



## Whistleblowing Policy and Procedure

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*Version 1 of this policy has been agreed as being fully consulted on with the following trade unions ASCL, NAHT, NASUWT, Unison, NEU, GMB and UNITE.*

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## 1. Introduction

- 1.1 SHINE Academies are committed to adopting policies and procedures to encourage a positive working environment and promoting the highest standards of integrity and accountability for all its employees.
- 1.2 The requirement to have clear whistle-blowing procedures in place is set out in the Academy Trust Handbook. In implementing this policy, the intention is to ensure, so far as is reasonably practicable, compliance with the provisions of the relevant legislation, including employee rights conferred through the Public Interest Disclosure Act 1998, which came into force on 2 July 1999 and the Employment Rights Act (ERA 1996). The Disclosure Act introduced specific rights for those who disclose information to a third party about an alleged wrongdoing, in defined circumstances.
- 1.3 The provisions in the ERA protect an individual who has disclosed information in the public interest regarding a qualifying disclosure as specified in section 43B.
- 1.4 To be protected, individuals need to make a qualifying disclosure. This means that the individual needs to reasonably believe that the disclosure is being made in the public interest and that malpractice in the workplace is happening, has happened or will happen.

The law also covers a deliberate attempt to cover-up any of these.

Individuals are protected by law if they make a qualifying disclosure of information about the specific areas outlined in section 3.1 of this policy.

- 1.5 It may be the case that the whistle-blower may not be directly or personally affected by the danger or illegality. A disclosure must be for the right reason, but equally should not go beyond being made to the right person for the right reason or motivation.
- 1.6 Personal grievances regarding the employment of an individual (for example bullying, harassment, discrimination) are not covered by whistleblowing law, unless the particular case is in the public interest. See section 3.4 for further details.
- 1.7 All stages of this policy will be implemented in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between employees with protected characteristics as required under the Equality Act 2010.
- 1.8 All whistleblowing qualifying disclosures will be dealt with by managers within the senior leadership team or an external investigator who are properly trained in how to deal with a protected/qualifying disclosure.

## **2. Purpose**

- 2.1 The purpose of the policy is to ensure that qualifying disclosures of fraud, malpractice or other improper conduct can be raised without fear of reprisal, victimisation or dismissal, and dealt with properly and with due consideration.
- 2.2 The approach is intended to encourage confidential freedom of expression so that employees feel confident to raise qualifying concerns within their place of work, rather than externally, or by overlooking a problem.

## **3. Definition and Scope**

- 3.1 Whistle-blowing covers concerns made that report wrongdoing that is 'in the public interest'. Examples of whistle-blowing include (but are not limited to):

- Criminal offences, such as fraud or corruption
- Pupils or employee health and safety being put in danger
- Failure to comply with a legal obligation or statutory requirements
- Breaches of financial management procedures
- Attempts to cover up the above, or any other wrongdoing in the public interest
- Damage to the environment

A whistle-blower is a person who raises a genuine concern relating to the above.

- 3.2 This policy covers qualifying disclosures of information about:

- Unlawful acts
- Breach of Council Standing Orders, Authority, Governing Body or Trust Board Policy or Procedure
- Miscarriage of justice
- Conduct or behaviour which falls below established standards of good practice
- Improper, unethical conduct or malpractice, including abuse of pupils and/or employees
- Health, safety or environmental damage or risk
- Deliberate concealment of information about any of the above

- 3.3 A qualifying disclosure means that it is the reasonable belief of the individual making the disclosure that one or more of the above has occurred, is occurring or is likely to occur.

- 3.4 This policy applies to all employees and Trustees of Shine Academies and any contractors working for the Trust, for example, agency staff, contractors, and volunteers.
- 3.5 This policy is separate from other procedures, e.g. disciplinary, child protection and work related grievance/complaints procedures, which should be followed in cases where an individual or a group of employees has a concern about a matter affecting their own work or workplace. Please refer to the relevant Trust policy for further guidance on concerns that do not fall under this policy. Trust policies applicable are:
- Disciplinary Procedure
  - Grievance Procedure
  - Dignity at Work Policy
  - Managing Safeguarding Allegations Policy
  - Complaints Procedure

#### **4. Procedure to Raise a Whistleblowing Concern**

##### **4.1 Advice and Support**

- 4.1.1 Employees should consider the examples in section 3 when deciding whether their concern is of a whistle-blowing nature. Anyone wishing to raise a concern under this policy may, in the first instance, wish to discuss the issue informally, in confidence, with a colleague, other senior manager, trade union/professional association representative or a HR representative. Individuals are encouraged to seek advice, and it is important that the individual asks questions if they are unsure whether their concern qualifies for protection.
- 4.1.2 Individuals are advised to contact their trade union representative or to seek advice from "Protect" (see section 4.1.3). The individual has the right to consult with and be accompanied by a trade union representative during the operation of the procedures and at all meetings held under this policy. If the individual is not an employee at the Trust they also have the right to consult with and be accompanied by a trade union representative, during the operation of the procedures under the policy.
- 4.1.3 A free, confidential employee helpline service (tel: 020 3117 2520) is provided by the independent charity "Protect" which offers independent advice to anyone worried about malpractice in the workplace. Further information is available online at [www.protect-advice.org.uk](http://www.protect-advice.org.uk). For individuals who do not feel able to raise concerns regarding child protection concerns internally, concerns can be reported via the NSPCC whistleblowing helpline on 0800 028 0285 or by email: [help@nspcc.org.uk](mailto:help@nspcc.org.uk).

## **4.2 Reporting Arrangements**

4.2.1 There is no legal requirement that a disclosure must be made in a certain way to a specific person with the organisation. Individuals are however advised to follow the reporting arrangements detailed within this policy and to seek advice from their trade union representative or Protect on this (see sections 4.1.2 and 4.1.3).

4.2.2 Concerns relating to school employees should be reported to the Headteacher.

If the concern is about the Headteacher, or it is believed they may be involved in the wrongdoing in some way, the employee should report their concern to the Chief Executive Officer.

Any concerns which relate to the Trust Central Team should be reported to the Chief Executive Officer.

If the concern is about the Chief Executive Officer, or it is believed they may be involved in the wrongdoing in some way, the concern should be reported to the Chair of the Trust Board.

4.2.3 It may be appropriate to go outside the normal line management structure, to an independent third party (see section 4.3). Where the concern relates to a contractor working on the Trust site, the concerns should be raised with a member of the senior leadership team.

4.2.4 SHINE Academies will maintain a register of qualifying disclosures lodged under the policy, report those qualifying disclosures to the relevant body and will make available for external inspection, such reports/statistical information as may be required. The relevant body may be, for example, The Financial Services Authority, the Regional Schools Commissioner, Local Professional Association Trade Union, and Exam Board or the Local Authority.

4.2.5 Where applicable, data should be kept in line with Trusts retention schedule. Retention of data will be proportional to the purpose for which the data is collected, whilst taking into account any legal statutory requirements in terms of retention periods.

## **4.3 Raising Concerns Further or Externally**

4.3.1 This policy is intended to provide individuals with an avenue within the Trust to raise concerns. SHINE Academies hopes the individual will be satisfied with any action

taken. If they are not, then they can request that the Senior Leadership Team refer the matter for consideration by;

- Directors of the Trust
- Trade Union Representative
- Local Citizens Advice Bureau
- Relevant Professional Bodies or Regulatory Organisations
- Relevant Voluntary Organisation
- Police

If the individual is not satisfied about the way the qualifying concern has been dealt with or does not believe that the Trust will deal with this appropriately, they may contact an external body, as detailed below.

#### 4.3.2 The external bodies may include:

- A legal advisor provided it is done in the context of obtaining legal advice
- A government minister if the individual is appointed under a Parliamentary Act by the minister and the disclosure is made in good faith
- A prescribed person (e.g., HMRC, the Health & Safety Executive, Ofcom, Ofsted etc.), in which case the following conditions below must be met:
  - the disclosure must be 'in good faith'.
  - the disclosure must be to a person prescribed for a particular purpose (for example, the Commissioners of the Inland Revenue).
  - the employee must reasonably believe the matter falls within the recipient's remit.
  - the employee must also reasonably believe the information and any allegation contained in it are substantially true.

If a disclosure is to some other person to whom it is reasonable to disclose:

- The disclosure must be 'in good faith'.
- The individual must reasonably believe the information and any allegation contained in it are substantially true.
- The disclosure must not be for personal gain.

In addition to the above one of the conditions below must also be satisfied through which the individual can demonstrate that:

- At the time the disclosure is made, they reasonably believe they will be subjected to detriment if the disclosure is made to the employer, or to a prescribed regulator instead; or

- There is no prescribed regulator, and they reasonably believe that disclosure to the employer will lead to the destruction or concealment of evidence; or
- They have previously made a disclosure of substantially the same information to the employer, or a prescribed regulator

4.3.3 Individuals are advised to seek advice before reporting a qualifying concern to anyone external (see sections 4.1.2 and 4.1.3).

4.3.4 Prescribed persons are mainly regulators and professional bodies. A complete list of prescribed persons can be found at:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

4.3.5 An appropriate organisation for an external complaint would be the Department for Education (DfE).

4.3.6 Any individual who approaches the media with their concerns is likely to lose their rights under whistle-blowing law. In doing so an individual cannot be acting for personal gain and must reasonably believe the information they disclose is substantially true. If an individual bypasses this internal procedure or a prescribed person before contacting the media, they must reasonably believe that the organisation will subject them to detriment for making the disclosure internally.

Disclosure to the media is not encouraged and is rarely, if ever, appropriate and that an individual considering making a disclosure to the media is strongly urged to take advice from their Trade Union or a legal representative before doing so.

The procedures set out in this policy are in place to ensure an appropriate way to raise public interest concerns and should be used as priority. Accordingly, the Trust would normally treat any unnecessary contact with the press on matters for which this policy applies as a serious disciplinary issue for which the disciplinary policy will be invoked.

#### 4.4 **Investigation**

4.4.1 When a concern is received by the Headteacher, Chief Executive Office or Chair of Trustees (referred to from here as the 'recipient') – they will:

- Meet with the person raising the concern within a reasonable time period. The person raising the concern may be joined by a trade union or professional association representative
- Get as much detail as possible about the concern at this meeting and record the information. If it becomes apparent the concern is not of a whistle-blowing nature,



the recipient should handle the concern in line with the appropriate policy/procedure

- Reiterate, at this meeting, that they are protected from any unfair treatment or risk of dismissal as a result of raising the concern. If the concern is found to be malicious or vexatious, disciplinary action may be taken (see section 8 of this policy)
- Establish whether there is sufficient cause for concern to warrant further investigation. If there is, the recipient should then arrange a further investigation into the matter. In some cases, they may need to bring in an external, independent body to investigate. In other cases, they may need to report the matter to the police. The person who raised the concern should be informed of how the matter is being investigated and an estimated timeframe for when they will be informed of the next steps.

#### **4.2 Outcome of the investigation**

- 4.2.1 Once the investigation – whether this was just the initial investigation of the concern, or whether further investigation was needed – is complete, the investigating person(s) will prepare a report detailing the findings and confirming whether or not any wrongdoing has occurred. The report will include any recommendations and details on how the matter can be rectified, and whether or not a referral is required to an external organisation, such as the local authority or police.

They will inform the person who raised the concern of the outcome of the investigation, though certain details may need to be restricted due to confidentiality. Beyond the immediate actions, the headteacher, trustees and other staff, if necessary, will review the relevant policies and procedures to prevent future occurrences of the same wrongdoing. While the Trust cannot always guarantee the outcome sought, the Trust will try to deal with concerns fairly and in an appropriate way.

- 4.2.2 In all cases, written records will be kept of the initial qualifying disclosure, details of the investigation and the outcome and action, if any, recommended.

### **5. Safeguards**

- 5.1 It is recognised that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from the alleged wrongdoer. SHINE Academies will not tolerate harassment or victimisation and will take action to protect anyone who raises a concern in good faith. Protection against reprisal or victimisation applies equally if the concern turns out later to be untrue.
- 5.2 The activation of this policy will not, however, halt the operation of other procedures

which may be in place affecting the whistle-blower.

- 5.3 If an individual feels they have been treated unfairly as a result of making a disclosure, they should raise their concerns with the Trust following the grievance or complaints procedure. Subsequently, if an individual feels that they have not received a satisfactory outcome through the full internal grievance or complaints procedure then they can decide to take the case to an employment tribunal. It is strongly advisable for any individual considering either course of action to seek advice from their trade union representative.
- 5.4 The Trust will deal with any suspected cases of victimisation or where an employee feels they have been treated unfairly as a result of making a disclosure, in line with the Trusts Disciplinary and Grievance Procedures.

## **6. Confidentiality & Data Protection**

- 6.1 The Trust will endeavour to protect the identity of anyone raising a concern who does not wish to be named.
- 6.2 Confidentiality will also be maintained during investigation and hearings other than in circumstances where there is a need for disclosure.
- 6.3 Breaches of confidentiality will be investigated and may be dealt with under the Trusts Disciplinary Policy.
- 6.4 Any documentation or evidence collected in conjunction with the application of this policy will be treated as confidential and information will only be shared with parties on a need to know basis.
- 6.5 Where applicable, data should be kept in line with the Trusts Data Retention schedule. Retention of data will be proportional to the purpose for which the data is collected, whilst taking into account any legal statutory requirements in terms of retention periods.

## **7. Anonymous Disclosures and Confidentiality**

- 7.1 Individuals are encouraged to put their name forward to concerns. Concerns expressed anonymously are much less powerful but employees should satisfy themselves of whether or not the allegation has any substance by considering:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the disclosures from attributing sources

7.2 If an individual raises a concern they should give their name only on condition that it is not revealed without their consent. This is raising an anonymous concern as being anonymous does not stop others from successfully guessing who raised the concern. In addition to this, it can lead people to focus on the whistle-blower and perhaps begin to suspect that they are raising the concern maliciously. It is also harder for those tasked with investigating the concern if they cannot ask follow-up questions and it is easier to get protection under the Public Interest Disclosure Act if the concerns are raised openly.

7.3 The identity of the whistle-blower will only be released by the appropriate person, if there is a legal requirement to do so i.e., a court order or if the whistle-blower gives written permission to do so.

## **8. Untrue Disclosures**

8.1 An allegation made in good faith but not confirmed by investigation will not be held against the individual.

8.2 Using this policy and procedure to further private disputes or making unfounded allegations for malicious or vexatious reasons will not be tolerated. Where such bad faith is established, disciplinary action may be taken against those involved. Before embarking upon such action, advice must always be sought. Please refer to the Trusts Disciplinary Policy for details on conducting investigations, the role of the investigating officer and disciplinary procedures and sanctions.

## **9. Monitoring**

9.1 This policy will be monitored to ensure the consistency of application and adherence to the equalities legislation, to ensure that the policy operates in accordance with the duty to promote equality, to eliminate discrimination and to promote good relations between employees with protected characteristics under the Equality Act 2010.

9.2 This policy will be monitored and reviewed by the relevant body in conjunction with recognised trade unions at agreed dates/timescales.



## Appendix A - Flow Chart of the Whistleblowing Process

