

Whistleblowing Policy

A policy for all employees

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Whistleblowing Policy

I. Introduction

- The policy is to help employees in Create Partnership Trust to raise concerns about possible malpractice(s) at an early stage and in the right way. The Trust would rather employees raised any matter when it is just a concern rather than wait for concrete proof.
- The Public Interest Disclosure Act (PIDA) 1998 was enacted to ensure a climate of greater frankness between employers and workers so that irregularities can be identified and addressed quickly and to strengthen employment rights by protecting responsible workers who blow the whistle about wrongdoing or failures in the work place.
- The policy set out in this document applies those statutory provisions to Create Partnership Trust.
- The term *whistleblowing* is referred to in law as making a *protected disclosure*.
- Employees can be the first to realise that something wrong may be happening within the school or Trust; however, they may feel unable to express their concerns either because they feel that speaking up would be disloyal to their colleagues or to the school or because they fear harassment or victimisation. In these circumstances, they may find it easier to ignore the concern than to report it.
- The Trust is committed to doing things right with the highest possible standards of openness and accountability as shown in the Trust's Staff Code of Conduct. In line with that commitment, it encourages employees and others with serious concerns about any aspect of the work of the school or Trust to come forward and voice those concerns. It recognises that certain cases will have to proceed on a confidential basis.
- This policy makes it clear that employees can do so without fear of reprisal and is intended to encourage and enable employees to raise serious concerns within the school rather than overlooking a problem or publicly disclosing the matter.
- The Trust recognises and endorses the role which trade unions and their officers play in this process and encourages employees to seek advice from or be represented by their trade union.
- All employees in or working with the Trust should use this policy. This includes permanent and temporary employees, and employees seconded from a third party. Any concerns relating to the third party, if relevant to the employee's secondment, can also be raised under this policy.
- Although the policy relates directly to employees it also demonstrates the Trust's commitment to dealing in the same way with disclosures from members of the public. PIDA does not offer legal protection in these circumstances but the Trust will take reasonable and appropriate action to protect members of the public when they make a disclosure.
- This policy supersedes all previous Whistleblowing policies

2. Aim & Scope

- To provide avenues for employees to feel confident in raising concerns
- To question and act upon their concerns
- To provide mechanisms for employees to receive updates and feedback on any action taken
- To reassure employees that if they raise any concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals or victimisation
- Concerns raised under the Whistleblowing Policy should be about something that is:
 - in the public interest
 - is or may be unlawful or a criminal offence (eg fraud, corruption or theft)
 - a breach of legal obligation (but not a personal contractual breach unless such breach involves a matter of public interest)
 - a miscarriage of justice
 - unauthorised use of public funds
 - mistreatment or sexual or physical abuse of an employee or pupil (subject to Child Protection procedures)
 - in disregard of legislation governing health and safety at work
 - seeking undue favour over a contractual matter or a job application

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- against the Trust's Financial Regulations
- has led to or could lead to a damage to the environment
- governance arrangements are not being observed or being breached
- discrimination against employees or pupils on the grounds of protected characteristics (Equality Act)
- evidence of activities not in line with a democratic, inclusive, multi-ethnic, multi-faith community and country
- deliberately concealing information tending to show any of the above.

The Public Interest Disclosure Act 1998 (referred to as the *Whistleblower's Act*) protects employees against detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. To obtain protection, employees must first disclose the information to their employer.

Therefore, this Policy has been adopted to provide an avenue within the Trust to raise concerns safely. If an employee chooses to take a matter outside the Trust, s/he should ensure that no disclosure of confidential information takes place and should take advice, if unsure, as the Public Interest Disclosure Act does not provide blanket protection and could leave employees vulnerable to disciplinary or other action if they disclose confidential information in circumstances not covered by the Act.

Exemptions

The policy covers concerns that fall outside the scope of other procedures. It is not intended as recourse against financial or business decisions made by the school or the Trust. Nor is it an alternative to well-established disciplinary or grievance procedures. It may, however, overlap with other policies for dealing with complaints.

Specifically, the policy is not designed to be used:

- for raising or reconsideration of matters that come under existing internal procedures eg Capability, Grievance, Disciplinary, Dignity at Work, Complaints
- for allegations that fall within the scope of specific statutory procedures (eg Child Protection) which will normally be referred for consideration under the relevant process, unless the employee has good reason to believe that the appropriate process is not being followed
- as an appeal process from any complaint or grievance

The employee will be advised if the disclosure falls outside the scope of this policy.

Where an employee considers one or more incidents amount to a safeguarding incident, s/he should make the report under the Safeguarding Policy. However, s/he may also make the disclosure directly to the Trust (CEO or Chair of the Board) if:

- s/he has good reason to believe that her/his disclosure will not be managed properly
- s/he will be exposed to victimisation or other detriment
- the disclosure is about another school or service provided by the Trust

Employees making a disclosure about their own school or workplace directly to the CEO, DCEO or Chair of the Board, should explain why they are unable to make the disclosure directly to their own manager or Headteacher/Head of School.

3. Safeguards – assurance of being taken seriously and protected

Harassment or Victimisation

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- The Trust recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Trust will take action to protect an employee when a concern is raised in good faith.
- It will not tolerate any resulting harassment or victimisation (including informal or indirect pressures) and will treat this as a serious disciplinary offence which will be dealt with under the appropriate procedures.
- Any investigation into an allegation of malpractice will not influence or be influenced by any disciplinary or redundancy procedures which already affect the employee. If allegations of malpractice arise during a disciplinary process, those allegations will be investigated at the same time as the disciplinary procedure.

Confidentiality

- All concerns will be treated in confidence and the Trust will do its best to protect the employee's identity if s/he does not want her/his name to be disclosed. If investigation of a concern discloses a situation which is sufficiently serious to warrant disciplinary action or police involvement, then the employee's evidence may be important. The employee's name will not be released as a possible witness however, until the reasons for its disclosure at this stage have been fully discussed with that employee.
- In line with GDPR requirements, all personal information will be processed to meet with the GDPR Article 5(39) (Principles relating to processing of personal data), and follow the EDPS Guidelines on processing personal information within a whistleblowing procedure 2016 and DfE Guidance on Whistleblowing Procedures for Schools (2014)

Anonymous Allegations

This policy encourages the employee to put her/his name to the allegation. Concerns expressed anonymously are much less powerful but they will be considered at the discretion of the Trust against the following criteria:

- The seriousness of the issue raised
- The likelihood of confirming the allegation from the attributable sources
- The Trust's best interests
- The protection of the Trust's assets

The employee should also bear in mind that if s/he chooses to raise a concern anonymously, it will be more difficult for the matter to be investigated and for the employee to be provided with feedback. For this reason, anonymously-raised concerns should be best done through a trade union.

Untrue Allegations

If an employee makes an allegation in good faith but it is not confirmed by the investigation, no reprisals will be taken. If, however, malicious or vexatious allegations are made, disciplinary action may be taken.

4. Raising a Concern

- Initially, the employee should raise her/his concerns by discussing the matter with the Headteacher or Head of School. For staff in Create Central, the appropriate person would be the HR Manager or the DCEO. Trade union advice is recommended at the earliest opportunity.
- If the concerns involve the Headteacher or Head of School or the HR Manager or DCEO, or if it is not appropriate due to the nature of the concerns, the employee should initially raise the concerns with the CEO.
- If the school has a Local Advisory Board (LAB) the disclosure can be raised with the Chair of the LAB.
- If the concerns involve the CEO, the employee should initially raise concerns with the Chair of the Trust.
- The Trust can be contacted directly by email: whistleblowing@createpartnershiptrust.org.uk

Where there is suspected serious misconduct, it is recommended that the disclosure sets out the following information:

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- Employee's name and contact details (unless they wish to remain anonymous)
- The name of the person alleged to have committed the serious misconduct
- The nature of the serious misconduct
- Whether the person committing the serious misconduct is employed by the Trust and their place of work
- Whether the person committing the serious misconduct is a service user or member of the public

The individual receiving the concern will be referred to as the *Lead Officer* throughout the remainder of the policy. The Lead Officer will then liaise accordingly to ensure that the concern is properly investigated. If the allegations arise from a disciplinary matter, they will be investigated as part of the disciplinary investigation.

Alternatively, if the employee feels s/he cannot express her/his concerns as detailed above, s/he can raise the concerns externally through www.gov.uk: *Whistleblowing: list of prescribed people and bodies*.

Where the concern relates to a child protection matter and the employee does not wish to raise it via the school, s/he should inform the Local Authority Designated Officer for Safeguarding (via email at ladoteam@birminghamchildrenstrust or on 0121 675 1669). If the concern requires police or other agency/authority involvement, the whistleblowing process will be halted until the relevant agencies have completed any necessary investigations and confirmed that it is appropriate to continue with the whistleblowing procedure.

Concerns can be raised orally but it is good practice for the concern to be recorded in writing at an early stage to ensure that all the details are correctly understood.

A written allegation should set out the background and history of the concern (giving names, dates and places where possible) and the reason why the employee is particularly concerned about the situation. It is preferable for the employee to record this in writing herself/himself. However, where the Lead Officer writes these down, a copy will be sent to the employee's home address or via the trade union representative to give the employee an opportunity to agree this as a correct record.

Although the employee is not expected to prove the truth of her/his allegation, s/he will need to demonstrate to the person contacted that there are sufficient grounds for her/his concern.

5. How the Trust will respond

Once the Trust or school has been informed, it can assess what action should be taken. This may involve an internal inquiry or a more formal investigation. The employee will be told:

- who will be handling the matter
- how that person can be contacted
- whether further assistance may be needed.

If the employee requests it, the Trust or the Headteacher will write to the employee summarising the concern and setting out how it will be handled. At this stage, it is essential that the employee declares any personal interest.

The employee may be asked for her/his view on how best the situation may be resolved. Should the concern fall within another policy of the Trust (eg the Grievance Policy), the employee will be informed at this point.

While the purpose of this policy is to enable an investigation of possible malpractice and take appropriate steps to deal with it, the employee will be given as much feedback as is possible in the situation. Any response may be limited by other confidentiality.

Concerns or allegations which fall within the scope of specific procedures, for example child protection, will normally be referred for consideration under the relevant procedure. Some concerns may be resolved by agreed action without the need for investigation. If immediate, urgent action is required, this will be taken before any investigation is conducted.

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The action taken by the school will depend on the nature of the concern. After initial enquiries to assess the seriousness, the matters raised may:

- be investigated by the school or Trust's leadership, internal audit or through the disciplinary process
- be referred to the LADO
- be referred to the police
- be referred to external auditors
- be referred to the Teaching Regulation Agency
- form the subject of an independent enquiry

If urgent action is required in response to a concern, this may be taken before a full investigation is conducted.

Some concerns may be resolved by action agreed with the employee without the need for investigation or it may be that an investigation can be completed without the person(s) under investigation being aware of the process.

In any event within ten working days of a concern being received, the school will write to the employee at her/his home address to:

- acknowledge that the concern has been received
- indicate how it proposes to deal with the matter
- give an estimate of how long it will take to provide a final response
- explain whether any initial enquiries have been made
- explain whether further investigation will take place, and if not, why not
- where appropriate, name an independent Support Officer to support the whistleblower during any investigation.

The Support Officer

The Support Officer will:

- make contact with the employee
- deal with all confidentiality issues
- agree the frequency of contact
- keep the employee informed about the progress of the investigation
- inform the Investigating Officer of any further issues the whistleblower may have.

Where it is felt appropriate, the Support Officer may:

- raise any concerns from the employee about the conduct of the investigation
- take appropriate steps to support the employee in the workplace
- support the employee if s/he is required to give evidence at any criminal or disciplinary proceedings that arise from the her/his concern.

If the employee wishes to retain her/his anonymity, s/he will need to nominate a representative and/or a contact address where correspondence may be directed in order to keep her/him informed.

The amount of contact between Investigating Officers and the employee will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from the employee.

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When any meeting is arranged, the employee has the right, if s/he wishes to be accompanied by a trade union or professional association representative or a friend (who need not be associated with the school or Trust).

The school or Trust accepts that the employee will need to be assured that the matter has been properly addressed.

Accordingly, subject to legal and/or confidentiality constraints, the Lead Officer will ensure that the employee is provided with information about the outcome of any investigations and/or proceedings.

6. No Detriment

The Trust is committed to ensuring that an employee who makes an allegation in good faith suffers no detriment from doing so.

7. How the matter can be taken further

Employees who are not satisfied with the action taken by the Trust and feel it right to question the matter further, may consider the following possible contact points:

- relevant professional bodies or regulatory organisations
- trade union or professional association
- Chair of the Trust's Board
- the Trust's independent auditors
- personal solicitor or legal adviser
- Police
- Local Government Ombudsman
- Citizens Advice
- Health and Safety Executive
- *Public Concern at Work* – Registered Charity
- Ofsted
- ESFA _ Education and Skills Funding Agency
- DfE - Department for Education (Regional Schools Commissioner for the West Midlands)
- National Society for the Prevention of Cruelty to Children - NSPCC 020 7825 2500

8. Trust Recording & Monitoring

The Trust will ensure it has sufficient internal arrangements to address the requirements of this policy, including appropriate support for the CEO, Trustees and Headteachers in implementing it.

The Trust will maintain a central Whistleblowing Register containing all concerns that are brought to its attention.

All whistleblowing concerns will be reported to the Board at least annually.

Personal data

In line with the Freedom of Information Act (FoI) 2000, the Trust will disclose 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.

If the Trust receives a request for information which would identify a whistleblower, it will contact the whistleblower to seek her/his reasonable views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.

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The Trust is mindful in terms of its legal obligation to disclose information under the FoI Act, that it also has legal obligations under PIDA to avoid discrimination or victimisation of employees and under the Health and Safety At Work Act 1974 to protect the health and safety (including mental health) of its employees.

The Trust will review the Whistleblowing Register and produce an annual report. The report will not mention any employees, only the concerns raised, the number of such concerns, the fact that the concern relates to a school or other education service provided by the Trust, and the nature of the job held by the person over whom the concerns were raised, if not bound by confidentiality. The report will also note any issues arising from the same with the intention of:

- preventing the occurrence of similar concerns in future
- consistency of treatment across schools and the Trust

For the avoidance of doubt, the Whistleblowing Register – along with the annual report referred to above – will be available for inspection by both internal and external audit, after removing any items which any employee has asked should remain confidential.

Information will be maintained in accordance with Data Protection legislation and best practice.