

# Whistleblowing Policy and Procedure



Policy Owner	Secretary to Council
Approving Body	Council
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Related Policies and procedures	Counter-Fraud Policy      Anti-Bribery Policy Anti-Money laundering      Criminal Finances Act Policy Financial regulations      Conflicts of Interest policy
Reviewed by	Chief Financial Officer Director HR Director of Governance and Legal Services
Approved by Audit and Compliance Committee	4/2/2019
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## 1. Policy Statement

The College is committed to the highest levels of governance and seeks to demonstrate responsibility in all of its affairs and activities, recognising the guidance and legislation on standards in public life - particularly with regard to probity, openness, accountability and the requirements of both public and private funding.

A key element of this commitment is to provide the facility to disclose information which, in an individual’s reasonable belief, is in the public interest and indicates malpractice, impropriety and/or risks as outlined in this policy. It is a fundamental principle of employment that an employee should not disclose their employer’s confidential information. However, types of disclosures known as “qualifying disclosures” can be made without fear of reprisal. These types of disclosures are commonly referred to as Whistle-blowing.

The Public Interest Disclosure Act 1998 amended the Employment Rights Act 1996 to give legal protection to workers from being dismissed, subjected to other detriment or victimised by their employer for making “qualifying disclosures” detailed in section 5.

This document sets out the College’s procedures for dealing with an employee or worker making a p r o t e c t e d disclosure. This policy applies to all employees and officers of the College. Individuals performing functions in relation to the organisation, such as agency workers and contractors, are encouraged to use it.

## 2. Definitions

**Whistle-blowing** is the disclosure of information, facts or activity, in the public interest, which in the worker's reasonable belief shows, or tends to show, malpractice or wrongdoing. The alleged wrongdoing can be wide-ranging, including breaking of organisational policy/rules, laws or regulations. It can include fraud, corruption, theft, misappropriation, abuse of position, or issues of health and safety, environment, and threat to public interest.

A **whistle-blower** should usually bring information or allegations to the surface internally but disclosures may be made externally to certain responsible or prescribed persons in certain limited circumstances.

## 3. Whistle-blowing policy and procedure - Objectives

The objectives of the Whistle-blowing policy and procedures include:

1. Promoting an environment and culture in the College where individuals can feel safe in the knowledge that raising concerns about malpractice will not result in any form of direct, indirect, or "soft" retaliation, such as being seen as a "troublemaker".
2. Promoting the use of existing internal processes - both informal and more formal - which would help resolve an issue earlier, without external disclosure and likely attendant adverse publicity.
3. Facilitating (a) the disclosure of reasonably-based, genuine and legitimate concerns and (b) their investigation and where applicable, resolution.
4. Helping prevent all forms of dishonesty and wrongdoing in the workplace.
5. Promoting accountability throughout the College's activities and operations, irrespective of location.

## 4. Scope

### 4.1 Outline

This policy and procedure provides guidance - to all staff, students, agency workers, work experience staff, employees, consultants, contractors and third-parties - on the procedure for the disclosure of information which, in an individual's reasonable belief, is in the public interest and indicates malpractice, impropriety and/or danger.

### 4.2 Procedures

Whistle-blowing enables disclosures within the College to be made independently of line-management, if that is the preference of the individual. However, before using the whistle-blower channels, staff, students, agency workers, work experience staff, employees, consultants, contractors and third-parties should consider whether there are more appropriate, relevant and/or direct procedures.

These include the College's:

- Student complaint procedure
- External complaints procedure
- Counter fraud policy and response plan

This procedure is for disclosures about matters other than an employee's own contract of employment. If an employee is concerned that his / her contract has been, or is likely to be broken, he / she should use the organisations Grievance or Dignity at Work Policy and Procedure.

## **5. Types of whistle-blowing issues**

**5.1** "Qualifying disclosures" considered to be a whistle-blower issue and therefore dealt with under this policy will relate to:

- a criminal offence;
- a breach of a legal obligation
- a miscarriage of justice
- an act creating risk to health and safety an act causing damage to the environmental
- deliberate concealment of any of the above

A disclosure as above can be made in the public interest under this policy if there is a reasonable belief a breach is being committed, has been committed or is likely to be committed. A reasonable belief is sufficient for making a disclosure to the College under this policy.

Specific examples of disclosures that may fall under these headings and hence be covered by this policy include financial malpractice, theft, fraud, bribery, corruption, criminal activity and falsification of data, research and/or results.

**5.2** It should be recognised that the whistle-blowing policy is not intended to facilitate the review of properly undertaken and legitimate business and/or financial decisions taken by the College under authorised procedures. It is also not intended to be used to facilitate the consideration (or reconsideration) of issues where the individual making the report has a personal or private interest in the matter and/or where other College procedures exist to properly and appropriately address them as outlined in (4), above.

## **6. Whistle-blower protections**

**6.1** A key element of this policy is the protections that the College will provide to whistle-blowers who reasonably disclose information that meets the criteria previously identified. The individual will be protected if he/she makes such a disclosure as set out in the following paragraphs, however, it should be noted that a disclosure will not necessarily qualify for protection if the person making the disclosure commits an offence in making it, for example if legal professional privilege applies in respect of information contained in the disclosure.

**6.2** The whistle-blower policy provides for whistle-blowers to request that they be supported. Do contact your Line Manager (as appropriate) or a HR Partner for further advice on the matter.

**6.3** The College will take all reasonable steps to protect whistle-blowers in ensuring that they are not subject to any form of reprisal as a result of reporting a concern. Persons making protected disclosures have a right not to be dismissed, subjected to any detriment or victimised because he/she has made a disclosure.

**6.4** Any reprisal will be treated as a serious offence under the College's disciplinary processes. Equally however, abuse of process by making malicious or vexatious allegations will also be regarded as a disciplinary issue.

## **7. Confidentiality**

**7.1** The College will treat all disclosures of information made under this policy in a confidential and sensitive manner. The name or names of the individual(s) making a disclosure will not be revealed without their consent during this procedure except where:

- The College is under a legal obligation to do so, or,
- The individual(s) making the disclosure consents in writing, or,
- There are grounds for believing that the individual(s) has (have) acted maliciously or vexatiously, or,
- The information is already in the public domain, or,
- It is considered essential to do so in order to enable the disclosure to be dealt with; this would include disclosing the name(s) to a professionally qualified lawyer in order to obtain legal advice.

**7.2** As far as practically possible, documents related to a disclosure will only be available to a designated College appropriate person and their immediate office. Similarly, as far as practicable, any documentation prepared in relation to the disclosure will not reveal the identity of the individual(s) making the disclosure under this policy.

**7.3** All parties involved will be asked to respect the confidentiality of the disclosure and any subsequent investigation.

**7.4** Where the individual(s) participate in any investigation e.g. by providing a witness statement or by assisting in the gathering of evidence, that participation will usually be required to be on an open rather than a confidential basis, although the role of the individual in the original disclosure of information will still remain confidential.

## **8. Anonymous reporting**

Individuals making disclosures under this policy are always encouraged to give their names and contact details. Anonymous disclosures may prove difficult or impossible to investigate and feedback cannot be provided to the discloser. It is also difficult to deter misuse of the Whistle blowing policy and procedure. However, where an anonymous report is received, the information will be assessed and then considered at the discretion of the College, based on factors such as the seriousness of the issue raised, credibility of the information disclosed,

likelihood of confirming the information, and what supporting evidence is/could be available from other sources.

#### **9. Malicious and/or vexatious allegations**

If an individual discloses information under this policy that is not then confirmed by subsequent investigation, no action will be taken against that individual; a worker does not have to prove that the facts or allegations disclosed are true, just that he/she has reasonable belief that a breach has occurred as related in Section 5.

If, however, an individual is found to have made malicious or vexatious allegations with a view to personal gain, and particularly if he or she persists with making them, then action may be taken under the College disciplinary process.

#### **10. Procedure for raising a whistle-blower issue**

##### **10.1 Initial step**

It is important that individuals disclose information in accordance with this policy at the earliest opportunity. It is not necessary to provide, or wait for, "proof" of the particular type of malpractice. The disclosure should contain as much detail as possible of the grounds for concern, including the names of individuals and significant dates, locations or events, where applicable.

Where two or more individuals are aware that they have knowledge of the same information that is covered by this policy, they should preferably each make a separate and individual disclosure to the College and should not discuss the matter further between themselves. Submission of joint disclosures may lead to counter-allegations of collusion or of manufactured information.

The procedure for making a disclosure is as follows:

- a. The individual should make the disclosure orally, in writing, or by e-mail to the appropriate person. A list of the College's designated appropriate persons and their contact details is provided at the end of this policy. The primary appropriate person is the College Secretary or Director of Governance and Legal Services who will arrange for the matter to be investigated in the most appropriate manner. A very restricted number of other senior officers will be informed only if that course of action is deemed absolutely necessary.
- b. If the disclosure is about the Secretary to Council or Director of Governance and Legal Services, then it should be made directly to the Principal.
- c. If the disclosure is about the Principal, then it should be made directly to the Chair of the Audit Committee.
- d. If for good reason the person making the disclosure feels that it is not appropriate to raise the matter to the College Secretary, then it may be raised directly with the Chair of Audit Committee.

## **10.2 Investigation of disclosures made within the scope of the whistle-blowing policy**

All allegations will be recorded in writing. It is the responsibility of the College designated appropriate person to decide on the form of investigation to be undertaken. The forms of investigation could include:

- a. Internal investigation / inquiry led within the College.
- b. External (independent) investigation / inquiry led outside the College (as appropriate).
- c. Referral to the police (as appropriate).

If the decision is that investigations should be conducted by more than one of these means, the College designated appropriate person must be satisfied that such a course of action is warranted by the nature of the issue, and the information available.

Where the issue is to be the subject of an internal investigation, the College designated appropriate person will then consider how that investigation should be conducted. This consideration will include determining:

- Who should, and will undertake and conduct the investigation.
- The procedure to be followed.
- The point in the investigation when the person(s) implicated in the disclosure (e.g. the person(s) against whom the disclosure has been made) will be informed as to the nature of the disclosure, and that an investigation has been initiated.
- The potential scope of the final investigation report (i.e. scope and terms of reference).

## **10.3 Investigation phase**

The investigation may be undertaken internally to the College or externally. As previously highlighted, the nature of some disclosures may warrant a combination of both internal and external approaches.

An independent person within the College, with appropriate experience and of an appropriate level of seniority, may be appointed to conduct the investigation. "Independent" in this context means a person with no relevant connection to the disclosure and individual(s) reporting the disclosure.

In cases where a suitable independent person within the College is not appropriate or available. Then the investigation would, of necessity, have to be undertaken by a person who is external to, and independent of, the College. There may be more than one person involved in the investigation if this is deemed necessary.

Importantly, investigations will not normally be carried out by the same person who will have to reach a decision on the matter. The investigation and its conclusions will normally be reported to another nominated independent person for them to make a decision on the outcome and any next steps.

Any investigation will be conducted as sensitively and speedily as possible, but having proper regard to the need for thoroughness and with no presumption of guilt. A written record will be kept of all investigations including interviews, evidence gathered, documents obtained etc.

When a disclosure is made, the person(s) against whom the disclosure has been made will usually be informed after the initial investigation has been undertaken.

Where the initial investigation provides reasonable grounds for suspecting a member or members of staff of involvement in any of the activities listed in Section 5 above, the investigating officer will advise the College as soon as practically possible on how to prevent any further loss, danger or damage. This may warrant the suspension, on full pay, of the persons under suspicion. Any such suspension must only be undertaken in accordance with the College's Disciplinary policy and procedure and not without direct advice from Human Resources. It may be necessary to plan the timing of suspension to prevent the destruction or removal of evidence that may be needed to support any subsequent disciplinary and/or criminal investigation.

As a result of the investigation, other internal procedures may then be invoked, such as the College's Disciplinary policy and procedure. Exceptionally, the matter as such may also warrant further investigation. In some instances, it may be necessary to refer the matter externally for further investigation at this stage.

An investigation will not be instigated and the individual raising the concern will be informed as such when the following circumstances apply:

- Where the issue concerned is already the subject of legal proceedings and / or an appropriate external referral
- Where the issue is already (or has already been) the subject of proceedings under this policy or one of the College's other procedures relating to staff or students.

#### **10.4 Conclusion and feedback phase**

Following the investigation, the College designated appropriate person will, as far as possible taking into account any need for confidentiality, inform the individual(s) who made the disclosure of the outcome of the investigation and what action, if any, will be taken next.

Should it be found that there is no or insufficient evidence that wrong-doing within the meaning of this procedure has occurred, is occurring or is likely to occur then it will be recommended that no further action should be taken by the College.

There is no right of appeal against the outcome of a whistle-blowing investigation.

#### **10.5 Reporting of the outcome**

The College, as part of its governance processes, will maintain a record of all whistle-blowing disclosures and reports together with subsequent investigations, conclusions and actions.

In all cases, a report of the outcomes of any investigation will be made to the Audit and Compliance Committee. This allows the Committee to monitor the effectiveness of the procedure. Additionally, the Audit and Compliance Committee will receive an annual overall summary report on whistle-blowing.

### **11. External support for whistle-blowers**

The independent charity Public Concern at Work offers free, confidential advice to people concerned about crime, danger or wrongdoing in the workplace.

Similarly, Whistle-blowers UK is run by “whistle-blowers for whistle-blowers” with the mission to provide advice and support for those who are considering acting on their conscience. Their respective websites are [www.pcaaw.co.uk](http://www.pcaaw.co.uk) and [www.wbuk.org](http://www.wbuk.org).

## 12. Independent Contact Details

Director of Governance and Legal Services	Director of Governance and Legal Services (TBC)	Director of Governance and Legal Services (TBC)
Principal	Paul Layzell	Paul.Layzell@rhul.ac.uk
Chair of audit Committee	Colette Wilson	colettelw@gmail.com

### Monitoring and review

This policy and related procedures will be reviewed and updated by the Directorate of Governance and Legal services as a minimum every 2 years.