



HALES VALLEY TRUST

WHISTLEBLOWING POLICY

**Policy Tracker – Responsibility for monitoring this policy:
COO
(Reviewed annually – date of next review April 2020)**

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6/5/19	J Mackinney	CEO	June 2019

This Policy is written in accordance with the Employment Rights Act 1996, the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013.

This Policy will come into effect from 1 April 2018 and will be reviewed on an annual basis.

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1 INTRODUCTION

- 1.1 Hales Valley Trust is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty, integrity and accountability.
- 1.2 The term whistleblowing has a specific legal definition, i.e. a disclosure or allegation of serious wrongdoing made by an employee, and a wider public definition, i.e. any disclosure or allegation of serious wrongdoing made by anyone.
- 1.3 This policy seeks to cover disclosures and allegations of serious wrongdoing within the Trust that are made by anyone. It also covers suppliers and those providing services under a contract with the Trust in their own premises, for example, care homes. Where this policy makes reference to a whistleblower; it refers to any individual or a member of the public who is making a disclosure or allegation of any serious wrongdoing.
- 1.4 Employees are often the first to realise that there may be something seriously wrong within the Trust. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Trust and they may have fears of harassment, reprimand, getting it wrong or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.5 In line with our commitment we expect employees, suppliers and those providing services under a contract with the Trust in their own premises and others that we deal with, who have serious concerns about any wrongdoing with regards to the Trust's work, to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.
- 1.6 This Policy makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. *This Whistleblowing Policy is intended to encourage and enable employees to raise serious concerns **within** the Trust rather than overlooking a problem or "blowing the whistle" outside the Trust.*
- 1.7 These procedures are in addition to the Trust's complaints procedures and other statutory reporting procedures applying to some directorates such as those relating to safeguarding children or vulnerable adults. Managers are responsible for making service users aware of the existence of these procedures.
- 1.8 This policy is not designed to be used:
- a) for raising or reconsideration of matters that come under existing internal Hales Valley Trust procedures e.g. grievance, disciplinary or capability procedures; or
 - b) 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 recommended from the Dudley Safeguarding Board, unless

the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or

- c) 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”, Hales Valley Trust will advise the whistleblower of this and consult with the whistleblower in respect of taking the complaint further. Wherever possible, the Trust will comply with the view of the whistleblower, but there are situations where the Trust is legally required to pass on details of allegations, without the consent of the whistleblower, such as in safeguarding matters, or where the allegations related to serious criminal activity undertaken by individuals outside the Trust.

1.10 This policy has been consulted upon and is supported by all trade unions.

2 AIMS AND SCOPE OF THIS POLICY

2.1 This Policy aims to:

- Encourage everyone to feel confident in raising concerns and to question and act upon concerns about practice.
- Provide avenues to raise those concerns and receive feedback on any action taken.
- Ensure an individual receives a response to any concerns raised and that they are aware of how to pursue them if they are not satisfied.
- Reassure the individual who has raised a concern that they will be protected from possible reprisals or victimisation if they have a reasonable belief that they have made any disclosure.

2.2 There are existing procedures in place if you are employed by Hales Valley Trust to lodge a grievance relating to your own employment. The Whistleblowing Policy is intended to cover major concerns and in order to be protected any wrongdoing will fall outside the scope of other procedures of serious wrongdoing. These include:-

- Breach of a legal obligation
- Conduct which is an offence or a breach of law, including, for example, data protection and equality legislation
- Any criminal activity; including incitement to commit a criminal act
- Corruption or fraud
- A miscarriage of justice

- A danger to health and safety risks of any individual (including members of the public)
- Damage to the environment
- Abuse of power or authority
- The unauthorised use of public funds (including gross waste or mismanagement of funds)
- Failure to comply with professional standards, Trust policies or codes of practice/conduct
- Sexual, emotional or physical abuse or neglect of clients, or other unethical conduct
- Safeguarding children and vulnerable adults
- Any other form of improper action or conduct is taking place. This could include breaches of the regulation requiring school governors 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)
- Breaches of the “Nolan Principles of Conduct Underpinning Public Life” (Please refer to Appendix 1)
- Deliberately concealing any of the above

committed by or related to the actions of:

- Hales Valley Trust employees/workers
- Contractors, agency staff, suppliers or consultants of Hales Valley Trust in the course of their work for the Trust
- Trade Unions

2.3 Any serious concerns of wrongdoing that you have about any aspect of service provision or the conduct of officers listed above can be reported under the Whistleblowing Policy. This may be about something that:

- makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Trust subscribes to; or
- is against the Trust’s Standing Orders, Financial Regulations and policies; or
- falls below established standards of practice; or
- amounts to improper conduct

In order for there to be a protected disclosure, information must be disclosed; it is not enough for an allegation to have been made.

Where a disclosure is merely an expression of opinion that fails to show that a legal obligation has been or is likely to be breached, it cannot amount to a protected act or qualifying disclosure.

This Policy does **not** replace the corporate complaints procedure.

3 SAFEGUARDS

Harassment or Victimisation

- 3.1 The Trust is committed to good practice; high standards and wants to be supportive of anyone making a protected disclosure.
- 3.2 The Trust recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, or if you have reasonable grounds for believing that it is true, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.
- 3.3 The Trust will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that affect employees of the Trust.

4 UNTRUE ALLEGATIONS

- 4.1 If you make an allegation but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you if you are employed by the Trust. Action via the civil courts may be taken against you if you are a member of the public.

5 HOW TO RAISE A CONCERN

Disclosures made by Hales Valley Trust employees, Trade Unions, Agency Staff, and any other individuals working for the Trust.

The Public Interest Disclosure Act 1990 (PIDA)

- 5.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the Trust) to raise any concerns about any suspected serious wrongdoing, an illegal act or a dangerous situation within the Trust.

- 5.2 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.
- 5.3 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.
- 5.4 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).
- 5.5 If an employee does not feel comfortable making a disclosure to the Trust, they may be entitled to make a disclosure to other prescribed persons. For further information please Appendix 2.
- 5.6 In the first instance the member of staff should normally raise concerns with their immediate line manager or the Head Teacher. If the concern is to do with the Headteacher the member of staff should raise the concern with the CEO or the Chair of the Board of Directors.

For specific safeguarding concerns if you believe an employee has:

- Behaved in a way that has harmed or may have harmed a child or vulnerable adult;
- Possibly committed a criminal offence against or related to a child or vulnerable adult; or
- Behaved towards a child or children or vulnerable adults(s) in a way that indicates that she/he is unsuitable to work with children or vulnerable adults.

You should follow safeguarding children procedures (Part B, Section 11) <http://safeguardingchildren.dudley.gov.uk/information-forprofessionals/safeguarding-children-procedures/part-b-specificsafeguarding> or contact the Local Authority Designated Officer (LADO) in respect of managing concerns or allegations at Safeguarding & Review via the Safeguarding Review Unit (Tel No 01384 813061). The link is also the same for safeguarding of adults.

- 5.7 Concerns may be raised verbally or in writing. Individuals who wish to make a written report are invited to use the following format:
- the background and history of the concern (giving relevant dates), and the reason why you are particularly concerned about the situation
 - each disclosure should be separately identified by reference to date and content
 - each alleged failure or likely failure to comply with a legal obligation or a matter giving rise to a health and safety breach should be separately identified

- 5.8 The earlier you express the concern the quicker action may be taken.
- 5.9 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that you have a reasonable belief that there has been wrongdoing.
- 5.10 Individuals employed in schools are normally expected to raise their concerns within the school initially, using existing policies where they are appropriate.
- 5.11 Where the employee working in a school considers one or more incidents amount to a safeguarding incident, they should make a referral under the Schools Safeguarding policy.

However, if the employee has good reason to believe that

- a) the complaint or whistleblowing will not be managed properly within the school, or
- b) that they will be exposed to victimisation as a result of the complaint; or
- c) the concern is about another school or another service provided by Hales Valley Trust;

then the employee may make the complaint directly to Hales Valley Trust. People who make a complaint to Hales Valley Trust about the school in which they work should set out why they feel unable to make the complaint directly to the school.

6 ADVICE TO EMPLOYEES WISHING TO RAISE A CONCERN OR MAKE A DISCLOSURE

- 6.1 Employees who have major concerns arising from their employment may wish to seek advice from their union or the charity Public Concern at Work (0207 404 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.

7 WHISTLEBLOWING BY MEMBERS OF THE PUBLIC

- 7.1 Unlike disclosures by employees, the Public Interest Disclosure Act does not cover disclosures by members of the public.
- 7.2 However, the Trust considers that any disclosures or allegations made by members of the public in respect of serious wrongdoing should be handled in the same way as disclosures made by employees.

7.3 Once a disclosure from a member of the public has been received by the Trust, it will be handled in the same way as a disclosure made by an employee under the Public Interest Disclosure Act.

8 HOW TO REPORT AN ACTUAL OR SUSPECTED SERIOUS WRONGDOING

The Responsible Officer

8.1 The Chief Executive has overall responsibility for the maintenance and operation of this Policy. The Chief Executive maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will report to the Board of Directors.

A person who wishes to report any suspected serious wrongdoing (“a disclosure”) to the Trust or seek advice and guidance should contact the Trust either by e-mail or telephone.

If you are unsure whether or how to use this Policy, you may seek free confidential help from the independent charity, **Public Concern at Work** Tel: 0207-404-6609 www.pcaw.org.uk email: whistle@pcaw.co.uk

Public Concern at Work will also be able to help if you feel that it would be inappropriate to speak to any of the officers referred to above.

You may wish to consider discussing your concern with a fellow worker first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

If you are employed by the Trust you may invite your current recognised trade union representative, trade union official or fellow worker to be present during any meetings or interviews in connection with the concerns you have raised.

Details that will need to be asked of you are listed below but are not exhaustive:

Name (unless they wish to be anonymous)

Contact details (unless they wish to be anonymous)

Who has committed the alleged serious wrongdoing?

What is the nature of the alleged serious wrongdoing?

Is the person making a disclosure employed by Hales Valley Trust?

If not, does that person work in a school (if so which one)?

Is the person a service user/member of the public?

8.2 Trust 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. If doing so, you must be explicit that the disclosure is being made under this policy. The manager must follow the obligation of confidentiality, but must, as soon as possible after receiving the Protected Disclosure, log the disclosure in accordance with 8.1 above, and then confirm to the employee concerned, in writing or email, that this matter has been recorded.

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360648/bis-14-1077-blowing-the-whistle-to-a-prescribed-person-the-prescribedpersons-list-v4.pdf

8.4 If you do take the matter outside the Trust, you should ensure that you do not disclose confidential information and you should check with one of the contact points listed in Paragraph 8.1 to ensure that you are not doing so.

9 HOW THE TRUST WILL RESPOND TO A DISCLOSURE

9.1 Within ten working days of a concern being raised, the responsible person (the Chief Executive) will write to the individual:

- acknowledging that the concern has been received;
- indicating how we propose to deal with the matter;
- giving an estimate of how long it will take to provide a final response; informing the individual whether any initial enquiries have been made;
- supplying the individual with information on staff support mechanisms, including confidential welfare counselling, and;
- informing the individual whether investigations will take place and, if not, why not.

9.2 The Trust will then consider and decide whether the disclosure falls under the whistleblowing criteria and, if not, will, wherever possible, seek the whistleblower's consent as to how the disclosure will be investigated using the appropriate Trust procedure(s).

9.3 However, there are situations where the Trust is legally required to investigate, under separate procedures, without the consent of the whistleblower, such as investigating allegations of ill-treatment or abuse of children or vulnerable adults (safeguarding) or suspected criminal activity. In these circumstances, the Trust

will, wherever possible, advise the whistleblower 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.

9.4 If it is concluded that the disclosure is considered to come under the whistleblowing policy and that an investigation needs to take place, the whistleblower, will be advised of the following:

- a) the arrangements for confidentiality
- b) how the person making the disclosure will be expected to contribute to the investigation
- c) the outcome of any discussions which may have taken place over anonymity
- d) an estimate of how long the investigation is likely to take
- e) the name of the investigator appointed to undertake the investigation
- f) the right of an employee to representation by a recognised trade union or work colleague at any meeting; and
- g) the right of any non-employee to seek support and representation at any meeting
- h) whether the Police will need to be involved or other agencies

9.5 Hales Valley Trust, wherever possible, will seek to advise the whistleblower of the outcome of the investigation. However, the Trust 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.

9.6 The use of this whistleblowing process does not automatically amount to acceptance by the Trust that the information provided is necessarily a qualifying disclosure.

9.7 For monitoring purposes the Trust keeps a list of communications received from people using this whistleblowing 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.

10 CONFIDENTIALITY AND ANONYMITY

10.1 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. Hales Valley Trust will seek to avoid disclosing information identifying any whistleblower, even if the Trust considers that the disclosure, by the Whistleblower, 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 whistleblower. In these circumstances, Hales Valley Trust will consult with the whistleblower prior to the disclosure taking place and offer support.

10.2 There may also be situations where the Trust may be obliged to disclose information, such as where there are legal proceedings following on from the investigation of the whistleblowing investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the whistleblower may be expected to give evidence at any hearing. In these circumstances, the Trust should discuss the implications for the whistleblower if he or she proceeds with the disclosure, and where appropriate, discuss appropriate support arrangements.

10.3 Hales Valley Trust may also be required to disclose the identity of the whistleblower to third parties, where necessary for the purposes of undertaking investigations e.g. where the allegations relate to serious criminal offences where the Trust considers that the Police should investigate.

10.4 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 whistleblower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation. Therefore whistleblowers are encouraged to put their name to the complaint.

10.5 Hales Valley Trust is subject to the Freedom of Information Act. This means that there is a presumption that Hales Valley Trust 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.

10.6 The Freedom of Information Act contains exemptions that may be applicable to permit the withholding of information identifying the whistleblower, including:

- s.40 Personal Data
- s.41 Information which, if disclosed, would give rise to an actionable breach of confidence

10.7 If the Trust receives a request for information identifying a whistleblower, it will contact the whistleblower 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.

10.8 The Trust is mindful, in reconciling the legal obligation to disclose information it holds under the Freedom of Information Act 2000, of its legal obligations under:

- d) The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and
- e) The Health and Safety at Work etc. Act 1974, to protect the health and safety (including mental health) of employees

11 PROTECTING AN EMPLOYEE WHISTLEBLOWER

11.1 Employees are protected if:

- they honestly think what they report is true
- they think they are telling the right person; and
- they believe that their disclosure is in the public interest

11.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against victimisation for whistleblowing. Hales Valley Trust has adopted this procedure in order to encourage early internal whistleblowing 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 whistleblowing procedure directly to the an independent HR advisor, appointed by the Trust.

11.3 An employee has the right to complain of victimisation as a result of any whistleblowing to an employment tribunal.

11.4 Any employee who victimises a whistleblower could:

- be subject to an internal Trust investigation and potential disciplinary action, including potential dismissal
- face a civil claim personally, as the affected whistleblower could be entitled to directly issue a legal claim against the culprit

12 RECORDING AND MONITORING COMPLAINTS

12.1 Hales Valley Trust 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.

12.2 The Trust will also record all disclosures of serious wrongdoing made by members of the public.

12.3 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 or members of the public, will be reported to the Board of Directors.

12.4 The Trust will record details of all complaints made under this policy, anonymising the identity of the whistleblower and use this information for the purposes of identifying areas of concern, which may indicate further action is required, and where appropriate,

share this information with other appropriate regulatory bodies. The types of information recorded may include:

- the date the concern was raised
- the nature of the concern and/or the risk/s highlighted
- who the concern was initially raised with
- whether confidentiality was requested
- the approach adopted
- the outcome, in terms of whether the concern was founded or unfounded
- whether feedback was given to the member of the public/contractor/employer/worker raising the concern
- whether the worker was satisfied with the outcome and if not, why not; and
- the date the case was closed

12.5 Both lists are maintained in accordance with the Data Protection Act 2018.

12.6 A report on the number of concerns will be published annually. This report will not include any information identifying any whistleblower.

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 local government Trustlors, school governors and clerks to school governing bodies. They also include certain senior local government officers required to be appointed by law.