



**MidKent  
College**

**Whistleblowing Policy**

Version	4
Effective Date	February 2019
Review Date	July 2022

## **1. Introduction**

- 1.1. All organisations face the risk of things going wrong from time to time, or of unknowingly harbouring illegal or unethical conduct. Members of staff and students are often the first to realise that there is or may be something seriously wrong within the College. However, they may not express their concerns because they feel that speaking up would be disloyal or that they will suffer a detriment.
- 1.2. Malpractice within the College is taken very seriously therefore the College actively encourages all members of staff and students to raise their concerns where they have a reasonable belief that malpractice has or is likely to take place. These concerns should be raised as soon as practicable rather than waiting for proof or evidence.
- 1.3. This procedure is intended to provide safeguards to enable members of staff to raise concerns about malpractice in connection with the College. The aim is to provide a rapid mechanism under which genuine concerns can be raised internally and if necessary, externally without fear of adverse repercussions to the individual. It is also intended to promote, throughout the College, a culture of openness and a shared sense of integrity by inviting all employees to act responsibly in order to uphold the reputation of the College and maintain public confidence.

## **2. Scope and Aim of Policy**

- 2.1. This policy applies to all employees, students, contractors, trainees and agency contract staff working for the College, regardless of their levels and grades.
- 2.2. The purpose of this policy is to balance the need to provide safeguards for members of staff and students who raise genuine concerns about malpractice against the need to protect other members of staff, members of the Corporation, students and the College against uninformed or vexatious allegations made against them. A flow chart is provided at Appendix 1 to assist with understanding the process to be followed for this policy.

## **3. Definition of Whistleblowing**

- 3.1. Whistleblowing is the disclosure of information which:
  - Relates to some danger, fraud or other illegal or unethical conduct in the workplace;
  - Is made by an individual who has a reasonable belief in the past, present or anticipated wrongdoing;
  - Is made in good faith, in pursuit of a good motive and not for personal gain;

- Is made using the correct disclosure procedure.

#### **4. Examples of Malpractice**

- 4.1. You should make a disclosure if you have a reasonable belief that:
- Fraud or financial irregularity has been or is likely to be committed;
  - Corruption, bribery or blackmail has occurred or is likely to occur;
  - A criminal offence has been committed, is being committed or is likely to be committed;
  - Malpractice or ill treatment of a student or colleague or abuse of their rights has been committed;
  - The College has failed to comply with a legal or regulatory obligation;
  - A miscarriage of justice has occurred, is occurring or is likely to occur;
  - The Health and Safety of any individual has been, is being or is likely to be endangered;
  - The environment has been, is being or is likely to be damaged;
  - There has been or is likely to be an improper use of authority;
  - Serious financial maladministration arising from the deliberate commission of improper conduct;
  - There is a threat to the safety of the College's property;
  - Failure to meet professional quality standards;
  - Any person is attempting to deliberately conceal evidence relating to any of these matters.
- 4.2. If you are unsure whether your concerns fall within the above or whether to use this procedure, you should obtain an independent advice from:
- Your trade union representative;
  - The independent charity "Public Concern at Work", where you will receive free and confidential advice about how to raise a concern about serious malpractice at work. For further information see their website [www.pcaw.co.uk](http://www.pcaw.co.uk) or telephone their helpline on 020 7404 6609.
- 4.3. The HR Department will also be able to help you determine whether your concern falls within the scope of any other policy and procedure. The important distinction between a grievance and a disclosure under this procedure is that a grievance normally affects an individual's own employment circumstances while a qualifying disclosure relates to a wider public interest.

#### **5. Internal Disclosure Procedure**

- 5.1. This procedure applies to the disclosure by an individual ('the Whistleblower') who has reasonable grounds to believe any examples of malpractice specified in Section 4 has occurred, is occurring or is likely to occur in connection with the College.

- 5.2. The Whistleblower should disclose, in confidence, the grounds for the belief of malpractice as soon as reasonably practicable to their immediate line manager or to the Director of HR, who will appoint an Investigating Officer. The Investigating Officer will be independent of the decision-making process and will not be a member of the Executive Group, in the interests of fairness.
- 5.3. If the Whistleblower feels that the matter is so serious that they cannot discuss it with any of the above, they should contact the Executive Director responsible for Human Resources or the Principal & CEO. If the concern is related to the Director of HR, the matter should be raised with the Executive Director responsible for Human Resources. If the concern is related to the Executive Director responsible for Human Resources, the matter should be raised with the Principal & CEO in their absence.
- 5.4. Any disclosure made under this procedure shall, wherever possible, be in writing, but, if this is not practicable, any such disclosure may be oral, at the choice of the Whistleblower. The Whistleblower should provide as much supporting evidence as possible about the disclosure and the grounds for their reasonable belief of malpractice.
- 5.5. On receipt of the disclosure, the Whistleblower will be invited to an investigation interview with the Investigating Officer to ascertain the area of concern and how the matter might be best resolved. The interview will take place as soon as practicable after the initial disclosure. The Whistleblower may be accompanied by a trade union representative or a work colleague at the interview. Notes or an audio recording of the interview will be provided to the interviewee.
- 5.6. The person(s) against whom the allegations have been made will be provided with details of the allegations and will be invited to an interview with the Investigating Officer. They may be accompanied by a trade union representative or a work colleague at the interview. Notes or an audio recording of the interview will be provided to the interviewee.
- 5.7. Following the investigation interviews (or after the initial disclosure if the Whistleblower declines to attend an interview), the Investigating Officer will consider the following:
  - Whether the matter should be reported to the police;
  - If the matter should be reported to the Education and Skills Funding Agency, the Department for Education and Employment, the National Audit Office or other appropriate public authority;
  - Whether the matter should be investigated further either internally by the College or by the Audit Committee or some other committee of the Corporation and/or by external or internal auditors or investigators appointed by the College;
  - Whether an immediate suspension from work is necessary, particularly if allegations relate to ill treatment of students, staff or third parties (any

suspension will be dealt with in accordance with the Disciplinary Policy and Procedure);

- That the matter is appropriate to be considered under this procedure and if not, whether the member of staff should consider using another more appropriate policy.
- 5.8. The recommendation that no further action by the College should be taken may be reached on the following basis:
- That the Investigating Officer 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 Whistleblower 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 or other public authority; or
  - That the matter is already the subject of proceedings under one of the College's other procedures relating to staff or students.
- 5.9. Any recommendations made under this procedure will be made to the Principal & CEO unless it is alleged that the Principal & CEO 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 the Corporation. In any case the recommendations will be made taking into consideration sections 6 and 7 of this policy.
- 5.10. The recipient of the recommendations will take all steps within his or her power to ensure that they are implemented except where in view of the recipient there are good reasons for not doing so. If the Principal & CEO decides not to implement fully any such recommendations, they are required to communicate that decision in writing to the Chair of the Corporation as soon as practicable, together with the reasons for the decision.
- 5.11. Once the Principal & CEO (or other recipient) has decided what further steps (if any) should be taken, the Whistleblower will be informed of the decision. If no further steps by the College are proposed, the Whistleblower will be informed about the reasons for this. There is no right to appeal internally if the allegation is dismissed after an investigation.
- 5.12. Where there is no case to answer but the Whistleblower held a genuine concern and was not acting maliciously, the Investigating Officer should ensure that this employee suffers no reprisals.

## **6. External Disclosure Procedure**

### **6.1. Disclosure to Prescribed Regulators**

If, having followed the internal procedure, the Whistleblower is not satisfied with the further steps (if any) decided upon or the outcome of any such steps, the

Whistleblower may raise the matter concerned on a confidential basis directly to a Prescribed Regulator. A list of selected Prescribed Regulators can be found on [www.pcaw.co.uk/law/lawregulatorses.htm](http://www.pcaw.co.uk/law/lawregulatorses.htm)

The Whistleblower is also entitled to make a disclosure to a Prescribed Regulator irrespective of whether an internal disclosure has been made first. The Whistleblower will have to satisfy the following conditions in order to gain a legal protection whilst making their disclosure directly to a Prescribed Regulator:

- The disclosure must be made in good faith;
- It must be made to the regulator prescribed in an order made by the Secretary of State;
- The disclosure must fall within the description of matters in respect of which that Regulator is prescribed;
- The Whistleblower must have a reasonable belief that the information disclosed is substantially true.

## **6.2. Disclosure to Person Responsible for Relevant Failure**

If the subject matter of the disclosure concerns the conduct or a failure of a person other than the College, the Whistleblower is entitled to make the disclosure to that person. It is important to note that the Whistleblower has to reasonably believe that that party is solely or mainly responsible for the relevant failure.

## **6.3. Disclosure to Legal Advisor**

The Whistleblower may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

## **6.4. Disclosures to Other Parties**

Disclosures to the media or other non-prescribed persons should be a last resort, when other internal and external avenues have been exhausted. The employees should be advised that the statutory provisions permit such disclosures only if certain conditions are satisfied, which relate to the Whistleblower's fear of being subjected to a detriment, a reasonable belief the College would conceal or destroy the evidence or if there was no action taken as a result of the previous disclosure. However it is advisable to seek professional advice before making this type of disclosure.

## **6.5. Safeguards**

Any report or recommendation made in relation to the matter will not identify the Whistleblower, unless the Whistleblower otherwise consents in writing or unless there are grounds to believe that the Whistleblower has acted maliciously. In the absence of such consent or grounds, the Investigating Officer will not reveal the identity of the individual as the Whistleblower of information under this procedure except:

- Where the Investigating Officer is under a legal obligation to do; or
- Where the information is already in the public domain; or

- On a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.

Any documentation (including computer files and discs) kept by the Investigating Officer relating to the matter will be kept secure, so that as far as practicable only the Investigating Officer shall have access to it. As far as practicable, any documentation prepared will not reveal the identity of the individual as the Whistleblower of information under this procedure.

Where the Whistleblower involves a recognised trade union representative or work colleague in this procedure, the Whistleblower will be under an obligation to use all reasonable endeavours to ensure that the representative or work colleague keeps this matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into public domain.

The Whistleblower will not be required by the College, without his or her consent, to participate in any enquiry or investigation into the matter established by the College unless there are grounds to believe that the Whistleblower may have been involved in misconduct or malpractice.

Where the Whistleblower participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis. The obligations of the Investigating Officer under sections 6 and 7 of this procedure will remain in relation to the identity of the individual as the original Whistleblower of information under this procedure.

## **7. Protection and Support for Whistleblowers**

- 7.1. The College will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the Whistleblower to any detriment, on the grounds of the Whistleblower's disclosure of information under this procedure. The Whistleblower should report any complaints of such treatment to the Investigating Officer. If the Whistleblower wishes the Investigating Officer to take action in relation to such complaints, the Whistleblower may be asked to consent in writing to the Investigating Officer revealing the Whistleblower's identity for the purposes of any such action.
- 7.2. No disciplinary action will be taken against a Whistleblower on the grounds of a disclosure raised in good faith and in accordance with this procedure.
- 7.3. Any individual who uses this procedure to make malicious, frivolous, vexatious, unreasonable or unfounded allegations, for personal gain or for ulterior motives, may be subject to disciplinary proceedings.

## **8. Duties and Responsibilities**

### **8.1. Executive Group**

The Executive Group is responsible for ensuring that as far as is reasonably practicable, the policy is applied fairly and consistently to eligible employees.

### **8.2. Managers**

Managers are responsible for ensuring employees are made aware of the policy. Managers have a responsibility to ensure that, where a concern is raised, it is dealt with quickly following the guidance in this policy.

### **8.3. Employees**

Employees are responsible for ensuring they are familiar with the provisions of the policy and, where necessary, to follow the process detailed in the policy should they wish to raise any concerns.

### **8.4. HR Department**

The HR Department is responsible for advising and supporting managers and employees in dealing with the process detailed within the policy; providing support for those involved in a whistleblowing claim, ensuring consistency in the way the policy is applied.

## **9. GDPR**

- 9.1. All records associated with this policy will be retained and disposed of in accordance with the HR Retention policy.

## **10. Associated Policies and Procedures**

- 10.1. Disciplinary Code & Procedure

## **11. Policy Validity**

- 11.1. This policy is valid for the academic years 2018-2022 and is due for review in July 2021.

## **12. Policy Owner and Writer**

- 12.1. The Senior Manager responsible for this policy is: The Executive Director responsible for Human Resources.

- 12.2. The current writer responsible for this policy is: Ian Johnston, Director of HR & Payroll.

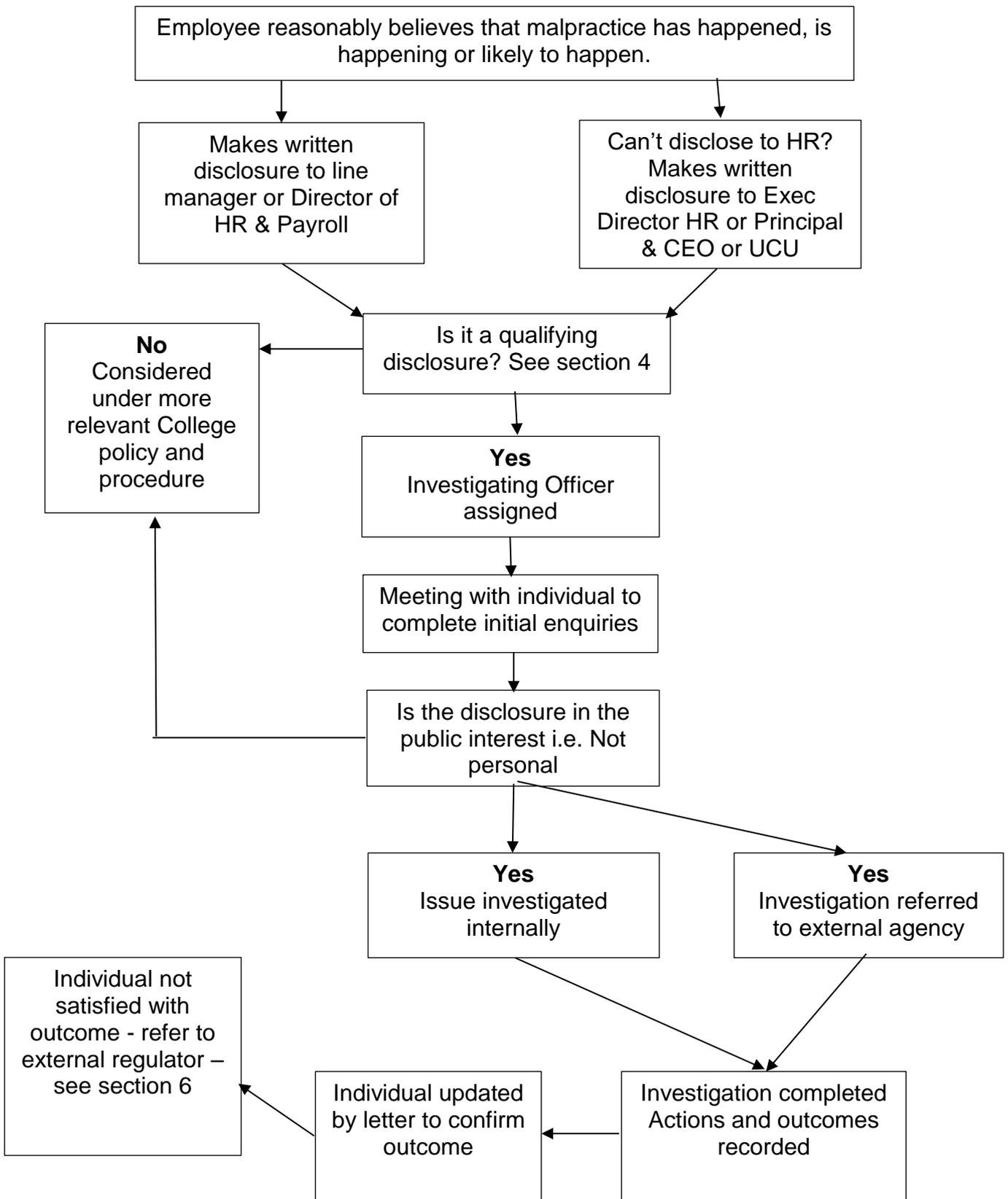
### **13. Policy Monitoring, Review and Evaluation**

- 13.1. A review of this policy will be undertaken by the review date by the policy writer and will be approved by the Person responsible.

### **14. Equality Impact Assessment**

- 14.1. This policy has been Equality Impact Assessed and generates no concerns about differential impact. The Equality Impact Assessment is filed on the Quality SharePoint site.

**Appendix 1**



The Whistleblowing policy, version 4 was agreed following consultation, negotiation, and agreement with UCU representatives and its members on the understanding that the content will be subject to review no later than July 2022.

**For and on behalf of UCU:**

Signed: 

Name: SUKH GILL

Date: 13/02/19

Signed: 

Name: RICHARD COYLE.

Date: 13/02/19.

**For and on behalf of MidKent College:**

Signed: 

Name: IAN JOHNSTON

Date: 13.2.19