



# ELSTON HALL

## Learning Trust

# Whistleblowing Policy

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**Approved by: Unions 08/06/2023 and Trustees 10/07/23**

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## Introduction

Elston Hall Learning Trust (EHLT) is committed to adopting policies, procedures to encourage a positive working environment and promoting the highest standards of integrity and accountability for all its employees/workers.

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.

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.

To be protected, employee's need to make a qualifying disclosure.

This means that the employee 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 1.1 of this policy

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 to the right person for the right reason or motivation.

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 1.4 for further details.

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 staff with protected characteristics as required under the Equality Act 2010.

All whistleblowing qualifying disclosures will be dealt with by managers with the senior leadership team/external investigator who are properly trained in how to deal with a protected/qualifying disclosure.

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.

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.

## **1. Scope**

1.1 The 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/students/staff
- Health, safety or environmental damage or risk
- Deliberate concealment of information about any of the above

1.2 A qualifying disclosure means that it is the reasonable belief of the employee/worker making the disclosure that one or more of the above has occurred, is occurring or is likely to occur

1.3 This policy applies to all employees, Governors and Trustees of EHLT and those contractors working for the Trust on EHLT premises, for example, agency staff, contractors, and volunteers.

1.4 This policy is separate from other procedures, e.g., harassment, disciplinary, child protection and work related grievance/complaints procedures, which should be followed in cases where an individual or group of employees involved in or has a concern about a matter affecting their own work or workplace. Please refer to the relevant EHLT policy for further guidance on concerns that do not fall under this policy. The Trust policies applicable are:

- Disciplinary Procedures
- Grievance Procedures
- Dignity at Work Policies
- Managing Safeguarding Allegations Policies
- Complaints Procedure

## **2. Principles**

### **2.1 Advice and Support**

- 2.1.1 Anyone wishing to raise a concern under the 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. It is important that the whistle-blower asks questions if they are unsure if their concern qualifies for protection. Employees are advised to seek advice (see sections 2.1.3 and 2.1.4)
- 2.1.2 Where an individual feels that an informal resolution has not been effective or is not appropriate and they decide to pursue the issue formally they should ensure that they follow the guidance in this policy with advise and support as detailed below.
- 2.1.3 Employees are advised to contact their trade union representative or to seek advice from Protect (see section 2.1.4) The whistle-blower 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 the policy. If the whistle-blower is not an employee 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.
- 2.1.4 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.pcaw.org.uk](http://www.pcaw.org.uk). For staff who do not feel able to raise concerns regarding child protection failures internally, staff are now able to report their concerns via the NSPCC whistleblowing helpline on 0800 028 0285 or by email: [help@nspcc.org.uk](mailto:help@nspcc.org.uk).

### **2.2 Reporting Arrangements**

- 2.2.1 The procedure should be published, brought to the attention of all employees and made available in every workplace. The appointed person(s) for EHLT to whom concerns should be addressed/reported initially is the Headteacher, or, if the concern relates to the Headteacher or Trust staff, the Chief Executive.
- 2.2.2 There is no legal requirement that a disclosure must be made in a certain way to a specific person with the organisation. Employees 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 2.13 and 2.14)
- 2.2.3 Where the concern relates to a member of the senior leadership team it may be appropriate to go outside the normal line management structure, to an independent third party. (see section

2.3) Where the concern relates to a contractor working on the school site, the concerns should be raised with a member of the senior leadership team.

2.2.4 The Trust 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.

2.2.5 Where applicable, data should be kept in line with the Trust's 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.

### **2.3 Raising Concerns Further or Externally**

2.3.1 This policy is intended to provide employees with an avenue within the Trust to raise concerns. The Trust hopes the employee 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;

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

If the whistle-blower 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.

2.3.2 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 employee 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 employee can demonstrate that:

- at the time the disclosure is made, they reasonably believe they will be subjected to detriment by their employer 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 their employer, or a prescribed regulator.

2.3.3 Employees are advised to seek advice before reporting a qualifying concern to anyone external (see sections 2.1.3 and 2.1.4)

2.3.4 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>

2.3.5 An appropriate organisation for an external complaint would be the Education and Skills Funding Agency (EFSA).

2.3.6 Any employee who approaches the media with their concerns is likely to lose their rights under whistleblowing law. In doing so an employee cannot be acting for personal gain and must reasonably believe the information they disclose is substantially true. If an employee 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 are rarely, if ever, appropriate and that an employee considering making a disclosure to the media is strongly urged to take advice from their Trade Union 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 justifying dismissal.

## **2.4 Investigation**

2.4.2 The process by which allegations will be investigated, including time limits for response will, so far as is reasonably practicable, mirror those set out in the Trust's Complaints Procedures. A summary of this procedure is outlined in section 2.4.2 – 2.4.12 below (Please refer to the Trust's Grievance procedure for further details) In exceptional circumstances and by agreement between the parties concerned, time limits for responses may be varied, but should not normally exceed six weeks.

2.4.3 Acknowledgment of the disclosure will be within five working days.

2.4.4 The designated person will then invite the whistle-blower to a meeting giving at least five working days' notice as soon as reasonably practicable to explain the details of their disclosure. It may be necessary during or following the meeting to adjourn for further investigation to take place.

2.4.5 In order to protect individuals and the Trust, initial enquiries will be made to establish what form an investigation may take.

2.4.6 The Acas guide to conducting workplace investigations provides guidance on decisions and actions an employer should make when deciding to conduct an investigation. The Trust's Grievance Policy is written in line with this, and the same process will be followed when conducting an investigation into a disclosure.

2.4.7 The person appointed to investigate the qualifying concern will be a suitably trained person, with no connection to the qualifying concern. This may be someone already employed within the Trust or an independent investigator from the Trust's HR provider.

2.4.8 The investigator will be expected to produce a written report, usually within 20 working days (see 2.4.7) relating to the allegations, the outcome of the investigation and further action to be taken. A recommendation for an appropriate course of action will be made. The investigator must make it clear to all parties, including the whistle-blower, that details of the concern may be required to be shared during the process, if appropriate internally or with the Police, External Auditor or further independent enquiry. If the qualifying concern is related to safeguarding, this will be dealt with through the Managing Safeguarding Allegations Policy. Similarly, if through the course of investigation there is also evidence of other concerns such as discrimination, harassment or misconduct these will be dealt with under the relevant Trust policy (See Section 1.4)



- 2.4.9 Investigations will normally be completed within 20 working days, but where this will not be possible due to the nature of the disclosure or delays beyond the Trust's control, the employee will be notified in writing of the reasons for the delay and the revised anticipated timescale.
- 2.4.10 Any individual who is the subject of a qualifying concern will be given details and the opportunity to respond.
- 2.4.11 All notes from any investigation meeting(s) with the whistle-blower will be shared with them once finalised.
- 2.4.12 The whistle-blower, the subject and the Trust will be informed of the result in writing. A written response will also be given to other external parties as appropriate.
- 2.4.13 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.

### **3. Safeguards**

- 3.1 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. The Trust 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.
- 3.2 The activation of this policy will not, however, halt the operation of other procedures which may be in place affecting the whistle-blower.
- 3.3 If an employee feels they have been treated unfairly as a result of making a disclosure, they should raise their concerns with the Trust following the Trust's Grievance Procedure. Subsequently, if an employee feels that they have not received a satisfactory outcome through the full internal grievance procedure then they can decide to take the case to an employment tribunal. It is strongly advisable for any employee considering either course of action to seek advice from their trade union representative.
- 3.4 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 Trust's Disciplinary and Grievance Procedures.

### **4. Confidentiality & Data Retention**

- 4.1 The Trust will endeavour to protect the identity of anyone raising a concern who does not wish to be named.

- 4.2 Confidentiality will also be maintained during investigation and hearings other than in circumstances where there is a need for disclosure.
- 4.3 Breaches of confidentiality will be investigated and may be dealt with under the Trust's Disciplinary Policy.
- 4.4 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.
- 4.5 Where applicable, data should be kept in line with the Trust's 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.

## **5. Anonymous Disclosures and Confidentiality**

- 5.1 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
- 5.2 If an employee 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.
- 5.3 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.

## **6 Untrue Disclosures**

- 6.1 An allegation made in good faith but not confirmed by investigation will not be held against the individual.
- 6.2 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 Trust's Disciplinary Policy for details on conducting investigations, the role of the investigating officer and disciplinary procedures and sanctions.

## **7. Monitoring**

- 7.1 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.
- 7.2 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

