WHISTLE BLOWING POLICY

Effective for employees, students, Directors and volunteers on or after 1 September 2018
Date: 25 August 2018
Date of next Review: September 2019

Whistleblowing is a sensitive subject – both for the employee raising concerns and those at the Academy who have to respond to them.

Q: You have concerns about serious wrongdoing in the academy but don't know what to do. You fear that if you "blow the whistle" then you will be seen as a troublemaker, ignored or possibly even dismissed. What should you do?

Before taking any action, it is important that you understand which procedure to follow so that the academy can address and resolve your concerns, and provide you with peace of mind that you have complied with your obligations and are afforded the appropriate legal protection.

The legislation

Whistleblowing legislation was introduced under the Public Interest Disclosure Act 1998 ("the Act") to encourage employees to come forward with disclosures of criminal behaviour or malpractice, without the fear of reprisal or dismissal.

Since its enactment there have been a number of high profile cases involving the NHS, banks, government departments and large corporate bodies where an employee had raised legitimate complaints and as a result was put at a disadvantage or dismissed.

Using the legislation, significant awards of compensation have been made in addition to reinstatement orders, and in some instances, criminal proceedings have followed for those who had broken the law.

In situations where whistle-blowers are dismissed, there is the possibility of obtaining an interim reinstatement order from a tribunal – pending a final tribunal hearing – if an application is made promptly to ensure that the whistle-blower is not financially disadvantaged.

Following policy

If you reasonably believe that there is malpractice within the academy, you should follow the academy's whistleblowing policy and report the matter to the relevant person lead IQA officer, safeguarding officer or academy director

You may be required to put your concerns in writing and invited to a meeting to discuss any allegations so that the academy can fully investigate the matters raised. The academy should not ignore your concerns and must respond to you.

What is covered?

Under the Act, the categories of malpractice are extremely wide and include:

- Criminal offences.
- Miscarriages of justice.
- Danger to the health and safety of any individual.
- Damage to the environment.
- Breach of any legal obligation.
- Deliberate concealing of information about any of the above.

Malpractice can be past, present or prospective. If you reasonably believe that the allegation is substantially true then you can make a qualifying disclosure to the academy.

In the public interest

Up until July 2013, there was a requirement that any disclosure had to be made in “good faith”. The government has removed this requirement and placed more emphasis on the disclosure being in the “public interest” and not for personal gain.

For example, under the revised legislation you would no longer gain protection under the whistleblowing legislation if you allege the academy has committed a breach of your terms and conditions of employment. This is unlikely to be a matter in the “public interest” as it is a private matter between you and the academy.

If you do have concerns about any breaches of your terms and conditions, these issues should be raised under the academy’s grievance procedure.

The situation would be very different, however, if you genuinely believed that a member of the academy’s staff was unlawfully taking money from the academy or secretly entering into a procurement contract for their personal gain.

In order to be afforded protection against any subsequent detriment or dismissal that is causally linked to your disclosure, you will need to demonstrate that:

- You have reasonable belief of malpractice,
- The disclosure is in the interests of the public and
- You have brought the matter to the academy’s attention.

Who is protected?

The individual making the disclosure does not have to be a permanent employee to be afforded protection; freelance contract staff, other agency workers, as well as people who are training but not employed are also protected under the Act. Best practice is for the academy to take any public interest disclosure seriously, regardless of the individual’s employment status.

In order for an individual to be afforded protection against victimisation and dismissal, they simply need to have raised a public interest disclosure to the academy. The disclosure no longer has to be raised in good faith.

There has been some concern raised that this will encourage disgruntled employees to raise disclosures in bad faith. This cannot be prevented, although there may be financial penalties that a tribunal can impose if it finds that a disclosure has been made in this way. It is therefore essential that the academy has robust procedures in place to address and resolve concerns quickly and effectively.

Following the investigation

Once the academy has investigated a public interest disclosure, regardless of whether or not the disclosure had merit or was upheld, the employee must not be subjected to a detriment because of raising the disclosure. The L&F academy is vicariously liable for the acts of its employees. Therefore, other employees should be instructed not to treat the whistle-blower differently.

This does not mean that the employee automatically gains protection preventing any future disciplinary action or can never be made redundant. The employee is simply sheltered from the academy taking any action as a direct result of the disclosure. There would be nothing to prevent you from fairly dismissing the employee in the future if it was found they had committed an act of gross misconduct, which was not related to the disclosure, or if their position became redundant.