

HEREFORD COLLEGE OF ARTS

WHISTLEBLOWING/PUBLIC INTEREST DISCLOSURE PROCEDURE

Manager Responsible **Linda Watkins, Clerk to the Governors**

Issue Number: 3 (Three)
 Replacement to November 1999, October 2006

Approval Date: November 1999 (Board)
 October 2006 (CMG)
 August 2007 (update to reflect College name change)

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FURTHER EDUCATION CORPORATION**

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1. BACKGROUND

- 1.1 The recommendation of Lord Nolan in the second report of the Committee on standards in Public Life states that: "local public spending bodies should institute codes of practice on whistleblowing appropriate to their circumstances, which would enable concerns to be raised confidentially inside, and if necessary, outside the organisation"
- 1.2 The Public Information Disclosure Act ("PIDA") 1998 came into force in July 1999 and will protect 'Whistleblowers' who fear reprisal or victimisation.

2. DEFINITION OF WHISTLEBLOWING

- 2.1 There is no legal definition of 'Whistleblowing' either within European Community law or UK law. The term 'Whistleblowing' was previously used when an employee (or ex-employee) publicly discloses wrongdoing within an organisation. Such wrongdoing can include fraud and financial irregularities, serious mal-administration arising from the deliberate commission of improper conduct, unethical activities which may be of a criminal nature and dangerous acts or omissions which create a risk to health, safety of the environment. It does not include mismanagement, which may arise from, for example, weak management rather than malpractice. Lord Borrie QC has defined whistleblowing as "... 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 of his fellow employees."
- 2.2 The Public Interest Disclosure Act 1998 protects disclosure if the employee can show one of the following:-
 - 2.2.1 that a criminal offence has been committed, is being committed, or is likely to be committed;
 - 2.2.2 that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject;
 - 2.2.3 that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - 2.2.4 that the health and safety of any individual has been, is being or is likely to be damaged. 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.
 - 2.2.5 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.

- 2.2 The term 'Whistleblowing' includes both the raising of a matter internally as well as a wider disclosure. The Government has commented as follows:-

"The Nolan Committee has used the term 'Whistleblowing' to mean the confidential raising of problems within an organisation or within an independent review structure associated with that organisation, not in the popular pejorative sense of leaking information to the media. Both the First and Second Nolan Reports are consistent with the Government's position, which accepts the need for procedures whereby staff can raise issues of concern and conscience."

3. PURPOSE OF THE PROCEDURE

- 3.1 The procedure covers all employees (permanent, temporary, casual, full and part time) and members of the Board.
- 3.2 The procedure exists to uncover any suspected malpractice or a disclosure which is in the public interest. This extends to allegations of suspected fraud, malpractice, financial irregularity, corruption, bribery, dishonesty, criminal activities, miscarriages of justice and breaches of the code of conduct and where a serious risk to health, safety or the environment has been created or ignored.

N.B. IN the public interest must be distinguished from OF the public interest and matters which are simply interesting to the public.

- 3.3 The procedure does NOT exist for the promotion of grievance by individuals in relation to their personal employment situation or as appeals against decisions of management unless they involve malpractice, fraud, corruption etc.
- 3.4 The College has already established procedures for dealing with staff grievances, discipline, harassment and complaints.
- 3.5 The College also believes that the availability of this procedure will eliminate any reasonable grounds for employees going 'outside' the organisation before the internal mechanisms have been invoked and applied.

4. OBJECTIVES

- 4.1 The College, as a publicly funded organisation, is committed to the highest standards of honesty and integrity. The College seeks to ensure that its affairs are conducted with probity and that a culture of openness exists throughout the organisation. Such a culture should help all employees, at all levels, to feel free to report genuine concerns about malpractice without fear of reprisals.
- 4.2 The College is committed to:
- 4.2.1 fighting fraud, corruption and malpractice whether the perpetrators are internal or external to the College;
 - 4.2.2 encouraging genuine concerns to be raised by staff in a professional manner within the line management structure without fear of victimisation.
 - 4.2.3 respecting the confidentiality of the informer, to ensure that their name is not disclosed to the alleged perpetrator of fraud, corruption or malpractice without their prior approval;

- 4.2.4 facilitating mechanisms outside the line management structure to receive information relating to fraud, corruption and malpractice;
 - 4.2.5 actioning urgently a full and thorough investigation of all the concerns raised;
 - 4.2.6 reporting the outcomes and actions of the investigations, as is appropriate, to those concerned
- 4.3 The College considers the following as serious disciplinary offences:
- 4.3.1 Any management or staff action designed to prevent, deter or victimise an individual from raising a genuine concern relating to fraud, corruption or malpractice
 - 4.3.2 Any abuse of the whistleblowing system through maliciously raising unfounded allegations;
 - 4.3.3 Making public any allegation of fraud, corruption or malpractice without raising it internally and allowing full investigation through the established procedures

5. CONFIDENTIALITY

- 5.1 Any employee who raises a concern has an assurance that the matter will be treated as confidentially as is possible and appropriate. For example, the 'whistleblower's' identity will not be routinely disclosed to the alleged perpetrator of malpractice (unless the 'whistleblower' consents to disclosure). In all circumstances the 'whistleblower's' identity will only be disclosed with their specific consent.
- 5.2 To whatever extent it is necessary and appropriate to take steps to preserve such confidentiality, the College will make appropriate arrangements (e.g. evidence can be oral or can be given away from the usual workplace). This is not to suggest that written records will not be made, but any such documentation will avoid revealing the identify of the 'whistleblower'.
- 5.3 There has, however, to be suitable regard to the rights of anyone who is accused of malpractice including such a person's right to be fully informed of any case which he/she is required to answer.
- 5.4 As with other procedures, the College would not normally be obliged to respond to a totally anonymous representation.

6. ACTIONS AND RESPONSIBILITIES

6.1 REPORTING PROCEDURE

- 6.1.1 No particular mode of reporting of whistleblowing is prescribed.
- 6.1.2 Employees (or members of the Board) may telephone the Clerk to the Governors, or use a sealed envelope marked 'Whistleblowing - strictly confidential'
- 6.1.3 The latter device will ensure that the Clerk to the Governors alone opens the envelope in question.

- 6.1.4 In the event that the allegations or concerns relate to the Clerk to the Governors, employees or members of the Board should report the allegations to the Principal using the same procedure.

6.2 INVESTIGATION PROCEDURE

- 6.2.1 Responsibility for conducting investigations (into allegations against all staff and all Board Members) rests with the Clerk to the Governors.
- 6.2.2 The Clerk to the Governor's position as a postholder appointed by the Board is one of considerable relative independence, and at least as well-placed as any other position to afford objective, independent treatment of matters brought to his/her attention through this procedure.
- 6.2.3 The Clerk to the Governors will then investigate the matter. In the first instance, the Clerk to the Governors will proceed with due discretion to conduct a preliminary investigation.
- 6.2.4 Depending upon the nature of the complaint, the Clerk to the Governors may commission Internal or External Audit to take over the investigation.
- 6.2.5 Any criminal activity may necessitate police involvement.
- 6.2.6 In the event that the allegation or concerns relate to the Clerk to the Governors, the Principal will take responsibility for the investigative procedure.

6.3 TIMESCALE AND COMMUNICATION

- 6.3.1 The Clerk to the Governors (or Principal, if it is the Clerk to the Governors being investigated) will ensure that investigations are, at all stages, conducted as expeditiously as possible, taking into account the confidentiality considerations already identified above.
- 6.3.2 In any event, the Clerk to the Governors (or Principal, if it is the Clerk to the Governor being investigated) will send immediately a written acknowledgement to the home of the 'whistleblower'.
- 6.3.3 It is not possible to stipulate specific timescales due to the nature of investigations of this type but the Clerk to the Governor (or Principal, if it is the Clerk to the Governors being investigated) will keep the 'whistleblower' generally informed on the progress of the investigation.
- 6.3.4 When the outcome of an investigation is reached, the 'whistleblower' will be notified of that outcome and any recommendations again, at their home address.
- 6.3.5 Depending on the nature of the concern or allegation and whether or not it has been substantiated, the matter will be reported to the Corporation and/or the LSC.

6.4 ACCESS TO THE CORPORATION/FURTHER APPEAL

- 6.4.1 If the 'whistleblower' is not satisfied that their concern is being properly dealt with, they may after informing the Clerk to the Governors, refer to the Principal to investigate.

- 6.4.2 In respect of any allegations concerning the Principal, the 'whistleblower' may, after informing the Clerk to the Governors directly contact the Chair of Governors.
- 6.4.3 If a 'whistleblower' is not satisfied that his/her concern has been properly dealt with by the Principal, then the 'whistleblower' has the right to raise the matter, again, in total confidentiality, with the Chair of Governors.
- 6.4.4 The 'whistleblower' should make such representations by writing to the Chair of Governors Board in a sealed envelope (which should be clearly marked 'Chair of Governors - Strictly Private and Confidential).
- 6.4.5 The envelope should be handed to the Principal's PA for onward delivery to the Chair of Governors.

6.5 ACCESS TO EXTERNAL BODIES

- 6.5.1 Only after the above procedure is exhausted, is it appropriate for the 'whistleblower' to have a right of access to the appropriate external agency, e.g. the College Auditors, the LSC, DfES, HSE.
- 6.5.2 Before taking such action, the 'whistleblower' will inform the Clerk to the Governors (or Principal, as appropriate) in writing.
- 6.5.3 It should be noted that in cases of referral to external bodies, the individual may be protected under PIDA if the employer has authorised the disclosure, or in such extreme circumstances where the worker has not initially raised the issue with the employer in the belief that the evidence would be concealed or destroyed and there is no regulatory body to which genuine concerns can be expressed.

7. MALICIOUS ACCUSATIONS

- 7.1 As with other procedures, the College will take disciplinary action against any employee who makes deliberately false and/or malicious accusations under this Whistleblowing Procedure.

8. PROTECTING WHISTLEBLOWERS

- 8.1 Finally, assurance is hereby given that employees will be protected from dismissal or other unfavourable treatment for raising a genuine concern so long as he/she follows the whistleblowing procedure, in accordance with the Public Interest Disclosure Act 1998.
- 8.2 It is in the College's overall interest that employees should raise genuine concerns, even if such concerns ultimately prove to be unfounded.
- 8.3 The College will regard an employee's actions as legitimate in this context if the following conditions are met:
 - 8.3.1 the employee has followed the College Procedure for Whistleblowing
 - 8.3.2 the employee acted in good faith and not for personal gain or out of personal motive

- 8.3.3 the employee has, by following the Procedure, afforded the College the opportunity to investigate and to take appropriate action before any disclosure reaches the public domain.
- 8.4 In the rare case of an 'exceptionally serious' breach, which is of such magnitude as to justify bypassing the above procedure, the 'whistleblower' will only have statutory protection if:
- 8.4.1 he/she has acted in good faith in making the disclosure
 - 8.4.2 he/she reasonably believes that his/her allegation is substantially true;
 - 8.4.3 he/she is not acting for personal gain
 - 8.4.4 the disclosure is of a very serious nature; and
 - 8.4.5 it is reasonable in all the circumstances for the disclosure to be made
 - 8.4.6 at the time of the disclosure he/she reasonably believes he/she will be subjected to a detriment
 - 8.4.7 there is a reasonable belief that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he/she makes the disclosure to his/her employer;
 - 8.4.8 he/she has previously made the disclosure to his/her employer

Person responsible: Linda Watkins, Clerk to the Governors
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