



WHISTLEBLOWING AND SERIOUS MISCONDUCT POLICY 2020

Signed [on behalf of the Board of Trustees]: _____

Print name: _____

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Person Responsible for policy: Chief Operations Officer



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1. Introduction

- 1.1 Education Impact Academy Trust (the MAT) is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty and accountability.
- 1.2 The term whistle blowing has a specific legal definition – “a disclosure or allegation of serious wrongdoing made by an employee” and a wider public definition – “any disclosure or allegation of serious wrongdoing made by anyone”.
- 1.3 This policy document seeks to cover both disclosures and allegations of serious wrongdoing made by employees, and to this end, where this policy makes reference to a whistle blower; it refers to any individual who is making a disclosure or allegation of serious wrongdoing.
- 1.4 Where an individual is aware of any serious wrongdoing committed by or related to the actions of the MAT’s employees, such as:
 - breach of a legal obligation
 - any criminal activity, including incitement to commit a criminal act
 - corruption or fraud
 - a miscarriage of justice
 - a danger to the health or safety of any individual or damage to the environment
 - abuse of power or authority
 - failure to comply with professional standards, the MAT’s policies or codes of practice/conductand reports it, the MAT will investigate any such allegations and, where appropriate, take action. The MAT is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistle blowing, and where appropriate, take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a whistle blower.
- 1.5 This policy seeks to set out how the MAT will handle and respond to any such allegations.
- 1.6 Whilst the whistle blowing legislation offers protection to employees, the MAT considers that any such allegations of serious wrongdoing should be investigated.
- 1.7 This policy seeks to:
 - encourage employees to feel confident in raising concerns or allegations in the public interest about suspected serious wrongdoing in the MAT without fear of reprisals or victimisation even where the concern or allegations are not subsequently confirmed by the investigation
 - give a clear message that allegations of serious wrongdoing or impropriety are taken seriously
 - ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions
 - set out what employees can expect by way of confidentiality and protection when making a whistle blowing disclosure
 - identify independent support for employees who wish to make a whistle blowing disclosure (see section 6).
- 1.8 This policy is not designed to be used:
 - for raising or reconsidering matters that come under existing academy procedures e.g. Grievance, Disciplinary, Capability, Complaints procedure
 - for allegations that fall within the scope of specific procedures (for example child or vulnerable adult protection) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively
 - as an appeal process from any complaint or grievance handled under any of the above procedures.
- 1.9 Where a complaint made under this policy falls outside the scope of the policy, e.g. where the complaint falls outside the scope of “serious wrongdoing”, the MAT will advise the whistle blower of this and consult with the whistle blower in respect of taking the complaint further. Wherever possible, the MAT will comply with the views of the whistle blower, but there are situations where the MAT is legally required to pass on details of allegations, without the consent of the whistle blower, such as in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the academy.
- 1.10 Likewise, if an allegation made under either of the other above complaints processes falls under the remit of a “serious wrongdoing”, the MAT will notify the whistle blower of this and investigate the allegation under this process.

2. Disclosures made by MAT employees

The Public Interest Disclosure Act 1998 (“PIDA”)

- 2.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the academy) to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the organisation.
- 2.2 This is called making a “Protected Disclosure” under the Act, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from harassment or victimisation as a result of the disclosure.
- 2.3 The person making the disclosure does not have to be directly or personally affected by the serious wrongdoing, but the disclosure must be made in the public interest.
- 2.4 To be protected, the disclosure must be in the public interest and raise a concern that:
 - a criminal offence (e.g. fraud, corruption or theft) has been or is likely to be committed
 - a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
 - a miscarriage of justice has been or is likely to occur
 - the health or safety of any individual has been or is likely to be endangered
 - the environment has been or is likely to be damaged
 - public funds are being used in an unauthorised manner
 - the MAT’s Financial Regulations have not been observed or is being breached by an employee
 - sexual or physical abuse by any member of staff on service user is taking place
 - unlawful discrimination is occurring to any member of staff or service recipient in relation to the legally protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation (see guidance on Equality Act at <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/equality-act-codes-practice-and-technical-guidance>);
 - any other form of improper action or conduct is taking place. This could include breaches of the regulation requiring Trustees to “act with integrity, objectivity and honesty and in the best interests of the school” (The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 <https://www.gov.uk/government/publications/school-governance-regulations-2013>) and breaches of the ‘Nolan Principles of Conduct Underpinning Public Life’ (See Schedule 1)
 - information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same.
- 2.5 PIDA will protect any employee or worker making a Protected Disclosure, irrespective of whether or not the disclosure relates to information gained in the course of their employment (e.g. a protected disclosure made by an employee acting as a service user would still fall under the PIDA protection).
- 2.6 If an employee does not feel comfortable making a disclosure to the MAT, he or she may be entitled to make a disclosure to other prescribed persons.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404330/bis-15-43-blowing-the-whistle-to-a-prescribed-person-list-of-prescribed.pdf

3. Advice to employees wishing to raise a concern or make a disclosure

Employees who have major concerns arising from their employment may wish to seek advice from their union or the charity Public Concern at Work (Whistleblowing Advice Line: 020 7404 6609 – <http://www.pcaw.org.uk/>), to see whether the information which they wish to report would meet the definition of a ‘qualifying disclosure’ and whether they should be using this procedure, or some other procedure.

4. Reporting an actual or suspected serious wrongdoing

4.1 A person who wishes to report any suspected serious wrongdoing (“a disclosure”) should contact the MAT.

E-mail: enquiry@educationimpact.org.uk

Post: Education Impact Academy Trust
Perry Common Road
Erdington
Birmingham B23 7AT
FAO Chief Executive Officer - Whistleblowing

Telephone: 0121 373 4475

Specifying the following information:

Name and contact details (unless they wish to be anonymous)

Who has committed the alleged serious wrongdoing?

What is the nature of the alleged serious wrongdoing?

4.2 Employees are also entitled to make a Protected Disclosure through their manager, if they feel confident in approaching their manager to report a concern or allegation of serious wrongdoing that falls under this policy. The manager must follow the obligation of confidentiality, but must, as soon as possible, and no later than 2 working days after receiving the Protected Disclosure, log the disclosure in accordance with 8.1, and then confirm to the employee concerned, in writing or email, that this matter has been recorded.

In the event that an employee does not feel comfortable in making a disclosure to the MAT, they are entitled to also make a Protected Disclosure to a number of other organisations. For further information as to whom, other than the MAT, a protected disclosure can be made, see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404330/bis-15-43-blowing-the-whistle-to-a-prescribed-person-list-of-prescribed.pdf

5. How the academy will respond to a disclosure

5.1 The MAT will acknowledge receipt of a disclosure within 2 working days.

5.2 The MAT will then consider and decide whether the disclosure falls under the whistleblowing criteria and, if not, will, wherever possible, seek the whistle blower’s consent as to how the disclosure will be investigated using the appropriate MAT procedure(s). The MAT’s decision will be given to the person making the disclosure, wherever possible, as soon as possible after receipt of disclosure, and no later than 5 working days after acknowledging receipt of the disclosure.

5.3 The decision letter should state who will be handling the disclosure, how that person can be contacted, what action is likely to be taken and when the employee or worker might expect to hear the outcome of the disclosure. A further letter, summarising progress to date, should be sent within another 10 working days, and if the matter has not been resolved at that time the letter should include an estimate of how long it is likely to be before a full response can be provided.

5.4 However, there are situations where the MAT is legally required to investigate, under separate procedures, without the consent of the whistle blower, such as investigating allegations of ill-treatment or abuse of children or vulnerable adults (safeguarding). In these circumstances, the MAT will, wherever possible, advise the whistle blower that the disclosure will be investigated under another process, but there may be situations where it is not appropriate to disclose the existence of these investigations.

5.5 When the disclosure is considered to come under the whistleblowing policy, and the MAT has assigned an investigator, he or she will contact the whistle blower, within a further 10 working days, to advise them of the following:

- the arrangements for confidentiality
- how the person making the disclosure will be expected to contribute to the investigation
- the outcome of any discussions which may have taken place over anonymity
- an estimate of how long the investigation is likely to take
- the name of the investigator appointed to undertake the investigation
- the right of an employee to representation by a recognised trade union or work colleague at any meeting.

- 5.6 The MAT will, wherever possible, seek to advise the whistle blower of the outcome of the investigation. However, the MAT is bound by the Data Protection Act and the Human Rights Act in respect of allegations relating to individuals and may not be able to disclose information where legal proceedings are pending.
- 5.7 The use of this whistle blowing process does not automatically amount to acceptance by the MAT that the information provided is necessarily a qualifying disclosure.
- 5.8 For monitoring purposes the MAT keeps a list of communications received from people using this whistle blowing process. This information is used for monitoring purposes and to detect if there are areas where there is a high incidence of alleged serious wrongdoing.

6. Confidentiality and anonymity

- 6.1 Although the PIDA does not refer to the confidentiality of concerns raised in a qualifying disclosure, there is a widespread assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. The MAT will seek to avoid disclosing information identifying any whistle blower, even if the MAT considers that the disclosure, by the whistle blower, falls outside the scope of a qualifying disclosure. However, there are situations where, due to the circumstances of the alleged serious wrongdoing, it is impossible to avoid disclosing information identifying any whistle blower. In these circumstances, the MAT will consult with the whistle blower prior to the disclosure taking place and offer support.
- 6.2 There may also be situations where the MAT may be obliged to disclose information, such as where there are legal proceedings following on from the investigation of the whistle blowing investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the whistle blower may be expected to give evidence at any hearing. In these circumstances, the MAT should discuss the implications for the whistle blower if he or she proceeds with the disclosure, and where appropriate, discuss appropriate support arrangements.
- 6.3 The MAT may also be required to disclose the identity of the whistle blower to third parties, where necessary for the purposes of undertaking investigations e.g. where the allegations relate to serious criminal offences where the MAT considers that the Police should investigate.
- 6.4 Anonymous complaints will be considered but, depending on the information given and the credibility of the evidence, there may not be enough information for a proper investigation without the investigator being able to contact the whistle blower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation.
- 6.5 The MAT is subject to the Freedom of Information (FOI) Act. This means that there is a presumption that the MAT discloses any information it holds, unless that information falls under one or more exemptions and, in most cases, that the application of that exemption is in the public interest.
- 6.6 The FOI Act contains exemptions that may be applicable to permit the withholding of information identifying the whistle blower, including:
- s.40 Personal Data.
 - s.41 Information which, if disclosed, would give rise to an actionable breach of confidence.
- 6.7 If the MAT receives a request for information identifying a whistle blower, it will contact the whistle blower to seek their views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.
- 6.8 The MAT is mindful, in reconciling the legal obligation to disclose information it holds under the FOI Act 2000, of its legal obligations under:
- The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and
 - The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees.

7. Protecting an employee whistle blower

- 7.1 Employees are protected if:
- they honestly think what they report is true
 - they think they are telling the right person
 - they believe that their disclosure is in the public interest.

- 7.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistle blowing. The MAT has adopted this procedure in order to encourage early internal whistle blowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised because of blowing the whistle, he or she should make a further complaint under this whistle blowing procedure directly to the Chair of Trustees.
- 7.3 An employee has the right to complain of victimisation as a result of any whistle blowing to an employment tribunal.
- 7.4 Any employee who victimises a whistle blower could:
- be subject to an internal investigation and potential disciplinary action, including potential dismissal
 - face a civil claim personally, as the affected whistle blower could be entitled to directly issue a legal claim against the culprit.

8. Recording and monitoring complaints

- 8.1 The MAT is legally required to maintain a list of concerns raised by employees made under the Public Interest Disclosure Act. Inclusion in this list does not amount to acceptance that the communication amounts to a Protected Disclosure and any subsequent decision that the matter falls outside the Act will be added to the record on the list.
- 8.2 For the purposes of investigating whether or not there are any systemic issues that need to be addressed, and to monitor the performance of any investigation, an anonymised summary of all disclosures of serious wrongdoing made by employees will be sent on a monthly basis to the Chair of Trustees.
- 8.3 The MAT will record details of all complaints made under this policy, anonymising the identity of the whistle blower and use this information for the purposes of identifying areas of concern, which may indicate further action is required.
- 8.4 Both lists are maintained in accordance with the Data Protection Act 1998.
- 8.5 A report on the number of concerns will be published annually. This report will not include any information identifying any whistle blower.

Schedule 1

The Nolan Principles of Conduct Underpinning Public Life

1. **Selflessness** – Holders of public office should act solely in terms of the public interest.
2. **Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** – Holders of public office should be truthful.
7. **Leadership** – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Holders of public office are defined in law. They include Trustees and academy staff whose funding is derived from the government.