



UK COLLEGE  
OF BUSINESS AND COMPUTING

# Whistleblowing Policy and Procedure

Reviewed by	AW
Reviewed on	October 2019
Approved	October 2019
Next reviewed by	October 2020
Version	V2

# **Whistleblowing Policy and Procedure**

## **1. Introduction and Statement**

The College is dedicated to ensuring it provides the highest possible principle of honesty, integrity, accountability and transparency. It endeavors to conduct its business in a responsible manner, taking into account the criteria established by external educational bodies and partnerships.

This policy encourages individuals to raise serious concerns, which are in the public interest, at a senior level within the College.

This policy meets the legal requirements set out in the Employment Rights Act 1996 ensuring the protection and fair treatment of individuals who raise a concern in the public interest. This will protect them against any detrimental treatment following their disclosure.

## **2. Operating Principles**

In operating this policy, the Company will:

- observe the statutory provisions of Part IVA of the Employment Rights Act 1996 “Protected Disclosures”, which gives legal protection to workers against being dismissed or penalised in any way as a result of making a protected disclosure for specified acts of serious malpractice;
- ensure that all workers are able to view a copy of this policy in a format which they can readily understand, particularly catering for those workers whose first language is not English and those who have difficulty with reading;
- ensure that workers are aware that we expect those who have serious concerns about any malpractice to come forward and voice those concerns;
- stress that the workers can and should raise the matter when it is purely a concern, as long as they have a reasonable belief in the relevant wrongdoing, rather than have them wait for proof or investigate the matter themselves;
- operate a supportive environment where individuals feel confident about raising concerns in relation to malpractice and provide easy-to-follow procedures for raising those concerns;
- ensure that individuals receive a considered response to their concerns and are provided with a right of appeal if they are not satisfied with the outcome;
- reassure workers that they will be protected from any possible reprisals or victimisation if they have raised their concerns in good faith using the procedures within this policy and/or the protected disclosure provisions under Part IVA of the Employment Rights Act 1996;
- emphasise to managers and workers that victimising people who raise genuine concerns is a disciplinary offence, as is raising an allegation maliciously;
- Keep records of proceedings and treat them as confidential in accordance with the Company’s policy to meet its obligations under the Data Protection Act 1998 and General Data Protection Regulation 2018; and review the aims, objectives and content of this policy regularly and monitor its operation to ensure it is achieving its purpose.

## **3. Purpose & Scope**

It should be emphasised that this policy is intended to advise and assist individuals who believe that they have uncovered malpractice or serious wrongdoing, so long as the correct avenues are followed in line with the policy. The policy has not been designed to query financial or business decisions relating to the College unless these involved elements of malpractice. It should also not

be used to re-evolve personal concerns that have already been addressed under the Grievance and/or the Disciplinary process. Those that make a disclosure where there is no public interest will not be protected under this policy and may not be protected under the Act.

This policy applies to those “workers” who have some form of contractual relationship with the Company as set out below.

- Employees with permanent or fixed-term contracts.
- The self-employed, other than those in business on their own account.
- Contract and agency workers, where the worker is supplied by a third person to the Company.
- Trainees, i.e. those who, while not employees, are nevertheless provided with work experience as part of a training course or are provided with training for work (or both) by the Company.

The policy and procedure also applies to the Company’s workers working off-site, i.e. where the workplace is not under the control or management of the Company.

#### **4. Concerns covered by the Policy**

The policy is intended to deal with serious or sensitive concerns about wrongdoings or malpractice which are in the public interest, covering the following areas:

- Criminal activity
- Failure to comply with a legal obligation
- Miscarriage of justice
- Danger to health and safety
- Damage to the environment
- Academic malpractice
- Financial malpractice or impropriety or fraud
- Improper conduct or unethical behavior
- Attempts to conceal any of the above

This list is an indication of the forms of malpractice which may cause concern, but is not restricted in any sense. Workers are encouraged to report any form of malpractice causing them concern. It is not necessary to show that malpractice has been committed, is being committed or is likely to be committed, but merely that the worker has, or had, a reasonable belief that this was, or likely to be the case.

The disclosure can relate to any wrongdoing anywhere in the world: it is not restricted to matters purely arising just in the UK.

#### **5. Concerns outside the scope of this Policy**

The policy does not cover complaints against action taken, or intending to be taken, by the College, the management team or colleagues which has placed, or could place, an individual at a particular disadvantage in respect of his or her duties, terms and conditions of employment, or relationships with co-workers. If an individual wants to raise such a complaint, he or she should use the College’s Complaint or Grievance Procedure.

For the avoidance of doubt, this procedure is outside the scope of the statutory minimum grievance procedures as set out under Part 3 of the Employment Act 2002 and the Employment Act 2002

(Dispute Resolution) Regulations 2004. However, while the College expects individuals to use this policy to raise concerns about malpractice, it has a duty to point out that an individual has a right to use the College's Grievance Policy if it relates to a complaint against the Company and it is the individual's intention that the disclosure should constitute a grievance, rather than raising a stand-alone concern under this policy.

## **6. Protection against Victimisation**

The College appreciates that the decision to raise a concern can be a difficult one to make, not least because there may be a fear of reprisal from those who may be committing malpractice or others who may be involved. The College will not tolerate victimisation of any person who raises a concern in good faith, even if it transpires that there is no basis for concluding that any malpractice has occurred, or is likely to occur, and will take appropriate steps to protect people raising such concerns, including taking disciplinary action against anyone who is found to be pursuing any form of retaliation or who has threatened to do so.

## **7. Confidentiality and Anonymity**

The College recognises that an individual may not wish to be identified during the course of raising a concern. In such circumstances, the College will do everything possible to protect the person's identity and will not disclose it without their consent. If it proves impossible to resolve the matter without revealing the individual's identity, the member of management dealing with the matter will discuss with them whether and how to proceed. In some cases, however, confidentiality cannot be absolutely guaranteed as the very fact of the investigation may serve to reveal the source of the information. The statement of the person raising the concern may be needed as part of evidence against the perpetrator, or legal proceedings at a later stage may require the individual to appear as a witness.

## **8. Raising Concerns Maliciously**

Just as the College will seek to protect those who raise concerns in good faith, it will also protect those against whom claims are made, where the person raising the claim does so maliciously, knowing it to be untrue. The College will take disciplinary action against any employee who raises a concern maliciously, which may include summary dismissal. As far as issues of confidentiality are concerned, if it can be shown that there are reasonable grounds to suspect that an individual has acted maliciously, a court may order his or her identity to be revealed.

## **9. Procedure for making a Disclosure**

### **General principles**

- The Company encourages workers to raise the matter when it is just a concern, as long as they have a reasonable belief in the wrongdoing, rather than have them wait for proof or investigate the matter themselves. Acting sooner, rather than later can avoid any further potential damage.
- It is recognised that in some circumstances it may be inappropriate to go through the stages below either because of the nature of the employment relationship, e.g. the complaint relates to the worker's immediate superior, or where the matter is of sufficient gravity or urgency. In these circumstances, a worker may start the process at Stage 2.

- The Company recognises that setting out a concern in writing is not easy especially for those workers whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should seek help from a work colleague.
- Individuals are encouraged to put their name to their allegation. Concerns expressed anonymously are much less powerful but will be considered by the Company in the context of: (i) the seriousness of the issues raised; (ii) the credibility of the concern; and (iii) the likelihood of confirming the allegation from attributable sources.
- In the event of any language difficulties, (e.g. a non-English speaking employee or a deaf employee) at a meeting, the Company will arrange for an interpreter so that the employee is not disadvantaged. Further, the Company will also consider making reasonable adjustments for any worker where the nature of his or her disability may place the individual at a substantial disadvantage.
- A worker raising a concern will be allowed reasonable time off, with pay, to seek advice for any meeting which forms part of the process and to be accompanied by a work colleague employed by the Company.

## **Informal Processes**

Any concern regarding a workplace situation should firstly be raised with the employee's direct line manager and/or head of department. However, where the wrongdoing is of a serious and sensitive nature and where knowledge of who the person involved is may cause difficulties, the formal process should be used.

## **Formal Process**

### **Stage 1**

The worker should, wherever possible and appropriate, seek to resolve the concern informally with the appropriate person(s) responsible for the matter. However, if the concern cannot be resolved by this approach or if such an approach is not appropriate because of the nature of the concern, then the worker has the right to use the formal approach by raising the concern with a senior manager or HR in writing, including the nature of the concern and why it is believed to show malpractice and that disclosure is in the best interest of the public (all relevant evidence should also be included).

### **Stage 2**

Following the receipt of disclosure, each step will be taken without any unreasonable delay, however, given the nature of malpractice investigations, timescales may be prolonged, but the worker will be kept up-to-date with progress. HR or the Manager informed will determine whether the senior management of the Company should be informed of the concern. Following this the next steps within this stage may be:

- An investigation involving the worker who raised the concern, to discuss the evidence they have provided relating to the concern including, documents, witness names etc.
- If required, the senior management may consider a possible independent investigator.
- Senior management will consider the report following investigations. If there is evidence that malpractice has taken place, the senior management team will be responsible for taking appropriate action.

- During and following the investigation, the senior management team will liaise with the worker who raised the claim, informing them of the processes, outcome and actions.
- On completion of the investigation the worker will receive the outcome and actions in writing.

### **Stage 3**

If the worker is not satisfied with the outcome from the 1<sup>st</sup> and 2<sup>nd</sup> stage, then he or she has the right of appeal at Stage 3.

- Following the outcome of the investigation, if action taken does not resolve the concern from the worker's perspective, the worker can appeal in writing to the senior management team within 5 working days of receipt of the original decision.
- The person dealing with the appeal should be senior to those who dealt with the initial concern.
- The designated senior manager will write to the worker inviting him or her to an appeal hearing to discuss the matter, confirming the right to be accompanied.
- At the appeal hearing the decision taken at Stage 2 will be considered against the worker's basis for appeal. The designated senior manager will notify the worker in writing of the outcome with reasons, normally within 10 days of the appeal hearing. A copy of the minutes from the meeting will be sent with notification of the outcome of the appeal.
- The decision at this stage will be final. There will be no further right of appeal.

### **Operating principles for investigating complaints**

- An investigation to establish all relevant facts will be conducted as sensitively and speedily as possible.
- Investigations will be carried out by an independent investigator who has had no previous involvement in the matter.
- In some instances, it might be necessary to refer the matter to an external authority for further investigation, such as the Police.
- At the end of the investigation, the investigator will analyse all the evidence and make findings of fact, based upon the balance of probabilities, as to whether malpractice has occurred or is likely to occur.

## **10. Raising Concerns Externally**

The College recommends that the concerns are raised internally in the first instance. This policy provides individuals with the opportunity and protection they need to raise concerns internally and the Company would therefore expect that in all cases, raising concerns internally would be the most appropriate and reasonable action to take.

There may be occasions when an individual, whilst believing honestly and reasonably that any information and allegations are true, feels unable to raise their concerns internally. In this event, they should consider raising the matter with the appropriate regulator who is listed in the Public Interest Disclosure Prescribed Persons Order 1999.

Workers should note that if the disclosure is made public to the media, in the majority of cases the individual will lose their whistleblowing legal rights.

## **11. Independent Confidential Advice**

If any person is unsure whether or how to raise a concern, they can get free confidential independent advice from Public Concern at Work (020 7404 6609).

## **12. Keeping Records**

The College recognises that it is important and in the interest of both employer and worker to keep written records during the concern raising process. Records will include:

- the nature of the concern raised;
- a copy of the worker's letter setting out the nature of the concern;
- the independent investigator's report;
- the Company's written response, including any action taken and the reasons for action taken;
- whether there was an appeal and, if so, the written response setting out the outcome;
- Minutes of meetings and subsequent developments.

Any documentation or records will be treated as confidential and kept in accordance with the General Data Protection Regulation and the Data Protection Act 1998.

Minutes of meetings will be given to the worker who has raised a concern, although in certain circumstances (for example to protect a witness), the Company reserves the right to withhold information to protect confidentiality in respect of a third party who has been involved in the case.

## **13. Monitoring and Review**

The board will be responsible for monitoring the effectiveness of this policy and taking remedial action where it is apparent that the policy and procedures may not be achieving the Company's overall aim.

## **14. Contractual status**

This policy does not form part of any worker's contract with the Company, however, the Company expects that its principles and procedures should be followed by all workers within its scope. The Company reserves the right to change the content of this policy, as necessary, from time-to-time and will communicate any significant changes, within one month of the changes taking place.

# Whistleblowing policy flow chart

