



HOLMEWOOD HOUSE SCHOOL

DISCLOSURE IN THE PUBLIC INTEREST (Whistleblowing) POLICY (updated December 2022)

Introduction

The School is committed to the highest possible standards of openness, probity and accountability.

The School encourages all members of staff to raise genuine concerns about malpractice or impropriety at the earliest practicable stage. This policy sets out a process whereby employees who have concerns about malpractice or impropriety may, in good faith, raise those concerns at a high level in the School, outside of normal line management, and without fear of detriment. The procedure also seeks to balance the need to provide safeguards for members of staff who raise genuine concerns about malpractice or impropriety against the need to protect other members of staff, members of the Governing Body, and the School against uninformed or vexatious allegations.

Legal Framework

The Public Interest Disclosure Act 1998 protects a worker from victimisation and dismissal following disclosure by that worker of a matter threatening the public interest, as long as the case satisfies the detailed conditions set out in the Act. To be protected, the worker must make a "qualifying disclosure" and ensure that it is made in one of the ways described in the Act.

"Qualifying disclosure"

This is any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

- i. That a criminal offence has been, is being or is likely to be committed;
- ii. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject. This includes any contractual or other common law obligation, statutory duty or requirement or administrative law requirement. It could include academic or professional malpractice or a failure to comply with any rules, regulations or codes of practice of the institution;
- iii. That a miscarriage of justice has occurred, is occurring or is likely to occur;
- iv. That the health and safety of any individual has been, is being or is likely to be endangered;
- v. That the environment has been, is being or is likely to be damaged; or
- vi. That information tending to show any of the above has been is being or is likely to be deliberately concealed.

These acts can be in the past, present or future so that, for example, a disclosure qualifies in relation to environmental damage that has happened, is happening or is likely to happen.

The Act places responsibilities upon the worker making a disclosure. In most cases, the worker must raise the matter internally first. The matter must be raised in good faith – it must be done from a reasonable and honest (even if mistaken) belief, and must not be motivated by personal antagonism.

If the person making the disclosure (the whistleblower) has not complied with the conditions of the Public Interest Disclosure Act in any respect, he or she may have committed a fundamental breach of contract by disclosing confidential information belonging to the employer.

As an employee, the whistleblower may also have fundamentally breached the duty of trust and confidence owed to the employer and may therefore be liable to the School's disciplinary procedures, which may result in dismissal.

The Procedure

The School already has in place policies and procedures relating to the conduct of staff and pupils, including the staff discipline and grievance procedures, and the dignity at work policy. Allegations of injustice, discrimination or malpractice against individuals should normally be raised under these established procedures. The Public Interest Disclosure Act, which this School's Whistle-blowing policy is intended to reflect, relates to concerns about matters of public interest which may need, at least initially, to be investigated separately by senior managers with corporate responsibilities or by Governors of the School. Such matters could include:

- Corruption, bribery or blackmail
- Criminal offences
- Failure to comply with a legal or regulatory obligation
- Miscarriage of justice
- Endangering the health or safety of any individual
- Endangering the environment
- Improper use of authority
- Serious financial maladministration arising from the deliberate commission of improper conduct

This procedure applies to disclosure by an employee or agency contract worker at the School, who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the school.

An individual may seek a confidential meeting with the Bursar to discuss whether it would be appropriate to make a formal disclosure under this procedure. An individual seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as is given under the procedure to someone making a formal disclosure, whether or not a formal disclosure follows.

This policy does not replace the School's Complaints Procedure.

5. Disclosures

The person making the disclosure should as soon as practicable disclose in confidence the grounds for the belief of malpractice or impropriety to one of the 'reportees' identified below. Any disclosure under this procedure shall, wherever possible, be in writing.

The person making the disclosure should provide as much supporting written evidence as possible about the grounds for his or her belief.

Disclosures should be made, as the discloser deems appropriate, to one of the following reportees: the Bursar, the Head, a member of the School leadership team (see staff handbook), or a Governor.

If for a particular reason none of these individuals is appropriate – for example if they are involved in the matter being disclosed – the disclosure should be made to the Chairman of Governors.

A reportee may decline to become involved in any disclosure made on reasonable grounds. Such grounds include previous involvement or interest in the matter concerned, incapacity or unavailability or that the reportee is satisfied that a different reportee would be more appropriate to consider the matter in accordance with this procedure.

On receipt of the disclosure, the reportee will offer to interview, in confidence, the person making the disclosure, or will advise that they have referred the matter to another reportee.

Such an interview will take place as soon as practicable after the initial disclosure. The purpose of the interview will be for the reportee to obtain as much information as possible about the grounds of the belief of malpractice and to consult about further steps which could be taken. The person making the disclosure may be accompanied by a trade union representative or work colleague at the interview. The reportee may be accompanied by an administrative assistant to take notes and an appropriate advisor. The notes will not identify the person making the disclosure. For safeguards in relation to confidentiality, see section "Protection for the Discloser".

Where the reportee is satisfied that this whistle-blowing procedure is appropriate, they will decide on the nature of the investigation of the allegations. This may be an internal investigation by school staff; or referral of the matter to the police or other appropriate public authority; or the commissioning of an independent enquiry, for example by the School's auditors.

If the reportee decides that the whistle-blowing procedure is not appropriate in respect of the matter disclosed, they shall inform the discloser, giving reasons in writing. These could be on grounds that the matter should be, is already or has already been the subject of appropriate proceedings under one of the school's other procedures relating to staff or pupils; or that it is already the subject of legal proceedings, or has already been referred to the police or other public authority; or of reasonable doubt as to the discloser's good faith and/or reasonable belief about malpractice or impropriety.

If the discloser is not satisfied with the reportee's decision, they may ask the Board of Governors to nominate an independent member who will review the matter of the disclosure, the information and evidence presented, the process followed by the reportee and the grounds for the reportee's decision. If the independent member decides that the matter should be investigated under the whistle-blowing procedure, they will direct a second reportee to arrange an appropriate investigation. If the independent member decides to uphold the view of the original reportee, no further action will be taken under the School's processes. The discloser may then consider whether to refer the allegations of malpractice or impropriety to an external agency (see section "External Disclosure").

Protection for the discloser

The School wishes to offer support to workers or pupils who may be considering whether to make a disclosure, but have reservations about raising concerns at a high level, or other difficulties which might affect their ability to initiate action under this procedure. This could include issues relating to ethnicity, culture or disability.

Subject to the paragraph below, the School will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the discloser to any detriment on the grounds of the disclosure of information under this procedure. The person making the disclosure should report any complaints of such treatment to the reportee. If the discloser wishes the reportee to take action in relation to such complaints, the discloser may be asked to consent in writing to the reportee revealing the discloser's identity for the purposes of any such action.

No disciplinary action will be taken against anyone for making a disclosure in accordance with this procedure. This will not prevent the School from bringing disciplinary action in cases where there are grounds to believe that a disclosure has been made maliciously or vexatiously or where an external disclosure is made in breach of this procedure without reasonable grounds or otherwise than to an appropriate public authority.

Investigation and outcomes

The reportee will ensure that the investigation is not carried out by any person with an involvement in the matter disclosed or who might ultimately have to reach a decision in the matter. The person or persons against whom an allegation is made will be told of it and of the evidence supporting it, and will be given full opportunity to offer refutation, explanation or mitigation before the investigation is concluded.

Where the discloser participates in an investigation, that participation will usually be required to be on an open rather than a confidential basis, although the obligations of the reportee will remain in relation to the identity of the individual as the original discloser of information under this procedure.

The reportee will receive from the investigators a written report setting out their conclusions and recommendations for further action. The reportee will liaise with

appropriate members of the School's Governing Body as to the implementation of any recommendations. The reportee will also inform the discloser of the recommendations. Where allegations of malpractice or impropriety on the part of a named individual are substantiated, the reportee will consider whether the matters should be referred for action under staff disciplinary procedures.

A formal account of the investigation and outcomes shall be made to the Governors at the next appropriate opportunity.

Safeguards

The investigation, and any report or recommendations in relation to the matter, will not normally identify the discloser except, where necessary, on a strictly confidential basis to the reportee's administrative assistant or to a professionally qualified lawyer for the purpose of obtaining legal advice, unless:

- i. the discloser consents
- ii. there are grounds to believe that the discloser has acted maliciously
- iii. the reportee is under a legal obligation to do so
- iv. the information is already in the public domain
- v. it is essential to do so in order to deal appropriately with the matter disclosed (for example, if the anonymity of the discloser is incompatible with a fair investigation of allegations against a named individual).

Where the discloser involves a trade union representative or other colleague in this procedure, the discloser will be under an obligation to use all reasonable endeavours to ensure that the representative or colleague keeps the matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

External Disclosure

If, having followed this procedure, the person making the disclosure is not satisfied with the outcome of any investigation or further action taken by the school, they may raise the matter on a confidential basis directly with the police or other appropriate public authority, to include the Health and Safety Executive, the Environment Agency, the Information Commissioner, the Department for Education, the Charity Commission, Ofsted or ISI. Before taking any such action, the discloser will inform the reportee. The reportee will advise the discloser on the requirements of the Public Interest Disclosure Act relating to external disclosures.

The discloser may also raise the matter externally, as set out in the paragraph above, if they have reasonable grounds for believing that they will be subjected to a detriment as a result of making the disclosure, or that all the available reportees are involved in the alleged malpractice.

The discloser may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

If you have any queries about this procedure you should contact the Bursar.