

PUBLIC INTEREST DISCLOSURE: 'WHISTLEBLOWING' – POLICY AND PROCEDURES

INTRODUCTION

1. The Institute of Education is committed to the highest standard of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of its funding bodies and the recommendations of the Committee on Standards in Public Life. Everyone connected with the Institute has the potential to assist us in fulfilling these commitments.
2. The Institute is also committed to uphold academic freedom. Members of the academic staff have the right, as set out in Section 202(2) of the Education Reform Act, 1988, within the law, to question and test received wisdom and to put forward controversial ideas without risk to their jobs or other positions in the Institute. All staff and students are encouraged to speak freely, without fear of disciplinary action or any other sanction, provided they do so lawfully, without malice and in the public interest.
3. It is a fundamental term of every contract of employment that an employee will faithfully serve her or his employer and not disclose confidential information about the employer's affairs. However, where an individual discovers information which they believe show malpractice or wrongdoing within the organisation then this information should be disclosed without fear of reprisal. Such disclosures may be made independently of line management. In some circumstances, the Public Interest Disclosure Act 1998 ('the 1998 Act') gives legal protection to employees who make disclosures regarding misconduct in the workplace, often colloquially termed 'whistleblowing', against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. The aim of these legal provisions is to protect employees from unfair treatment (i.e. victimisation and dismissal) for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace.
4. The Institute welcomes disclosure of this character and always expects that individuals disclosing information will do so internally, within the Institute, using the procedure set out below if they do not feel able to raise their concerns through the normal management processes or through a trade union representative. It should be noted that the legal protection provided by the 1998 act is not extended to a person raising concerns externally, for example, in the media, instead of using internal channels unless there are sound legal reasons for taking such an exceptional course. These are set out in paragraphs 21-24 below.
5. It is also important to note that this policy is intended to assist individuals who believe that they have discovered malpractice or impropriety of the sort

explained in paragraphs 7-9 below. It may not be used to question financial or business decisions taken by the Institute nor to raise any matters which have already been addressed under the Institute's harassment, complaint, disciplinary, grievance or other formal procedures.

6. Whilst the Public Interest Disclosure Act 1998 itself offers protection only to the 'workers' of the Institute, this policy extends that protection to all members of the Institute community including its employees, students, members of the Council and holders of honorary appointments.

SCOPE OF THE POLICY

7. This policy is designed to allow members of the Institute community to raise at a high level within the institution any concerns, or to disclose any information, which the individual believes shows malpractice within the work of the Institute. It is intended to cover serious concerns, which are required to be identified and dealt within the public interest. Those concerns may, at least initially, be investigated separately but could then lead to the application of other Institute procedures including, for instance, harassment and disciplinary procedures.
8. The concerns which may be raised include:
 - financial malpractice, impropriety or fraud;
 - failure to comply with any legal obligation (e.g. The Data Protection Act 1998) or with the instruments and articles of government of the Institute (i.e. the Charter, Statutes and Ordinances);
 - endangering health and safety or the environment;
 - criminal activity or a miscarriage of justice;
 - academic or professional malpractice;
 - improper conduct or unethical behaviour; and
 - attempts to conceal any of the above.

Issues raised in this way should be matters of genuine public interest and not simply private disputes or disagreements.

9. The list in paragraph 8 above is not exhaustive and persons raising concerns with the Institute under this procedure should not be deterred merely by the fact that the matter sought to be raised does not fit neatly into one or other of the above categories. The most important thing to appreciate is that this policy is intended to assist the Institute to identify and deal with the malpractice or impropriety and uphold the high standards of integrity referred to above.

SAFEGUARDS

10 *Protection*

This policy is designed to offer protection to all members of the Institute who disclose such concerns provided that the disclosures are made: i) in good faith; ii) in the reasonable belief on the part of the individual making the disclosure

that it tends to show malpractice of the sort described in paragraphs 7 – 9; and iii) to an appropriate person as described in paragraph 14 below.

11. *Confidentiality*

The Institute will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation will be kept confidential so long as it does not hinder or frustrate any investigation. However, it is not possible to give an absolute guarantee of confidentiality; for example, in some cases the investigation process itself may reveal the source of the information or the individual making the disclosure may need to provide a statement as part of the evidence required.

12. *Anonymous allegations*

This policy encourages individuals to put their name to any disclosures they make and the Institute's intention to maintain confidentiality of the identity of individuals should greatly assist this. Concerns expressed anonymously are much less powerful, but they may be considered at the discretion of the Institute. In exercising this discretion, the factors to be taken into account will include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from alternative credible sources.

13. *Untrue allegations*

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. If, however, an individual makes, in the view of the Chair of the Audit Committee, malicious or vexatious allegations, (for example, making what was known to be an untrue allegation in pursuit of a private grudge against a blameless colleague) and particularly if he or she persists in making them, disciplinary action may be taken against the individual concerned. It must be emphasised, however, that genuinely mistaken allegations, reasonably made to the Institute in good faith, will not be penalised by disciplinary sanctions against the party making such allegations.

PROCEDURES FOR MAKING A DISCLOSURE WITHIN THE INSTITUTE

14. *Initial step*

In order to maintain consistency of treatment within the Institute for all individuals, a designated person will receive any disclosure which any member of the Institute community may wish to make. The designated person within the Institute is the Pro-Director for Strategy and Organisation. In the event of the disclosure relating to, or through line management responsibilities being perceived to relate to, the Pro-Director for Strategy and Organisation then that

disclosure may be made to the Director. If an individual does not wish to raise the matter with either the Director or the Pro-Director for Strategy and Organisation, then it may be raised with the Chair of the Audit Committee (who is a lay, external member of the Council).

15. *Process*

The Pro-Director for Strategy and Organisation, or other designated person, will consider the information made available and decide what further action, if any, is required. In so doing the Pro-Director for Strategy and Organisation will decide whether an investigation should be conducted and if so what form it should take, taking into account the terms of other Institute Policies and Procedures that may be relevant. Depending on the nature of the allegation and the information disclosed to:

- be carried out internally;
- be referred to the police or an appropriate regulatory body; or
- form the subject of an independent inquiry which may be carried out by the Institute's internal auditors or a suitable external body or individual.

16. *Investigation*

An initial investigation to establish all relevant facts will normally, at the request of the Pro-Director for Strategy and Organisation, be conducted by another senior officer of the Institute, not in any way connected to the Individuals or issues involved in the complaint, or by the Institute's internal auditor, who will report his or her findings to the Pro-Director for Strategy and Organisation. In the event of the disclosure relating to, or being perceived to relate to, the Pro-Director for Strategy & Organisation, the Director will establish the investigation and receive the report of its outcome. If, for any reason, the Director felt unable to act in this way, the Chair of the Audit Committee would take this role, supported by an independent member of staff. Such investigations will not be carried out by the person who will have to reach a decision on the matter raised. The Institute will ensure that any investigation will be conducted as sensitively and as speedily as possible. The person making the complaint will be informed of the process which is to be followed.

17. Using the information derived from the initial investigation, the Pro-Director for Strategy and Organisation will decide what, if any, further steps and procedures are required. The internal procedures which may be followed are:

- disciplinary;
- grievance or complaint;
- harassment; or
- the establishment of a special investigating committee.

In some instances it may be necessary to refer the matter to an external authority for further investigation. The Institute will follow the provisions of its

anti-fraud and anti-corruption strategy and will report evidence of criminal activity to the police.

18. *Feedback to and treatment of the person making the disclosure*

The Pro-Director for Strategy and Organisation will inform the individual making the disclosure what action, if any, is to be taken. If no action is to be taken, the individual concerned will be informed of the reasons for this and, if dissatisfied, will be allowed to remake the disclosure to one other appropriate person. For example, if the disclosure is initially made to the Pro-Director for Strategy and Organisation, then that disclosure may subsequently be made to the Chair of the Audit Committee or to the Chair of Council, who will decide on an appropriate course of action to be taken based on the information available. Furthermore, throughout the process the person making the disclosure will be entitled and is specifically encouraged to raise in writing directly with the Pro-Director for Strategy and Organisation, (or the Director, or the Chair of the Audit Committee, as appropriate) any complaint that he or she has been victimised or bullied or suffered any other negative consequences arising from the making of the disclosure.

19. The person or persons against whom any allegations or complaints are made by the disclosure will be informed of the matter and of any evidence supporting it and will be allowed to respond before the investigation or further action is concluded. In making such a response, the individual concerned will be permitted to seek advice from a friend or Union representative. Such a response may be in writing or given orally. In either case, the response will be minuted and the respondent will be invited to confirm the written record of it.

20. *Reporting of outcomes*

A report of all disclosures, the investigations and any subsequent actions taken will be made annually by the Pro-Director for Strategy and Organisation to the Audit Committee. The Pro-Director for Strategy and Organisation will retain such reports with all associated documentation for three years following the conclusion of the investigation and any subsequent processes. Where the Pro-Director for Strategy and Organisation, or other appropriate person, decides that no further steps are required after consideration of the initial disclosure, no documentation will be placed in any personal file. The documentation in relation to any case taken further will be dealt with in accordance with existing procedures. Reports to the Audit Committee will not normally identify the names of individuals involved.

MAKING A DISCLOSURE OUTSIDE THE INSTITUTE

21. *General*

One purpose of this disclosure policy is to establish a reassuring and well-understood procedure to encourage disclosures to be made within the Institute. It is also the case that under the 1998 Act the highest level of legal protection is

given to 'whistleblowers' who make internal disclosure in accordance with policies of this kind. Accordingly, it is expected that disclosures will normally be made within the Institute using these procedures. External disclosures might be lawful but this is by no means always the case. Great care should be taken by any person contemplating any disclosure outside the Institute, because this might be unlawful. For example, some legal protection may be extended under the 1998 Act to an individual making a disclosure outside the Institute in certain circumstances. However, there are a number of conditions, all of which must be met as set out below.

22. *Conditions to be met*

The individual making the disclosure must:

- not make the disclosure for personal gain;
- reasonably believe that the information is true; or
- make the disclosure to an appropriate regulator or public body, such as the Health and Safety Executive, the Information Commissioner or the Higher Education Funding Council for England.

If an individual believes that a criminal act has taken place the disclosure must be made to the police.

23. If the above conditions are not, or cannot, be met, any outside disclosure will be protected only if:

- the person making the disclosure reasonably believed that they would be victimised if the matter were raised either internally or with an authorised regulator;
- there is no regulator to whom to make a disclosure or there is a reasonable belief that there would be a 'cover-up' if the matter were raised internally;
- the particular disclosure was reasonable in all the circumstances;
- reasonably believe that the information tends to show a specific malpractice; or
- be acting in good faith.

In determining the reasonableness of the external disclosure, factors such as the appropriateness of the person to whom the disclosure was made or whether the risk or danger still existed would be taken into account.

24. A disclosure made to a solicitor in the course of taking legal advice is protected under the 1998 Act. If, exceptionally, a person wishes to make a disclosure outside the Institute then it is strongly recommended that such person take legal advice from a lawyer able to give advice on the material provisions of the 1998 Act in relation to external disclosures (some of which provisions are referred to in paragraph 5.3 above).

COLLABORATIVE ARRANGEMENTS

25. The Institute will ensure that other institutions which teach or undertake any other work, under franchise, validation or other similar agreements, have adequate internal procedures for dealing with staff and student complaints, and grievances, as well as a public interest disclosure procedure with an independent element.

REVIEW

26. This policy and procedure will be reviewed at least once in every three years, and the outcome(s) of the review, together with any recommended changes, will be reported to the Audit Committee.

CONTACT DETAILS

27. **Pro-Director: Strategy and Organisation**

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