

Board of Management

Date of Meeting	Wednesday 21 June 2017
Paper No.	BoM6-L
Agenda Item	14.1.3
Subject of Paper	Whistleblowing Policy
FOISA Status	Disclosable
Primary Contact	Paul Clark; College Secretary/Planning
Date of production	12 June 2017
Action	For Approval

1. Recommendations

1.1 The Board of Management is invited to review the revised Public Interest (Whistleblowing) Policy, and confirm approval subject to any agreed changes.

2. Purpose of report

2.1 The purpose of this paper is to enable confirmation of approval of the College's Public Interest Disclosure Policy , this having been agreed at the meeting of the Audit Committee on May 24 2017. This version is a significant draft revision (Version 2).

3. Context

3.1 The Public Interest Disclosure Act 1998, which came into effect on 1 January 1999, provides legal protection to employees against being unfairly dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns.

3.2 This Policy and the associated Procedure is consistent with, and supportive of, the College's stated value of Integrity, Honesty and Transparency.

3.3 While the 1998 Act is designed to protect "workers", the College Policy and Procedure apply to both College staff and students.

3.4 Note that the Enterprise and Regulatory Reform Act 2013 removes the requirement that a whistleblower must make a protected disclosure 'in good faith'. Instead, tribunals will have the power to reduce compensation by up to 25% for detriment or dismissal relating to a protected disclosure that was not made in good faith.

4. Impact and implications

4.1 The purpose of this Policy and Procedure is to reassure staff and students that it is safe and acceptable for them to raise such concerns internally. It is thereby more likely that College management will: (a) be forewarned of potential malpractice, (b) investigate it, and (c) take such steps as are reasonable to remove any unwarranted danger. In this way, the Policy and Procedure aim to deter and facilitate the early detection of malpractice.

Appendices:

Appendix 1:

Public Interest Interest (Whistleblower) Policy

Public Interest Interest (Whistleblower) Policy Equality Impact Assessment



Public Interest Disclosure (Whistleblowing) Policy

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Public Interest Disclosure (Whistleblowing) Policy

1. Introduction

1.1. The College is committed to the highest standards of openness, honesty, decency, and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of the Scottish Government, the Scottish Funding Council and the Nine Principles of Public Life in Scotland.

1.2. The Public Interest Disclosure Act 1998, which came into effect on 1 January 1999, amends the Employment Rights Act 1996 to give legal protection to employees against being unfairly dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns.

1.3 The Enterprise and Regulatory Reform Act 2013 introduced a series of changes to the Public Interest Disclosure Act 1998 including protection for whistleblowers from bullying or harassment by co-workers and a requirement that whistleblowers must have a reasonable belief that the disclosure is in the public interest. However, there is no longer a requirement that the disclosure is made in good faith.

2. Purpose and Aims

2.1. This policy and related procedure is designed to encourage employees and workers, including agency workers and contractors, to raise, at a high level, concerns and/or disclose information which the individual believes shows malpractice, while protecting employees' rights not to suffer detriment. While students do not fall within the scope of the legislation, this policy and related procedure is intended to extend the same assurance to students who disclose information that they will suffer no detriment.

3. Scope

3.1 A number of policies and procedures are already in place relating to grievance, discipline, complaints, centre malpractice etc. This policy is intended to cover concerns which are in the public interest and may (at least initially) be investigated separately, but which might then lead to the invocation of such procedures.

These might include:

- 3.1.1. Financial irregularities, malpractice, impropriety or fraud.
- 3.1.2. Dangers to health and safety or the environment.
- 3.1.3. Breaches of contract.
- 3.1.4. Negligence.
- 3.1.5. Serious maladministration.
- 3.1.6. Corruption
- 3.1.7. Bribery.
- 3.1.8. Criminal activity.
- 3.1.9 Academic or professional malpractice.
- 3.1.10 Improper conduct or unethical behaviour / practices.
- 3.1.11 Failure to comply with or breaches of a legal obligation.
- 3.1.12 Attempts to conceal any of the above.

4. Policy Statement

4.1 There is a relationship of trust and confidence between an employer and an employee and, in terms of the law, neither party should, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage that relationship of trust and confidence. However, where an individual discovers information which they believe shows malpractice/wrongdoing within the organisation then this information should be disclosed without fear of reprisal, and may be made independently of line management.

4.2 This policy is intended to assist individuals who have a genuine concern about suspected wrongdoing or danger to College activities. It is not designed to question financial or business decisions properly taken by the College; nor may it be used to

reconsider any matters which have already been addressed under grievance or disciplinary procedures.

4.3 Protection

This policy is designed to offer protection against dismissal or victimisation to those employees or other members of the College who disclose such concerns provided disclosure is made:

4.3.1 Where the individual has a genuine concern in relation to alleged wrongdoing.

4.3.2 Where the whistleblower is victimised in breach of the Act, he/she, irrespective of the validity of the disclosure, can bring a claim to an Employment Tribunal. It is of note that there is no financial cap on compensation in whistleblowing claims, and no requirement for a minimum period of service.

4.3.3 Staff must not threaten nor retaliate against whistleblowers in any way. If staff are involved in such conduct they may be subject to disciplinary action. However, if the College concludes that a whistleblower has made false allegations maliciously or with a view to personal gain, the whistleblower may be subject to disciplinary action.

4.4 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 at their request, and the College will endeavour to maintain confidentiality, recognising that this may hinder 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.

4.5 Anonymous Allegations

4.5.1 This Policy encourages individuals to identify themselves when making any disclosures of the nature referred to above. Disclosures expressed anonymously will only be considered at the discretion of the College.

4.5.2 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.

4.6 Allegations not supported

A whistleblower does not have to prove that the facts or allegations disclosed are true. As long as the worker reasonably believes that the relevant failure has occurred or is likely to occur, it does not matter that the belief subsequently turns out to be wrong, or that the facts alleged don't support a relevant breach in law.

If, however, an individual makes malicious allegations or allegations for personal gain, disciplinary action may be taken against him or her.

5. Definitions

"Whistleblower" - The person disclosing information in the public interest.

"Designated Person" – The person within the College to whom any such disclosures should be submitted. This would normally be the Principal or appointed Depute (see Procedure).

6. Responsibilities

Designated Person The Designated Person will consider the information made available to them and decide on the form of investigation to be undertaken and ensure appropriate follow up action is completed. (See Procedure).

Investigating Officer The Investigating Officer will be determined by the Designated Person. The Investigating Officer will undertake the role independently, and will report their findings to the Designated Person.

7. References

7.1. Policy Framework

Associated Policies and Procedures	Title
Policy Framework	Governance
Policy	Public Interest Disclosure (Whistleblowing) Policy
Procedure	Public Interest Disclosure (Whistleblowing) Procedure

7.2. Other College Policies and Procedures

Policy / Procedure	Title
See 3.1 "Scope" above.	

7.3. External References

Source	Title
http://www.legislation.gov.uk/ukpga/1998/23/contents	Public Interest Disclosure Act 1998
http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted	The Enterprise and Regulatory Reform Act 2013

8. Document Control and Review

Approval Status	Draft	
Approved by	Audit Committee	
Date Approved	21 June 2017 (proposed)	
EQIA Status	EQIA Conducted?	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
Proposed Review Date	31 June 2020	
Lead Department	Executive	
Lead Officer(s)	College Secretary/Planning	
Board Committee	Audit Committee	
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9. Revision Log

Version Date	Section of Document	Description of Revision
Version 2 21 Jun 2017	All	Revision and update of legacy GMC Policy & Procedure. Separate Policy and Procedure documents created as per CoGC templates, with appropriate updates. EQIA completed. Reference to changes to legislation under The Enterprise and Regulatory Reform Act 2013.

Equality Impact Assessment (EQIA)

The General Equality Duty and protected characteristics are detailed at the end of this form.

Refer to the EQIA Guidance Document for more Information on how to complete this form.

Title of Policy, Procedure, or Relevant Practice:	Public Interest Disclosure (Whistleblowing) Policy	
Lead Officer:	College Secretary	
Type of Policy, Procedure, or Relevant Practice:	New: <input type="checkbox"/>	Existing/Reviewed/Revised: <input checked="" type="checkbox"/>
Date of Assessment:	10 March 2017	

Step1: Outcomes and Potential Impacts

1A. What are the intended consequences (outcomes) of the policy, procedure or relevant practice?

This policy and related procedure is designed to allow employees or other members of the College to raise, at a high level, concerns and/or disclose information which the individual believes shows malpractice, while protecting employees' rights not to suffer detriment.

The Policy is designed to protect from detriment any member of staff who reports malpractice, including breach of College values, improper conduct or unethical behaviour / practices, failure to comply with or breaches of a legal obligation, and/or attempts to conceal any of the above.

1B. Could this policy, procedure or relevant practice potentially result in differential impact on groups with protected characteristics?

Ye: If "Yes", go to **Step 2** and then complete the remainder of this form

No: If "No", or "Unforeseen" go to **Step 6** and then complete the remainder of this form

Step 2: Consideration of Evidence and Information

2A. What information do you plan to use as the basis of this EQIA?

(What information is available and if information is lacking, how will you address this shortfall?)

It is recognised that the student & staff population represent the full range of protected characteristics and that there is a duty to make the make the Policy and Procedure accessible, fair, and effective for all.

2B. Please indicate potential positive, neutral and negative impacts in relation to each protected characteristic.

(What does the information indicate about potential positive, neutral and negative impacts on people who share protected characteristics? Are the needs of people with different characteristics met? Does the policy, procedure, or relevant practice affect some groups differently?)

Protected Characteristic	Detail the Potential Positive, Neutral, or Negative Impacts with Reference to Evidence, or Information
Age	Not apparent
Protected Characteristic	Detail the Potential Positive, Neutral, or Negative Impacts with Reference to Evidence, or Information
Disability	To recognise that individuals may have different communication needs; so for example written communications should not be

	required, and any format of submission should be accepted. Use clear, logical language. Policy and Procedure should be easily found on the College website.
Gender Reassignment	Use Inclusive positive language throughout, e.g. “their rather than “he” and/or “she”.
Protected Characteristic	Detail the Potential Positive, Neutral, or Negative Impacts with Reference to Evidence, or Information
Marriage & Civil P’ship *	Neutral
Pregnancy & Maternity	Recognise that pregnancy leave might present a difficulty – manage and support those wishing to make a submission.
Protected Characteristic	Detail the Potential Positive, Neutral, or Negative Impacts with Reference to Evidence, or Information
Race	Recognise possibility of, for example, cultural pressures affecting an individual’s willingness to disclose.
Religion or Belief	No apparent impact
Protected Characteristic	Detail the Potential Positive, Neutral, or Negative Impacts with Reference to Evidence, or Information
Sex	Recognise that some might think that their submission may not be taken seriously eg a women disclosing to a man.
Sexual Orientation	Not apparent

Step 3: Consider Alternatives and Mitigation
3A. Are you able to reduce any potential negative impacts identified above? Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/> N/A: <input type="checkbox"/> If N/A, go to Step 4
3B. If “Yes”, what arrangements could be implemented to reduce any potential negative impacts identified above? Policy and Procedure have been revised under guidance from EDI team
3C. If “No”, it may be appropriate if the policy, procedure, or relevant practice affects groups differently where this is a proportionate means of achieving a legitimate aim. If this is the case, please provide explanatory details to objectively justify this decision. (Note: you may be required to obtain legal advice to verify your decision. If you suspect this may be the case, please contact Diversity & Equalities for direction.)

Step 4: Compliance with General Equality Duty
<p>4A. Does the policy, procedure or relevant practice comply with the three parts of the general duty:</p> <ul style="list-style-type: none">• Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act.• Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.• Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <p>Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/> For 4B- 4D, please detail relevant groups who share a protected characteristic and refer to evidence/information</p>
<p>4B. If “Yes”, how? Make accessible and supportive as possible to make a disclosure. Manage and support those wishing to make a submission, to reassure the discloser that they would be taken seriously, and there would be no negative consequences</p>
<p>4C. If “No”, what are the negative impacts and the associated risks? None</p>
<p>4D. If “No”, What arrangements exist, or could be implemented to better comply with the general duty? Not applicable</p>

Step 5. The Involvement of Individuals, Groups and Organisations Representing Protected Characteristics
5A. Who has been involved in the undertaking of this assessment? (Please detail the staff/student/stakeholder groups) ED&I team
5B. How successful has this been, and what changes can be made to improve this process in the future? Successful, as differential impacts were suggested and identified.
5C. If you have further involvement to carry out, please list who you are going to involve and how?

Step 6: Making a decision and outcome
6A. What is your decision? (Please select an option from the drop down menu options using the arrow on the right) B. A negative impact is not foreseen, and on the contrary the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.
6B. Are you able to introduce the policy, procedure, or relevant practice without making any changes? Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
6C. If “Yes”, clearly explain upon which basis this decision was made Due consideration given of access issues, and facilitating disclosure.
6D. If “No”, what changes will you make before implementation?

Step 7: Taking action and monitoring
7A. What action will we take? Review and approval of the Policy prior to implementation.
7B. Who will take that action? College Secretary
7C. When will that action be completed? By 24 th May 2017 (Board of Management Audit Committee).
7D. Once implemented, how will the policy, procedure, or relevant practice be monitored? By SMT/ Audit Committee as appropriate.

Miscellaneous

Additional Information (please insert any supporting information, or data here)

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Sign-off, authorisation and publishing

For College records, but not for publishing publically

- The information contained within this EQIA needs to be confirmed and approved as the completed EQIA will be published on the College web-site.
- As such, EQIAs must be approved by a Director or above.
- Ask a Director to review and sign off the EQIA (an electronic signature will suffice, as long as a paper copy follows).
- Following completion, send an electronic copy to both the Diversity & Equalities Manager and Director of Planning and Administration.

Name:	Paul Clark
Position:	College Secretary
Signature:	
Date:	

Summary of the General Duty of the Equality Act 2010

Components	Due Regard
A public authority must, in the exercise of its functions, <i>have due regard</i> to the need to:	Having due regard specifically involves taking steps to:
a)	Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act.
b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.	a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic * b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it. c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.	a) Tackle prejudice. b) Promote understanding.

‘Due regard’ comprises two linked elements: proportionality and relevance. The weight that public authorities give to equality should be proportionate to how relevant a particular function is to equality. In short, the more relevant a function is to equality, then the greater the regard that should be paid.

The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and Civil Partnership *
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation

* Although Marriage and Civil Partnership applies to section a) in employment only, this will be considered for **all** stakeholders