

Confidentiality & 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 so that similar cases do not occur.

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.

Taking a 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

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;
- 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 recrimination 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.

Qualifying Disclosure Guide

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.