

DERWENTSIDE COLLEGE

Public Interest Disclosure Policy and Procedure

1. Purpose

The purpose of this Policy and Procedure is not only to promote a culture of openness and accountability but also to ensure that effective arrangements are in place to deal with any legitimate concern that is raised about serious malpractice or misconduct in a manner which is fair, consistent and expeditious.

2. General principles

- 2.1 The College is committed to the highest standards of integrity and accountability both in its strategic and operational management and in its corporate governance.
- 2.2 As evidence of this commitment, the Board of the Corporation has –
 - 2.2.1 adopted a Code of Conduct for its own performance;
 - 2.2.2 instituted an annually updated register of interests (including gifts, hospitality etc) for Board members and for those College employees with major financial responsibilities;
 - 2.2.3 accepted the 'Seven Principles of Public Life' as proposed by the Nolan Committee;
 - 2.2.4 adopted a Policy on Public Access to Information which informs staff and members of the public how to get access to the above documents, to Board papers and to the Board itself;
 - 2.2.5 adopted a Fraud and Irregularity Policy.
- 2.3 Serious malpractice will not be tolerated and should be prevented or identified through the normal process of management. On occasion a situation might arise where that process is ineffective in dealing with malpractice. In such a situation, it is important that employees and other workers have the means to make a bona fide disclosure, the encouragement to do so, the knowledge that the matter will be treated as confidential, and the assurance that they will suffer no repercussions.
- 2.4 It is the responsibility of every employee to disclose any incidence of serious malpractice that comes to his or her attention – and the College acknowledges that an individual who does this, in good faith, will be protecting the reputation of the College and helping to maintain public confidence in its management and governance.
- 2.5 The College is determined to operate wholly within the legal requirements of the Public Interest Disclosure Act (PIDA) 1998.
- 2.6 Misuse of this Policy and Procedure knowingly to make false or malicious allegations may constitute an act of gross misconduct which could lead to dismissal.

2.7 This Policy and Procedure applies to all College employees, workers, trainees and apprentices and to all members of the Board of the Corporation.

3. Concern and disclosure

3.1 The kinds of concern or disclosure for which this Policy and Procedure should be used must relate to the following kinds of serious malpractice or misconduct –

- 3.1.1 criminal acts (e.g. fraud, financial irregularity, bribery, theft, corruption, blackmail);
- 3.1.2 acts or omissions which may create a risk to health and safety and/or the environment;
- 3.1.3 failures to comply with legal obligations;
- 3.1.4 miscarriages of justice;
- 3.1.5 acts or omissions by the Board in the conduct of Corporation business which are illegal, reckless or beyond its powers;
- 3.1.6 deliberate concealment of information concerning these kinds of malpractice or misconduct.

3.2 In raising a concern or making a disclosure an individual must –

- 3.2.1 be acting in good faith;
- 3.2.2 reasonably believe that the substance of the disclosure is true;
- 3.2.3 be seeking no personal gain or advantage – and declare any personal interest in the matter;
- 3.2.4 be raising a matter that is of a genuinely serious nature;
- 3.2.5 be clear that the matter is not covered by any other College procedure;
- 3.2.6 be sure to use this Policy and Procedure inside the College, and not raising the matter externally/publicly except as a last resort where he or she has a reasonable belief that
 - raising the matter internally will result in personal detriment or victimisation
 - evidence will be destroyed
 - the previous raising of the matter under this Policy and Procedure has been ignored, obstructed or otherwise not acted upon.

3.3 This Policy and Procedure is **not** designed to –

- 3.3.1 replace the Staff Grievance Procedure – which should be used where an employee feels aggrieved about an issue relating to his or her employment;
- 3.3.2 replace the procedures of Health and Safety Policy – which should be used for routine health and safety matters;
- 3.3.3 require an individual making a disclosure, or having suspicions, of malpractice to have more than a reasonable belief that this is the case (i.e. he or she does not have to have proof).

4. Procedure

4.1 The College has designated the following postholders to receive concerns or disclosures of alleged malpractice of the type listed in Clause 3.1 –

- 4.1.1 the Clerk to the Corporation;
 - 4.1.2 the Director of Finance and Resources (where the Clerk is either unavailable or implicated).
- 4.2 An individual seeking to raise a concern or make a disclosure should do so, either orally or in writing, to the Clerk (or Director of Finance and Resources) who will convene a meeting with that individual as soon as possible in order to –
- 4.2.1 establish the nature of the concern or disclosure by listening carefully and taking notes;
 - 4.2.2 assess whether the concern or disclosure falls within the ambit of this Policy and Procedure – advising the individual of the appropriate route to follow if it does not do so;
 - 4.2.3 inform the individual that his or her concern or disclosure will be treated seriously, sensitively and in confidence;
 - 4.2.4 reassure the individual if he or she is anxious about his or her own career or personal safety;
 - 4.2.5 advise the individual of the likely timescales within which the matter will be dealt with.
- 4.3 Having established the nature of the concern or disclosure, the Clerk (or Director of Finance and Resources) will immediately –
- 4.3.1 inform the Principal (or the Chair of the Corporation if the Principal is implicated, or a non-implicated Board member if both the Principal and the Chair are implicated);
 - 4.3.2 decide, in liaison with the Principal (or the Chair or other Board member), whether the matter should be –
 - resolved by agreed action without the need for investigation;
 - investigated internally;
 - referred to the Internal College Auditors;
 - reported to the Police.
- 4.4 Within ten working days of receiving a concern or disclosure, the Clerk (or Director of Finance and Resources) will write to the individual (at his or her home address) –
- 4.4.1 acknowledging that the concern or disclosure has been received;
 - 4.4.2 indicating how the matter will be dealt with;
 - 4.4.3 giving an estimate of how long it will take to provide a final response;
 - 4.4.4 whether an investigation will take place – and if not, why not.
- 4.5 If the matter is to be investigated internally, the Clerk (or Director of Finance and Resources) will undertake a formal investigation into the concern or disclosure –
- 4.5.1 the purpose of an investigation is to enable the College to establish a fair and balanced view of the facts of a concern or disclosure;
 - 4.5.2 the amount of investigation required will depend on the complexity of the concern or disclosure and will vary from case to case;
 - 4.5.3 an investigation will involve –

- enquiring into the circumstances surrounding the concern or disclosure – reviewing any relevant documents, interviewing employees and others, and taking witness statements;
 - giving the employee an opportunity to offer an explanation;
 - taking a balanced view of the information that emerges;
 - reaching a decision whether or not there are sufficient grounds to substantiate the concern or disclosure.
- 4.5.4 all employees must co-operate fully with an investigation – including informing the College of relevant witnesses, disclosing relevant documents and attending any investigative interviews if requested (at which an employee may be accompanied by a trade union representative or colleague);
- 4.5.5 an investigation will be complete and an initial conclusion will be conveyed to the complainant within twenty days (except where there is an immediate danger of loss of life or serious injury, in which case the initial investigation will be completed without delay).
- 4.6 At the conclusion of an investigation, the Clerk (or Director of Finance and Resources) will make recommendations to the Principal (or the Chair or other Board member) for any remedial or other action, as appropriate.
- 4.7 Where the Clerk him or herself wishes to raise a concern or make a disclosure about the conduct of Corporation business, the actions he or she should take are set out in the Further Education Funding Council's *Guide for Clerks* and successor documents –
- 4.7.1 firstly, the Clerk must make every effort to resolve the difficulty through the avenues available within the College, ensuring that his or her concerns are properly understood and have been adequately considered by those concerned by –
- setting out the reasons for the concern in a letter to the Chair to the Corporation and the Principal;
 - informing the Chair to the Corporation's Audit Committee if the issue is relevant to that committee's terms of reference;
 - reporting his or her concerns to a meeting of the relevant committee or to the full Corporation – asking for this to be recorded in a publicly available minute;
 - informing the College's external auditors.
- 4.7.2 secondly, the Clerk should obtain legal advice from the College solicitor about whether the Corporation is acting, or has acted, inappropriately or beyond its powers.

5. Appeal

- 5.1 An individual who has raised a concern or made a disclosure and who is not satisfied that his or her concern has been properly investigated, has the right to raise the matter in confidence with the Principal (or the Chair to the Corporation if the Principal is implicated, or a non-implicated Board member if both the Principal and the Chair are implicated) and to receive a written response within ten working days.

- 5.2 If the concern or disclosure is found to be unsubstantiated, the individual has the right of access to an appropriate external body –
- 5.2.1 the individual will be requested to put in writing, to the Clerk (or Director of Finance and Resources), the reasons for being unable to accept the decision;
 - 5.2.2 the College will make a written response to the individual within ten working days of his or her letter;
 - 5.2.3 if the College's written response still does not satisfy the individual, he or she may wish to exercise the right to approach appropriate external bodies (e.g. M.P, Councillor, LLSC, National Audit Office).

6. Confidentiality

- 6.1 Confidentiality is an important part of this Policy and Procedure and every individual involved in its operation, whether raising a concern, making a disclosure or involved in any investigation, is responsible for observing the high level of confidentiality that is required.
- 6.2 The College will keep a confidential record of concern, disclosures and investigations, which will include the names of the people involved, dates, the nature of the incident(s), the action taken, and any follow-up and monitoring information –
- 6.2.1 the College will keep such records for 6 years;
 - 6.2.2 where a concern or disclosure was unsubstantiated, this will be clearly stated in the College's record;
 - 6.2.3 all sensitive records will be treated confidentially and in compliance with the requirements of the Data Protection Act 1998.
- 6.3 Breach of confidentiality may give rise to disciplinary action under the *Staff Dismissal Procedure* and *Staff Disciplinary Procedure*.

7. Protection of employees

- 7.1 Any employee who raises a concern or makes a disclosure under this Policy and Procedure, or who participates in any investigation under this Policy and Procedure, in good faith, will be protected from any form of intimidation or victimisation that occurs as a result of his or her involvement.
- 7.2 Any employee who considers that he or she may have been subjected to any such intimidation should seek support from the Clerk (or Director of Finance and Resources) or from the Personnel Department – or he or she may alternatively (or additionally) raise a complaint under the *Staff Grievance Procedure*.
- 7.3 It is a disciplinary offence, for which summary dismissal may result, to intimidate, victimise or retaliate against an employee who has, in good faith, raised a concern, made a disclosure or supported or assisted with an investigation under this Policy and Procedure.
- 7.4 Any employee who, after investigation, is found to have provided false information or to have acted in bad faith in respect of a concern, disclosure or

investigation under this Policy and Procedure will be subject to disciplinary action under the *Staff Dismissal Procedure* and *Staff Disciplinary Procedure*.

8. Equality and diversity

- 8.1 An analysis of the effects on equality and diversity of this Policy and Procedure has been undertaken
- 8.2 This analysis indicated that there was no potential differential negative effect on the grounds of age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, sexual orientation, marriage or civil partnership – and no potential breach of the Equality Act 2010.
- 8.3 The operation of this Procedure will be monitored by the Personnel Manager in order to establish that no unlawful discrimination is taking place and to identify opportunities for the enhancement of equality of opportunity and fair treatment.

9. Review

- 9.1 This Procedure will be regularly reviewed by the Personnel Manager to take account of the outcomes of the monitoring process, legislative changes and developments in good practice.
- 9.2 As part of the review, the Personnel Manager will seek and consider the views of the College's employees and of the recognised trade unions.
- 9.3 The outcome of the review will be reported to the Director of Finance and Resources and, by him, to the Senior Management Team.

CWf/AD
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