

# Whistleblowing Policy and Procedure

Policy Review Area	HR
Lead Manager	Clerk, Board of Governors
Originated	1998
Last updated	September 2013
Reviewed by Board	December 2015
Next Review	December 2018

## **SECTION ONE: POLICY STATEMENT**

### **1. Legislative background**

The Public Interest Disclosure Act 1998 (PIDA) creates a framework for the private, public and voluntary sectors, to ensure that concerns about serious malpractice are properly raised and addressed in the workplace. It also protects individuals against victimisation, detriment or dismissal for making disclosures of information in the public interest.

Although the Act does not require organisations to set up whistleblowing procedures, the College has written this Procedure to demonstrate its commitment to the highest standards of accountability and openness in management and governance.

### **2. Definitions**

Whistleblowing is not legally defined. However, Lord Borries (QC Business, Ethics and Accountability) described it as:

*“Whistleblowing is the disclosure by an employee (or professional) of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or his fellow employees”*

### **3. Policy aims**

The Board of Governors of City College Brighton and Hove is committed to:

- 3.1 safeguarding against malpractice and taking appropriate measures should it occur;
- 3.2 Providing a safe learning and working environment for all students, staff and other visitors;
- 3.3 making sure that the college is administered honestly at all times;
- 3.4 providing a rapid and robust mechanism for staff to raise genuine concerns about malpractice, in good faith and without fear of reprisal,
- 3.5 Making sure that allegation of suspected malpractice within the College are thoroughly investigated either internally or by the appropriate external authorities.
- 3.6 Respecting the confidentiality of those raising concerns, should it be specifically requested. [Exceptions to this may be necessary if the nature of the complaint means involving outside bodies e.g. Police].

### **4. Responsibilities under the Whistleblowing Policy and Procedures**

**The Board of Governors of City College Brighton and Hove** is responsible for

making sure that the college complies with its legal duties, under the Public Information Disclosure Act 1998, for approving its Policy statement and monitoring any cases of Whistleblowing at least annually. The Board delegates this responsibility to its Audit Committee.

**The Executive Team and Senior Leadership Team** are responsible for ensuring that the Corporation's policy is implemented through a set of robust procedures, that the Policy and Procedures are accessible to all staff and that individual staff are aware of their responsibilities.

**Line Managers** are responsible for following the Whistleblowing procedures should they receive a disclosure from a team member, and for ensuring that all members of their team act appropriately in accordance with the procedures.

**The Clerk to the Corporation** shall be the reporting assessor, and is responsible for ensuring that reports on any Whistleblowing incidents are made to the Audit Committee.

**5. Related college policy and procedures:**

- College complaints policy and procedures
- Staff grievance policy and procedures
- Safeguarding Policy and Procedures (including Prevent)
- Anti-fraud policy\*
- Anti-bribery policy\*
- Staff disciplinary and dismissal policy and procedures

\*These policies form part of the College Financial Regulations

## **SECTION TWO: WHISTLEBLOWING PROCEDURES**

### **1. USE OF THE PROCEDURES**

1.1 These Procedures are to inform staff of the appropriate way to raise serious concerns outside their line management structure.

1.2 Whistleblowing is not to be used to raise grievances. The college has well-established Grievance Procedures designed to resolve and redress employee concerns relating to their employment.

1.3 Under no circumstances should employees or members of the Corporation talk to the media or to any other person or body without first exhausting the proper procedure.

1.4 The procedures should be used if serious malpractice is discovered within the College, for example:

- Fraud
- Corruption
- Financial irregularity
- Bribery
- Dishonesty
- Criminal Activity
- Creating or ignoring a serious risk to safeguarding of young people and vulnerable adults
- Creating or ignoring a serious risk to the radicalisation of young people and vulnerable adults under the Prevent Duty.
- Miscarriage of justice
- Creating or ignoring a serious risk to health and safety
- Creating or ignoring a serious risk to security

### **2. TO WHOM DOES THE PROCEDURE APPLY?**

The Public Interest Disclosure Act 1998 (PIDA) protects "workers" who disclose information in the correct manner. "Workers" are defined as individuals who are:

- a. employed under a contract of employment;
- b. employed under any other contract under which they perform personally any work or services for another party;
- c. agency workers;
- d. work experience trainees;
- e. homeworkers.

### **3. PROTECTED GROUND FOR DISCLOSURE**

3.1 To qualify for protection for disclosure, a Discloser must:

- a. be acting in good faith;
- b. have reasonable grounds for believing the information disclosed indicates the existence of one or more of the following:
  - i. that a criminal offence has been committed, is being committed, or is likely to be committed;
  - ii. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject;
  - iii. that a miscarriage of justice has occurred, is occurring or is likely to occur;
  - iv. that the health and safety of any individual has been, is being or is likely to be put in danger. It must indicate a greater danger than is associated with the normal use of the process/product, or a danger that is not usually associated with it;
  - v. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

3.2 A Discloser will also be protected if he/she has raised the matter previously with the College, or decided against raising it because of a reasonable fear of being penalised or because he/she believed that evidence would be concealed or destroyed.

3.3 Making false or malicious allegations could constitute gross misconduct and will be dealt with under the College disciplinary procedures.

#### **4. STAGE ONE: Initial Disclosure**

4.1 As a first step, the member of staff should consider whether it is more appropriate to use one of the other college procedures, such as the grievance procedure, to raise the issue;

4.2 Where it is considered inappropriate to use any other college procedure, the member of staff should normally raise the concern, in the first instance, with their line manager. A governor should normally raise concerns with the Clerk to the Corporation.

4.3 If a member of staff feels unable to follow this route, for good reason, or wishes to discuss the concern in confidence, he/she can disclose the matter to one of the College's designated assessors.

The designated assessors are named in the Annex to this procedure and shall include:

- The Clerk to the Corporation as the Reporting Assessor
- Two other members of staff nominated by the Chief Executive Officer (one male, one female)
- The Safeguarding Officer (but only in cases where the concerns relate to malpractice under the child protection and Prevent legislation)

4.4 The role of the Designated Assessor is to:

- a. Advise the Discloser of the appropriate route to lodge the complaint if it does not fall under the College's Whistleblowing Procedure
- b. Initiate investigations into complaints which do fall within the scope of the Whistleblowing Procedure
- c. Make recommendations to management for appropriate remedial action if required, and monitor management action to implement these recommendations;
- d. Make regular reports to the Chair of the Corporation and to the Audit Committee, via the Clerk to the Corporation.

4.5 Concerns may be raised orally, or in writing, to one of the Designated Assessors. The discloser should provide as much supporting evidence as possible about the disclosure and the grounds for the belief of malpractice.

4.6 In the event that an allegation is made against one of the Designated Assessors, the complaint should be made to one of the other Designated Assessors

## **5. STAGE TWO: Information Gathering and Recommended Action**

5.1 On receipt of the concern, the Designated Assessor will offer to interview the Discloser within seven working days, or immediately if there is risk of loss of life or serious harm. The purpose of the interview will be for the Designated Assessor to obtain as much information as possible from the Discloser about the grounds for the belief of malpractice.

5.2 Within 10 working days of the interview (or after the initial disclosure if no interview takes place), or immediately if there is any danger of loss of life or serious harm, the Designated Assessor will recommend what further steps should be taken. Recommendations may include one or more of the following:

- a. That the matter should be investigated internally using appropriate College Managers, the Audit Committee or other investigators appointed by the College such as the internal auditors;
- b. That the matter should be investigated through an independent external investigators;
- c. That the matter should be dealt with under another college procedure, such as the disciplinary procedure or the grievance procedure;
- d. That the matter should be reported to the Funding Agency/ies, other regulators or relevant public authority;
- e. That college procedures should be reviewed and amended;
- f. That the matter should reported to the police;
- g. That no further action should be taken (see 5.5 for grounds).

5.3 At this stage, the Discloser will be asked whether he or she wishes their identity to be disclosed and will be reassured with regard to protection from possible reprisals or victimization.

5.4 The Discloser will be notified of the intended response to his or her disclosure and the reasons for it, as soon as is reasonably practicable.

5.5 The grounds upon which the Designated Assessor may recommend no further action are as follows:

- a. that, on the balance of probabilities, there is no evidence that malpractice has occurred, is occurring or is likely to occur;
- b. that the Discloser is not acting in good faith;
- c. that the matter is already (or has been) the subject of proceedings under one of the college's other procedures
- d. that the matter is already the subject of legal proceedings, or has already been referred to one of the external agencies listed in 5.2.

## **6. STAGE THREE: Investigation**

6.1 If the Designated Assessor considers an investigation to be the appropriate next step, he/she will initiate this investigation, aiming to convey an initial conclusion to the Discloser in writing within 28 days. However, if there is danger of loss of life or serious harm, the investigation will be completed within less than 14 days;

6.2 Should the investigation require more time than the time limits given above to reach a conclusion, this will be communicated to the Discloser, with reasons for the extension;

6.3 Any recommendations made under this procedure should be made by the Designated Assessor to the Chief Executive Officer (CEO) unless it is alleged that the CEO is involved in the alleged malpractice, in which case the recommendations should be made to the Chair of the Audit Committee. If the CEO decides not to implement any such recommendations in full, that decision will be notified in writing by the Reporting Assessor to the Chair of the Board of Governors and the Chair of the Audit Committee, together with the reasons for it;

6.4 If no further steps by the college are proposed, the Discloser will be given reasons, by the Designated Assessor, for this.

## **7. Right to Appeal and Public Disclosure**

7.1 If the Discloser has not had a response within a satisfactory time limit, considers that the complaint has not been dealt with appropriately, or has reasons to believe that all the Designated Assessors are or were involved in the alleged malpractice, he/she may:

- a. Appeal within 20 working days to the Chair of the Board of Governors
- b. Raise the matter directly with the Skills Funding Agency, Department for Education, other relevant public authority or the Police. Before taking any such action, the Discloser must inform the Designated Assessor

7.2 Once the channels laid out in this procedure have been exhausted, the Discloser has a right and a duty to publish his/her concerns publicly provided that he/she is:

- a. Acting in good faith;
- b. Believes, on reasonable grounds, that the information is accurate;
- c. Has not made the disclosure principally to obtain payment or personal gain;

7.3 Before taking any final course of action the Discloser should consider discussing the matter with an independent third party, e.g. a legal advisor, the Citizen Advice Bureau or Public Concern at Work Organisation, Suite 306, 16 Baldwins Gardens, London, EC1N 7RJ. Tel: 0207-404-6609.

## **8. Support for the Worker**

8.1 Confidential independent support will be offered to staff during and after the issues have been addressed in accordance with the College Welfare Guidelines.

8.2 Any worker can seek confidential legal advice about a concern and be protected in doing so.

8.3 Where a worker is in a union recognised by the College, disclosure to trade union officials will be protected under the Whistleblowing Procedures. In any event a disclosure by a union member for the purpose of obtaining legal advice from the union solicitor will be protected.

8.4 A worker who feels that he/she has been victimised or dismissed for making a protected disclosure can make an application to an Employment Tribunal for compensation.

## **9. Review of the Policy and Procedure**

The Board shall review its policy and procedure on Whistleblowing at least every three years through the Audit Committee, and more frequently if deemed necessary.