



Whistleblowing Policy and Procedure **(Making a Disclosure in the Public Interest)** **2019/2020**

Introduction

Richmond upon Thames College is committed to the highest standards of openness, probity and accountability.

An important aspect of accountability and transparency is to ensure that we have a mechanism in place that enables staff and other members of the College to voice concerns in a responsible and effective manner. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. Nevertheless, where an individual discovers information which they believe shows serious malpractice or wrongdoing within the College then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in relatively minor instances the line manager would be the appropriate person to be told).

The Public Interest Disclosure Act (PIDA), which came into effect in 1998, gives legal protection to workers against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. The College has endorsed the provisions set out below so as to ensure that no members of staff should feel at a disadvantage in raising legitimate concerns.

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question financial or business decisions taken by the College nor should it be used to reconsider any matters which have already been addressed under harassment, complaint, grievance, disciplinary or other procedures. Once the "whistleblowing" procedures are in place, it is reasonable to expect staff to use them rather than air their complaints outside the College.

When there is any significant instance of fraud, irregularity or major weakness or breakdown in the accounting or other control framework is suspected or discovered, the Chair of the Audit Committee, ESFA and both external and internal auditors (if applicable) should be informed as soon as practically possible. Fraud should also be reported to Action Fraud to help identify systematic risks potentially affecting whole sectors.

Scope of Policy

This policy is designed to enable all workers of the College to raise concerns internally and at a high level and to disclose information which the individual believes shows malpractice or impropriety. 'Worker' has a wider meaning in the case of Whistleblowing. In addition to all employees, including Senior Postholders, it covers agency workers, contractors and apprentices. This policy is intended to cover concerns which are in the public interest and may at least initially be investigated separately but might then lead to the invocation of other procedures e.g. disciplinary. The law provides protection for workers who raise legitimate concerns about specified matters, these are called "qualifying disclosures". In order to be 'protected' a disclosure must relate to a specific subject matter and the disclosure must also be made in an appropriate way. Whistleblowing protection is confined to a qualifying disclosure made in the public interest by a worker who has a reasonable belief that:

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

is being, has been, or is likely to be, committed. It is not necessary for the worker to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The worker has no responsibility for investigating the matter - it is the College's responsibility to ensure that an investigation takes place.

The College is committed to be compliant with the Bribery Act 2010. The College actively encourages a culture of honesty and openness and all employees are required to raise with their manager or other designated person any issue that, in the employee's opinion, might constitute bribery or corruption.

The College has also noted the requirements of the Modern Slavery Act 2015 (the "Act"). We are determined that there will be no modern slavery or human trafficking in our College. Our policies evidence our commitment to act ethically and with integrity throughout our organisation. A report of concern in relation to those matters can be made under the protection of the whistleblowing policy.

PRINCIPLES

- Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. All workers of the College should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.
- Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially.
- No worker will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the worker will not be prejudiced because he/she has raised a legitimate concern.
- Victimisation of a worker for raising a qualified disclosure will be a disciplinary offence.

- If misconduct is discovered as a result of any investigation under this procedure the organisation's disciplinary procedure will be used, in addition to any appropriate external measures.
- Maliciously making a false allegation is a disciplinary offence.
- An instruction to cover up wrongdoing is in itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager/director, workers should not agree to remain silent. They should report the matter to a member of the Executive Team or a designated person.
- The Audit Committee must oversee the College's policies on and processes around fraud, irregularity, impropriety and whistleblowing and ensure:
 - The proper, proportionate and independent investigation of all allegations and instances of fraud and irregularity
 - That investigation outcomes are reported to the Audit Committee
 - That the external auditor (and internal auditor if applicable) has been informed and that appropriate follow-up action has been planned/actioned
 - That all significant cases of fraud or suspected fraud or irregularity are reported to the EFSA
 - Referral to the College's external auditors or relevant external bodies such as the police, Ofsted, the NSPCC, Health & Safety Executive or the Information Commissioner's Office.
 - Risks around fraud have been identified and controls put in place to mitigate them

Safeguards

i. Protection

The College recognises that the decision to report a concern can be a difficult one to make not least because of the fear of reprisal from those responsible for the malpractice. The College will not tolerate harassment or victimisation and will take action to protect the worker when they raise a concern in the reasonable belief that the matter is made:

- in good faith
- in the reasonable belief of the individual making the disclosure that it tends to show malpractice or impropriety and if they make the disclosure to an appropriate person (see below). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure. In an extreme case malicious or wild allegations could give rise to legal action on the part of the persons complained about.

Workers who 'blow the whistle' on wrongdoing in the workplace can claim unfair dismissal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) is automatically considered 'unfair' if it is wholly or mainly for making a protected disclosure. If a case goes to a tribunal and the tribunal thinks the disclosure was made in bad faith, it will have the power to reduce compensation by up to 25%.

- A worker will have to show three things to claim PIDA protection:
 - 1) that he or she made a disclosure
 - 2) that they followed the correct disclosure procedure
 - 3) that they were dismissed or suffered a detriment as a result of making the disclosure

Compensation for a successful whistleblowing claim is unlimited. The statutory cap for unfair dismissal compensation does not apply where the reason for the dismissal is an employee's protected disclosure, and this can result in a large compensation award.

ii. Confidentiality

The College will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

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.

It is important to note that any breach of confidentiality could put the organisation at significant risk. It is important therefore that workers are properly briefed by the HR team about the risks of perceived victimisation, the low threshold for "detriment", the dangers of constructive unfair dismissal and uncapped compensation.

No formal disciplinary action will be taken against a worker on the grounds of making a disclosure under this policy. This does not prevent the College from bringing disciplinary action against a worker where the College have grounds to believe that a disclosure was made maliciously or veraciously or where a disclosure is made without reasonable grounds.

A worker making a disclosure may want to confidentially request counselling or other support from the College's Occupational Health Service. Any such request should be addressed to the Assistant Principal HR and OD. Such requests would be made in confidence.

iii. Anonymous Allegations

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the College.

In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

iv. Untrue Allegations

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

Where feasible, the worker will be contacted when their concern has been investigated to ascertain whether they have suffered any detriment as a result of their whistleblowing. If at any time, either during or after the investigation, the worker feels that they have suffered any detriment as a result of whistleblowing, the worker is advised to contact their union representative or a member of the CLT.

Procedures for Making a Disclosure

On receipt of a complaint of malpractice, the member of staff who receives and takes note of the complaint, must pass this information as soon as is reasonably possible, to the appropriate designated investigating officer as follows:

- Complaints of malpractice will be investigated by the appropriate Senior Manager. If the complaint is related to a Senior Manager the Principal will consider the allegations and will appoint the most appropriate Senior Manager to investigate this. If the complaint is related to a Senior Postholder, this should be passed to the Principal and the Chair of Governors who will nominate an appropriate investigating officer.
- Complaints against the Principal should be passed to the Chair of Governors who will nominate an appropriate investigating officer.
- The complainant has the right to bypass the line management structure and take their complaint direct to the Chair of Governors. The Chair of Governors has the right to refer the complaint back to management if he/she feels that the management without any conflict of interest can more appropriately investigate the complaint.

Should none of the above routes be suitable or acceptable to the complainant, then the complainant may approach one of the following individuals who have been designated and trained as independent points of contact under this procedure. They can advise the complainant on the implications of the legislation and the possible internal and external avenues of complaint open to them:

1. Assistant Principal HR and OD
2. Director of Finance

In cases where a member of senior staff/Board of Directors is suspected of impropriety or behaviour in line with one or more of the areas set out in this policy, the worker should make the disclosure to a prescribed person rather than the employer for an independent investigation to be completed. A list of prescribed persons and bodies can be found on the Department for Business, Innovation and Skills website.

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

Timescales

Due to the varied nature of these sorts of complaints, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

The investigating officer, should as soon as practically possible, send a written acknowledgement of the concern to the complainant and thereafter report back to them in writing the outcome of the investigation and on the action that is proposed. If the investigation is a prolonged one, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded.

If there is evidence of criminal activity, then the investigating officer should inform the police. The College will ensure that any internal investigation does not hinder a formal police investigation.

All responses to the complainant should be in writing and sent to their home address.

Investigation Procedure

The investigating officer will take the following steps:

- Carry out an initial assessment to determine the scope of any investigation
- Obtain full details and clarifications of the complaint.
- Inform the member of staff against whom the complaint is made as soon as is practically possible. The member of staff will be informed of their right to be accompanied by a trade union or other representative at any future interview or hearing held under the provision of these procedures.
- The investigating officer should consider the involvement of the College auditors and the Police at this stage and should consult with the Principal. The Chair of Governors will be consulted with should the complaint be about the Principal. The Chair of Governors and the Principal will be consulted with should the complaint be about a Senior Postholder.
- The allegations should be fully investigated by the investigating officer with the assistance where appropriate, of other individuals / bodies.
- A judgement concerning the complaint and validity of the complaint will be made by the investigating officer. This judgement will be detailed in a written report containing the findings of the investigations and reasons for the judgement. The report will be passed to the Principal as appropriate or the Chair of Governors – where appropriate.
- The Principal will decide what action to take. Complaints relating to the Principal will be referred to the Chair of Governors who will be required to make a decision regarding the action to be taken. Complaints relating to a Senior Postholder will be referred to the Principal and the Chair of Governors who will be required to make a decision regarding the action taken. If the complaint is shown to be justified, then they will invoke the disciplinary or other appropriate College procedures.
- The complainant should be kept informed of the progress of the investigation(s) and informed when the investigation has been concluded and where appropriate, of the final outcome.
- Whistleblowing complaints and outcomes will be reported to the Audit Committee
- If appropriate, a copy of the outcomes will be passed to the College Auditors to enable a review of the procedures.

Whilst the College cannot guarantee that every employee will receive their desired outcome, the concern will be dealt with fairly and appropriately and it is hoped that the outcome will be satisfactory. However, if the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Principal or one of the designated persons described above.

If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the College recognises the lawful rights of workers and ex-workers to make disclosures to prescribed persons (such as HM Revenue & Customs, CQC, the Health and Safety Executive, the Audit Commission, the Financial Conduct Authority, the Serious Fraud Office, the Independent Police Complaints Commission, the Environment Agency, the Competition and Markets Authority or Ofsted) or, where justified, elsewhere.

Accountability

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).

All concerns raised under this policy will also be reported to the Assistant Principal HR and OD who will report to the Board on an annual basis as appropriate.

Further Assistance for Workers

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 College Principal/CEO.

Complainants who are unsure whether their complaint should be raised under this procedure can seek independent advice by calling the Independent Charity Protect on their Advice Line (020 3117 2520) or by email whistle@protect-advice.org.uk

| Version | Effective from | Summary of change | Prepared by | Approved by |
|---------|----------------|---|----------------|------------------------------------|
| 1 | 05.07.17 | AoC model policy 2013 | Zoe Lawrence | July 2017 |
| 2 | 24.06.20 | Policy updated to legally approved version including sector updates and contact information for workers | Sarah Connerty | ARC – 24.06.20 Board – 08.07.20 |