

# All Saints Schools Trust



## Whistleblowing Policy 2018 - 22

	Date	Signed
Agreed by Trust Board:	July 2018	Chair of Board James Hargrave
Lead:	HR Committee	
Review date:	July 2022	

# Whistleblowing Policy

## Rationale:

The Trust has a responsibility to ensure that all of its schools are managed to the highest standards of probity, openness and accountability and that its decision making and administration is conducted in such a way as to be above any suspicion of malpractice. In line with this commitment, all Trust schools encourage all employees with serious concerns about any aspect of the school's work to come forward and raise their concerns without fear of being disloyal or suffering harassment or victimisation as a result.

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

Adopting a whistleblowing policy is essential to the principles of accountability, transparency and probity, which underpin good governance.

It is in everyone's interest that potential failings and malpractice are identified early so that the Head Teacher/governors/Trust Board can take appropriate action.

## Aims:

The Trust and its schools are committed to promoting and maintaining the highest standards in the management and administration of their affairs. The Trust also wishes to comply with all of its obligations under the UK Corporate Governance Code, to maintain a sound system of internal control, and recognises that a whistleblowing procedure is essential to the principles of accountability, transparency and probity, which underpin good governance. (<http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>)

This policy aims to encourage the raising of concerns in a confidential manner and to reassure employees that they will be protected from harassment and victimisation for whistleblowing provided that they reasonably believe the disclosure to be in the public interest.

This policy is also intended to guide any employee who has a disclosure to make about malpractice in the school/Trust in making that disclosure. It sets out to whom malpractice (or suspected malpractice) should be reported, and how it should be reported.

It also aims to set out the safeguards that the schools and Trust will offer to any employee(s) who makes a disclosure in the recommended way and in good faith.

### **Consultation:**

This procedure has been subject to consultation with all recognised trade unions.

### **Application:**

This procedure applies to all teaching and support staff within the Trust.

Whistleblowers do not need a qualifying period of service to bring a claim of unfair dismissal: in other words, staff 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.

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

### **Scope:**

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/Trust 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.

Disclosures relating to the worker's own contract will usually fall outside of whistleblowing, and should instead be followed up via grievance procedures.

Likewise, 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.

### **Key Principles:**

- The school/Trust is clear that no employee will be subject to victimisation or other detriment by reporting concerns which they believe to be true.
- Any issue reported will be taken seriously and investigated.
- Concerns raised will be treated in a confidential manner and feedback will be given on any action taken.

### **Definitions:**

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.

An action does not have to constitute a criminal offence in order to be classified as 'malpractice', although clearly anything that constitutes a criminal offence would almost certainly amount to malpractice.

The term 'employee' shall include not only those directly employed by the Trust but also those contractors working for the Trust such as agency staff. It also covers those providing services under contract with the school/Trust.

### **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 issue and the individual, or individuals, thought to be involved in the malpractice being reported.

As a general rule, an employee wishing to make a disclosure should raise his/her concern(s) in the first instance with the Head Teacher or the Chair of the school's governing body or in the case of the Trust with the CEO. This is appropriate where the concern is about the conduct or practice of colleagues or where there is a concern that the school's/Trust's policies and procedures are not being properly or fairly applied. This will enable the issue to be addressed immediately at the appropriate level.

Where an employee genuinely believes that she or he cannot approach the Head Teacher or the Chair of Governors or the CEO, the concern should be raised with the Chair of the Trust board. This course of action would be appropriate if the disclosure were about the conduct or practice of the Head Teacher, the Governing Body or the Trust or if a disclosure has already been made to them and no discernible or timely action has been taken to address the situation.

In exceptional circumstances an employee may directly approach one of the Members of the Trust. This would normally only be appropriate if she/he reasonably believes that the Chair of the Trust board is involved in the malpractice or would for some other reason be unwilling to investigate it.

If the employee reasonably believes that the Members are themselves implicated, she/he should report the matter to the Department of Education.

A disclosure may be made verbally (either in person or by telephone) or in writing. An employee should normally identify him/herself and should make it clear that she/he is making a disclosure within the terms of this policy. Concerns raised in casual conversation do not constitute a disclosure.

An employee 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. Employees who feel unable to commit their concerns to writing will normally be asked to meet with an appropriate senior officer who will compile a written note of the disclosure.

The whistleblower may be accompanied by a trade union representative or appropriate workplace colleague at meetings 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 information should be based on more than hearsay, gossip or the reports of others. The disclosure should usually include specific examples of unacceptable behaviour.

Disclosures should not be made to the press, radio, television or other media. 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.

A checklist which may be of some assistance if an employee is thinking of making a concern is attached to this policy as Appendix A.

### **Responding to a Disclosure:**

The response to an employee's disclosure will depend on a number of factors including the seriousness and complexity of the allegations which have been made.

Allegations may be:

- Investigated within the school/Trust or by the Members
- Referred to the Trust's internal or external auditors
- Referred to the police
- Referred to another independent form of enquiry
- Any combination of the above

The 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 policy/procedure, she/he will be advised to pursue it via that route.

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/Trust 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.

The whistleblower will be informed 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.

Where a whistleblower is unwilling to identify him/herself, any person receiving a complaint about malpractice should log the incident and with the Chair of the Trust board to decide whether or not any investigation should be undertaken.

A checklist which outlines some information for those receiving a complaint is attached to this policy as Appendix B.

### **Liability:**

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 staff 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.

### **Safeguards for Whistleblowers:**

Staff 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.

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.

The decision to report malpractice can be a difficult one for an employee who may fear subsequent victimisation or harassment. 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.

No action will be taken against staff 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.

Where employees 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 always 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 in school or to the police. Any person subject to disciplinary action or prosecution would have 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.

### **Employee Responsibilities:**

All employees have a duty of confidentiality to the school/Trust and therefore it is important that this procedure is used and not ignored. Any disclosure externally to the press or media will result in disciplinary action. The Public



Interest disclosure Act 1988 does provide protection to individuals who make certain disclosures of information in the public interest but anyone wishing to make an external disclosure is strongly advised to seek legal advice before doing so as they may put their employment at risk.

### **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.

### **Law:**

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.

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.

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 5 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 Audit Commission.

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.

### **Limitations and Exclusions:**

This policy is not intended to substitute for other procedures/policies through which employees may raise specific concerns or complaints about their personal treatment. Complaints by employees about their personal treatment by others or about the way in which employment policies and practices have been applied to them (including decisions about pay and grading) should be raised under the Trust's grievance policy or under any other appropriate policy. Complaints about the protection of children should normally be raised under the separate policy(ies) designated for that purpose. This procedure would also not normally be appropriate for raising concerns about health and safety issues, unless they were related to a broader complaint of malpractice.

Where service users and members of the public have serious concerns, they should raise issues as outlined in the school/Trust's complaints policy.

### **Further Steps:**

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

- Audit Commission 0303 444 8330
- Recognised trade union
- Elected Suffolk County Council member
- The Health and Safety Executive 01245 706222
- Information Commissioner 0303 123 1113
- The Pensions Regulator 0845 600 7060
- Local Government Ombudsman 0300 061 0614
- OFSTED 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).

### **Term of Review:**

This policy will be reviewed every four years.

## Appendix A

### Checklist for Employees

If you are thinking of raising a concern, here are a few things to remember:

<b>Yes: Please Do...</b>	<b>No: Please Do Not...</b>
Raise the matter as soon as possible if you feel your concerns are warranted.	Do nothing. The school/Trust would prefer you to raise your concerns so that they can carry out a full and fair investigation.
Tell your suspicions or concerns to someone who has the appropriate authority to deal with them.	Be afraid of raising your concerns. The school/Trust has safeguards in place to protect staff who raise a concern.
Be assured that the school/Trust will take seriously concerns raised based on honest and reasonable suspicions.	Try to investigate the matter yourself. This may complicate any later enquiries, particularly if a criminal investigation becomes necessary.
Familiarise yourself with the whistleblowing policy.	Approach or accuse any individuals directly.
Consider writing down the key points and details as to why you are concerned.	Tell your suspicions or concerns to anyone other than those with the proper authority.

## Appendix B

### Checklist for Head Teachers, Chair of Governors or CEO

If you receive a disclosure:

<b>Yes: Please do...</b>	<b>No: Please do not...</b>
Be fully responsive to the employee(s) concerns.	Ridicule or ignore the concerns raised.
Respect the fact that staff can raise a concern confidentially.	Approach or accuse any individuals directly.
Take detailed notes of the information provided; including details such as who, what, where, when, why and how in relation to the matter of concern.	Tell your suspicions or concerns to anyone other than those with the proper authority.
Evaluate the allegation objectively.	Try to investigate the matter yourself. This may complicate any later enquiries, particularly if a criminal investigation becomes necessary.
Advise the appropriate person, whether this is the Chair of Trust board or a different individual, department or authority.	Do nothing. The school/Trust is committed to a culture of openness in which staff feel able to communicate their concerns freely and in confidence.
Deal with the matter promptly and as a matter of priority within the agreed time frames.	Delay. The speed of response may be important.

## Document History

<b>Version</b>	<b>Date</b>	<b>Comments</b>
Issue 1	June 2018	Amended in line with new County guidance/template