

WHISTLEBLOWING POLICY AND PROCEDURE

Approved

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1. POLICY OVERVIEW

Believe Engage Succeed Trust (BEST) is committed to achieving the highest possible standards of service and ethics. This policy enables workers to raise their concerns of serious wrongdoing without fear of reprisal. This Whistleblowing Policy and Procedure will form part of the induction process for all those working or volunteering in the Trust.

2. INTRODUCTION

BEST recognises that every school local governing body (LGB) has a responsibility to ensure that its school is managed to the highest standards of probity, and that its decision making and administration is conducted in such a way as to be above any suspicion of malpractice. The Trust Board has the same responsibility across all of the Trust.

Clear policies, standards and procedures for making decisions, particularly those which entail significant expenditure, or decisions which significantly affect employment at the school / Trust are essential elements in creating and sustaining an atmosphere of openness and trust in school /Trust management. Such an atmosphere is the best way of forestalling suspicion or complaint.

Workers who raise concerns about malpractice within their place of work have statutory protection against victimisation for making such a disclosure, under the Public Interest Disclosure Act 1998, and the subsequent Enterprise and Regulatory Reform Act, which was enacted in June 2013. The worker must reasonably believe the disclosure to be in the public interest, and it must otherwise qualify as a protected act (see section 4 for more detail on the criteria.)

1.1 Liability

BEST recognises that employers are now liable for any detriment a whistleblower suffers as a result of having made a disclosure, if the detriment was done by another worker in the course of employment (even if was without the employer's knowledge), or by an agent of the employer (with the employer's authority). This is balanced by the new ability for an employer to defend itself by showing that it took all reasonable steps to prevent the detriment from occurring. This includes having a policy on whistleblowing, ensuring workers are aware of it, and that it is followed when cases arise.

Individuals can also be found legally liable for detriment they caused a whistleblower, unless they can show they have acted in response to a statement from the employer, which it was reasonable to rely upon.

1.2 Policy and Procedures

BEST is committed to promoting and maintaining the highest standards in the management and administration of its affairs.

Academy Trusts, as listed companies, have obligations under the UK Corporate Governance Code to maintain a sound system of internal control. Adopting a whistleblowing procedure is essential to the principles of accountability, transparency and probity, which underpin good governance. For more information on the Code, go to:

<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>

By the adoption and publication of this policy and procedure a school / Trust may demonstrate its commitment to high standards of conduct in its affairs and establish a basis on which any worker can properly raise concerns without prejudice to his/her personal position.

2. SCOPE

Although legislation only applies to paid workers, this policy reflects best practice and extends the principles and procedure to volunteers, Members, Trustees, and governors, as well as current and former workers.

BEST therefore envisages this policy being used in relation to potential whistleblowers, as well as parties who may be cited in a whistleblowing disclosure.

This policy applies to all individuals working for BEST, at all levels and grades, whether they are employees, contractors, trainees, volunteers, casual or agency staff.

An employee working within the school but employed on another organisation's terms and conditions of employment should have the matter managed under their appropriate policy/procedure.

3. INTENDED IMPACT

Whistleblowing is the exposure of any kind of information or activity which relates to suspected serious wrongdoing, is deemed illegal, unethical or not correct within an organisation. This may include, but is not limited to, information relating to one or more of the following:

- A criminal offence has been, or is being committed;
- A person has failed or is failing, to comply with a legal or regulatory
- A miscarriage of justice has occurred, or is occurring;
- The health and safety of an individual has been, or is being endangered;
- The environment has been, or is being damaged;
- Fraud, corruption, bribery or blackmail;
- Administrative malpractice;
- Failure to properly safeguard assets;
- Obstruction or frustration of the exercise of academic freedom;
- Academic or professional malpractice (including, for instance, violation of Intellectual Property Rights or failure of integrity in research);
- Suppression or concealment of any of the above matters.

The distinction between a grievance and whistleblowing is important. BEST has attempted to distinguish the kinds of activity which should be reported via the Whistleblowing Policy and Procedure in the list above.

A grievance is a matter of personal interest and does not impact on the wider public. BEST is very clear - we would prefer for issues to be raised and for consideration to be given to which policy applies – than for issues not to be raised at all.

A whistleblower is a person who raises a genuine serious concern in good faith relating to any of the above. The whistleblower may or may not be directly affected by the matter.

This procedure is intended to encourage any worker who has a concern that practices in their school or the Trust does not meet the required standards of probity to raise that concern at an appropriate level and in an appropriate manner. It is also intended to guide any worker who has a disclosure to make about malpractice in their school / Trust in making that disclosure. It sets out to whom malpractice (or suspected malpractice) should be reported, and how it should be reported.

The procedure also sets out the safeguards that the school / Trust will offer to any worker who makes a disclosure in the recommended way.

4. TRUST'S COMMITMENT TO INDIVIDUALS WHO WHISTLEBLOW

Making a disclosure is a professional duty. However, we recognise it may still be a difficult, stressful and anxious situation for many people. Whistleblowing is about doing the right thing with integrity. BEST encourages openness and will support anyone who raises a genuine concern in good faith under this Policy, even if they turn out to be mistaken.

The Whistleblowing Policy and Procedure must always be applied fairly and in accordance with employment law. Those who step forward to do the right thing will be fully supported throughout the process and afterwards.

Individuals making a disclosure will be encouraged to seek the advice and support of their Trade Union or professional association. Whistleblowing may be a stressful process and BEST is keen to make sure that any whistleblower has appropriate professional support.

They will be provided with clear lines of communication where they can get support from within the organisation. Whistleblowers will be provided with the contact information for an external, independent and confidential support helpline, if required.

Subject to the Trust's data protection obligations, individuals making a disclosure will receive feedback about the outcome of their disclosure.

If it is discovered that an individual has made malicious allegations, in bad faith or with a view to personal gain, the individual may be subject to disciplinary action.

5. PROTECTION AND EXCLUSIONS

5.1 Who do the protections apply to?

Whistleblowers do not need a qualifying period of service to bring a claim of unfair dismissal: in other words, workers are protected as soon as they join the organisation. Tribunals are also not restricted by the usual upper limit on compensation. These two facts can mean that sometimes whistleblowing claims are used tactically.

Protection is afforded to workers as well as employees; this includes staff on casual contracts, freelance workers, seconded workers, trainees and agency workers.

Protection from detriment also applies to ex-employees making disclosures after the termination of their employment.

Furthermore, the Government has indicated the protections may be extended to job applicants, which will prevent organisations from blacklisting applicants because they have made protected disclosures against previous employers. This is dependent upon the outcome of a Call for Evidence by the Government.

5.2 What should a concern be about, in terms of the criteria for qualifying disclosures?

The term “malpractice” may cover a broad range of acts, omissions, or practices. Workers will usually report specific instance(s) of wrongdoing by individual(s). In certain circumstances, workers may report bad practice which, if it were to continue, would be likely to lead to wrongdoing.

The Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013 protect workers who make qualifying disclosures from any detriment, as a result of making a disclosure.

A qualifying disclosure must relate to:

- a criminal offence;
- a failure to comply with any legal obligation;
- a miscarriage of justice;
- danger to health and safety of any individual;
- damage to the environment;
- an attempt to cover up any of these.

In a school / Trust, concerns may often (but by no means always) centre upon appropriate use of funds. For instance, the following would normally be an inappropriate use of budget:

- disregard of proper tendering procedure for contracts;
- manipulation or falsification of accounting records;
- making decisions for personal gain;
- inappropriate (e.g. private) use of school assets

Other, non-financial, concerns may include inappropriate use of school /Trust premises or inappropriate professional relationships which potentially affect the good management of the school / Trust.

The Enterprise and Regulatory Reform Act introduces the need for disclosures to be “in the public interest”, removing the need for them to have been made in good faith. However, as there is no legal definition of “public interest”, it will remain to be decided in individual cases. Disclosures relating to the worker’s own contract will usually fall outside of whistleblowing, and should instead be followed up via grievance procedures.

If a tribunal believes a successful disclosure was made in bad faith, compensation can be reduced by up to 25%. In practice, this means workers may now bring claims maliciously or for personal gain but still be protected, if they are able to meet the public interest criteria.

To be afforded protection, workers must also raise their concerns in the proper way (see section 6 for specific guidance on process). Usually, in the first instance, this should be via internal processes. In certain cases, the Act also protects disclosure to “prescribed regulators” such as the National Audit Office.

The Act only protects wider disclosure (e.g., to the media, an MP, etc.) if:

- the worker reasonably believed they would be victimised, if they had raised the matter internally or with a prescribed regulator;
- there was no prescribed regulator and they reasonably believed the evidence would be concealed;
- the concern had already been raised with the employer or prescribed regulator;
- the concern was exceptionally serious;
- and no payment was accepted for the story.

5.3 What kinds of detriment are workers protected from?

The kinds of detriment that could be suffered by whistleblowers will depend on whether they are job applicants, existing members of staff, or ex-members of staff. Some examples of detriment linked to a protected disclosure are:

- harassment and bullying,
- inappropriate disciplinary action,
- loss of work or pay,
- damage to career prospects,
- providing poor references,
- defamation,
- inappropriately referring them to external organisations for audit or scrutiny,
- not considering them for a role if they re-apply,
- dismissal or selection for redundancy because of making a qualifying disclosure.

5.4 Other relevant guidance and procedures

Complaints by workers about their personal treatment or the way in which employment policies and practices have been applied to them should be raised via the grievance procedure or other appropriate procedure. Complaints about the protection of children should normally be raised under the separate procedures designated for that purpose, unless those procedures have not been sufficiently enacted.

6. PROCEDURE FOR MAKING A DISCLOSURE

The means of making a disclosure will depend to some extent on the nature and seriousness of the concern, the sensitivity of the issues and the individual(s) thought to be involved in the malpractice reported.

6.1 Lines of reporting

As a general rule, a worker wishing to make a disclosure should raise the concerns in the first instance with the Headteacher or the Chair of the relevant LGB. This is appropriate where the concern is about the conduct or practice of colleagues: a concern that the school's policies and procedures are not being properly or fairly applied. This enables the issue to be addressed at school level.

Where a whistleblower believes that s/he cannot approach the Headteacher or the Chair of the relevant LGB, the concern should be raised with the Chief Executive Officer or Chair of the Trust Board. This will be appropriate where the disclosure concerns the conduct of the

Headteacher or the relevant LGB, or where a disclosure has already been made to them and no discernible or timely action has been taken to address the situation.

In exceptional circumstances a whistleblower may approach the Secretary of State, who will refer it back to the Education and Skills Funding Agency. This will normally only be appropriate, if s/he reasonably believes that BEST is involved in the malpractice or would for some other reason be unwilling to investigate it.

6.2 Process of disclosing

A disclosure may be made verbally (e.g. by telephone) or in writing. The whistleblower should normally identify him/herself and should make it clear that s/he is making a disclosure within the terms of this procedure.

A whistleblower raising a concern verbally will normally be expected to support and substantiate those concerns in writing, unless there are special circumstances indicating that this is inappropriate. If the whistleblower feels unable to commit their concerns to writing s/he will normally be asked to meet with an appropriate senior officer, who will compile a written note of the disclosure.

Making a disclosure may be a difficult or anxious time for the whistleblower. They should be confident that they will be protected and supported by the Trust. If they are a member of a Trade Union or professional association, they may wish to take advice before proceeding but they don't have to.

The whistleblower may be accompanied by a trade union representative or appropriate workplace colleague at meetings / telephone calls that are held for the purpose of formally discussing or investigating the disclosure.

It is not necessary for a whistleblower to produce conclusive evidence to support his/her disclosure. Suspicion may be valid grounds for raising a concern. However, the whistleblower should normally have direct information about, or knowledge of, the malpractice alleged, or know where such evidence is located. The whistleblower's concern should be based on more than hearsay, gossip, or the reports of others. The disclosure should usually include specific examples of unacceptable behaviour.

Even where extreme circumstances are thought to exist, individuals should not make disclosures to the press, radio, television or other media. This is because such disclosures may prevent an independent, objective investigation. The recommended internal reporting channels should be used. Workers have certain rights to report malpractice to specified external agencies, e.g. a worker who suspects that a criminal act has been committed may inform the police. However, it is expected that whistleblowers make disclosures following the reporting lines set out above.

6.3 Anonymous disclosure

Disclosures can be made anonymously. However, it is much more difficult to investigate anonymous disclosures and it will not be possible to provide feedback to the whistleblower.

7. RESPONDING TO A DISCLOSURE

7.1 Response routes

The response to a whistleblower's disclosure will depend on a number of factors; such as the seriousness and complexity of the allegations made.

Allegations may be:

- investigated within the school / Trust;
- referred to the internal or external auditors;
- referred to the police;
- referred to another independent form of enquiry;
- or any combination of the above.

The school / Trust may wish to consider using external independent investigators, though this will in part depend on the complexity of the case.

Disclosures will be subject to initial enquiries in order to decide whether a full investigation is necessary and, if so, what form it should take, who should conduct it, and whether any reference to another agency is necessary or desirable. Some concerns may be resolved through agreed action without the need for further investigation.

If the whistleblower's concern falls within the scope of an alternative procedure, s/he will be advised to pursue it through that procedure.

A whistleblower who presents his/her disclosures in writing will, wherever possible within ten working days, receive:

- an acknowledgement that the concern has been raised;
- an indication of how the school proposes to deal with the matter;
- an estimate of how long it will take to provide a final response;
- an indication of any initial enquiries that have been made; and
- an indication of whether further investigations will take place and, if not, why not.

7.2 Feedback to whistleblower

Feedback will be provided to the individual who raised the disclosure. They will be told when the process has been concluded. They will be told of the outcome of any investigation insofar as this is compatible with any duty of confidentiality on the employer. The extent of the information given to whistleblowers will depend upon a number of factors, e.g. whether the investigation is referred to the police and leads to criminal prosecution. Where an investigation is protracted, it is recommended that the school / Trust keeps the whistleblower updated on the progress of the investigation, as silence may lead them to become suspicious of inaction, and make a disclosure externally.

7.3 Anonymous whistleblower

Where a whistleblower is unwilling to identify him/herself, any person receiving a complaint about malpractice should log the incident and seek advice from BEST's Chief Executive Officer or the Chair of the Trust Board, to consider whether any investigation should be undertaken.

8. SAFEGUARDS FOR WHISTLEBLOWERS (SEE ALSO SECTION 4.3)

8.1 Internal procedures

The decision to report malpractice can be a difficult one for staff, who may possibly fear subsequent victimisation or harassment. No action will be taken against workers who raise a concern in the proper way, and which they reasonably believe to be in the public interest, even if that concern is subsequently discovered to be unfounded after investigation.

However, whistleblowers who are already the subject of investigation or action under a formal procedure (e.g. discipline, capability or harassment) should not expect the procedure to be discontinued as a result of the disclosure, unless there is good reason for doing so.

8.2 Other protections

To harass, bully, or otherwise subject a person to detriment because they have made a whistleblowing disclosure, or assisted in the investigation of one (for example as a witness), will be considered a disciplinary offence.

Where whistleblowers do not wish to be identified to others in the course of an investigation that wish will be respected in so far as it is reasonably practicable. However, anonymity cannot be guaranteed. The process of investigation may reveal the identity of whistleblowers and, especially in serious cases, whistleblowers may be required to give evidence, either by the school or the police. Any person subject to disciplinary action or prosecution has access to all the evidence.

The school / Trust will take all reasonable steps to minimise any difficulties whistleblowers may experience, as a result of raising a concern. The school / Trust will consider sympathetically requests from whistleblowers for special leave, counselling or other support.

9. IMPROPER DISCLOSURES

No action will be taken against a whistleblower, if a concern is raised in the proper way, which the whistleblower reasonably believes to be in the public interest.

However, if allegations are not raised in the proper way, and/or the whistleblower cannot show that they reasonably believe it to be in the public interest, disciplinary sanctions may occur. This is particularly likely, if it is believed that the disclosure was also malicious, vexatious, or made for personal gain.

10. INDEPENDENT INFORMATION AND ADVICE FOR WORKERS

Independent information and advice for individuals concerned about whistleblowing can be obtained from their trade union or professional association, also from the 'Public Concern at Work' website <http://www.pcaaw.org.uk>

For further Trust based advice on this policy and procedure, please contact either BEST's Chief Executive or BESTs Chair of the Board.

11. HOW THE MATTER CAN BE TAKEN FURTHER

This procedure is intended to provide individuals with an avenue to raise concerns with their school. If the whistleblower is not satisfied, and feels it is right to take the matter further, the following are possible contact points:

- The National Audit Office Whistleblowing hotline: 020 7798 7999
- Recognised trade union
- Elected Suffolk County Council member
- The Health and Safety Executive: 0300 003 1647
- Information Commissioner's Office: 0303 123 1113
- The Pensions Regulator Whistleblowing: 0345 600 7060
- Local Government Ombudsman: 0300 061 0614
- OFSTED Whistleblowing Hotline: 0300 123 3155
- A solicitor
- The Police

If the matter is taken outside the school / Trust, the whistleblower must take all reasonable steps to ensure that confidential or privileged information is not disclosed (i.e. confidential information, in whatever format, must not be handed over to a third party).