The Family of Learning Trust

Whistleblowing Policy

This policy is non contractual and may be updated or changed by the Trust subject to consultation (if required)

Version	**01/25**
Name of Policy Writer	**EducateHR Ltd**
Last Updated	**February 2025**
Next Review Due	**February 2026**

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1. Introduction

1.1 The Public Interest Disclosure Act 1998 (PIDA) inserted provisions into the Employment Rights Act 1996 to give protection against victimisation to employees acting as 'whistleblowers', the definition of victimisation in such circumstances including being subjected to informal means of recrimination or retribution, as well as formal disciplinary sanction (up to and including dismissal).

1.2 Whistleblowing is defined as an employee raising concerns about serious malpractice at their place of work by means of making what qualifies as a '**protected disclosure**', provided the individual concerned has acted in a responsible manner by dealing with the issues in this way.

1.3 PIDA protects whistleblowers from detrimental treatment by their employer as a result of making a public interest disclosure. To qualify as a 'protected disclosure', and thus attract statutory protection, the whistleblower must be acting '**in the public interest**'.

1.4 In addition to this, the information must **actually be disclosed** in the manner described in the following clauses. (There is no statutory protection in relation to gathering information or threatening to make a disclosure, but only for **making** a disclosure in accordance with the terms of the legislation.)

1.5 For the disclosure to be protected by the relevant legislation it must be made in the correct manner to the appropriate person or body (and a disclosure will not qualify for legal protection if the person making the disclosure commits an offence in doing so).

1.6 Accordingly, a protected disclosure must be made either to the employer or, in the case of an external disclosure, to an appropriate '**prescribed person**' (further defined later in this policy).

1.7 In making a protected disclosure, a member of staff must have a reasonable belief that any information disclosed in this manner:

- relates to one of six categories listed in PIDA, namely:
    i) commission of a criminal offence
    ii) failure to comply with a legal obligation
    iii) a miscarriage of justice
    iv) danger to the health and safety of any individual
    v) damage to the environment
    vi) the deliberate concealment of information falling within any of these categories;
- is substantially true; **and**
- constitutes action in the public interest.*

In this context, schools should be aware that the precise meaning of 'public interest' is not defined within the relevant legislation and interpretation of this point therefore remains dependent on evolving case law. Legal rulings have indicated that issues linked to an individual's terms and conditions of employment or personal experiences at work (and thus of interest to only a particular sub-section of the public as opposed to the public as a whole) may conceivably be covered by the legislation. In other words, the employer should **not rely on the 2013 amendment to the PIDA, which altered the text to the effect that a qualifying disclosure must be made 'in the public interest' (as opposed to the previous wording 'in good faith') as necessarily (despite this being the intended*

express purpose of said amendment) excluding matters relating solely to an individual's own contract or personal conditions of employment.

2. Purpose and scope

2.1 The whistleblowing procedure is intended to cover major concerns that may fall outside the scope of the school's other procedures (such as health and safety protocols or grievance process).

2.2 Such concerns could conceivably include (the following list is not exhaustive) perceptions of possible:

- fraud and/or corruption
- unauthorised use of school funds
- conduct which is an offence or a breach of law
- health and safety risks including risks to children, colleagues or the general public
- failure to comply with school financial regulations and/or statutory procedures
- failure to comply with agreed codes of practice
- damage to the environment
- other unethical conduct.

2.3 This policy is designed to encourage staff to feel confident in raising issues of consequence by questioning and, should this be deemed appropriate, taking further action in relation to any serious concerns they might have about practices within the school.

2.4 This policy aims both to promote a fair and impartial investigative response to such concerns being raised and to ensure that staff not only receive ~~an~~ appropriate feedback on relevant issues which they have brought to the attention of management but also that they are made aware of how to pursue these matters further should they fail to be satisfied by the outcome of their representations.

2.5 It is important to draw a distinction between whistleblowing, which is relevant only to matters which are **in the public interest** (although the caveat italicised in the preceding section should be noted in this regard), and issues which do not qualify as whistleblowing, and are therefore not relevant to the above legislation, this latter category normally including concerns referencing a personal grievance related to matters such as (the perception of) discrimination, bullying, harassment etc.

2.6 As stated above, it is normally the case that matters relating to a personal grievance are **not** covered by whistleblowing legislation (unless the circumstances of the individual case are deemed to be in the public interest). Accordingly, such matters should generally be addressed in accordance with the policy felt most relevant to the specific issue of concern (grievance, bullying and harassment etc) rather than invoking the whistleblowing procedure.

2.7 This policy enables the academy to comply with the Public Interest Disclosure Act 1998 and the Public Interest Disclosure (Prescribed Persons) Order 2014.

2.8 The whistleblowing procedure is intended to cover major concerns that may fall outside the scope of the academy's other procedures (such as health and safety or grievance process).

2.9 Such concerns could conceivably include (this list is not exhaustive) perceptions of possible:

- conduct which is an offence or a breach of law
- health and safety risks including risks to children, public and colleagues
- failure to comply with school financial regulatory and compliance matters
- failure to comply with codes of practice
- damage to the environment
- fraud and corruption
- unauthorised use of school funds
- other unethical conduct.

3. Employer responsibility

3.1 As the employer of staff the academy trust board has overall legal responsibility for ensuring that the academy has a whistleblowing policy.

3.2 The governing body of the academy is responsible for the running of the establishment and through school management will maintain (in a format that will not compromise confidentiality) a record of concerns which have been raised in relation to whistleblowing and the outcomes of those concerns.

3.3 The academy recognises that the decision to report a concern can be a difficult one, not least because of fear of reprisals or recrimination from those responsible for the alleged failure or malpractice.

3.4 The academy does not tolerate harassment or victimisation. Accordingly, the academy will ensure that all necessary action is taken to protect staff members when a whistleblowing concern is raised (in which regard it is conscious of its vicarious liability for the actions of employees in circumstances where any individual's conduct could be reasonably interpreted as amounting to victimisation of a whistleblower).

4. How to raise a concern

4.1 Concerns of this nature are most appropriately raised in writing, although a concern may be raised orally if preferred.

4.2 Any submission should set out the background and history of the issue giving rise to concern, giving full details of relevant names, dates and places where possible.

4.3 The submission should also clarify the reason why there is felt to be particular concern about the situation and should include sufficient grounds to justify this concern. It is advised that the earlier a concern is raised the easier it is to take appropriate action.

4.4 Staff are encouraged to involve their trade union or professional association and may be accompanied by a recognised trade union representative or work colleague during any meetings related to investigation of a relevant issue, reasonable time off from work being permitted for this purpose.

4.5 A form for recording the whistleblowing concern is available for use at Appendix 1.

4.6 It should be noted that if any staff member making a disclosure under the terms of the whistleblowing policy is already subject to disciplinary, grievance or redundancy process, those procedures will not be halted as a direct result of any such disclosure.

5. Raising a concern – internal procedure

5.1 The staff member should raise their concern with the headteacher or line manager (as appropriate) or, if the complaint is about the headteacher, with the chair of governors.

5.2 If the concern relates to the governing body, it should be raised with the chair of the academy trust (or, if that is deemed inappropriate, with the most relevant of the external bodies identified in the following section).

5.3 The action taken by the headteacher or line manager (or chair of governors) will depend on the nature of the concern. The matters may be subject to:

- internal investigation
- referral to external regulatory authorities
- referral to the police
- consideration of the academy's disciplinary procedure (should the concern relate to the conduct of one or more employees).

5.4 An initial assessment should be made to decide whether an investigation is appropriate and, if so, what form this should take. Concerns or allegations that fall within the scope of other specific procedures (such as child protection etc) will normally be referred for consideration under those procedures.

5.5 It may be possible to resolve some concerns by agreed action without any requirement for an investigation. Within ten working days of a concern being received, the headteacher or line manager (or chair of governors) will write to the staff member who has raised the issue to acknowledge receipt of the concern and indicate:

- how it is proposed to deal with the matter
- whether an initial enquiry has been made
- whether further investigation will take place (and, if so, give an estimate of length of time before a substantive response will be provided).

5.6 The amount of contact between the person dealing with the matter and the staff member who raised the concern will depend on the nature and complexity of the issue(s), and the clarity of the initial information provided. If necessary, further information may be sought from the individual raising the concern.

5.7 Subject to legal and confidentiality constraints, the staff member will receive information about the outcomes of any investigation.

6. Raising a concern – external procedure

6.1 In accordance with legal protection for whistleblowers, only certain (prescribed) external authorities and individuals are to be regarded as legitimate bodies who may be contacted for the purpose of making a 'protected disclosure'.

6.2 Whistleblowing to an external body without initially going through the internal procedure is inadvisable without compelling reason. Examples of compelling reason could, for instance, include either concerns in relation to serious issues of health and safety or allegations that senior management had colluded in matters involving inappropriate conduct.

6.3 Should a staff member feel that it is appropriate to take the matter externally, the following authorities (defined as 'prescribed persons') are the regulators who, within an educational setting, are most likely (although the list is not exhaustive) to be regarded as legitimate bodies in the event of being approached by a whistleblower:

- Ofsted
- Ofqual
- Secretary of State for Education
- National Audit Office.

NSPCC whistleblowing advice line is available. Staff can call 0800 0280285 – 08:00 to 20:00, Monday to Friday and 09:00 to 18:00 at weekends. The email address is: help@nspcc.org.uk.

Alternatively, staff can write to: National Society for the Prevention of Cruelty to Children (NSPCC), Weston House, 42 Curtain Road, London EC2A 3NH

6.4 Members of Parliament also qualify as 'prescribed persons' in accordance with the relevant legislation.

6.5 If a member of staff does not feel able to raise concerns in any of the ways outlined above, they should consult the Public Disclosure Act for information about other routes by which a disclosure may be made.

7. Untrue or malicious allegations

7.1 If an allegation is made in the public interest but is not confirmed by any subsequent investigation, no action will be taken against the staff member making the disclosure. However, allegations which are deemed to have been malicious or vexatious could potentially lead to disciplinary action, including proceedings for gross misconduct.

8. Confidentiality and anonymity

8.1 The identity of any individual raising a whistleblowing concern will be protected whenever possible. The investigation process may, however, unavoidably reveal the source of the information and a statement may be required as part of the mechanism by which relevant evidence is gathered, and if the staff member does not wish their identity to be disclosed this could make it difficult to proceed further with the matter.

8.2 Anonymous allegations may be given consideration by the academy (and this will always be the case when they are deemed to be of a serious nature) but such allegations carry less weight than those which are attributable to a named individual and are often significantly more difficult to investigate effectively. Consequently, issues raised anonymously are, inevitably, less likely to prove capable of full exploration.

Appendix 1: Report form to be used for Public Interest Disclosure

Name of School:

Name of staff member making report: ***(whistleblowers are encouraged to provide an indication of their identity although this is not compulsory)***	
Persons reported:	
Concerns reported **Provide full details of the background to the concern including:** • **names, dates and places** • **reasons why you are concerned** ***(attach separate sheet if necessary)***	
Date:	
Signed: **(if name appears above)**	