

<b>Title:</b>	Public Interest Disclosure Policy & Procedure (‘Whistleblowing’)
<b>Updated by:</b>	Head of Governance March 2020
<b>Approved by:</b>	Audit Committee & Corporation March 2020
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<b>Associated documents/policies:</b>	Gifts & Hospitality Policy, Anti-Fraud Policy, College Financial Regulations, Staff Disciplinary Policy & Procedures, Staff Grievance Policy& Procedures, Dignity at Work, Code of Conduct

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## **1. Introduction**

Bath College, as a publicly funded organisation, is committed to the highest standards of honesty and 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 is essential in order to prevent such situations occurring and to address them when they do occur.

Members of staff, contractors working for the College and learners may be the first to realise that there may be something wrong within the College. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues, tutors or to the institution. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

### **Policy Principles**

1.1 This document is intended to encourage and enable individuals to safely raise concerns which are in the public interest.

1.2 Individuals can make a disclosure without fear of victimisation, subsequent discrimination or disadvantage. Anyone who raises a genuine concern will have significant legal protection under the Employment Rights Act 1996 – Part IVA, Part V and Part X and the Public Interest Disclosure Act 1998.

1.3 The College will manage a disclosure in line with best practice and current legislation, and will not tolerate harassment or victimisation (including informal pressures) of anyone raising a concern under this procedure in good faith, (whether or not it proves well-founded), and will take disciplinary action against anyone conducting such harassment or victimisation.

1.4 The discloser must be acting in good faith and have reasonable grounds for believing that the information being disclosed indicates a case of malpractice within the College and is in the public interest; disciplinary action will be taken in response to maliciously unfounded disclosures.

1.5 If the discloser is already the subject of disciplinary or other procedures relating to their employment, those procedures will not be halted as a result of their disclosure.

1.6 The College has a range of policies and procedures e.g. discipline, grievance, bullying and harassment, health and safety, recruitment and selection and safeguarding which deal with standards of behaviour at work and which do not fall within the definition of a “qualifying disclosure”. Employees are encouraged to use the provisions of these procedures when appropriate before looking to this policy.

If an individual is uncertain whether something is within the scope of the policy, they should seek advice from the Human Resources Team.

## 2. Whistleblowing

Whistleblowing is the popular term used when someone who works in or for an organisation raises a concern about a possible fraud, crime, or danger of other serious risk that could threaten customers, colleagues, the public or an organisation's own reputation.

Whistleblowing can help alert employers to risks such as:

- Fraud or financial irregularity
- Corruption, bribery or blackmail
- Criminal offences or failure to comply with any legal or regulatory obligation
- Miscarriage of justice
- Endangering the health or safety of any individual
- Causing damage to the environment
- Improper use of authority
- Serious financial maladministration arising from the deliberate omission or improper conduct
- Academic / professional misconduct
- Misreporting performance data

A whistleblower is a person who raises a genuine concern relating to any of the above. If you have any genuine concerns related to suspected wrongdoing or danger affecting the college's activities, you should report it under this policy.

For clarification about whether something is within the scope of this policy, please seek advice, in confidence, from the Human Resources Team.

## 3. Raising a Concern

Individuals are encouraged, in the first instance, to raise any concerns with their line manager either in person or in writing. The line manager may be able to agree a way of resolving the concern quickly and effectively. In some cases, they may refer the matter to an Assessor.

If an individual believes that the matter is more serious or that the line manager has not addressed the concern, or the preference is not to raise it with them for any reason, the individual should contact an Assessor.

The Principal will ensure that *at least* three members of staff of appropriate experience and standing within the College are designated at any time for the purposes of this procedure as Assessors. The designated Assessors in Bath College are the:

- Director of Finance & Corporate Services
- Director of HR & OD
- Head of Governance
- Quality Manager
- HR Advisor

If the concerns relate to the Principal or a member of the Governing body, the concerns should be reported to the Head of Governance who will consult with the Chair of the Corporation (or Chair of Audit Committee if the concern relates to the Chair). If the concerns relate to the Head of Governance, the reporting procedure is to the Principal who will consult with the Chair of the Corporation,

The College may choose to appoint external assessors to investigate matters if the circumstances seem to suggest this would be appropriate.

The Principal will ensure that sufficient resources are available to the Assessors to assist them with managing both their regular College workloads, as well as to provide them with appropriate support should the nature of their involvement in the disclosure process prove stressful and/or lengthy.

#### **4. Disclosure Procedure**

This procedure applies to disclosure by an employee, an agency contract worker, an independent consultant employed or engaged by the institution, a learner at the institution or a member of the Corporation, who has a genuine concern that is in the public interest

The person making the disclosure should, as soon as practicable, disclose in confidence the grounds for their belief to any of the Assessors. An Assessor may decline to become involved on reasonable grounds. Such grounds include:

- previous involvement
- interest in the matter concerned
- incapacity or unavailability, or
- that an Assessor is satisfied, that another Assessor would be more appropriate to consider the matter in accordance with this procedure (it will be for the Assessor who has been approached to ensure that another Assessor has been appointed or, if they have an interest in the matter concerned, that they ensure HR is supporting the person raising the concern to identify an alternative Assessor. )

Any disclosure to an Assessor under this procedure shall, wherever possible, be in writing. The person making the disclosure should provide as much supporting written evidence or other documentation as possible about the grounds for their belief.

An Assessor will arrange a meeting as soon as possible to discuss the concerns with the person raising it. A colleague or union representative may accompany them, but this companion must respect the confidentiality of the disclosure and any subsequent investigation. A written summary of the concern will be recorded, and a copy will be provided to the individual. An indication of how it is proposed to deal with the matter will be provided within two working days after the meeting or, if the matter needs more consideration, an indication of when this information is expected to be provided.

## 5. Confidentiality and Anonymous Disclosures

Staff should be able to feel able to voice whistleblowing concerns openly. However, if an individual wishes to raise a concern confidentially, the College will seek to keep their identity secret. If it is necessary for anyone investigating the concern to know the identity of the person who raised it, this will be discussed with the individual. It should be noted that the law does not compel an organisation to protect the confidentiality of a whistleblower. However, it is considered best practice to maintain that confidentiality, unless required by law to disclose it.

Where a disclosure is made anonymously this should not be ignored and discarded. Rather, an Assessor should determine and document, following consultation with the Principal and any other pertinent parties (provided they are not themselves the subject of the alleged malpractice), whether there appears to be sufficient grounds, on the evidence available and depending on the seriousness of the allegation, for any investigation to be instigated.

## 6. Third Party Disclosures

Third parties, with no direct involvement with the College, may also attempt to raise concerns under this procedure or via the Fraud Policy and the nature of these concerns should be considered on their merits as indicated above under 'Anonymous Disclosures'.

However, it should be notified to the Discloser, by an Assessor, that the same protection afforded to staff and learners under the College procedure cannot be extended or guaranteed to external third parties, although protection **might** be provided under the wider legislation covered by the Public Interest Disclosure Act 1998. The Discloser should seek independent legal advice on this matter.

## 7. Advice & Guidance for Assessors

As each disclosure will be unique, the Assessors will have automatic access to advice and guidance from the Principal (unless it is claimed that the Principal is involved in the alleged malpractice) and, if appropriate, from the Chairs of the Corporation and the Audit Committee. For more detailed and complex referrals, the Assessors should also have access to the College's Internal Auditors and to its legal representatives.

## 8. Further Steps

As soon as practicable after the interview, i.e. within no more than two working days, or after the initial disclosure if no interview takes place, the Assessor will recommend to the Principal, what further steps, *if any*, should be taken. Such recommendations may include one or more of the following:

- that the matter should be more appropriately investigated internally by the College and/or by the College's external or internal auditors or other investigators appointed by the College

- that the College's Disciplinary Procedures should be invoked.
- that a member of staff or a learner should be given the opportunity to seek redress through the College's grievance or complaints procedures
- that the matter should be reported to the police.
- that the matter should be reported to the Education & Skills Funding Agency.
- no further action is taken.
- that simultaneous investigations, i.e. under this procedure and under the disciplinary procedures are undertaken.

All such decisions should be documented for subsequent review. The grounds on which the Assessor may recommend that no further action by the institution should be taken are as follows:

- that the Assessor is satisfied that the person making the disclosure does not have a reasonable belief that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur, or
- that the Assessor is satisfied that the person making the disclosure is not acting in good faith, or
- that the matter concerned is already the subject of legal proceedings, or has already been referred to the police, the Skills Funding Agency or other public authority, or
- that the matter is already or has already been the subject of appropriate proceedings under one of the institution's other procedures relating to staff or learners.

Any such recommendations will be made by the Assessor to the Principal and documented within two working days, unless it is claimed that the Principal is involved in the alleged malpractice or unless there are other reasonable grounds for not doing so, in which case the recommendations will be made to the Chair or the Vice-Chair of Corporation. The recommendations will be made without revealing the identity of the person making the disclosure save as provided below. The recipient of the recommendations will take all steps within his or her power to ensure that they are implemented, save to the extent that in the view of the recipient there are good reasons for not doing so – either way, this will be documented.

If the Principal decides not to implement any such recommendations, that decision will be notified in writing to the Chair of the Corporation as soon as practicable and no more than a further three working days after the Principal received notification of recommendations from the Assessor, together with the reasons for it.

Once the Principal or other recipient has decided what further steps, if any, should be taken, the Assessor will give appropriate feedback to the person making the disclosure of the decision in writing no more than five working days after the last interview occurred or from receipt of the initial disclosure if no subsequent interviews took place. If no further steps by the College are proposed, the Assessor will give the reasons for this.

In accordance with the Post-16 Audit Code of Practice, where any significant cases 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, the

relevant funding body and both internal and external auditors (if applicable) will be informed as soon as practically possible.

## **9. Access to the Corporation (Right of Appeal)**

Any Discloser who is not satisfied that their concern is being dealt with appropriately by the designated Assessor has the right to raise it in confidence with the Chairs of either the Corporation or the Audit Committee who will make a final decision on action to be taken and will notify the discloser of the outcome. Contact should be made via the Head of Governance (provided they are not the subject of the concern).

## **10. External Disclosure**

An individual has the right to make a disclosure outside of the College where there are reasonable grounds to do so and in accordance with the law. The list of 'prescribed' organisations and bodies can be found in information on the GOV.UK website. This includes the Secretary of State for Education. Individuals, in the course of seeking advice, can also make disclosures on a confidential basis to a practicing solicitor or barrister.

If, having followed this procedure, the person making the disclosure does not believe the further steps taken are appropriate or believes their concerns have not been appropriately resolved, he or she may raise the matter on a confidential basis directly with the College's external auditor who will advise on appropriate next steps.

## **11. Safeguards**

Any report or recommendations by the Assessor in relation to the matter will not normally identify the person making the disclosure, save on a strictly confidential basis to the Assessor's Administrator or to a professionally qualified lawyer for the purpose of obtaining legal advice, unless:

- the Discloser consents in writing.
- there are grounds to believe that the Discloser has acted maliciously.
- the Assessor is under a legal obligation to do so.
- the information is already in the public domain.
- it is essential to do so in order to deal appropriately with the matter disclosed.

Any documentation including computer files, discs and memory sticks kept by the Assessor relating to the matter will be kept secure, so that as far as practicable only the Assessor and his or her administrator shall have access to it. As far as practicable, any documentation prepared by the Assessor will not reveal the identity of the individual of the Discloser of information under this procedure.

Where the person making the disclosure involves a local trade union representative or work colleague in this procedure, the Discloser will be under an obligation to use all reasonable endeavours to ensure that the representative or work colleague keeps

the matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

The Discloser will not be required by the College, without his or her written consent, to participate in any enquiry or investigation into the matter unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice. Where the person making the disclosure participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis, although the obligations of the Assessor will remain in relation to the identity of the individual as the original discloser of information under this procedure.

Subject to the paragraphs below, the College will not, and it will use all reasonable endeavours to ensure that its employees do not, subject the Discloser to any detriment on the grounds of the disclosure of information under this procedure. The person making the disclosure should report any complaints of such treatment to an Assessor. If the Discloser wishes the Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Assessor revealing the Discloser's identity for the purposes of any such action.

## **12. Protection against Disciplinary Action**

No disciplinary action will be taken against anyone for making a disclosure in accordance with this procedure. This will not prevent the College from bringing disciplinary action in cases where there are grounds to believe that a disclosure has been made maliciously or vexatiously or where an external disclosure is made in breach of this procedure without reasonable grounds or otherwise than to an appropriate public authority.

Whistleblowers must not suffer any detrimental treatment as a result of raising a concern. No-one must threaten or retaliate against whistleblowers in any way. Such conduct may be subject to disciplinary action.

## **13. Policy Review**

This procedure may be amended by the Corporation of Bath College from time to time, particularly following any disclosure. Any comments or suggestions about the procedure should be referred to the Head of Governance.

The Audit Committee shall be provided with quarterly reports about the number and general nature of disclosures during the year, with all relevant details anonymised.

## **14. Contacts**

Protect (formerly Public Concern at Work) is an independent organisation which provides free legal advice to employees who are worried about malpractice at work. The Advice Helpline is 020 7404 6609 or contact them via email [whistle@pcaw.co.uk](mailto:whistle@pcaw.co.uk). For further information, visit their website: [www.pcaw.co.uk](http://www.pcaw.co.uk)

The [Advisory, Conciliation and Arbitration Service \(Acas\)](#) or trade unions can also provide more guidance.