

Whistleblowing Policy and Procedure 2021-22

Lead Responsible:	Clerk to the Corporation and Company Secretary
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Introduction

1. The law (Public Interest Disclosure Act) protects employees who reveal serious wrongdoings ('whistleblowers') in the workplace to the employer ('the College'), a legal adviser or an appropriate public authority.
2. The College is committed to creating an environment where it is both acceptable and safe for whistleblowers to raise concerns about actual or potential malpractice if and when they objectively and reasonably believe it exists without fear of reprisal.
3. The mutual trust and confidence between the College and employee is fundamental to a good employment relationship. It is expected that all employees will fulfil their duties in good faith and not disclose information about the organisation or operations which is calculated to, or likely to destroy that good relationship.
4. Should an employee discover apparent evidence of malpractice, impropriety or wrongdoing then it is expected that the employee will first to raise the matter internally with an appropriate senior manager in the first instance. If the whistleblower feels the matter cannot be resolved internally or has not been adequately resolved through these channels they can follow the procedures set out in this document. Public disclosure would only be appropriate if the suspected malpractice is exceptionally serious.

The Public Interest Disclosure Act

5. The Public Interest Disclosure Act 1998 ('the Act') came into force on 2 July 1999 and has been amended by the Enterprise and Regulatory Reform Act 2013. This legislation gives legal protection to employees against being dismissed or penalised by their employers for publicly disclosing serious concerns falling in certain specified categories. It also gives protection to employees against suffering a detriment, bullying or harassment from another employee for publicly disclosing serious concerns falling within certain specified categories.
6. The Act protects disclosure if the staff member is acting in the public interest and can show that he/she had a reasonable belief in one of the following:
 - a) That a criminal offence has been committed, is being committed or is likely to be committed;
 - b) That a person has failed or is failing or is likely to fail to comply with any legal obligation to which they are subject;
 - c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
 - d) That the health and safety of an individual has been, is being or is likely to be endangered. (It must indicate a greater danger than is associated with the normal use of the process/product, or danger that is not usually associated with it);
 - e) That the environment has been, is being or is likely to be damaged; or
 - f) That information tending to show any of the matters above has been, is being or is likely to be deliberately concealed.
7. The Act is not designed to support a claim from an employee about a breach of their own contract of employment. In these circumstances the employee should raise concerns with Human Resources.

Definitions

8. Whistleblowing is defined by the College as the disclosure by a member of staff of information to a designated member of the College which relates to malpractice – which is defined as dangerous fraudulent or other illegal conduct connected with the workplace, be it conduct by the employer or by fellow colleagues.
9. An employee is someone employed by the College, on payroll with a contract of employment.
10. For the purposes of this policy, staff is defined more widely and includes employees and workers of all kinds including full time, part time, agency workers and Governors.

11. A whistleblower can be any member of staff.

Scope

- 12. All staff are entitled to use this policy regardless of contractual terms.
- 13. Learners are beyond the scope of this policy however, they are encouraged to raise concerns with the Director of Student Support, Vice Principal or similar senior role with the academic departments.
- 14. This policy covers, but is not limited to, allegations of fraud, financial irregularities, corruption, bribery, dishonesty, criminal activities, failing to comply with a legal obligation, miscarriages of justice or creating, concealing or ignoring a serious risk to health, safety or the environment.

Our commitment

- 15. The College always tries to operate fairly, ethically and in line with our published values. We support the right and of staff to 'whistle blow' as defined within the Act and to their protection within the framework established by the Act and included in the Employment Rights Act. The College will treat whistleblowers and allegations of malpractice seriously and investigate any concern raised under this policy seriously and properly within the means of the College. In so doing, the whistleblowers' identity will remain strictly confidential and not disclosed without their prior approval unless required for legal or regulatory purposes.

Our safeguards and confidentiality

- 16. The member of staff (whistleblower) raising the concern(s) should not discuss the matter with colleagues other than the person to whom they are reporting their concern(s).
- 17. The whistleblower may want a colleague to accompany them to a meeting, in which case the concern(s) can be disclosed to that colleague on the basis that the colleague will observe the confidentiality.
- 18. The whistleblower may want to seek independent advice from a legal advisor or trade union, in which case the concern(s) may be disclosed to them in accordance with their normal operating procedures.
- 19. No formal disciplinary action will be taken against a whistleblower on the grounds of making a protected disclosure made under this policy or procedure. This does not prevent the College from bringing disciplinary action against a member of staff where the College has grounds to believe that a disclosure was made maliciously or vexatiously, or where a disclosure is made outside the College without reasonable grounds. A disclosure may be declared malicious or vexatious at any stage of the procedure.
- 20. A whistleblower will not suffer dismissal or any detrimental action or omission of any type (including informal pressure or any form of victimisation) by the College for making a protected disclosure in accordance with this policy and procedure.
- 21. A member of staff who victimises a whistleblower or makes a malicious disclosure will be investigated under the disciplinary policy for potential Gross Misconduct.
- 22. Any investigation arising does not presume guilt. An investigation is conducted to establish the facts of a matter and there may be positive benefits to the College, irrespective of whether malpractice is found.
- 23. An employee who is subject to disciplinary procedures or who has lodged a grievance against the College can only use this whistleblowing policy once any such processes have concluded.

Our whistleblowing procedure

- 24. If a member of staff has an objective and reasonable belief that malpractice, impropriety or wrongdoing has been, is being or is likely to be happening, they should make arrangements to discuss their belief

with the Principal or Clerk to the Corporation without delay. The whistleblower may want a colleague to accompany them to this meeting.

25. A meeting with the Principal or Clerk to the Corporation will be held in strictest confidence. It is expected that the whistleblower will raise their concern(s) constructively and provide as many facts / documentation / information available as possible to support their disclosure of malpractice, impropriety or wrongdoing.
26. The Principal or Clerk to the Corporation will listen to the concern(s) and allegation(s) objectively and then decide on the most appropriate action including an appropriate person / body to conduct an investigation. The Principal and/or Clerk to the Corporation will inform the Chair / Vice Chair of Governors (unless the concern(s) relates to the Chair / Vice Chair of Governors in which another, appropriate Governor will be identified and informed).
27. If the concern(s) relate(s) to the Principal, the whistleblower should raise the concern(s) with the Clerk to the Corporation. If the concern(s) relate(s) to the Clerk to the Corporation, the whistleblower should raise the concern(s) with the Principal. In either case, the Chair / Vice Chair of Governors will be made aware of the concern(s) and a meeting will be arranged between the whistleblower and the Chair / Vice Chair of Governors who will decide on the most appropriate action including an appropriate person / body to conduct an investigation. The whistleblower may want a colleague to accompany them to this meeting.
28. If legal representation is taken by the whistleblower, the College should be notified of the substance of this prior to the meeting. When a member of staff makes a disclosure, the College will acknowledge its receipt, in writing, within a reasonable time (normally within 10 working days).
29. Whistleblowers are encouraged to identify themselves when raising concerns as this improves the likelihood of a satisfactory investigation and outcomes and we wish to promote openness without fear of reprisal.
30. Concerns raised anonymously will be considered at the College's discretion and in exercising this discretion, the College will take account of such matters as:
 - the seriousness of the concern(s) raised;
 - the credibility of the concern(s); and
 - how likely it is that the concern can be confirmed from attributable sources.
31. For further guidance in relation to this policy and procedure, or concerning the use of the disclosure procedure generally, employees may wish to speak to the Executive Director of Human Resources and Central Services or to the Clerk to the Corporation in confidence and as appropriate in the circumstances.

Our investigation process

32. Where the whistleblowing matter becomes subject of an internal investigation, an appropriate person will be asked to lead the investigation and produce a report. This person may be a leader / manager in the College with no direct association with the whistleblower or the concern(s) raised or an external investigator appointed by the College / Governing Body.
33. The person(s) leading the investigation will undertake objective and dispassionate research into the concern(s) and surrounding or preceding circumstance to establish all the reasonably obtainable and relevant facts.
34. The whistleblower will reasonably be informed about the timescale and progress of that investigation. All correspondence between the person(s) leading the investigation and the whistleblower will be confidential and may be to a personal or preferred address / email account.
35. The report resulting from the investigation will be shared with the Principal / Clerk to the Corporation or Governor, as appropriate and the whistleblower, if appropriate within a reasonable time. The outcome and recommendations of the report will inform the next steps / course of action and the whistleblower will be informed of the next steps / course of action within a reasonable time.
36. Considerations to be taken into account when making decision about the outcome of an investigation may include:

- If the concern(s) is / are the subject of legal proceedings or appropriate action by an external body; or
 - If the concern(s) is / are subject to another relevant College procedure.
37. If the investigation concludes that malpractice, impropriety or wrongdoing has occurred or was intended, then one of more of the following courses of action may be taken:
- a. the wrongdoer may be subject to disciplinary action which can result in dismissal.
 - b. the concern(s) and outcome(s) may be referred to external agencies including the Police, funding agencies, external auditors, Ofsted, the Health and Safety Executive or the Information Commissioner's Office.
38. If the investigation concludes that false, malicious or vexatious claims or accusations have been made and no malpractice has occurred this will be investigated under the disciplinary policy for Gross Misconduct.
39. Should the whistleblower feel that the investigation into their concern(s) was handled in an unsatisfactory manner and/or returned inadequate or incorrect findings then the whistleblower may refer the matter to the Principal / Clerk / Chair / Vice Chair of the Governors, as appropriate. The person will aim to resolve the referral / further concerns as soon as is practicable. If the whistleblower is not satisfied with the further intervention they may refer the matter to FE Commissioner.
40. The College will take the necessary precautions to protect staff raising concerns in line with this policy against detriment or dismissal for raising genuine legitimate concerns.
41. The whistleblower has a right to report directly to the Police in instances where there is clear and unambiguous evidence that a criminal offence has been committed or to disclose other very serious matters to appropriate external monitoring bodies if there are compelling reasons why these matters cannot be addressed internally in accordance with this policy.
42. The Clerk to the Corporation shall keep a register of any disclosures under this policy, which shall be reported at least annually to the Full Governing Body.

Access to external bodies

43. The aim of this Policy is to provide an open and accountable internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. In most cases staff should not find it necessary to alert anyone externally, however, the law recognises that in some circumstances it may be appropriate for staff to report concerns to an external body. An appropriate body might be the Police, the College's internal or external auditors, the Education and Skills Funding Agency (ESFA), Ofsted or an MP or local Councillor.
44. This right is not conditional on a report first being made using the College's internal arrangements and concerns can be raised internally and to the external agencies simultaneously or consecutively.
45. We believe in having an open culture where people are comfortable speaking up and hence strongly encourage all staff to seek advice before reporting a concern to anyone external. The charity, Protect, operates a confidential helpline.
46. The NSPCC whistleblowing helpline is available for staff who do not feel able to raise concerns regarding child protection failures internally. The College stresses safeguarding is a high priority with robust procedures in place to log and deal with any issue. Staff who lack confidence in these processes are asked to at least consider making a simultaneous report to the College and any external body; so that key information only the College may hold is not missed nor cause any delay in protecting the child or vulnerable person.
47. If a member of staff seeks advice outside of the College, they must be careful not to breach any confidentiality obligations. Such advice may be obtained from a trade union in accordance with their normal procedures or through legal representation. A member of staff making a disclosure may want to confidentially request counselling or other support from the College's occupational health service.

Contact details

Principal: Malcolm Goodwin

Email: malcolm.goodwin@capel.ac.uk

Clerk to the Corporation and Company Secretary: Joanne Coffey

Email: joanne.coffey@capel.ac.uk

Tel: 07947 034 100

Protect (Independent whistleblowing charity giving free legal advice)

Helpline: 020 3117 2520

Email: whistle@protect-advice.org.uk

Website: <https://protect-advice.org.uk/>

Occupational Health Service

Helpline: 0800 328 1437 (24hr) and quoting Access Code: CapelStaff

Website: www.employeeassistance.org.uk.

NSPCC

Helpline: 0800 028 0285 (8am to 8pm Monday to Friday)

Email: help@nspcc.org.uk.

ESFA

<https://www.gov.uk/guidance/how-esfa-handles-whistleblowing-disclosures>

Email: complaints.esfa@education.gov.uk

Ofsted

Helpline: 0300 1233155 (8am to 6pm, Monday to Friday)

Email: whistleblowing@ofsted.gov.uk