Broom Barns Community Primary School

"Whistleblowing" Policy for Schools

Sept 2015

To be reviewed Sept 2018

Reporting illegal or improper conduct (disclosures under the public interest disclosures Act 1998) or concerns about safeguarding children or young people

1 Introduction

This policy applies to all employees and governors. Other individuals performing functions in relation to the organisation, such as agency workers and contractors, should have access to it

It is important to the school that any fraud, misconduct or wrongdoing by employees or governors of the school is reported and properly dealt with. The Governing Body will, therefore, respond to all individuals who raise any genuine concerns that they may have about the conduct of others in the school, **which are in the public interest**. This policy sets out the way in which individuals may raise any concerns that they have and how those concerns will be dealt with.

1.1 Broom Barns School expects the highest standards of conduct from all employees and governors and will treat seriously any concern raised about illegal or improper conduct.

1.2 Any individual covered by this policy will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the Headteacher (or the Chair of Governors if the concerns relate to the Headteacher) any serious impropriety or breach of procedure.

1.3 Employees who do not follow the steps identified in this procedure or other agreed internal procedures, and take their concerns to other outside sources (e.g. the press), may be subject to a formal disciplinary investigation.

1.4 This procedure has been drawn up in consultation with the Professional Associations and Trade Unions.

2 Background

The law provides protection for employees who raise legitimate concerns about specified matters. These are called 'qualifying disclosures' A qualifying disclosure is one made in the public interest by the employee who has a reasonable belief that:

- A criminal offence

- A miscarriage of justice
- An act creating risk to health and safety
- An act causing damage to the environment
- Corruptly receiving any gift or advantage, thus failing to comply with the Bribery Act 2010 (see Model Anti-Bribery Policy for Schools available on the Grid)
- Allowing private interests to override the interests of the school
- A breach of any legal obligation; or
- concealment of any of the above

is being, has been, or is likely to be, committed. It is not necessary for the employee to have proof that such an act is being, has been, or is likely to be committed,- a reasonable belief is sufficient. The employee has no responsibility for investigating the matter; it is the school's responsibility to ensure that an investigation takes place

2.1 Where the concerns are about **safeguarding children or young people**, the school's Designated Senior Person for Child Protection should be notified (see 7 below).

2.2 It is a procedure in which the Headteacher or Chair of Governors will be expected to act swiftly and constructively in the investigation of any concerns in accordance with the school's disciplinary procedure.

2.3 Concern about a colleague's professional capability should **not** be dealt with using this procedure (but see section 7 below).

3 When should it be used?

This procedure is for disclosures about matters other than a breach of an employee's own contract of employment. If an employee is concerned that his/her own contract has been, or is likely to be, broken he/she should use the school's Grievance procedures.

Where a disclosure is merely an expression of opinion that fails to show that a legal obligation has been or is likely to be breached, it **cannot** amount to a protected or qualifying disclosure for the purposes of the whistle blowing legislation

3.1 So this procedure is not designed to replace or be used as an alternative to the grievance procedure, which should be used where an employee is only aggrieved about his/her own situation. Nor should this policy apply where the employee simply disagrees with the way the school is run.

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3.2 Employees must have reasonable grounds for believing the information they have is accurate and not just idle gossip or rumour.

3.3 An employee who makes such a protected disclosure has the right not to be dismissed, subject to any other detriment, or victimised, because he/she has made a disclosure, provided it has not been made maliciously. Any employee who uses this procedure will not be penalised for doing so. The employer will not tolerate harassment and/or victimisation of any employee raising concerns.

3.4 An employee who is not sure whether the conduct he/she is concerned about does constitute illegal or improper conduct or is unsure about how to proceed may contact the Herts for Learning Head of HR - (details in section 8) or their Professional Association/Trade Union.

3.5 Financial regulations require that any suspicion of fraud, corruption or other financial irregularity is reported to Internal Audit for possible investigation. Normally an employee must first report any suspicion of such an irregularity to the Headteacher or Chair of Governors (but see 5), who will in turn report it to Internal Audit. Similar principles apply to Academies where the funding agency must be informed.

4. Principles

4.1 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the employee who raised the issue.

4.2 No employee will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the employee will not be prejudiced because he/she has raised a legitimate concern.

4.3 Victimisation of a worker for raising a qualified disclosure will be a disciplinary offence.

4.4 If misconduct is discovered as a result of any investigation under this procedure the matter will be considered under the disciplinary procedure, in addition to any appropriate external measures.

4.5 Maliciously making a false allegation is a disciplinary offence.

4.6 An instruction to cover up wrongdoing is in itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority, employees should not agree to remain silent.

5. Procedure

5.1 In the first instance, unless the employee reasonably believes his/her Headteacher to be involved in the wrongdoing, any concerns should be raised with the employee's Headteacher. If he/she believes the Headteacher to be involved, then the employee should proceed straight to stage 3 (see below 5.3).

5.2 The Headteacher/Chair of Governors will arrange an investigation into the matter (either by investigating the matter himself/herself or immediately passing the issue to someone in a senior position). The investigation may involve the employee and others involved giving written statements. Any investigation will be carried out in accordance with the principles set out above. The employee's statement will be taken into account and he/she will be asked to comment on any additional evidence obtained.

Employees who want to use the procedure but feel uneasy about it may wish to consult their Professional Association/Trade Union initially and bring a colleague or Professional Association/Trade Union Representative along to any discussions, so long as the third party is not involved in the issue.

Where anonymity is requested efforts will be made to meet the request where appropriate but that might not always be possible. The earlier and more open the expression of concern the easier it will be to take appropriate action.

5.3 The Headteacher (or the person who carried out the investigation) will then report to the Chair of Governors/Governing Body who will take the necessary action, including reporting the matter to any appropriate department or regulatory agency. If disciplinary action is required this will be taken forward by the Headteacher/Chair of Governors/Governing body in consultation with the School's HR Advisory Team. On conclusion of any investigation the employee will be told the outcome of the investigation and what the next steps will be. If no action is to be taken the reason for this will be explained.

If the employee is concerned that his/her Headteacher is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigation, he/she should inform the Herts for Learning, Head of HR. Employees who feel unable to follow this route, for whatever reason, have the option of contacting one of the following:

- HM Revenue and Customs
- The Financial Services Authority
- The Office of Fair Trading

- The Health and Safety Executive
- The Environment Agency
- The Director of Public Prosecutions
- The Serious Fraud Office
- The Education Funding Agency
- The Department for Education
- The National College for Teaching and Leadership

6 What should be done if an issue is raised with a member of staff?

6.1 If a member of staff, other than the Headteacher, is approached by a colleague on a matter of concern as defined in this document, he/she is advised to take the matter to the Headteacher (but see 5).

7 Safeguarding Children and Young People

7.1 All employees have a duty to report concerns about the safety and welfare of pupils/students.

7.2 Concerns about any of the following should be reported to the Designated Senior Person for Child Protection (DSP):

- physical abuse of a pupil/student
- sexual abuse of a pupil/student
- emotional abuse of a pupil/student
- neglect of a pupil/student
- an intimate or improper relationship between an adult and a pupil/student

The school's DSP are Jayne Currant, Louise Hogan and Jackie Phillips.

7.3 The reason for the concern may be the actions of a colleague (including a more senior colleague), a Governor, another pupil/student or someone outside the school. Whatever the reason, concerns must be reported. Failure to report a Child Protection related allegation will be in itself, a disciplinary matter.

Law Relating To This Document

Employment Rights Act 1996
Public Interest Disclosures Act 1998

The legislation protecting individuals who makes a protected disclosure applies not only to employees, but also to any person who undertakes to do or perform personally (or otherwise) any work or service for the employer, regardless of the nature of the contractual relationship between them.

A Whistleblowing Policy should establish the procedure for an employee to follow if he/she has a genuine concern about a colleague's conduct or the organisation's practices. The Whistleblowing Policy should make clear what sort of allegations will count as a protected disclosure and should allow for the employee to raise these concerns with a nominated person and set out the steps that the employer will take in response.

A qualifying disclosure means any disclosure of information that in the reasonable belief of the worker is made in the public interest. The requirement that a whistleblower make a qualifying disclosure 'in good faith' has been removed. Therefore, while the employer can seek a declaration from the whistleblower that he or she is not knowingly making a false allegations, disciplinary action is likely to be appropriate only where there is clear evidence that the employee has misused the whistle blowing procedure. A consequence of the requirement that a disclosure be made in the public interest is that an employee will generally be precluded from being able to 'blow the whistle' about breaches of his or her employment contract.

Section 43J of the Employment Rights Act 1996 provides that a Settlement Agreement made between an employee and employer cannot prevent future protected disclosures.

Any confidentiality obligations in contracts of employment that would prevent an employee making a protected disclosure will be void.

8 Contacts

Herts HR (for Maintained Schools and ESCs)
Louise Tibbert – Assistant Director
Tel: 01992 556653

Herts for Learning (for Academies)
Helen Foster – Head of HR
Tel: 01438 844873

Legal, Member & Statutory Services -
Kathryn Pettitt - Chief Legal Officer
Tel: 01992 555527

County Internal Audit
Helen Maneuf -Head of Assurance Services:
Tel: 01438 845502

or via your Professional Association or Trade Union Representative, a list of the current County Secretaries is available on the grid.