

WHISTLEBLOWING POLICY

INTRODUCTION

1 The Open University takes notice of the good practice guidance on whistleblowing in higher education as outlined in the Higher Education Code of Governance (2014) issued by the Committee of University Chairs (CUC), the Scottish Code of Good Higher Education Governance (2013) and the CUC Guide for Members of Higher Education Governing Bodies (2009), as well as the Whistleblowing Commission Code of Practice (2013).

2 Annex A3 of the CUC Guide (2009) expresses the intent of the University's Policy in the following terms:

'Members of staff are often the first to know when things are going wrong in an institution, whether these concern financial malpractice, the abrogation of appropriate and agreed procedures, or departures from the statutory or other requirements for good governance. All institutions should establish official channels through which such concerns should be raised, for example through heads of department, at official committees, or through staff representatives, including the accredited trades unions. In the normal course of events, concerns should be raised through these channels. But members of staff often feel, rightly or wrongly, that their own position in the institution will be jeopardised if they raise a particular concern in this way, and sometimes the usual channels may indeed be inappropriate.'

PURPOSE

3 The purpose of this Policy is to provide guidance to University Officers, employees, students, other members of the University, and any other associated person acting on the University's behalf wishing to raise reasonable concerns they may have about irregularities in the running of the University or of the activities of colleagues within the University. These parties are referred to as 'members of the University and associated persons' below. This policy is not intended to replace the University's existing policies and procedures in relation to fraud, bribery, grievances, disciplinary matters or student complaints. This policy should be used in conjunction with the Whistleblowing Procedures and Guidance (Appendices).

4 Under the Public Interest Disclosure Act 1998¹ staff will have protection against dismissal and victimisation if they make 'protected disclosures' as defined in the Act and amended in The Enterprise and Regulatory Reform Act (2013). These Acts limit the type of disclosure they protect and the University believes that members of the university and associated persons should feel able to raise legitimate concerns which may not fall within the definitions set down in the Act, without fear of their position within the University being jeopardised. This policy is intended to set out what any member of the university and associated persons should do if they have such concerns.

¹ In Northern Ireland, the Public Interest Disclosure (Northern Ireland) Order 1998.

DISCLOSURES

- 5 Whistleblowing is defined within the University as the reporting by members of the University or associated persons of suspected wrongdoing or dangers in relation to University activities. This includes perceived bribery, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment and any breach of legal or professional obligations. Concerns about the management of projects, programmes of work or change initiatives are in scope.

MAKING A DISCLOSURE

- 6 Concerns raised by members of the University and associated persons should normally be directed to the person's manager or Head of Unit, with the following exceptions relating to students:
- a) Concerns raised by undergraduate and taught postgraduate students should normally be directed to the Director, Academic Services or in the case of students in Northern Ireland, Scotland and Wales to their Nation Director².
 - b) Concerns raised by postgraduate research students should normally be directed to the student's supervisor or their Head of Unit.
- 7 These concerns are likely to be able to be escalated through normal line or project management channels, and are unlikely to be made anonymously.
- 8 If, however, a member of the University or associated person believes that a concern should not be raised in this manner such allegations should normally be reported to the University Secretary² who will then be responsible for next steps to be taken in accordance with the Procedures and Guidance (Appendices). The Vice-Chancellor or Pro-Chancellor may be contacted² if the University Secretary is unavailable or is implicated in the disclosure.
- 9 If for any reason the person making the disclosure considers that none of these Officers is appropriate, the concerns should be raised with the Chair of the Audit Committee via the whistleblowing mailbox (whistleblowing@open.ac.uk)³ who shall decide what action to take having regard to the particular circumstances. This may include, but is not limited to, the involvement of the external auditors, the funding councils, legal advisers or other members of the Audit Committee (see Procedures and Guidance Appendices).
- 10 a) The identity of a whistleblower should be kept confidential as far as is reasonably practical, and the person making the disclosure should be assured of this confidentiality in any relevant correspondence (see paragraph 9, Appendix 2).
- b) Anonymous disclosures are not encouraged but the right to anonymous disclosure is recognised. Any such disclosure will be investigated at the discretion of the officer to whom the disclosure is made, having regard to the seriousness of the allegation.

EXTERNAL ADVICE

- 11 Public Concern at Work is an independent authority on public interest whistleblowing and offers free advice to people who may have concerns around whistleblowing. They have a website (www.pcaw.org.uk) which provides a range of advice to individuals including a

² Contact details are outlined within the attached Procedures and Guidance.

³ The whistleblowing mailbox is managed by the Head of Governance and Director, University Secretary's Office, who are responsible for passing concerns on to the Chair of the Audit Committee.

contact telephone number. In addition, the Committee on Standards in Public Life's website (www.public-standards.gov.uk) provides advice on the ethical standards expected across the public sector¹². Disclosures arising under this Policy may include matters for which the University already has dedicated procedures. For example:

Financial irregularity, bribery and corruption: The University takes very seriously actual or alleged financial irregularity by members of the University or associated persons. The University has an [Anti-Fraud, Bribery and Corruption Policy](#) which sets out the procedure to be followed if fraud, irregularity or bribery is suspected or alleged, and under which all suspected incidents should be reported without delay to the University Secretary, Group Finance Director or Chief Auditor.

Academic Malpractice: The University has a formal procedure for the investigation of allegations of academic malpractice or misconduct. The [Code of Practice for Research at the Open University](#) sets out the standards that govern research at this University

Bullying and Harassment: The University has formal grievance procedures and a Code of Practice on dealing with bullying and harassment which apply to staff, and procedures under a Student Code for dealing with bullying and harassment which apply to students.

- 13 Consequently, where disclosures relate to other University policy or procedure including that identified above, that relevant policy or procedure will usually be followed (Appendix 1, paragraph 7). Disclosures relating to all other issues as defined above (see paragraph 5) will be handled in accordance with the Whistleblowing Procedures and Guidance (Appendices).
- 14 Disclosures will normally be the subject of a preliminary investigation to establish whether or not there is substance to the disclosure. If a preliminary investigation does not take place i.e. the disclosure is effectively dismissed summarily, the person making the disclosure shall be informed and given the opportunity to remake the disclosure to some other person or a higher authority in the University.
- 15 A preliminary investigation will be conducted by an appropriate person and not by those who may be required to make a final decision on the matter or any person who may have a conflict of interest.
- 16 If the preliminary investigation finds that there is substance to a disclosure, the matter may be considered under the appropriate stage of the disciplinary procedures, may be the subject of a formal investigation and/or may be referred to the police.
- 17 The person making the disclosure will be informed of who will be handling the concern and an estimation of how long the investigation will take.

COMMUNICATION (INCLUDING TRAINING)

- 18 The University ensures that its whistleblowing and associated policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risk it faces.
- 19 Unit managers or their nominee are responsible for ensuring all employees receive appropriate training and for the communication of the University's Whistleblowing Policy and other relevant policies to associated person(s). Unit managers will also monitor and review their procedures and action plans to ensure their suitability, adequacy and effectiveness in relation to this Policy and implement improvements as appropriate.

TOP LEVEL COMMITMENT

- 20 This Policy is owned by the University Secretary and is reviewed annually by the Audit Committee on behalf of the Council to ensure fitness for purpose. It has the full support of the Vice-Chancellor and senior management of this University.

University Secretary's Office

Revised February 2017

Last reviewed March 2019

Attached: Whistleblowing Procedures and Guidance (Appendices 1 & 2)

APPENDIX 1 - WHISTLEBLOWING PROCEDURES AND GUIDANCE

PURPOSE AND RESPONSIBILITY

- 1 This document outlines what needs to be done, when, and by whom, when a whistleblowing disclosure is made under the Whistleblowing Policy. This includes disclosures made directly to the whistleblowing mailbox (whistleblowing@open.ac.uk).

Whistleblowing disclosures

- 2 The policy defines whistleblowing as “the reporting by members of the University or associated persons of suspected wrongdoing or dangers in relation to University activities. This includes perceived bribery, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment and any breach of legal or professional obligations.” (paragraph 8, Whistleblowing Policy). Concerns about the management of projects, programmes of work or change initiatives are in scope.
- 3 The policy outlines three ways in which whistleblowing concerns can be raised:
- a) Staff concerns should normally be raised with line managers or appropriate Heads of Unit. Student concerns should normally be raised with the Director, Academic Services⁴ or appropriate Nation Director⁵. This type of disclosure is referred to as a “first-line disclosure” within this document.
 - b) If concerns cannot be raised in this way for any reason, allegations should normally be reported to the University Secretary⁶. This type of disclosure is referred to as a “second-line disclosure” within this document.
 - c) If for any reason raising the concern with any of these people is deemed inappropriate, the concern should be raised with the Chair of Audit Committee via the whistleblowing mailbox. This type of disclosure is referred to as a “mailbox disclosure” within this document.
- 4 Those making disclosures are able to request explicitly that their identity is kept confidential as far as is practical if they seek this assurance. Those making disclosures should also be aware that there may be a delay in receipt and acknowledgement of any disclosures sent at weekends or during University closures, and that emails sent to any persons named above may be viewed by others responsible for managing their correspondence.

First- and second-line disclosures

- 5 A first-line disclosure (made to line managers, Heads of Unit, the Director Academic Services or Nation Directors as appropriate) may be made verbally or in writing (including by email). First-line disclosures are not likely to be made anonymously (although this may be possible in limited circumstances) and are more likely to be resolved through normal management channels.
- 6 A second-line disclosure may be made directly to the University Secretary⁶ where the person raising the allegation has deemed it inappropriate to raise as a first-line disclosure. A second-line disclosure may be made verbally or in writing (including by email), and may

⁴ Via christopher.rooke@open.ac.uk

⁵ Ireland: john.darcy@open.ac.uk; Scotland: susan.stewart@open.ac.uk; Wales: louise.casella@open.ac.uk

⁶ Via jonathan.nicholls@open.ac.uk. If the University Secretary is unavailable or implicated in the disclosure, the Vice-Chancellor (mary.kellett@open.ac.uk) or Pro-Chancellor (pro-chancellor@open.ac.uk) may be contacted.

be made anonymously. Disclosures at this level may potentially be more serious in nature and less likely to be resolved through normal management channels.

- 7 Those receiving an initial first-line disclosure are first responsible for establishing whether other existing University policies and procedures apply to it (see “Investigating Disclosures” section of Whistleblowing Policy) or whether the matter falls under existing line management or project management responsibilities. If this is the case, the person receiving the disclosure will decide whether the relevant policy, procedure or management line should be followed from this point or whether it should be treated as a whistleblowing disclosure.
- 8 If this is not the case, and the disclosure fits the definition in the Whistleblowing Policy (see paragraph 2 above), it should be treated as a whistleblowing disclosure.

Process

- 9 The receiver should acknowledge receipt of the disclosure, normally within one working day of receipt/discussion. Assurance should be given to the whistleblower that:
- a) Their disclosure will be taken seriously and treated sensitively;
 - b) Their identity will be kept confidential as far as is practical, particularly if they have explicitly requested this (see paragraph 9, Appendix 2); and
 - c) They will not suffer a detriment because they have raised a concern, unless it is later found that this was done maliciously, in which case disciplinary action may be taken.
- 10 The person who has received the disclosure should then refer it to the University Secretary via the relevant Head of Unit if/as appropriate unless the University Secretary themselves is implicated. This should normally take place within two working days of its receipt. Should notification to the University Secretary be inappropriate, the disclosure should be notified directly to the whistleblowing mailbox (see paragraphs 12-22 below).
- 11 The University Secretary is responsible for deciding what action should be taken to address the substance of the disclosure. This could include, but not be limited to, action within his/her management responsibilities, consulting appropriate staff to determine action to be taken⁷, appointing an appropriate member of staff to carry out a preliminary investigation⁸, or escalating the disclosure to the Chair of Audit Committee via the whistleblowing mailbox. Confidentiality should be a key concern in all of these stages.

Mailbox disclosures

- 12 Disclosure to the Chair of Audit Committee using the whistleblowing mailbox (i.e. bypassing first- and second-line disclosure) is intended as a last resort after other methods of raising concerns have been exhausted, or where the other methods are reasonably deemed by the individual making the disclosure to be inappropriate.

⁷ This is likely to involve, but may not be limited to, the Director, University Secretary's Office, Head of Governance and the Chief Auditor.

⁸ In line with the “Investigating Disclosures” section of the Whistleblowing Policy and the guidance in this document (Appendix 2).

- 13 The whistleblowing mailbox is managed by the Head of Governance and Director, University Secretary's Office (USO), who are responsible for passing concerns on to the Chair of the Audit Committee.
- 14 Emails sent to the whistleblowing mailbox are forwarded directly to the Head of Governance and Director, USO by a mailbox rule. The Head of Governance will normally act as mailbox monitor and will be responsible for opening these emails and ensuring appropriate action is taken on the contents. Should the Head of Governance be unavailable e.g. on annual leave, the mailbox monitor responsibility passes to the Director, USO. Should the Director, USO also be absent the responsibility is passed to the Chief Auditor or other nominated senior manager.
- 15 Mailbox monitor responsibility should not be passed to the University Secretary, Vice-Chancellor or Pro-Chancellor given that the opportunity to raise concerns with them directly may have been deliberately bypassed.
- 16 Any responses sent to emails via the mailbox will be sent from, and copied to, the mailbox for visibility.
- 17 Not every email sent directly to the mailbox will qualify as a whistleblowing disclosure (see paragraph 2 above). Some issues raised via the mailbox may relate to existing policy or procedure, and it may sometimes be appropriate to inform other members of University staff of the substance of an email outside the whistleblowing procedures depending on its nature.
- 18 The mailbox monitor will usually respond directly to any emails received via the mailbox which do not contain disclosures e.g. queries on process.
- 19 Upon receipt of a direct disclosure to the mailbox, the Head of Governance and Director, USO will discuss it confidentially as soon as is practical. This should normally be within one working day of receipt but may take longer depending on the nature of the disclosure.
- 20 The mailbox monitor will then contact the Chair of Audit Committee by email via a secure email account, attaching a copy of the initial disclosure email and recommending a course of action. This communication will normally be shared with the University Secretary unless he/she is implicated in the disclosure. Again, this should normally be within one working day of receipt depending on the nature of the disclosure.
- 21 Thereafter it is the responsibility of the Chair of Audit Committee to determine the action to be taken in relation to the disclosure, with due regard to the course of action recommended to him/her. This would normally involve delegating the matter to the University Secretary to handle onward if appropriate. Other actions may include, but not be limited to, setting a preliminary investigation in motion directly, and/or involving other members of University staff or the Audit Committee, external auditors, funding bodies, legal advisers or the police, depending on the nature of the disclosure.
- 22 Should the Chair of Audit Committee be unavailable for a significant period of time, the Pro-Chancellor will normally take on their role in relation to direct mailbox disclosures.

Acknowledgement and keeping whistleblowers informed

- 23 Unless the disclosure has been made anonymously, receipt of disclosure should always be acknowledged by return email from the mailbox. The recipient should acknowledge receipt using neutral wording, assuring confidentiality as far as practical.
- 24 It is likely to be difficult to acknowledge disclosures made anonymously, though disclosures sent from a generic email address may warrant a reply. This reply could

include assurances of keeping identity confidential and being protected from detriment, should the whistleblower subsequently wish to waive their anonymity.

- 25 Whistleblowers will usually be kept informed of proceedings by the mailbox monitor at regular and appropriate intervals. Normally a fortnightly update will be considered reasonable, but timescales and the amount of detail it is possible to communicate will necessarily vary depending on the nature of the individual allegation(s) and investigation(s).
- 26 It may not be possible or appropriate to keep whistleblowers informed of developments for some disclosures depending on their nature e.g. if criminal proceedings might be prejudiced, if the disclosure is made anonymously or the specific details and outcomes where disciplinary action is taken.
- 27 Whistleblowers will normally be informed by the mailbox monitor when an investigation is completed and/or case concluded, with information on the general outcome and any further action to be taken if this is appropriate (see Appendix 2 on investigations below).

Reporting to Audit Committee

- 28 An annual report on whistleblowing cases will be made to the Audit Committee alongside the annual review of the Whistleblowing Policy. This will normally include information on the number and types of disclosure, actions taken and resolution.
- 29 Individual whistleblowing cases may also be reported to the Audit Committee as they occur, depending on the nature and complexity of the disclosure and the status of the investigation.
- 30 Reporting to the Audit Committee on whistleblowing is the responsibility of the University Secretary, but will normally be produced by the Head of Governance.

APPENDIX 2

Principles for investigating whistleblowing disclosures

- 1 Any whistleblowing-related investigation should be carried out with reference to the principles outlined in this document and in line with the most recent guidance on conducting workplace investigations issued by the Advisory, Conciliation and Arbitration Service (Acas)⁹.
- 2 A preliminary investigation will normally be required, with the purpose of establishing whether or not there is substance to a disclosure. This will normally be carried out on the instructions of the University Secretary or the Chair of Audit Committee as per the procedures outlined in Appendix 1.
- 3 If there is no investigation and the disclosure is dismissed summarily, the person making the disclosure will be informed and given the opportunity to remake the disclosure at a higher stage of the process e.g. to the Chair of Audit Committee.
- 4 The person making the disclosure should be informed as soon as possible of who will be handling the concern and an estimation of how long the investigation will take. Investigations should take place and be concluded as soon as possible, but the timeframe involved will necessarily depend on the nature and complexity of the matters to be investigated.
- 5 A preliminary investigation should be conducted by a person of appropriate experience and seniority. They should not be anyone who may be required to make a final decision on the matter or who may have a conflict of interest.
- 6 The investigator should record the scope of the investigation and any action taken along with relevant dates and findings. A concise preliminary investigation report should be completed and sent to the University Secretary and whistleblowing mailbox to ensure that appropriate records are kept. These records will be treated as formal complaints for the purposes of retention in line with the University's Retention Schedule (current year plus six years).
- 7 If the preliminary investigation finds that there is substance to the disclosure, the matter may be referred for consideration at the appropriate stage of the disciplinary procedures, may be the subject of a formal investigation and/or may be referred to the police, depending on the nature of the matter. At this point there is an expectation that People Services support will be required in following appropriate process.
- 8 The person making the disclosure should be assured that their concerns will be treated seriously and sensitively.
- 9 If confidentiality is requested, the person making the disclosure should be assured that this will be respected as far as is possible, consistent with a fair investigation and a fair disciplinary procedure or legal action should this be required, as there may be an overriding reason for disclosure of identity e.g. if police involvement is required. The person should be assured that although confidentiality cannot be guaranteed in all circumstances, the University will support them and protect them from detriment for having raised a concern unless it is later proved information provided was knowingly false.
- 10 Normally the person against whom an allegation is made should be told of the allegation, of the evidence supporting it and be allowed to comment before the investigation is

⁹ 'Conducting Workplace Investigations', Acas, October 2015

concluded and a report made (bearing in mind the potential need for confidentiality in respect of the identity of the person who made the original disclosure). However there may be cases in which this is not appropriate action e.g. where revealing that an investigation is underway would provide an opportunity to conceal evidence.

- 11 The person making the allegation shall not suffer detriment for having raised a concern unless it is later proved information provided was knowingly false. Persons believing they have suffered detriment should report this.
- 12 Action by a manager or others to deter a member of the University or associated person from raising a concern about an irregularity or other malpractice may be considered as a disciplinary offence.
- 13 Members of the University or associated persons making allegations should be informed of the general outcome of the investigation, but are not entitled to receive a copy of the report which is confidential to the investigator, those responsible for initiating the investigation (normally the University Secretary or Chair of Audit Committee), the staff responsible for administering the process, the appropriate disciplinary authority (if relevant) and the Audit Committee. The person against whom the allegation is made will be informed of the outcome of the investigation and will be entitled to receive a copy of the report if disciplinary action is to be taken. The results of any investigation, including those relating to research activity, will be reported to the Audit Committee.

University Secretary's Office
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