

Whistle Blowing Policy

(Disclosure of Serious Malpractice)

April 2016



Whistle Blowing Policy

CONTENTS

- Purpose of the policy
- 1 Raising Concerns
- 2 Investigating the public interest disclosure
- 3 The Protection of individuals who make a public interest disclosure (whistle blowers) who may fear reprisal or victimisation
- 4 Policy Review

APPENDICES

Appendix A – Contact details for nominated persons referred to in the Policy

WHISTLEBLOWING POLICY

This policy has been approved by the Governors and the College after full consultation with the recognised trade unions.

PURPOSE

The College wishes to maintain the highest standards of service to its students, staff and the community and recognises the need to have in place a policy enabling public interest disclosures also known as 'Whistle blowing' to be made.

This procedure will enable concerns to be raised confidentially inside, and if necessary, outside the College. It is intended to encourage staff to **"speak up"** and inform management if they are concerned about serious malpractice, fraud or corruption, so that management can investigate this.

A 'qualifying disclosure' means any disclosure of information which in the reasonable belief of the individual making the disclosure, tends to show one or more of the aspects covered by the Public Interest Disclosure Act 1998 (PIDA).

The examples shown below describe instances of malpractice which relate to the aspects covered in the Act.

- Conduct which is a criminal offence or a breach of law
- Disclosures related to miscarriages of justice
- Dangerous procedures risking health and safety, including risks to the public as well as other employees
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud and corruption
- Failure to safeguard students and staff
- Other unethical conduct

This is not an exhaustive list

The following procedure is intended to provide a confidential channel and process for individual employees to raise genuine and legitimate concerns in confidence without affecting job or promotion prospects and without fear of victimisation; to deter serious malpractice; avoid crisis management and public criticism; and promote accountability throughout the College. It gives everyone the opportunity to act professionally and with propriety.

The procedure is separate from the College's grievance procedure and should not be used by employees to raise grievances about their personal employment situation.

1. RAISING CONCERNS

- 1.1 In most cases, an individual should make the disclosure to a relevant manager, his or her line manager, or to the Vice Principal or the Director of Finance & Resources. Alternatively concerns can be raised with the Clerk to the Governors, who is independent from the management of the College, the Principal, Chair of Audit Committee, Chair of the Board or appropriate Union Representative.
- 1.2 Where a disclosure relates to the Clerk or the Principal the matter should be disclosed to the Chair of the Audit Committee or the Chair of the Board.
- 1.3 The matter will be treated confidentially and the employee's name will not be disclosed to the alleged perpetrator of malpractice without their prior approval. In order to allow a legitimate

concern to be raised without trace, employees may choose to report the matter orally rather than in writing. A full note (which should not identify the employee) will be made by the person hearing the concern.

- 1.4 Unless the suspected misconduct involves the Principal, the concern should be referred to him/her, if not directly, then by the Individual to whom the disclosure was first made.
- 1.5 All issues raised under this policy will be treated seriously, in confidence and with total discretion. The identity of the employee will remain confidential throughout the process and afterwards, unless disclosure is required by law.

2. INVESTIGATING THE ALLEGATION

- 2.1 The College will respond to concerns. The matters raised may:
 - a. be investigated by management, or through the disciplinary process
 - b. be investigated through the disciplinary process
 - c. be referred to the police
 - d. be referred to the auditor or
 - e. form the subject of an independent inquiry
- 2.2 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle will be to consider what is in the public interest.
- 2.3 Some concerns may be resolved by agreed action without the need for an investigation. If the concern is of an urgent nature then this will be taken into account before any investigation is conducted.
- 2.4 Within **5** working days of a concern being raised, the responsible manager will write, in confidence to the individual making the disclosure acknowledging that the concern has been received. Thereafter within **10** working days an outline action plan with timescales to address the concern will be provided in confidence to the employee. The amount of contact between the staff considering the issues and the individual making the disclosure will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. The outline plan will indicate to the employee how and who will conduct the investigation and an estimate of how long this will take.
- 2.5 Where any meeting is arranged, off-site if required, the individual making the disclosure can be accompanied by a union representative or work place colleague.
- 2.6 The College will take steps to minimise any difficulties which an employee may experience as a result of raising a concern. For instance, if the individual making the disclosure is required to give evidence in criminal or disciplinary proceedings the College will arrange for the individual to receive advice about the procedure.
- 2.7 Appropriate feedback will be given to the employee following the outcome of the investigation.
- 2.8 If an employee is not satisfied that their concern is being properly dealt with they will have the right to raise it in confidence with the Audit Committee through the Chair of that Committee and they may wish to seek advice from the charity Public Concern at Work. (Appendix A contains contact points for nominated persons)

- 2.9 Following any interviews and / or investigation, recommendations will be made to the Principal in confidence (the Chair of the Audit Committee or Chair of the Board as appropriate). The Principal (Chair of the Audit Committee or Chair of the Board) will decide what further action should be taken, if any, and the appropriate mechanism to achieve resolution (including an action plan) and means of informing the complainant.

3. PROTECTING WHISTLEBLOWERS WHO FEAR REPRISAL OR VICTIMISATION

- 3.1 There is no specific common law duty on employees to report fraud to a nominated person within the College or an external source. The only exception is that line managers will generally have a duty to report the fraud of their subordinate employees. It is usually appropriate that the matter is raised internally where possible, but disclosure outside the employment relationship will, in some cases be justified and necessary.

3.2 Disclosure outside the employer body

Employees are subject to an implied contractual term of confidence and trust, which seeks to prevent them from disclosing their employer's confidential information. There may also be within the contract of employment a specific confidentiality clause. The breach of this condition is often classed as gross misconduct which justifies summary dismissal.

If an employee makes an unauthorised disclosure of fraud or serious malpractice to a regulatory authority and its disclosure is in the public interest, the public interest disclosure act (PIDA) and subsequent case law shows that this is, in many circumstances, a lawful action, even though it may contravene an implied contractual duty or a specific confidentiality clause.

This type of disclosure should not be made for personal gain (e.g. selling your story to the papers) and it must be reasonable to make the disclosure in the circumstances.

Clearly the College would prefer for matters to be resolved internally wherever possible.

3.3 What is considered to be 'in the public interest'?

The difficulty lies in determining what constitutes 'in the public interest'. Such matters are generally confined to fraud, dangers to health and safety or to the environment, failure to observe the law, criminal activities and threats to national security or deliberate concealment of the above. They are matters which warrant disclosure in the interests of protecting the public (or the College, staff or students) and in these cases the courts will generally uphold the public interest defence.

3.4 Health and safety concerns

With regard to the voicing of concerns over health and safety in the workplace, employees are now statutorily protected against victimisation or dismissal for taking certain specified types of action on health and safety grounds. These protected actions include the bringing to the College's attention, by reasonable means and in the absence of a representative or committee with whom it would be reasonably practicable for the employee to raise the matter, a concern about circumstances at work which the employee reasonably believed to be harmful to health or safety.

3.5 Protection for the employee

The employee will be protected against victimisation or dismissal for raising legitimate concerns through the proper channels. If they feel that they are being bullied or suffer detriment or any disadvantage as a result of raising a concern then they must report this also.

It is unlawful for the employer to dismiss or subject to detriment an employee who makes a 'protected disclosure' from day one of employment.

3.6 Protection for the institution

If an employee uses this procedure to raise concerns maliciously or with dubious motives such as personal financial gain, there may be cause for disciplinary action.

Employees are encouraged to raise concerns internally even if sometimes they may prove to be unfounded as management would appreciate the opportunity of investigating and taking appropriate action before the concern is raised externally.

The College will maintain a record of disclosures made (anonymously) as well as any complaints of failure to maintain confidentiality or complaints of victimisation.

Periodically all staff will be reminded that the policy exists to encourage genuine speaking up so that the College can be a learning organisation and improve. A procedure to report health and safety errors or near misses openly already exists. Staff should be reminded that they have protection from day one.

Where speaking up occurs it should be celebrated –whilst respecting anonymity. Anyone who subjects an individual to detriment because they have raised a concern will be sanctioned under the disciplinary policy

4. POLICY REVIEW

Date of Policy:	3 December 2001
Date of Review:	April 2016
Date of next review:	April 2019

APPENDIX A

CONTACT POINTS FOR NOMINATED PERSONS

POSTION	CURRENT POST-HOLDER	CONTACT POINT
Chair of Audit Committee	Stan Walker	07939 238907
Chair of the Board	David Rosbottom	07860 480387
Clerk to the governors	Charlotte Fitch	0797 0803566
The Principal	Louise Tipping	01695 633244
Director of Finance & Resources	Conor Edwards	01696 633244
Health and Safety Coordinator	Colin Smith	01696 633244
Financial Statements Auditors	Murray Smith	01606 79411
Internal Audit Services	Wylie & Bisset	0141 566 7000
Public Concern at Work	Charity which supports employees and employers in connection with PIDA issues	Helpline: (020) 7406 6609 Email: whistle@pcaw.co.uk Website: www.pcaw.co.uk