

# **Public Interest Disclosure (Whistleblowing) Policy and Procedure**

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## 1. Introduction

- 1.1. The West Herts College Group is committed to operating in an ethical and principled way. The aim of this policy and procedure is to provide employees and workers (referred to as 'workers' in this policy) with a means for raising genuine concerns of suspected bribery, breaches of the law and other serious wrongdoings.
- 1.2. The College encourages workers to raise genuine concerns about suspected wrongdoing at the earliest practicable stage. This policy and procedure is intended to provide safeguards to enable members of staff to raise concerns about malpractice in connection with the College.
- 1.3. This policy and procedure also aims to encourage workers to raise genuine concerns through internal College procedures without fear of adverse repercussions being taken against them. The law allows workers to raise such concerns externally and this policy informs workers how they can do so. However, a failure to raise a concern under this procedure may result in a disclosure losing its protected status under law.
- 1.4. This policy and procedure also seeks to balance the need to allow a culture of openness against the needs to protect other workers against vexatious allegations or allegations, which are not well founded.
- 1.5. The principles of openness and accountability, which underpin legislation protecting whistleblowers, are reflected in this policy and procedure. The College is also committed to ensuring compliance with the Bribery Act 2010.

## 2. Applicability of this policy and procedure

This policy and procedure applies to:

- All employees of the College, including apprentices; and
- Workers which includes any casual workers; home based casual workers; and
- subcontractors; and
- Agency workers engaged by the College.
- Workers might be unsure whether it is appropriate to raise their concern under this policy and procedure or whether it is a personal grievance, which is more appropriate to raise under the college's grievance procedure. Any worker in this situation is encouraged to approach one of the Designated Assessors (see Section 5) in confidence for advice.

## 3. Protected disclosures

- 3.1. The law protects workers who, out of a sense of public duty, want to reveal suspected wrongdoing or malpractice.
- 3.2. The law allows workers to raise what it defines as a 'protected disclosure'. In order to be a protected disclosure, a disclosure must relate to a specific subject matter (see Section 4 below) and the disclosure must be made in an appropriate way (see Section 5 below). A 'protected disclosure' must, in the reasonable belief of the worker making

it, also be made in the public interest. A 'protected disclosure' must consist of information and not merely be allegations of suspected malpractice.

#### **4. Specific Subject Matter**

4.1. If, in the course of employment, a worker becomes aware of information which they reasonably believe tends to show one or more of the following, they must use this policy and procedure to advise:

- That a criminal offence has been committed, is being committed, or is likely to be committed;
- That an individual 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 or safety of any individual has been, is being, or is likely to be, endangered;
- That the environment has been, is being, or is likely to be, damaged;
- That information tending to show any of the above is being or is likely to be deliberately concealed.

#### **5. Designated Assessors**

5.1 The Principal/Chief Executive of the College will ensure that at least three but not more than five members of staff of appropriate experience and standing within the College are designated at any time for the purposes of this procedure as designated assessors ("Designated Assessors") and that one of the members shall be designated as lead designated assessor ("the Lead Assessor"). With effect from 24th November 2014, the Designated Assessors will be:

**Lead Designated Assessor:** Chris Pearson (Director of Strategy and Corporate Affairs)

**Other Designated Assessors:** Ralph Devereux (Clerk to the Corporation)

5.2. The Principal/Chief Executive may revoke any such designation from time to time and appoint new Designated Assessors. The Principal/Chief Executive will report any such revocation to the next meeting of the Corporation, together with brief reasons for the revocation. Where a revocation arises from the termination of a Designated Assessor's employment, (whether by the College or by the officer) brief reasons for the termination will be given to the Corporation. Following changes to Designated Assessors, the policy will be amended accordingly and republished.

5.3. The Lead Assessor will co-ordinate the training of the Designated Assessors in the use of this procedure and will produce an annual report to the Corporation on the number of occasions when this procedure has been formally invoked and their outcome.

## **6. Procedure for making a disclosure**

- 6.1. Information which a worker reasonably believes tends to show one or more of the situations given in Section 4 should promptly be disclosed to one of the Designated Assessors.
- 6.2. Workers are encouraged to identify themselves when making a disclosure. If an anonymous disclosure is made, the College will not be in a position to notify the individual making the disclosure of the outcome of action taken by the College. Anonymity also means that the College will have difficulty in investigating such a concern. The College 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.
- 6.3. For further guidance in relation to this policy and procedure, or concerning the use of the disclosure procedure generally, employees should speak in confidence to one of the Designated Assessors.

## **7. Procedure for investigation of a disclosure**

- 7.1. When a worker makes a disclosure, the College will acknowledge its receipt, in writing, within a reasonable time.
- 7.2. The College will then determine whether it believes that the disclosure is wholly without substance or merit. If the College considers that the disclosure does not have sufficient merit to warrant further action, the worker will be notified in writing of the reasons for the College's decision and advised that no further action will be taken by the College under this policy and procedure. Considerations to be taken into account when making this determination may include the following:
  - If the College is satisfied that a worker does not have a reasonable belief that suspected malpractice is occurring; or
  - If the matter is already the subject of legal proceedings or appropriate action by an external body; or
  - If the matter is already subject to another appropriate College procedure.
- 7.3. When a worker makes a disclosure, which has sufficient substance, or merit warranting further action, the college will take action, it deems appropriate (including action under any other applicable College policy or procedure). Possible actions could include internal investigations; referral to the College's auditors; or referral to relevant external bodies such as the police, OFSTED, Health and Safety Executive, or the Information Commissioner's Office.
- 7.4. If appropriate, any internal investigation could be conducted by
  - a) a designated assessor, or b

- b) a manager of the college without any direct association with the individual to whom the disclosure relates, or
  - c) by an external investigator appointed by the College as appropriate.
  - d) Depending on the seriousness of the concern raised and the seniority of the worker making the disclosure, it would be appropriate for a senior manager or a designated officer, such as the Clerk to the Corporation, to investigate the concern.
- 7.5. The investigation will be carried out in an expeditious fashion; however, no timescales are set, as different types of concerns will require varying time for investigation.
- 7.6. All communications with the worker making the disclosure will be in writing and sent to the worker's home address rather than through the College's internal mail or email. If investigations are prolonged, the College will keep the worker concerned updated as to the progress of the investigation and an estimated timeframe for its conclusion.
- 7.7. Any recommendations for further action made by the College will be addressed to the Principal or the Chair of the Corporation as appropriate in the circumstances. The recipient will take all steps within their power to ensure the recommendations are implemented unless there are good reasons for not doing so.
- 7.8. The worker making the disclosure will be notified of the outcome of any action being taken by the College under this policy and procedure within a reasonable period of time. If the worker is not satisfied that their concern has been appropriately addressed, they can appeal against the outcome by raising the issue with the Principal or the Chair of the Corporation within 10 working days. The Principal or the Chair of the Corporation will make a final decision on action to be taken and notify the worker making the disclosure.

## **8 Safeguards for workers making a disclosure**

- 8.1. A worker making a disclosure under this procedure can expect their matter to be treated confidentially by the College and, where applicable, their name will not be disclosed to anyone implicated in the suspected wrongdoing without their prior approval.
- 8.2. The College will take all reasonable steps to ensure that any report of recommendations, or other relevant documentation produced by the College does not identify the worker making the disclosure without their written consent, or unless the College is legally obliged to do so, or for the purposes of seeking legal advice.
- 8.3. No formal disciplinary action will be taken against a worker on the grounds of making a disclosure made under this policy or procedure. This does not prevent the College from bring disciplinary action against a worker where the College has grounds to believe that a disclosure was made maliciously, or where a disclosure is made outside the College without reasonable grounds.
- 8.4. A worker will not suffer dismissal or any detrimental action or omission of any type (including informal pressure or any form of victimisation) by the College for making a disclosure in accordance with this policy and procedure. Equally, where a worker is threatened, bullied, pressurised or victimised by a colleague for making a disclosure, disciplinary action will be taken by the College against the colleague in question.

## **9 Disclosure to external bodies**

- 9.1. This policy and procedure has been implemented to allow workers to raise disclosures internally within the College. A worker has the right to make a disclosure outside the college where there are reasonable grounds to do so and in accordance with the law.
- 9.2. Workers may make a disclosure to an appropriate external body prescribed by the law. This list of 'prescribed organisations and bodies can be found in on the [www.gov.uk](http://www.gov.uk) website.
- 9.3. Workers can also make disclosures on a confidential basis to a practicing solicitor or barrister.
- 9.4. If a worker seeks advice outside of the College, they must be careful not to breach any confidentiality obligations or damage the College's reputation in so doing.

## **10 Accountability**

- 10.1. The College will keep a record of all concerns raised under this policy and procedure (including cases where the College deems that there is no case to answer and therefore no action should be taken) and will report to the Corporation's Audit Committee on an annual basis as appropriate.

## **11 Further assistance for workers**

- 11.1. The College will not tolerate any harassment or victimisation of workers who make disclosures. If, at any stage of this procedure, a worker feels that they are being subject to informal pressures, bullying or harassment due to making a disclosure, they should raise this matter, in writing, to the Principal or the Chair of Corporation as appropriate.
- 11.2. A worker making a disclosure may want to confidentially request counselling or other support from the College's occupational health service. Any such request for counselling or support services should be addressed to Sarah Knowles (Deputy Principal, Performance and Development). Such a request would be made in confidence.
- 11.3. Workers can also contact the charity Public Concern at Work for confidential advice on whistleblowing issues. Their contact details are:  
[www.pcas.org.uk](http://www.pcas.org.uk)  
3<sup>rd</sup> Floor, Bank Chambers, 6-10 Borough High Street, London SE1 9QQ  
Whistleblowing Advice Line: 020 7404 6609

## **Policy and Procedure Review and Approval**

This policy and procedure has been approved, by the Audit Committee of the Corporation, on 18<sup>th</sup> November 2013.

It will be reviewed annually by the Lead Designated Assessor and any changes proposed will be brought to the Audit Committee of the Corporation for approval.

## Notes for assessors on implementation of the Whistleblowing Policy

### Legal changes 2013 include:

- A complaint must be made in the public interest
- College will be vicariously liable for the actions of one worker against another worker

### The purpose of a Whistleblowing Policy:

As confirmed by the new ACAS Code of Practice on Disciplinary and Grievance Procedures, a Whistleblowing policy is separate from a grievance procedure. A policy signals to staff the appropriate way to raise their concerns. By implementing a policy and actively promoting it, senior management can demonstrate their commitment to hearing about concerns early and staff will be reassured that they will be protected if they raise concerns. Further, by clearly indicating that there are safe external routes to raise concerns, i.e. to a prescribed regulator, staff will be even more assured that raising the matter internally is appropriate. Once implemented the policy must be promoted to ensure that staff are in no doubt about the avenues open to them in such an eventuality.

### Approach to implementation:

One problem is the reluctance many employees feel to 'snitch' on colleagues. Despite often showing great courage and determination, whistleblowers are not necessarily popular with their colleagues, particularly where the disclosure threatens people's jobs. HR managers have a duty to support sincere whistleblowers and it is in the long-term interests of the organization that they should do so.

Managers may need training to ensure matters brought to their attention are resolved in line with the correct policy and in a way that will cause least damage to the organization. That training includes developing understanding of what qualifies as a disclosure under the act, and what does not. Again, all policies need to have the full support of directors and senior managers and be communicated to employees.

### Assessors notified of a concern:

- Have a responsibility to ensure that concerns raised by a discloser are taken seriously
- Should where appropriate investigate properly and make an objective assessment of the concern
- Should keep the discloser advised of progress
- Have a responsibility to ensure that the action necessary to resolve a concern is taken.

### Difference between a personal grievance and a whistleblowing complaint:

A grievance will concern an employee personally, i.e. the individual may have a complaint about:

- His or her pay or working hours
- The amount of work that he or she is expected to do
- Working conditions, or
- Being bullied by fellow workers.



A protected disclosure, on the other hand, will concern the conduct of another person in the workplace (whether or not that conduct affects the discloser personally), in circumstances where the discloser genuinely believes that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment.

Examples of the difference between a grievance and a protected disclosure:

<b>Grievance</b>	<b>Protected disclosure</b>
An employee's complaint about the type of work that he or she is being asked to do, for example if it is not covered by his or her contract	A disclosure that an individual has been instructed to carry out actions that he or she genuinely believes to be illegal e.g. to falsify a tax return
An employee's complaint that he or she has received insufficient safety training	A disclosure that safety rules within the workplace are routinely being flouted, thus endangering safety
An employee's complaint about the hours that he or she is expected to work	A disclosure that the requirements imposed by the company on a group of staff represent a breach of the working time legislation

**Some 'Dos and Don'ts':**

<b>Do ...</b>	<b>Don't</b>
... encourage an individual who has come forward to disclose some sort of wrongdoing to explain fully the evidence that he or she has of the wrongdoing	... get angry or defensive if an individual raises allegations of malpractice within an organization
... ask the whistleblower to provide specific examples of the conduct that he or she has observed or the evidence obtained to support the allegations of malpractice	... allow personal views about the whistleblower to influence the assessment of the allegations that he or she is making
... distinguish between facts and opinions	... react negatively to a disclosure, or adopt a judgmental attitude
... appreciate that it can be very stressful for the person alleging wrongdoing	... dismiss an employee's disclosure as an exaggeration, or as trivial, unless there is clear evidence that the allegations are unfounded
... let the whistleblower know that he or she has the College's support	... attempt to suppress evidence of wrongdoing
... listen attentively to what the employee has to say and take it on board	... penalize an individual for making a disclosure that proves unfounded if, despite making a mistake, he or she had reasonable grounds to suspect the wrongdoing.

*For further information see 'Whistleblowing: Guidance for Colleges' published by the Association of Colleges, September 2013*



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