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EPSOM
COLLEGE

WHISTLE-BLOWING

Introduction

This policy document sets out the means by which the College enables and supports members of staff to raise genuine concerns relating to activities encountered through their work that are dangerous, illegal or otherwise improper. It complies with requirements of Keeping Children Safe in Education September 2023 Part One, and The Public Interest Disclosure Act (1998), which encourages employees to raise concerns about malpractice in the workplace — action referred to as 'whistle-blowing' — and ensures that organisations respond by dealing with the message rather than the messenger and resist the temptation to cover up serious malpractice. The Act promotes the public interest by protecting from dismissal and victimization those who in good faith inform on those engaged in illicit activity, and applies whether or not the information is confidential.

It is not possible to list all illicit activities to which this policy relates, but included would be criminal offences, financial irregularities, risks to health and safety, potential environmental problems, failure to comply with legal obligations, miscarriages of justice, acting contrary to the staff code of ethics and the cover-up of any of these. In the College, as in every school setting, the welfare of children is always of paramount importance: the highest level of support will be offered to a member of staff who brings to the attention of senior colleagues any deficiency in the care of pupils in general or a concern for a particular pupil who is thought to be at risk.

Those who raise genuine concerns — whistle-blowers — are to be regarded as loyal and public-spirited employees who provide an early warning system that can alert colleagues to danger or illicit activity before it is too late. Their actions can save jobs, money, reputations and even lives.

General principles

The College seeks to enable members of staff to raise concerns internally in a confidential manner. Members of staff who have a reasonable suspicion that malpractice has occurred, is occurring or is likely to occur should, in the first instance, disclose their concerns to a senior manager, who in all probability would be the Head of Department. However, if circumstances dictate the disclosure would be made to either the Head or the Bursar. Guidance is offered later in the document to cover circumstances where a disclosure might first be made to an outside organisation.

Underpinning all the guidance set out in this document the College acknowledges its responsibility to ensure that

- it will not tolerate malpractice;
- it will provide a clear and simple procedure for raising concerns, which is accessible to all employees;
- it will respect the confidentiality of employees who raise concerns, and will make every effort to maintain confidentiality without compromising any investigation into the concerns;

- it will not take action against, or allow harassment or victimization of, any employee who, in good faith and following the procedures set out in this document, raises a genuine and legitimate concern, even if that concern proves later to have been unfounded;

- it recognises an employee's right to raise concerns beyond the normal line management structure, should this be appropriate;

- it may invoke its disciplinary procedure against any employee found to have knowingly made a false, malicious, vexatious or frivolous allegation.

Each individual employee has a responsibility for raising concerns about unacceptable practice or behaviour. Compelling reasons for making a disclosure include

- preventing a problem from worsening or widening;

- protecting others, e.g. by reducing risks;

- self-preservation: intervening where there is a possibility of the whistle-blower him/herself becoming implicated.

However, it is recognised that a potential whistle-blower will almost certainly have reservations about making a disclosure, especially if a friend or close colleague is implicated. Those to whom the disclosure should be made will endeavour to reassure the potential whistle-blower and help him or her overcome any fear of

- having misinterpreted the actions of others;

- not being believed;

- starting a chain of events that escalates;

- disrupting a particular project or piece of work at a critical stage;

- damaging careers;

- creating any other serious repercussions.

Whistle-blowing is very different from making a complaint. More often than not a whistle-blower is someone who raises a concern about a malpractice that affects others. He or she is not directly or personally affected by the malpractice and is unlikely, therefore, to have a personal interest in the outcome of any investigation of the concern that is raised. The whistle-blower is not obliged to provide evidence of the malpractice: he or she need do no more than convey the message.

Someone who complains — either informally, or formally via the College's grievance procedure — is seeking redress or justice for him/herself in relation to alleged poor treatment (e.g. bullying or a breach of employment rights). The complainant has a vested interest in the outcome of any investigation and would therefore be expected to be able to provide evidence to substantiate the complaint. Members of staff should not use the whistle-blowing procedure to raise grievances that relate to their own employment.

Principles of processing data under GDPR

Whilst a large proportion of whistleblowing reports are made anonymously, many contain personal data that is divulged as part of the reporting process.

The processing of personal data can greatly aid effective operation of a whistleblowing service because it allows a more detailed investigation to take place. It also enables the receiving party to provide feedback to the reporter on the outcome of an investigation.

The governing principles for processing personal data under UK GDPR law 2021[1] (articles 5-11) state that data should be:

- Processed lawfully, fairly and transparently.
- Collected for specified, legitimate purpose.
- Adequate, relevant and limited to what is necessary.
- Accurate and up to date.
- Kept in a form which permits identification for no longer than necessary for purpose.
- Processed in a manner to ensure appropriate security of the data.

a. Data Minimisation in a whistleblowing context

'Data minimisation' means data reporters and handlers only collecting data and processing data that is "adequate, relevant and limited to what is necessary" is processed.

When capturing a whistleblowing report, detail is essential. More detail can greatly aid the investigation process – but it can be difficult to determine how much information is 'too much'.

Both the reporter and the handler must avoid collecting and sharing unnecessary personal data (which is then subsequently stored and processed).

b. Storing whistleblowing report and subject data

Article 5(1)(e) requires that data is not kept for longer than is necessary for the purposes for which the personal data was processed.

UK GDPR does not impose an exact timeframe. Data processors and controllers may implement stricter requirements to delete and destroy data which is no longer deemed

Necessary.

[1] 1 UK General Data Protection Regulation (UK GDPR) – the EU GDPR (2018) was incorporated into UK legislation, with some amendments, by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit)

This storage period may vary significantly for whistleblowing reports. In the event of a complex investigation, the data controller may need to retain the data for several months whilst that investigation takes place. Although a 'set retention period' is not always applicable, whistle-blowers must be advised that their details will only be retained until the case is closed and the issue resolved - the data held will be periodically reviewed and will be erased or anonymised when it is no longer required.

c. Consent

Under UK GDPR, Data Handlers must "demonstrate that the data subject has consented" to the processing of his or her data. The consent must be specific, informed and there must be some form of clear affirmative action. This means the whistle-blower will be more informed about how and where their data is stored and, in turn, can exercise their rights under GDPR should they wish to.

d. Obtaining consent at outset

Data handlers must obtain the consent of the whistleblowing individual regarding their own data at the outset of data collection. In instances when the reporter shares the data of a third party, all affected employees must be informed that their data may be processed and their consent must be requested to proceed. Only data relevant to the report must be processed, and that information will only be held until the report has been fully investigated and resolved.

e. Withdrawal of consent

Whilst employees can be asked to agree to the processing of their data for the whistleblowing report, they are also within their rights to withdraw such consent.

Under Article 7(3), it must be as easy to withdraw as to give consent. For example, if consent is obtained by a signed letter, it must also be possible to withdraw consent with a signed letter.

f. Rights of the Data Subject

Articles 12-23 outline the rights afforded to Data Subjects under the UK GDPR, namely:

- The Right to access.
- Right to data portability.
- Right to rectification / Right to erasure.
- Right to object.
- Right to restriction of processing.

They are set out in more detail in the Data Protection Policy for staff.

In a whistleblowing context, the rights of the data subject may be restricted. For example, it would not be productive to identify, under a Subject Access Request, that they are the subject of a serious report regarding a criminal offence. There is provision under Article 23 for Member States to restrict the GDPR subject rights for the "prevention, investigation, detection or prosecution of criminal offences" or civil law claims. Article 29 Working Party recommends that "under no circumstances can the person accused in a

whistle-blower's report obtain information about the identity of the whistle-blower".

As the data subject, UK GDPR does put the whistle-blower in a much stronger position and affords

them more authority over their own data.

Procedure

A member of staff who wishes to raise a genuine concern should voice that concern, suspicion or unease as soon as he/she feels able to do so: the earlier a concern is raised the easier and sooner action can be taken. Any disclosure should in the first instance (that is, unless exceptional circumstances dictate otherwise) be made internally: to the Head, Bursar or other senior manager.

The member of staff raising the concern should be prepared to

- specify exactly what practice is causing concern and why;
- demonstrate sufficient grounds for concern without necessarily proving the truth of any allegation;
- set down the concern on paper, outlining the background and history, and giving names, dates and places where possible.

Having made a disclosure, the informant can expect to be kept informed of the nature and progress of any enquiries.

Safeguarding children including child protection

All members of staff must acknowledge their individual responsibility to bring matters of concern that affect the safeguarding of children to the attention of those who have been appointed and trained to deal with child protection matters. Remember that if having raised a child protection concern about a child with the DSL, you disagree with their decision NOT to make a referral to children's services, you should make that referral yourself.

Sometimes, a member of staff may be the first to recognise that something is wrong but may not feel able to express concerns out of a feeling of embarrassment or because to do so would be regarded as an act of disloyalty to colleagues. These feelings, however natural, must never result in a child or young person continuing to be unnecessarily at risk. It is often the most vulnerable children or young persons who are targeted. All children must be able to rely on all College staff including volunteers to safeguard their welfare.

If a pupil makes an allegation against a member of staff or volunteer, whoever receives the allegation, whether directly from the pupil or via a third party, will immediately inform the Head, who, in consultation with the Designated Safeguarding Lead (DSL) will decide who else should be informed. If the allegation concerns the Head the person receiving the allegation will immediately inform the DSL, who will in turn inform the Chairman of Governors. If the DSL is absent one of the College's Deputy DSLs will act on her behalf.[2]

There may be occasions where a member of staff has a personal difficulty — perhaps a physical or mental health problem — which he/she knows may be impinging on his/her professional competence. He/she has a responsibility to discuss such a situation with the head of department so that professional and personal support can be offered. Whilst in most instances such discussions can and will remain confidential, this cannot be guaranteed where personal difficulties raise concerns about the welfare or safety of children.

Epsom College takes the safeguarding duty towards pupils very seriously, and wants all staff including volunteers and governors to feel able to raise concerns about poor or unsafe practice and potential failures in the college's

[2] The College's DSL is Mr Chris Filbey (Assistant Head: Wellbeing and DSL). The Deputy DSLs are Ms Marisa Bosa, Mr Paul Williams, Mr Rod Wycherley, Mrs Leah Skipper, Mr Ed Lance, Mr Nick Russell and Mrs Lynsey Buhagiar.

safeguarding regime, and know that such concerns will be taken seriously by the senior leadership team. Where a person feels unable to raise an issue, or feels that their genuine concerns are not being addressed, the NSPCC's "what you can do to report abuse" dedicated helpline is available on 0808 800 5000 8.00am to 8.00pm Monday to Friday or email help@nspcc.org.uk.

External disclosures

A member of staff who wishes to raise a genuine concern should in the first instance consider making a disclosure internally; that is to either the Head of Department, the Head or the Bursar. However, it is acknowledged that there are circumstances where it would be appropriate for a member of staff to raise a concern directly with an appropriate external authority.[3] This would apply when the member of staff has good reason to believe that

- the circumstances are exceptionally serious;
- he/she will be victimised by the College;
- someone acting on behalf of the College intends to conceal or destroy relevant evidence;
- no action had been taken by the College after a reasonable length of time had passed since the concern had first been raised internally.

A member of staff making a disclosure to an external authority for any of these reasons is protected by The Public Interest Disclosure Act (1998), provided the disclosure is being made in good faith and is not being made for personal gain.

General guidance is available at www.gov.uk/whistleblowing.

The NSPCC whistleblowing helpline is available as an alternative route for staff who do not feel able to raise concerns regarding child protection failures internally, or have concerns about the way a concern is being handled by the college. Staff can call 0808 800 5000 from 8.00am to 8.00pm Monday to Friday and Email help@nspcc.org.uk.

[3] Reference is made to 'prescribed regulators' in the Public Interest Disclosure Act (1998). Examples are the Health and Safety Executive, Inland Revenue and Financial Services Authority. The corresponding authority for Child Protection matters would be Surrey Children's Service North East Area Team 0300 123 1610 ask for the LADO. Anyone considering external whistleblowing can seek advice confidentially from Protect at protect-advice.org.uk and complete the online Advice Line or calling 020 3117 2520 (option 1).