



# WHISTLEBLOWING POLICY and PROCEDURE

*November 2022*

Responsibility	Head Teacher
Date of next review by	30/11/2024

Signed: 

Head Teacher

Date: 21/11/22

Signed: 

Director of Operations

Date: 21/11/22

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## 1. INTRODUCTION

This policy applies to all employees of the Aspire Free School Academy Trust (Aspire Academy) regardless of whether they are on a permanent, fixed term, temporary or casual contract. It is based upon the Worcestershire County Council Policy of the same name.

People working within organisations are often the first to realise that there may be something seriously wrong in the place in which they work. The Aspire Academy is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we encourage employees who have serious concerns about the school to come forward and voice those concerns about specified matters:

## 2. Qualifying Disclosures

Qualifying disclosures are disclosures of information where the employee or worker reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.

- A criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- Deliberate attempt to conceal any of the above

## 3. PROTECTION

The *Employment Rights Act 1996* and the *Public Interest Disclosure Act 1998* gives legal protection to staff (including employment agency supplied workers and those on work experience) against being dismissed or penalised by employers as a result of disclosing information on malpractice, wrongdoing or dangers (a 'qualifying disclosure').

Protection is given to a 'protected disclosure' which is a 'qualifying disclosure' given to particular persons as defined by the legislation.

A disclosure is not protected unless the whistle-blower reasonably believes that the disclosure is made in the public interest.

An employee can make a disclosure, and still retain protection, under the *Employment Rights Act 1996*, to a non-prescribed person if certain conditions are met, namely:

- the employee reasonably believes the information is substantially true
- the employee is not making the disclosure for personal gain
- in all the circumstances, it is reasonable for the employee to make the disclosure
- The employee must also reasonably believe that they would be subject to a detriment by the employer if they made the disclosure directly to the employer or a prescribed person and/or the employee
- reasonably believes that the employer would conceal or destroy evidence if the disclosure were put directly; or have previously made the same disclosure to the employer or a prescribed person to no avail.

Notwithstanding legal protection for a whistle-blower, any victimisation of an employee for raising a protected disclosure will be considered a conduct matter by the Council and dealt with accordingly under the Managing Conduct Policy.

It is not necessary for an employee to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The employee has no responsibility for investigating the matter - it is the school's responsibility to ensure that an investigation takes place.

The governing body is responsible for ensuring the operation of this policy with regard to matters relating to this school.

**This procedure is not designed to be a substitute for the school disciplinary or grievance and harassment procedures. If the matter relates to yourself or to a breach of your own contract of employment, you should make use of the school's Grievance and Harassment Procedures.**

## **4. GUIDING PRINCIPLES**

Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Employees should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.

An instruction to cover up wrongdoing is in itself a disciplinary matter. If you are told not to raise or pursue any concern, even by a person in authority, you should not agree to remain silent. You should report the matter in accordance with this policy.

### **4.1. Harassment or victimisation**

The Academy recognises that the decision to report a concern can be a difficult one to take, not least because of the fear of reprisal from those responsible for the malpractice or from the school. The school will not tolerate any such harassment or victimisation and will take appropriate action to protect those that raise a concern in good faith. In addition, the *Public Interest Disclosure Act 1998* offers protection to employees from suffering a detriment and dismissal when they have 'blown the whistle'.

### **4.2. Confidentiality**

The School undertakes to protect your identity and won't disclose it without your consent. If the situation arises where it is not possible to pursue your concern without revealing your identity (e.g. the need to give evidence in court or at a disciplinary hearing), the Investigating Officer will discuss this with you and whether it is possible to proceed.

### **4.3. Safeguarding issues**

If the concern relates to a safeguarding issue employees should inform the school's Designated Safeguarding Lead, Head Teacher or Chair of Governors, if the Head Teacher is involved. Who should then immediately contact the Local Authority Designated Officer (LADO). However, if the Head Teacher or Chair of Governors fails to contact the LADO or an employee is still concerned about the situation they should contact the Access Centre on 0845 607 2000.

### **4.4. Anonymous allegations**

Concerns expressed anonymously, may be considered under this whistle-blowing procedure, especially those relating to the welfare of children. The school, when determining whether an anonymous allegation will be investigated further, will take the following factors into account:

- The seriousness of the issue raised.

- The credibility of the concern.
- The likelihood of obtaining the necessary information in order to confirm the allegation.

#### **4.5. Deliberately false or malicious allegations**

The school will consider any deliberately false or malicious allegations it receives as a disciplinary matter.

#### **4.6. The role of the Trade Unions**

If you are considering raising concerns using this procedure you may wish to seek advice from your trade union representative (if applicable) before doing so.

## **5. HOW IS A CONCERN RAISED?**

If wrongdoing in the workplace is suspected:

- **Do not** approach or accuse the individual directly.
- **Do not** try to investigate the matter.
- **Do not** convey such suspicions to anyone else other than those with the proper authority but do raise your concern (see below).

As a first step raise the issue with the Head Teacher or in the absence of the Head Teacher, the Deputy Head Teacher. However, if you believe that the Head Teacher is involved in the matter of concern you should contact the Chair of Governors. It is expected that the Investigating Officer will either be the Head Teacher or the Chair of Governors, however they do have the discretion to delegate the investigation to another person if they feel this is appropriate.

Although concerns may be raised verbally, they are better put in writing. When setting out your concern in writing you should include as much detail as possible, for example, set out the background and history of the concern; giving names, dates and places and explaining the reasons for your concerns. If you feel unable to raise the issue directly with the Head Teacher or Chair of Governors, you can also ask your trade union or professional association to raise the matter on your behalf or support you in raising the concern.

## **6. HOW THE SCHOOL WILL RESPOND**

Initially the Investigating Officer will consider the matter raised and decide whether an investigation is appropriate and if so, what form it should take. It may be appropriate for the Investigating Officer to initially consider other procedures such as the procedure for dealing with allegations of abuse against staff or Staff Malpractice. If the concern is unrelated to a qualifying disclosure, then the Investigating Officer should halt the use of this procedure and instead refer the employee to the Grievance and Harassment or other relevant procedures.

### **6.1. Written acknowledgement**

Once the Investigating Officer has considered the issue(s) they will write to you within 10 working days of the concern being raised:

- (a) Acknowledging that the concern has been received.
- (b) Indicating how they propose to deal with the matter.
- (c) Giving an estimate (so far as is reasonably practical) of how long it will take to provide a final response.
- (d) Advising whether any initial enquiries have been made.
- (e) Advising whether further enquiries will take place.
- (f) Informing you of any support available whilst matters are investigated.

- (g) Maintaining confidentiality where possible, but explaining that it may not be possible that you remain anonymous.

### **6.2. The investigation process**

The Investigating Officer may decide it is necessary to meet with you to seek further information or for clarification purposes. Where a meeting is arranged you have the right to be accompanied by a trade union representative or a colleague who is not involved in the matter(s) of concern. The Investigating Officer may also feel it is necessary to collect further evidence and interview witnesses as part of the investigation process.

During the investigation process the Investigating Officer may feel it is appropriate to refer matters to:

- The ESFA (Education Skills Funding Agency), due to concerns about financial loss or irregularity.
- The Police, due to concerns of a criminal nature.
- The Local Authority Designated Officer (LADO) in relation to child safeguarding concerns.
- Teaching Regulation Agency.

The investigation process would aim to be completed within 20 working days of the matter being raised with the Investigating Officer, however enquiries may extend beyond this timescale in some more complex cases.

### **6.3. Possible outcomes**

Following the investigation process the Investigating Officer will write up their findings and recommendations and present them, in the form of a report, to the Head Teacher and the Chair of Governors if either the Head Teacher or Chair of Governors has not completed the investigation, so that they can determine what further action (if any) is required. It may be necessary to refer the matter to other nominated governors to agree actions if the Head Teacher and the Chair of Governors are already involved in the issue(s) or investigation.

The Investigating Officer will determine that either:

- (a) There is no evidence to support the matters raised and no further action is required, or
- (b) Allegations have been proven and that it is appropriate to take action in accordance with the disciplinary procedure or other relevant action, or
- (c) The outcome is currently unknown because matters have been referred to other parties for further investigation e.g. police, audit, social services, legal, DBS or NCTL (National College for Teaching and Leadership), or
- (d) The allegation is found to be malicious and will be investigated as a conduct issue under the disciplinary procedure.

The school will take appropriate steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the school will arrange for you to receive advice and support about the procedure.

The school recognises that you need to be assured that the matter has been properly addressed. Therefore, subject to legal constraints, you will receive a copy of the report.

## **7. HOW CAN THE MATTER BE PURSUED FURTHER?**

This policy is intended to provide employees of the school an avenue in which to raise concerns within the school and it is hoped that this will be the option in the first instance.

### 7.1. External Bodies

You are strongly advised to seek independent advice before you raise any issue outside of the school. Advice is available from your trade union (if applicable) or 'Protect' (formally Public Concern at Work) which is an independent charity providing confidential advice to workers who are unsure whether or how to raise a public interest concern (telephone 2020 3117 2520 or <https://protect-advice.org.uk/>)

You can also raise your concern with the proper external regulator. The legislation sets out a number of bodies to which qualifying disclosures may be made. The Department for Business, Innovation and Skills has published guidance detailing the list of the prescribed persons and bodies to whom employees can make a disclosure. This includes, amongst other bodies:

- The Secretary of State for Education (since 2015)
- The Audit Commission
- The Health and Safety Executive
- Charity Commission: Report serious wrongdoing at a charity as a worker or volunteer (GOV.UK)

For the full list of see "*Whistleblowing: list of prescribed people and bodies*" at [www.gov.uk](http://www.gov.uk).

An employee can make a disclosure (and still retain protection under the *Employment Rights Act 1996*) to a non-prescribed person (for example, the police or Ofsted) if certain conditions are met, namely: the worker reasonably believes the information is substantially true; the worker is not making the disclosure for personal gain; and, in all the circumstances, it is reasonable for the worker to make the disclosure. The worker must also: reasonably believe that he or she would be subject to a detriment by the employer if he or she made the disclosure directly to the employer or a prescribed person; reasonably believe that the employer would conceal or destroy evidence if the disclosure were put directly; or have previously made the same disclosure to the employer or a prescribed person to no avail.

**The school encourages employees to raise their concerns in accordance with this procedure in the first instance. If, having read this policy, you are uncertain about whether it is the appropriate policy or how to proceed, please feel free to seek informal advice from the Local Authority Human Resources Department.**

