



Procedures for Whistleblowing in Schools and Model Policy

Guidance for School Governing Bodies on Procedures for Whistleblowing in Schools
and Model Whistleblowing Policy



Guidance

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- Audience** Governing bodies of all maintained schools in Wales; local education authorities; teaching and other unions; diocesan authorities; Governors Wales; The Children's Commissioner for Wales and other statutory and voluntary bodies concerned with children's rights and local and national education organisations.
- Overview** This document provides guidance for governing bodies on developing whistleblowing procedures for school staff and a model policy for governing bodies to adopt.
- Action required** Governing bodies to have regard to the guidance when developing or revising whistleblowing procedures for school staff.
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- Additional copies** Further copies may be obtained at the above address. This document can also be accessed from the Welsh Assembly Government website at:
<http://new.wales.gov.uk/topics/educationandskills>
- Related documents** The Clywch Inquiry – Report of the Examination of the Children's Commissioner for Wales into allegations of child sexual abuse in a school setting, June 2004
NAW Circular 03/2004 – School Governing Bodies Complaints Procedures
NAW Circular 45/2004 – Staff Disciplinary Procedures in Schools
NAW Circular 39/2006 – Guidance for School Governing Bodies on Procedures for Complaints Involving Pupils

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Summary

The former Children's Commissioner for Wales, Mr Peter Clarke, in his Clywch Inquiry report published in June 2004 made the following recommendation:

Recommendation 21.5 - 'I recommend that the Welsh Assembly Government issues guidance, within 6 months of the publication of this report, which requires the governors of all schools, whether they be community, voluntary aided, voluntary controlled, foundation or independent schools and further education colleges to have a whistleblowing policy in place and that all teachers and non teaching staff are informed as to its operation'.

In response, the Welsh Assembly Government gave a commitment in relation to maintained schools to consult on and issue 'best practice' guidance to assist governing bodies to put in place whistleblowing procedures for all school staff.

This document provides governing bodies of maintained schools in Wales with guidance on whistleblowing procedures for school staff, together with a model policy for whistleblowing that governing bodies can adopt.

The guidance aims to ensure that the staff of maintained schools are able to raise concerns about conduct or practice which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice, in a safe and professional way. The guidance covers:

- the legal context
- what constitutes whistleblowing
- the aim, scope and context of a whistleblowing procedure, including how a process for raising and handling a concern might best operate.

Section 1: Introduction and Legal Context

Introduction

1.1 The Children's Commissioner for Wales set out a number of recommendations in his Clywch Inquiry report, published in June 2004, directed at the Welsh Assembly Government. One was that:

Recommendation 21.5 - '... the Welsh Assembly Government issues guidance, within 6 months of the publication of this report, which requires the governors of all schools, whether they be community, voluntary aided, voluntary controlled, foundation or independent schools and further education colleges to have a whistleblowing policy in place and that all teachers and non teaching staff are in-formed as to its operation'.

1.2 The Children's Commissioner also recommended that:

Recommendation 21.6 - '... on appointment in any school or further education college in Wales, every teacher and member of non teaching staff should receive written and oral instruction on whistleblowing procedures and how to operate them. This should be reinforced on a regular basis.

1.3 The Welsh Assembly Government in response to the recommendation gave a commitment to issuing guidance to governing bodies to assist them to put whistleblowing procedures in place for school staff.

Legal Context

1.4 Whistleblowing is the means by which an employee can raise concerns with a third party, often with his or her employer. In a maintained school this should mean that all members of staff, are able to raise concerns about conduct or practice within the school which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice, and are able to do so without fear of victimisation and with confidence that their concerns will be taken seriously and dealt with properly.

1.5 Statutory protection for employees who whistleblow is provided by the **Public Interest Disclosure Act 1998 (“PIDA”)**. The PIDA protects employees against victimisation if they make a protected disclosure within the meaning of the PIDA and this is considered more fully in sections 3.4 to 3.8 of this document and Annex A.

1.6 The local education authority (“LEA”) is the legal employer of staff in community, community special and voluntary controlled schools, but the regulation of conduct and discipline in relation to the staff of such schools is the responsibility of the governing body where the school has a delegated budget. The governing bodies of such schools are to be treated as the employer of staff for the purposes of employment law. Where such a school does not have a delegated budget, staffing/employment matters are the responsibility of the LEA. In foundation, foundation special and voluntary aided schools, the governing body is the employer of most staff.

1.7 The responsibility for establishing a whistleblowing procedure is a matter for each employer. In respect of community, community special, voluntary controlled, voluntary aided, foundation and, foundation special schools, including maintained nursery schools, this is the governing body. The Assembly Government is seeking to assist governing bodies in the effective discharge of this aspect of their employment duties. This guidance is issued in accordance with section 71 of the Government of Wales Act 2006 which enables the Welsh Ministers to do anything to facilitate or is calculated to facilitate, or is conducive or incidental to the exercise of any of their other functions. In addition, the Welsh Ministers have the power under section 10 of the Education Act 1996 to promote the education of the people in Wales.

1.8 The Staffing of Maintained Schools (Wales) Regulations 2006 set out the framework for staff appointment, performance/capability, discipline and dismissal for all categories of maintained schools. School whistleblowing policies need to have regard to the existing governing body procedures in accordance with these regulations.

1.9 However, irrespective of the legal provisions relating to whistleblowing, governing bodies should be seeking to establish a culture in their schools in which members of staff can express their concerns, confident that such concerns will be taken seriously, investigated and appropriate action taken in response. Consequently the existence of a whistleblowing procedure in a school should not in any way lessen a governing body's commitment to fostering a general climate of openness and co-operation in the school in which there should be opportunity for all school staff to be able to discuss difficulties and problems of all kinds with management.

1.10 Having a whistleblowing policy should also not lessen in any way the governing body's commitment to dealing with concerns raised by individuals outside of the school staff i.e. parents, pupils, governors etc under its complaints or other relevant procedures.

Working Days

1.11 In this guidance references to 'working days' means any day other than a Saturday, Sunday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

Section 2: What is Whistleblowing

Definition of Whistleblowing

2.1 Whistleblowing has been defined as:

‘the disclosure by an employee or professional of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the work place, be it of the employee or his/her fellow employees’

(Public Concern at Work Guidelines 1997).

2.2 Within the school setting members of staff are often the first to realise that there is something seriously wrong; or to see the signs of conduct or practice which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice; or to perceive that things are not as they should be. However they may have reservations about expressing their concerns because they feel that speaking up would be disloyal to their colleagues, the governing body or to the LEA or damaging to the reputation of the school. They may also fear victimisation or harassment. As a result a member of staff could decide to ignore the concern rather than report it.

2.3 The governing body should establish a whistleblowing procedure to ensure that members of staff are aware of the appropriate channels to raise a concern; should give members of staff an assurance that they can raise such concerns without fear of reprisal; and, wherever possible, to ensure that the procedure is confidential, although governing bodies should recognise that some members of staff may wish to give their name.

2.4 Whilst school staff should be able to discuss difficulties and problems of all kinds with management, if members of staff become aware of conduct or practice which they consider is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice or is otherwise inconsistent with the standards set within the school, members of staff should report the matter in accordance with the whistleblowing procedure.

the disclosure by an employee or professional of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the work place, be it of the employee or his/her fellow employees

2.5 It is recognised however that under some circumstances members of staff may feel unable to express their concerns within the school. Whilst staff are encouraged to approach an appropriate person in the school (see section 4.1 of this guidance document), where they feel unable to do so it is open to them to approach other organisations outside of the school setting with their concerns. A list of these organisations is at section 4.22, although the LEA, Public Concern at Work and the trade unions are suggested as the key organisations to contact.

2.6 A whistleblowing procedure is specific and is essentially about employment issues for employees. It should be separate and distinct from other procedures that a governing body has in place for complaints, including complaints involving pupils, staff performance and capability, staff grievance and staff discipline. The Welsh Assembly Government has provided the following guidance for governing bodies relating to some of these procedures:

- School Governing Bodies Complaints Procedures - NAW Circular 03/2004.
- Staff Disciplinary Procedures in Schools - NAW Circular 45/2004, and
- Guidance for School Governing Bodies on Procedures for Complaints Involving Pupils - NAW Circular 39/2006.

2.7 Whistleblowing procedures are separate to such procedures but need to take account of the existence of those procedures.

Section 3: Principles of a Whistleblowing Procedure

Aims and Scope of a Whistleblowing Procedure

3.1 The aim of a whistleblowing procedure should be to:

- give confidence to members of staff about raising concerns about conduct or practice which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice or is inconsistent with school standards and policies so that s/he is encouraged to act on those concerns
- provide members of staff with avenues to raise concerns
- ensure that members of staff receive a response to the concerns they have raised and feedback on any action taken
- offer assurance that members of staff are protected from reprisals or victimisation for whistleblowing action undertaken in good faith.

3.2 The procedure should apply to all school staff including full and part time, casual, temporary and substitute staff and to individuals undertaking work experience in the school.

3.3 The procedure should cover whistleblowing about alleged:

- unlawful conduct
- miscarriages of justice in the conduct of statutory or other processes
- failure to comply with a statutory or legal obligation
- maladministration, misconduct or malpractice
- health and safety issues including risks to the public as well as risks to pupils and members of staff
- action that has caused or is likely to cause danger to the environment
- abuse of authority
- unauthorised use of public or other funds
- fraud or corruption
- breaches of financial regulations or policies
- mistreatment of any person

- action that has caused or is likely to cause physical danger to any person or risk serious damage to school property
- sexual, physical or emotional abuse of members of staff or pupils
- unfair discrimination or favouritism
- racist incidents or acts, or racial harassment and
- any attempt to prevent disclosure of any of the issues listed.

This list is not exhaustive but the whistleblowing policy is distinct from other policies within schools.

Whistleblower’s Safeguard Against Reprisal, Harassment and Victimisation

3.4 A governing body needs to recognise that the decision to whistleblow can be a difficult one for members of staff but that it is in the long term interests of the school that concerns are addressed. Governing bodies should foster a culture where all staff members feel able to raise concerns, although it is important that staff are aware of the legal requirements surrounding whistleblowing.

3.5 As noted above statutory protection is provided to whistleblowers by the PIDA. The PIDA provides protection to employees in circumstances where their disclosure can be classed as a protected disclosure. In brief a protected disclosure is one which is:

- a qualifying disclosure; and
- made in accordance with sections 43C to 43H of the PIDA.

The PIDA provisions are set out in Annex A to this guidance.

Where governing bodies or members of staff are unclear about any of the PIDA requirements they should seek further advice. Public Concern at Work is an independent charity that provides free advice for persons who wish to express concerns about fraud or other serious malpractice (see section 4.22 of this document for contact details). Governing bodies could also approach their local authority or contact the Governors Wales Helpline for further advice and members of staff their trade union.

3.6 Staff need to be aware that a disclosure of information is not a protected disclosure within the meaning of the PIDA if:

- the person making it commits an offence by doing so, or
- it is made by a person to whom the information has been disclosed in the course of obtaining legal advice and a claim to legal professional privilege could be maintained in legal proceedings.

3.7 The PIDA provides that it would be automatically unfair to dismiss or make any employee/member of staff redundant because they had made a protected disclosure; and that it would be unlawful to subject them to any other detriment, such as demotion or a fine. In the event of such action an Employment Tribunal has the power to order re-instatement, re-engagement or order the award of compensation to successful claimants.

3.8 Governing bodies must not tolerate harassment or victimisation of members of staff when matters are raised in accordance with the PIDA provisions. Governing bodies should make it clear that any member of staff who victimises or harasses a member of staff as a result of their having raised a concern in accordance with the whistleblowing policy will be dealt with under the governing body's staff disciplinary procedures.

Links to Other Procedures

3.9 If the member of staff who raised the concern is already the subject of disciplinary or redundancy procedures or staff grievance procedures or has made a complaint which is being considered by the governing body, those procedures need not necessarily be halted in light of the whistleblowing. However the position must be reviewed to see if there is a link between the whistleblowing issue and the other action. This review could conclude that the action should continue because there is no link or that the case should be put 'on hold' whilst the whistleblowing concerns raised by the member of staff are investigated.

Confidentiality

3.10 The governing body should do its utmost to protect the identity of members of staff who raise a concern and do not want their name disclosed. However whistleblowers will need to understand that investigation into the concern could reveal them as the source of the information; and statements may be required from members of staff as part of the evidence which would be seen by all parties involved. If the investigation leads to prosecution the whistleblower is likely to be called on to give evidence in court. If the whistleblower is unwilling to give details of their concern because of fear of disclosure of their identity but the chair of governors or headteacher remains concerned about the seriousness of the allegation, the chair of governors or headteacher should discuss this with the member of staff and ask them to reconsider so that the matter can be taken forward.

Members of staff should not be placed under undue pressure to disclose their name and governing bodies are expected to proceed with investigating the concern on the basis of an anonymous allegation. If a further meeting is required with the whistleblower, then the member of staff should be asked if they want this to be held at a mutually agreed place away from the workplace. The member of staff may also ask their LEA, trade union representative or professional association to raise the matter on their behalf or to support them in raising the concern to further protect their confidentiality.

Anonymous Allegations

3.11 Governing bodies should encourage members of staff to put their name to allegations whenever possible - anonymous concerns are much less powerful. Nonetheless anonymous allegations should be considered under the whistleblowing procedure especially concerns raised relating to the welfare of children. In determining whether to take an anonymous allegation forward governing bodies should take the following factors into account:

- the seriousness of the issue raised
- the credibility of the concern
- the likelihood of confirming the allegation from attributable sources and obtaining information from them.

Untrue and Malicious/Vexatious Allegations

3.12 If an allegation is made in good faith but it is not confirmed by further inquiry, the matter should be closed and no further action taken. If, however, the inquiry shows that the allegation was malicious and/or vexatious or made for personal gain then the governing body should consider taking disciplinary action against the member of staff who made it.

Allegations Concerning Child Protection Issues

3.13 If the concern raised relates to a child protection issue the headteacher or chair of governors should consult the LEA officer designated to lead on child protection as a matter of urgency who will decide whether a referral to the statutory authorities should be made so that the action for the handling of such allegations under the procedures established by the Local Safeguarding Children Boards (LSCB) can be initiated. If the LEA officer is not available the designated manager for child protection in the local authority's social services department should be contacted.

In relation to child protection issues, it is open to the member of staff to make a direct referral to the social services designated manager either before raising their concern with the governing body or where the headteacher or chair of governors fails to do so after raising their concern and the member of staff remains concerned about the situation.

Publicising the School's Whistleblowing Policy

3.14 The governing body should take appropriate steps to make all school staff, including casual or temporary school staff and individuals undertaking work experience in the school, aware of the whistleblowing policy. In this context the governing body should consider doing the following:

- provide every member of staff with a copy of the policy when they first take up appointment or placement in the school
- make reference to the policy and where a copy of it can be obtained in letters of appointment/placement
- place a copy of the policy on the school's website

- produce and make available to members of staff leaflets publicising the policy and where it can be obtained
- produce and display posters at appropriate places in the school publicising the policy and where it can be obtained.

Section 4: Processes for Raising and Enquiring into a Concern

How to Raise a Concern

4.1 As a first step, a member of staff should normally raise a concern with his/her immediate line manager, the headteacher, the chair of governors or a governor nominated for whistleblowing. But the person to be approached depends to an extent on the seriousness and sensitivity of the issue and who is thought to be involved. For example, if the concern involves the headteacher, members of staff should approach the chair of governors.

4.2 If a member of staff feels unable to express their concerns within the school, they can raise their concerns with other organisations outside of the school setting. Section 4.22 of this document provides a list of appropriate individuals/organisations, although the LEA, Public Concern at Work and the trade unions are suggested as the key organisations to contact. However where the concern relates to a child protection matter if the member of staff does not raise this through the school they must consult the LEA officer designated to lead on child protection or if that person is not available, the local authority's designated social services manager for child protection. This is in case the organisation with which they raise their concern is not familiar with child protection procedures and consequently does not instigate them.

4.3 The sooner a concern is raised the easier it is to take action. Concerns are better raised in writing for the avoidance of doubt. Members of staff should set out the background and history to the concern, giving names, dates and places where possible, and the reason why they are concerned. If the member of staff feels unable to put the matter in writing they can still raise their concern verbally and should telephone or arrange to meet the appropriate person. Where a concern is raised verbally, the person receiving the concern should make a written note of it immediately, recording the date and time, and sign it. Where possible the record should be read back to the whistleblower to confirm its accuracy. Members of staff may also ask their trade union or professional association to raise the matter on their behalf or to support them in raising the concern.

4.4 Although members of staff are not expected to prove the truth of an allegation, they need to demonstrate to the person contacted that there are grounds for the concern. In determining what action

to take the person who is appointed to handle the member of staff's concern needs to assess whether there are sufficient grounds for the headteacher or governing body to act.

Response Following the Raising of a Concern

4.5 The action to be taken will depend on the seriousness of the concern. The matters raised may:

- need inquiry internally in the school
- need to be passed to the Police if they relate to alleged criminal activity
- need to be passed to the named person within the LEA who deals with complaints about financial management or financial propriety in schools if there is concern relating to financial impropriety (see section 4.7 below)
- need to be referred to the LEA officer responsible for child protection matters if there is concern relating to child protection, or if that person is not available the local authority's designated social services manager for child protection.

4.6 For those concerns which are referred to the Police, or other statutory authority, the whistleblowing process should be halted until the statutory authorities have completed their investigations and confirmed that it is appropriate to continue with the whistleblowing process.

4.7 Regulation 4(26) of the Education (LEA Financial Schemes) (Wales) Regulations 2004 requires that LEAs must include in their scheme for financing schools:

- details of the person or persons in the authority to whom complaints must be made by persons working at a school or by school governors about financial management or financial propriety
- how such complaints should be dealt with.

Governing bodies should consider making available to all members of staff the contact details of the person within the LEA who deals with complaints about financial management.

4.8 For matters not requiring referral to the Police or the LEA at the outset, initial enquiries should determine whether the formal whistleblowing procedure should be instigated for considering the concerns raised. It may be possible to resolve some whistleblowing concerns without the need for any formal inquiry or further process. Where formal inquiry is instigated concerns will be looked at initially under the whistleblowing procedure. However some allegations may raise issues which may subsequently need to be dealt with under other existing governing body procedures, such as staff disciplinary or staff grievance.

4.9 The governing body's whistleblowing procedure should provide information on support for members of staff raising a whistleblowing concern, particularly if a member of staff is required to give evidence in criminal or disciplinary proceedings. Such support might come from the school's local authority (particularly from their officers familiar with whistleblowing), subject to agreement with authority, or from the trade unions.

4.10 Where any meeting is arranged with the member of staff who is the subject of a whistleblowing allegation, the governing body need to be clear on the purpose of the meeting. If the meeting is intended to notify the member of staff that they may be subject to disciplinary proceedings, then the governing body must ensure that the meeting is held in accordance with the governing body's disciplinary procedure and the member of staff has the right to be accompanied by a trade union or professional association representative or a fellow worker at the meeting. If the meeting is intended to only establish facts relating to the allegation it would be good practice to permit the staff member to be similarly accompanied.

Timescale for Response

4.11 The person receiving the whistleblowing allegation needs to respond to the concerns raised. It should be made clear to the whistleblower that it is necessary to look into the concerns; and that at this stage the concerns/allegations are neither accepted nor rejected.

4.12 The Assembly Government considers it good practice that the person appointed to deal with the concern raised should provide a written response to the whistleblower normally **within 5 working days** (except in the case of anonymous allegations):

- acknowledging that the concern has been received
- indicating how it is proposed to deal with the matter
- giving an estimate of how long it will take to provide a final response
- informing them of whether any enquiries have been made
- informing them whether further enquiries will take place
- giving information on support available to them whilst matters are looked into, and
- confirming confidentiality will be maintained wherever possible but explaining that there is no guarantee that the whistleblower can remain anonymous.

The Inquiry Process

4.13 The full governing body should not consider whistleblowing allegations since it might need to institute staff disciplinary or other proceedings at a later stage. The governing body should appoint an appropriate person to deal with the whistleblowing concern. This could be the headteacher, a governor or another person such as a governor of another school, LEA Governor Support Officer or other LEA officer or officer of another LEA. The person should not be the chair of governors. The person appointed should:

- Look into the allegation - seeking evidence and interviewing witnesses as necessary
- Maintain confidentiality wherever possible but be mindful that there can be no guarantee that the whistleblower can remain anonymous
- If appropriate, bring the matter to the attention of the LEA appointed person dealing with complaints about financial management of schools

- If appropriate, i.e. for allegations of criminal behaviour report the matter to the Police; or for child protection allegations, report the matter to the LEA officer designated to lead on child protection or if that person is not available the local authority's social services designated manager for child protection
- For those concerns which are referred to the Police or other statutory authority, the person investigating must halt the whistleblowing process until the statutory authorities have completed their investigations and confirmed that it is appropriate to continue with the whistleblowing process.

4.14 If the person appointed by the governing body to handle the concerns raised needs to talk to the whistleblower, the member of staff should have the right to be accompanied by a trade union or professional association representative or a fellow member of staff not involved in the area of work to which the concern relates, at any meeting.

4.15 The inquiry should normally be completed **within 10-15 working days** following the initial response to the whistleblower. If the inquiry extends beyond the timescales outlined for specific reasons, all individuals concerned should be notified of this in writing with an indication of when the inquiry will be completed.

4.16 The person appointed to conduct the inquiry should keep all notes of telephone and face to face discussions, records and documents reviewed, tests undertaken and results in date order and in a safe place. He/she should ensure that the correct form of evidence is obtained and appropriately kept including original documents; certified copies of papers; physical objects; secondary evidence (e.g. discussions); and details of any circumstantial evidence.

The Inquiry Report

4.17 Following completion of the inquiry process a written report should be made by the person appointed to undertake the enquiries and submitted to the chair of the governing body normally **within 5 working days**.

4.18 The report should always keep the name of the whistleblower confidential unless they have expressly agreed that they wish to be named and should set out:

- how the inquiry arose
- who the concerns are raised against
- the position in the school of the person against whom the concerns are raised and their responsibilities
- how the inquiry was undertaken
- the facts and evidence which were identified
- a summary of the findings and recommendations in respect of the concern itself and any work required on system weaknesses identified during the inquiry.

4.19 Following receipt of the inquiry report, the chair of governors should convene a committee with at least one other governor and possibly an independent person from outside the governing body e.g. the LEA or governor of another school, to consider the concern and the inquiry report and decide on the action to be taken. This should normally take place **within 5 - 10 working days** following receipt of the inquiry report. The committee should determine:

- the need for disciplinary action or other appropriate action to be taken under a governing body procedure e.g. staff performance, staff grievance etc . If a need for disciplinary action is determined the chair of governors must ensure that the governing body staff discipline committee does not consist of the same governors considering the concern under the whistleblowing process
- the further action to be taken and the reasons why
- no action to be taken and the reasons why.

The committee should notify the chair of governors of the outcome immediately.

4.20 Following notification of the committee's decision, the chair of governors should notify the whistleblower of the outcome in writing normally **within 5 working days** (except in relation to anonymous allegations). This should set out the action to be taken or if no further action is to be taken the reasons why.

Taking the Matter Further

4.21 If no action is to be taken following the raising of a concern and/or the member of staff is not satisfied with the way the matter has been dealt with, the member of staff can make a complaint under the governing body's complaints procedure or raise their concern with another organisation as listed in section 4.22 below.

4.22 If a member of staff does not wish to raise their concern with their school it is open to them to take concerns to other organisations such as:

- the local authority
- a diocesan authority (for Church schools)
- a relevant professional body or regulatory organisation such as the General Teaching Council for Wales (GTCW) or the Wales Audit Office
- the Children's Commissioner for Wales
- the Public Services Ombudsman for Wales
- the Care and Social Services Inspectorate for Wales
- a solicitor
- the Police - for concerns of criminal behaviour
- a trade union or professional association
- Public Concern at Work (an independent charity that provides free advice for persons who wish to express concern about fraud and other serious malpractice. Telephone on 0207 404 6609 or www.pcaw.co.uk).

4.23 Members of staff should be informed that if the matter is taken to another organisation they must take care not to disclose privileged confidential information and must still have regard to the PIDA in raising their concerns.

Annex A

Provisions in the Public Interest Disclosure Act 1988 Relevant to a Protected Whistleblowing Disclosure

Statutory protection for employees who whistleblow is provided by the **Public Interest Disclosure Act 1998 (“PIDA”)**. The PIDA protects employees against victimisation if they make a protected disclosure within the meaning of the PIDA.

The PIDA defines a qualifying disclosure as any disclosure which in the reasonable belief of the worker making the disclosure tends to show one or more of the following:

- that a criminal offence has or is likely to be committed
- that a person has or is likely to fail to comply with a legal obligation
- that a miscarriage has or is likely to occur
- that the health or safety of any individual has or is likely to be endangered
- that the environment has been or is likely to be endangered, or
- that information tending to show any matter falling within any of the above paragraphs has been or is likely to be deliberately concealed.

A qualifying disclosure which is made in accordance with sections 43C to 43H of the PIDA is summarised below; the PIDA sets out the full statutory requirements.

Section 43C - Disclosure to employer or other responsible person

Disclosure made in good faith to:

- the employer, or
- where the worker reasonably believed that the failure relates solely or mainly to the conduct of someone other than his employer or to any other matter for which a person other than his employer has legal responsibility to that other person.

Section 43D - Disclosure to legal adviser

Disclosure made to legal advisers in the course of obtaining legal advice.

Section 43E - Disclosure to Minister of the Crown

Disclosure to Minister of the Crown where the worker's employer is appointed by a Minister of the Crown, or are a body any of whose members are so appointed.

Section 43F - Disclosure to prescribed person

Disclosure made in good faith to a person prescribed by legislation and the worker reasonably believes:

- the failure falls within one of the description of matters in respect of which that person is prescribed, and
- that the information and any allegations are true.

The Regulations Public Interest Disclosure (Prescribed Persons) Order 1999 (as amended by subsequent Orders) set out the persons who are so prescribed. The full list of prescribed persons is not set out in this guidance document but include by way of example the Public Services Ombudsman for Wales and the Children's Commissioner for Wales. The full list is set out in the schedule attached to the 1999 Order.

Section 43G - Disclosure in other cases

The disclosure must:

- be made in good faith
- be believed by the worker to be substantially true
- not be made by the worker with a view to seeking personal gain

- in all the circumstances be reasonable for the worker to make the disclosure
- in addition the worker must satisfy one of the following three conditions:
 - he or she reasonably believes that he or she will be subject to a detriment by his or her employer if they disclose to the employer
 - where there is no other prescribed person to whom the disclosure should be made, the worker reasonably believes that the evidence will be concealed or destroyed if disclosed to the employer, or
 - the worker has previously made a disclosure of substantially the same information to his employer or to a prescribed person.

Section 43H - Disclosure of exceptionally serious failure

The disclosure must:

- be made in good faith
- be believed by the worker to be substantially true
- not be made by the worker with a view to seeking personal gain
- in all the circumstances be reasonable for the worker to make the disclosure.

A disclosure of information is not a protected disclosure within the meaning of the PIDA if:

- the person making it commits an offence by doing so, or
- it is made by a person to whom the information has been disclosed in the course of obtaining legal advice and a claim to legal professional privilege could be maintained in legal proceedings.

Annex B

Model Whistleblowing Policy for School Staff

School Name.....

Introduction

Whistleblowing has been defined as:

‘the disclosure by an employee or professional of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the work place, be it of the employee or his/her fellow employees’

(Public Concern at Work Guidelines 1997).

Statutory protection for employees who whistleblow is provided by the **Public Interest Disclosure Act 1998 (“PIDA”)**. The PIDA protects employees against victimisation if they make a protected disclosure within the meaning of the PIDA and speak out about concerns about conduct or practice within the school which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice.

This policy applies to all school staff including full and part time, casual, temporary or substitute staff and to individuals undertaking work experience in the school.

Aims and Scope of Policy

The governing body is committed to high standards in all aspects of the school and will treat whistleblowing as a serious matter. In line with the governing body’s commitment to openness, probity and accountability, members of staff are encouraged to report concerns which will be taken seriously, investigated and appropriate action taken in response.

the disclosure by an employee or professional of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the work place, be it of the employee or his/her fellow employees

This policy aims to:

- give confidence to members of staff about raising concerns about conduct or practice which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice or is inconsistent with school standards and policies so that s/he is encouraged to act on those concerns
- provide members of staff with avenues to raise concerns
- ensure that members of staff receive a response to the concerns they have raised and feedback on any action taken
- offer assurance that members of staff are protected from reprisals or victimisation for whistleblowing action undertaken in good faith and within the meaning of the PIDA.

This policy covers whistleblowing relating to alleged:

- unlawful conduct
- miscarriages of justice in the conduct of statutory or other processes
- failure to comply with a statutory or legal obligation
- potential maladministration, misconduct or malpractice
- health and safety issues including risks to the public as well as risks to pupils and members of staff
- action that has caused or is likely to cause danger to the environment
- abuse of authority
- unauthorised use of public or other funds
- fraud or corruption
- breaches of financial regulations or policies
- mistreatment of any person
- action that has caused or is likely to cause physical danger to any person or risk serious damage to school property
- sexual, physical or emotional abuse of members of staff or pupils
- unfair discrimination or favouritism
- racist incidents or acts, or racial harassment and
- any attempt to prevent disclosure of any of the issues listed.

The PIDA sets out the full statutory rights and obligations of members of staff wishing to whistleblow. Where members of staff are unclear about any of the PIDA requirements they should seek further advice. Public Concern at Work is an independent charity that provides free advice for persons who wish to express concerns about fraud or other serious malpractice (telephone 0207 404 6609 or www.pcaaw.co.uk). Members of staff could also approach their trade union for further advice.

Safeguard Against Reprisal, Harassment and Victimisation

The governing body will not tolerate harassment or victimisation of members of staff when matters are raised in accordance with the PIDA provisions. Any member of staff who victimises or harasses a member of staff as a result of their having raised a concern in accordance with the whistleblowing policy will be dealt with under the governing body's staff disciplinary procedures.

The PIDA provides protection to employees in circumstances where their disclosure can be classed as a protected disclosure. Under the PIDA it would be automatically unfair to dismiss or make any employee/member of staff redundant because they had made a protected disclosure; and that it would be unlawful to subject them to any other detriment, such as demotion or a fine. In the event of such action an Employment Tribunal has the power to order re-instatement, re-engagement or order the award of compensation to successful claimants.

Confidentiality

The governing body recognises that members of staff may want to raise concerns in confidence and will do its utmost to protect the identity of members of staff who raise a concern and do not want their name disclosed.

However investigation into the concern could reveal the source of the information; and statements may be required from the member of staff as part of the evidence, which would be seen by all parties involved. If the investigation leads to prosecution and the whistleblower is likely to be called in to give evidence in court.

The governing body will not place members of staff under pressure to give their name and will give due consideration to proceeding with investigating the concern on the basis of an anonymous allegation.

Anonymous Allegations

Staff should put their name to allegations whenever possible - anonymous concerns are much less powerful. Nonetheless anonymous allegations will be considered under this whistleblowing procedure especially concerns raised relating to the welfare of children. In relation to determining whether an anonymous allegation will be taken forward the governing body will take the following factors into account:

- the seriousness of the issue raised
- the credibility of the concern
- the likelihood of confirming the allegation from attributable sources, and obtaining information provided.

Untrue and Malicious/Vexatious Allegations

If a member of staff makes an allegation in good faith but it is not confirmed by further inquiry the matter will be closed and no further action taken. If, however, the inquiry shows that untrue allegations were malicious and/or vexatious or made for personal gain then the governing body will consider taking disciplinary action against the member of staff.

Allegations Concerning Child Protection Issues

If a member of staff raises a concern related to a child protection issue, the headteacher or chair of governors should urgently consult the LEA officer designated to lead on child protection (or if they

are not available the designated manager for child protection in the authority's social services department) so that the action for the handling of such allegations under the school's disciplinary procedure for staff and the child protection procedures established by the Local Safeguarding Childrens Boards can be initiated.

However, in relation to child protection issues, it is open to the member of staff to make a direct referral to the social services designated manager either before raising their concern with the governing body or where the headteacher or chair of governors fails to do so after raising their concern and the member of staff remains concerned about the situation.

Procedure for Making a Whistleblowing Allegation

You should raise your concern with your line manager, the headteacher, the chair of governors, or the governor nominated for whistleblowing or [*other named person and contact number*]. The person to be approached depends to an extent on the seriousness and sensitivity of the issue and who is thought to be involved.

If you feel you cannot express your concerns within the school, it is open to you to raise your concern with someone outside the school setting from the list of organisations in the section of this policy 'Taking the Matter Further', with key organisations to contact suggested as the LEA, Public Concern at Work and the trade unions. However, where the concern relates to a child protection matter, if you do not want to raise this through the school, you must consult the LEA officer designated to lead on child protection or if that person is not available, the local authority's designated social services manager for child protection. If the concern needs to have Police or other statutory authority involvement, the whistleblowing process will be halted until the statutory authorities have completed their investigations and confirmed that it is appropriate to continue with the whistleblowing process.

If possible put your concern in writing for the avoidance of doubt. You should set out the background and history of the concern; giving names, dates and places where possible, and explaining the reason for your concerns. If you feel unable to put the matter in writing you can still raise your concern verbally and should telephone or arrange to meet the appropriate person. You can also ask your trade union or professional association to raise the matter on your behalf or to support you in raising the concern.

Response to Whistleblowing

The matter raised may:

- need inquiry internally in the school
- need to be passed to the Police if it relates to alleged criminal activity
- need to be passed to the person in the LEA who deals with complaints about financial management or financial propriety in schools
- need to be referred to the LEA officer designated to lead on child protection if there is a concern relating to child protection, or if that person is not available the local authority's designated social services manager for child protection.

At this stage concerns/allegations are neither accepted nor rejected.

Timescale for Response

The person [*name/status*] appointed by the governing body to look into whistleblowing allegations will normally provide a written response to you **within 5 working days** (except in the case of anonymous allegations):

- acknowledging that the concern has been received
- indicating how it is proposed to deal with the matter
- giving an estimate of how long it will take to provide a final response
- advising whether any enquiries have been made

- advising whether further enquiries will take place
- informing you of support available whilst matters are looked into, and
- maintaining confidentiality wherever possible, but also explaining that it may not be possible that you can remain anonymous.

The Inquiry Process

The appointed person [*name/status*] will:

- Look into the allegation - seeking evidence and interviewing witnesses as necessary.
- Maintain confidentiality wherever possible but will be mindful that there is no guarantee that the whistleblower can remain anonymous.
- If appropriate, bring the matter to the attention of the LEA appointed person dealing with complaints about financial management of schools.
- If appropriate, for concerns of criminal behaviour refer the matter to the Police.
- If appropriate, for concerns of child protection, refer the matter to the LEA officer designated to lead on child protection/local authority social services designated manager for child protection. The whistleblowing process will be halted until the statutory authorities have completed their investigations and confirmed that it is appropriate to continue with the whistleblowing process.

If the person appointed by the governing body needs to talk to you, you are permitted to be accompanied by a trade union or professional association representative or a fellow member of staff not involved in the area of work to which the concern relates.

The target is to complete the inquiry **within 10-15 working days** from the date of the initial written response. If the enquiry extends beyond the timescales outlined for specific reasons all individuals concerned will be notified of this in writing with an indication when the inquiry will be completed.

The Inquiry Report

Following completion of the inquiry process the person appointed [*name/status*] will make a written report and submit to the chair of the governing body normally **within 5 working days**. **The report will not contain the whistleblower's name unless you have expressly stated that you wish to be named.**

Following receipt of the inquiry report, the chair of governors will convene a committee with at least one other governor and an independent person from outside the governing body, e.g. the LEA or a governor of another school to consider the inquiry report and decide on the action to be taken. This should normally take place **within 5 - 10 working days** following receipt of the inquiry report.

Following notification of the committee's decision, the chair of governors will notify you of the outcome normally **within 5 working days** (except in relation to anonymous allegations), setting out the action to be taken or that no further action is to be taken and the reasons why.

Taking the Matter Further

If no action is to be taken and/or you are not satisfied with the way the matter has been dealt with, you can make a complaint under the governing body's complaints procedure or raise your concerns with other organisations as listed below:

- the local authority
- a diocesan authority (for Church schools)
- a relevant professional body or regulatory organisation such as the General Teaching Council for Wales (GTCW) or the Wales Audit Office
- the Children's Commissioner for Wales
- the Public Services Ombudsman for Wales
- the Care and Social Services Inspectorate for Wales
- a solicitor

- the Police - for concerns of criminal behaviour
- a trade union or professional association
- Public Concern at Work (an independent charity that provides free advice for persons who wish to express concern about fraud and other serious malpractice. Telephone 0207 404 6609 or www.pcaw.co.uk).

Chair of Governors

Contact Telephone Number

Appendix to Annex B

Guidance Note for Members of Staff

This guidance should be followed if you suspect any conduct or practice in any area of the school's activities which is potentially illegal, corrupt, improper, unsafe or unethical or which amounts to malpractice.

Do

- Make an immediate note of your concerns.
- Note all relevant details such as what was said in telephone or other conversations, the date, time and the names of any parties involved; or any action observed.
- Convey your suspicions to someone with the appropriate authority and experience e.g. your line manager, a member of the senior management team, the headteacher, chair of governors.
- Deal with the matter promptly.
- Keep a copy of all notes/details etc.
- Ask for a copy of your school's whistleblowing policy if this has not routinely been made available to all school staff.

DO NOT

- Do nothing.
- Be afraid of raising your concerns. You must not suffer any recrimination as a result of voicing a reasonably held suspicion. The headteacher and/or chair of governors will treat any matter you raise sensitively and confidentially wherever possible (if you feel that the matter raised is not being treated sensitively and seriously then seek professional or alternative advice).
- Approach or accuse any individuals directly.
- Try to investigate the matter yourself. There are rules surrounding the gathering of evidence for use in criminal cases and in relation to child protection cases. Any attempt to gather evidence by people who are unfamiliar with these rules may destroy the case.
- Convey your suspicions to anyone other than those with the proper authority although other organisations such as a trade union or professional association may help you raise your concerns.

- If you wish to remain anonymous, do not include your name/position or any other information which could lead to your identity being disclosed.

Remember the Public Interest Disclosure Act 1998 protects you from victimisation by dismissal, redundancy or any other detrimental action provided you:

- Have disclosed the information in good faith.
- Believe it to be substantially true.
- Have not acted maliciously or made a false allegation.
- Are not seeking any personal gain.
- It was reasonable for the disclosure to have been made.