

Whistleblowing Policy and Procedure

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¹ The Review Period and the Target Review Date refer to our internal policy review process. The published policy is current and is the most recent approved version

Version Control Document

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July 2016	2.0	Amends in response to Scrutton Bland audit	Ruth Lockett
December 2016	2.2	Amends and approval	Dawn Clarke
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1. Policy Statement

TEN Group is committed to treating all allegations of malpractice seriously and will support concerned employees, doing everything possible to maintain confidentiality and protect them from reprisals provided that concerns have been raised using this procedure and the employee has acted in good faith.

2. Policy Aims & Objectives

The purpose of this policy is to encourage and provide the procedure for TEN Group employees, temporary staff, consultants and contractors to raise and discuss genuine concerns relating to serious malpractice that is in the public interest. Examples of serious malpractice could include:

- Unaddressed risks to students and staff
- Maltreatment of students (including discrimination)
- A criminal offence
- Fraud and financial malpractice
- Failure to comply with a legal or professional obligation
- Miscarriage of justice
- Unaddressed health and safety risks
- Damage to facilities, systems or the environment
- Deliberately concealing information relating to any of the above.
- That the environment, has been, is being, or is likely to be, damaged.
- Creating or ignoring a serious risk to the radicalisation of young people and vulnerable adults under the Prevent Duty.

3. Legal requirements

3.1 The Public Interest Disclosure Act 1998 became effective on 1 January 1999. Its purpose is to provide the procedures for staff to raise their concerns relating to serious malpractice within their organisation in a responsible way and at an early stage.

3.2 The Act provides protection from detrimental treatment, victimisation and dismissal, provided that concerns have been raised in accordance with the Act.

3.3 The Public Interest Disclosure Act protects disclosure if the employee reasonably believes the disclosure to be true and can show one of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health and safety of any individual has been, is being or is likely to be damaged. It must indicate a greater danger than is associated with normal practices; or a danger that is not usually associated;
- that the environment has been, is being or is likely to be damaged, or
- that information tending to show any issue/event falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

- 3.4 The Enterprise and Regulatory Reform Act 2013 (sections 17-20) introduced a series of changes to the Public Interest Disclosure Act 1998, which strengthens the protection for whistleblowers, expressly requiring disclosures to be in the public interest and making employers liable for bullying of disclosers by colleagues.

4. Definitions

Whistleblowing - The term whistleblowing can be defined as raising a concern about a wrong doing within an organisation. The concern must be a genuine concern about a crime, criminal offence, miscarriage of justice, unaddressed dangers to health and safety and the environment – and also the cover up of any of these.

The discloser – the individual raising the concern.

In good faith - means to raise a concern honestly so that the concern can be addressed. A disclosure made in good faith to the employer will be protected if the whistleblower has a reasonable belief the information tends to show that the malpractice has occurred, is occurring or is likely to occur.

Definition of a 'worker' – means, in accordance with the Employment Rights Act 1996 section 230(3), summarised as an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied, whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract

And, in accordance with section 43K of the same Act, summarised as an individual who (a) works or worked for a person was introduced or supplied to do that work by a third person e.g. an agency.

For the full legal definition, please refer to the legislation.

5. Scope

This Policy applies to all permanent or temporary employees, Academy Council Members, Board members and members of TEN Group and contractors.

It should be noted that, whilst the process for raising a concern covered by this policy is available to all employees, governors, members and contractors, the protection afforded by the Public Interest Disclosure Act 1998 applies only to individuals defined as a 'worker' by section 230(3) and 43K of the Employment Rights Act 1996.

6. General points about raising a concern

6.1 All concerns raised through the whistleblowing procedure must meet the criteria in section 3. General concerns relating to bullying or harassment, grievances or safeguarding should be made by following the relevant TEN Group policies (see section 12). To report a health and safety incident please refer to the Incident and Accident Reporting procedure.

6.2 All concerns should be raised at an early stage using the procedure in section 7.

- 6.3 Employees are encouraged not to take concerns outside TEN Group, other than as stated in section 10 and in the first instance any concern should be raised internally in accordance with this Policy. Complaints made to the media or other bodies may actually hamper a speedy, full and professional investigation of the serious concern raised.
- 6.4 Concerns should be raised if they are in the public interest, which includes the interests of TEN Group, staff and / or students. (See 3.4).
- 6.5 The discloser's identity will be kept confidential. However, if a concern results in disciplinary or legal action, the discloser may be required to give evidence.
- 6.6 Employees will not be disciplined for raising concerns in good faith, through this procedure.
- 6.7 The TEN Group will not tolerate any harassment or victimisation of employees who make disclosures. If, at any stage of this procedure an employee feels that they are being subject to informal or formal coercion, pressure, bullying, harassment or victimisation due to making a disclosure, they should raise this matter, in writing, to the Head of Professional Services in NES (see section 13 for contact details).
- 6.8 This Whistleblowing policy and procedure is not to be used for anonymous complaints or for the purpose of furthering any private dispute. Disclosers are encouraged to identify themselves when raising a concern. If an anonymous disclosure is made, TEN Group will not be in a position to notify the individual to explain the outcome of action taken by the TEN Group. Anonymity also means that the TEN Group will have difficulty in investigating such a concern. The TEN Group reserves the right to determine whether to apply this procedure in respect of an anonymised disclosure in light of the following considerations: the seriousness of the issues raised in the disclosure; the credibility of the concern; and how likely it is that the concern can be confirmed from attributable sources.
- 6.9 It is a serious disciplinary offence to:
- deliberately raise unfounded allegations;
 - victimise or harass a member of staff for raising their concerns;
 - actively deter a member of staff from raising a genuine concern.

7. Procedure for raising concerns

- 7.1 Concerns (that meet the criteria listed in section 3) should be raised verbally or in writing (declaring any personal interest) to their immediate line manager or head of department, making it clear that they are using the Whistleblowing procedure. However, the TEN Group recognises that because of the seriousness or sensitivity of some issues, together with the knowledge of whom the member of staff thinks may be involved, may make this difficult or impossible.
- 7.2 If the discloser does not feel able to raise the concern with their line manager or head of department, or if the concern relates to safeguarding, they should raise the concern verbally or in writing (declaring any personal interest) to:
- The Principal of their organisation or the NES Managing Director.

If the concern relates to the Principal or the NES Managing Director, the concern should be raised with the Chairperson of Norfolk Academies, City College Norwich or NES, where appropriate.

If the concern relates to the Chairperson of Norfolk Academies, City College Norwich or NES, the concern should be raised with the Head of Professional Services.

At the time the concern is raised, the discloser should make it clear that they are using the Whistleblowing procedure.

7.3 Any concerns raised with line managers or heads of department as part of this procedure should be raised verbally or in writing (declaring any personal interest) to:

- The Principal of their organisation or the NES Managing Director;
or if the concern relates to the Principal of their organisation or the NES Managing Director, to:
- the Chairperson of Norfolk Academies, City College Norwich or NES, where appropriate.

It should be made clear that the concern is raised as part of the Whistleblowing procedure.

7.4 Confidential advice is available from Public Concern at Work, a registered charity which advises on serious malpractice in the workplace (0207 404 6609).

8. Investigations into concerns

8.1 The TEN Group will treat all disclosures seriously and sensitively and will fully investigate the matter.

8.2 The discloser will be interviewed, in confidence, by the Principal or NES Managing Director or Head of Professional Services, with whom the concern was raised. The discloser may be accompanied to this interview, by a work colleague or trade union representative for support purposes only. Any person accompanying a discloser to an interview must not be involved in the proceedings relating to the concern or be involved in the concern itself.

8.3 If the concern raised relates to an accusation of potential misconduct, the identified person will be interviewed to give an account of the issue.

8.4 If the concern relates directly to the activities of a TEN Group Principal or Managing Director, the investigation will be undertaken by the Chairperson of the relevant Board and the Head of Professional Services in NES. The Chairperson, at their discretion, may also ask an independent third party to undertake the investigation.

8.5 If the concern relates directly to the activities of the Trustee / Director / Academy Council Member, the investigation will be undertaken by the Chairperson of the TEN Group Board and the Head of Professional Services in NES. The Chairperson, at their discretion, may also ask an independent third party to undertake the investigation.

8.6 If the concern relates directly to the Chairperson of the TEN Board, the Head of

Professional Services in NES will consult with Trustees of the TEN Board to determine an appropriate investigatory solution, which may include involving an independent third party.

- 8.7 The person undertaking the investigation will provide the discloser with a response within ten working days, although in complex matters this may be an initial response pending further investigations.

9. Assessment stage

- 9.1 Following the initial interview(s), an assessment of what action should be taken will be made by the staff member in receipt of the disclosure.

9.1.1 If the assessment is made that the concern can be resolved quickly (i.e. within one working week) it will be brought to the attention of the appropriate member of the management team for resolution and the discloser will be notified of this. This may lead to the implementation of other formal TEN Group procedures, e.g. Disciplinary Procedure.

9.1.2 If the assessment is made that the concern is of a complex nature, it will be referred to the appropriate Principal or Managing Director for further investigation. In the case of a referral to the Principal or Managing Director, the discloser will be notified within ten working days.

- 9.2 In the event of a decision that no action will be taken following interviews and/or investigation, the discloser will be given a written explanation of the reasons for this decision.

10. Appeal stage

- 10.1 If the discloser wishes to appeal against a decision not to take action, they may do so in writing to the Chairperson of the TEN Board, within five working days of receipt of the outcome of the investigation. If the Chairperson has been involved in any investigation, the appeal will be passed to two independent Trustees of the TEN Board. The Chairperson, at their discretion, may also ask an independent third party to undertake the appeal.

- 10.2 If the discloser, after exhausting the Internal Appeal process, considers that their concern has not been dealt with and settled appropriately then they may contact an appropriate external body such as:

- the Police
- any of TEN Group's external Auditors
- The Charity Commission
- Ofsted (Whistleblower hotline for reporting safeguarding concerns: 0300 123 3155 (Monday to Friday from 8.00am to 6.00pm).)
- a relevant examination or other assessment body
- a relevant funding agency or
- the local authority or safeguarding body.
- Skills Funding Agency
- local elected politician
- a practising solicitor or barrister;
- Trade Union (if a member)

- Prescribed person or body.

If the discloser seeks advice outside of the TEN Group, they must be careful not to breach any confidentiality obligations or damage the TEN Group's reputation in so doing.

11. Record Keeping and Reporting

- 11.1 A confidential record of any concern raised using this procedure, its nature and the outcome of the investigation will be kept centrally by the Head of Professional Services.
- 11.2 Previous records may be used for cross-referencing and monitoring purposes when looking at future concerns.
- 11.3 Concerns raised using this procedure will be reported annually to the relevant Audit Committee.

12. References to related TEN Group policies

- Financial regulations
- Safeguarding
- Health & safety
- Grievance
- Dignity at Work
- Incident and accident reporting

13. Contact

Please contact the Head of Professional Services for advice on any aspect of this policy and procedure.

Contact details:

Head of Professional Services,
Norfolk Educational Services,
Thetford Building
City College Norwich
Ipswich Road
Norwich
NR2 2LJ

14. Equal Opportunities Statement

This policy and procedure has been assessed against the nine protected characteristics outlined in the Equality Act 2010 and no apparent disadvantage to equal opportunities has been determined.

If you have any comments or suggestions in relation to equal opportunities of this policy or procedure please contact the policy holder.