

Public Interest Disclosure Procedure

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This policy and procedure is subject to The Equality Act 2010 which recognises the following categories of individual as Protected Characteristics: Age, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex (gender), Sexual orientation, Disability.

SECTION 1 : INTRODUCTION

- 1.1 Milton Keynes College wishes to promote a culture of openness, honesty and integrity within which all workers are encouraged to act responsibly and where malpractice is not tolerated.
- 1.2 One of the ways in which it promotes this culture is to allow workers to raise in a responsible way, either verbally or in writing, concerns about malpractice which they know or suspect to be occurring within the College. This Public Interest Disclosure Procedure explains in fuller detail a route for a worker (the term 'worker' includes directly employed staff, agency or contract workers) to identify malpractice without fear of recrimination or victimisation, and in so doing to uphold public confidence and the reputation of the College.
- 1.3 This procedure is not for the resolution of personal grievances which should be raised through the College Grievance or Harassment Procedures. Legitimate concerns should be raised if they are in the interests of the College, staff, students or the public, and must not be raised in the furtherance of any private dispute. This procedure is designed to cover situations where a worker suspects wrongdoing by another person or persons within the organisation and wishes to draw this to the attention of the College authorities, confidentially if necessary. A worker should always seek to raise their concerns internally in the first instance.
- 1.4 Given that students may also be aware of matters which should rightly be raised in such a context, these procedures are intended to cover them as well as workers in terms of allowing them to identify malpractice without fear of recrimination or victimisation. However, it must be noted that the Public Interest Disclosure Act 1998 only provides a remedy for workers who are victimised or dismissed following a protected disclosure. For this reason, these procedures use the word "worker" throughout for the person making the disclosure, although it could also be a student.

Equally, students should not use these procedures for raising complaints or grievances about their own situation. Separate student complaints and appeal procedures are available for this purpose and are explained in the Student Handbook which is available on the Student Internet.

- 1.5 The type of disclosure covered by this procedure involves information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following :
 - a) that a criminal offence (e.g. suspected fraud, financial irregularities, corruption, bribery, dishonesty) has been, is being or is likely to be committed;
 - b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject;
 - c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - d) that the health or safety of any individual has been, is being, or is likely to be endangered;

- e) that the environment has been, is being or is likely to be damaged;
 - f) that information tending to show any matter falling within any of the above categories has been, is being or is likely to be deliberately concealed.
- 1.6 Workers must declare any personal interest they may have in making a disclosure.
- 1.7 A worker shall be protected from disciplinary action as a result of his/her disclosure, even if it proves to be incorrect, provided that s/he follows this procedure and at all times acts in good faith, and believes on reasonable grounds the information to be accurate. However, if a worker is found not to be acting in good faith, for example if the disclosure is false and malicious, to support a personal vendetta or to avoid disciplinary proceedings, then the disclosure may make him/her liable to disciplinary action, which could include dismissal.
- 1.8 The worker may at any time involve a friend or trade union representative (but not a solicitor or barrister) to support him or her in the making of a disclosure provided that the worker uses all reasonable means to ensure that the friend or representative keeps the matter strictly confidential, except as required by law.
- 1.9 All responses shall be made to the worker in complete confidence and shall be confirmed in writing to his/her home address.
- 1.10 The College shall make every effort to keep the worker's identity confidential, except as specified below, unless the worker otherwise consents in writing or unless there are grounds to believe that the worker has acted maliciously. In the absence of such consent or grounds, the person investigating shall not reveal the identity of the worker except in the following circumstances:
- a) when under a legal obligation to do so;
 - b) where knowledge of his/ her identity in relation to the disclosure is already in the public domain;
 - c) on a strictly confidential basis to the College's legal advisors.
- 1.11 Workers who are not sure if the Public Interest Disclosure Procedure is the correct one through which to articulate their concern should in the first instance contact their line manager, or any one of the following for advice:
- a) the Human Resources Manager;
 - b) the Governance Executive;
 - c) any other member of the middle or senior management team
- Other sources of advice are local trade union representatives or the charity Public Concern at Work which advises on serious malpractice in the workplace; their number is 0207 404 6609.

SECTION 2 : THE PROCEDURE

- 2.1 Where possible the concerned worker (the Discloser) should in the first instance, in complete confidence, discuss the issue of concern with his/her line manager.
- 2.2 Where the Discloser prefers not to discuss the matter with the line manager, s/he should contact any of the following:
 - a) the Human Resources Manager;
 - b) the Governance Executive;
 - c) any other member of the middle or senior management team

The Human Resources Manager and the Governance Executive are the two designated assessors [Assessor] listed in Annex 1 who have been identified by the College and trained to carry out this role.

- 2.3 If the disclosure has been made to someone who is not an Assessor, they will refer this on to one of the Assessors (as listed in Annex 1) for investigation, and inform the Governance Executive who will keep a log of all disclosures under this policy. The Assessors will be able to determine at an early stage whether the disclosure warrants the invoking of the College's Fraud Response Plan if that is the most appropriate way forward, rather than via this policy.
- 2.4 The Discloser should provide as much supporting evidence as possible about the disclosure and the grounds for the belief of the malpractice.
- 2.5 On receipt of a disclosure the Assessor shall immediately acknowledge the communication in writing; all written communications shall be sent confidentially to the Discloser's home address, unless agreed otherwise. The person investigating shall arrange to meet the Discloser as soon as possible, and normally within five working days. Where there is an immediate danger of loss of life or serious injury the interview and responses shall be arranged immediately.
- 2.6 The Assessor shall make reports to the Principal, the Chair of the Audit Committee and Chair of Governors (provided that they are not implicated in the disclosure) of any disclosure under this procedure (keeping the name of the Discloser confidential unless the Discloser has agreed otherwise) and of the progress of the case and the outcome, including any notification of malpractice to an outside body.
- 2.7 The Assessor shall within ten working days of the initial interview advise the Discloser in writing of what action s/he will be taking, if any. The options include the following :
 - a) that no further action will be taken, giving the reasons for this;
 - b) to advise the Discloser to pursue the matter through a more appropriate College procedure eg the Grievance Procedure;

- c) to advise the Discloser that further investigations shall be carried out within the College. These further investigations should normally take no longer than 15 working days to complete;
 - d) to advise that s/he supports the Discloser's case and of the action taken in response, which may include notification to an appropriate outside authority i.e. the Learning & Skills Council (or its successor bodies), the Department for Children, Schools and Families, the Health & Safety Executive, the College Audit Service, the National Audit Office, an appropriate Examining Body, the Police, Local Councillor or MP, or other public authority. The person investigating will advise the Principal, the Chair of the Audit Committee and the Chair of Governors before taking this step;
 - e) to advise the Discloser that there are grounds for believing that the case has been brought maliciously and that disciplinary proceedings are or may be instigated.
- 2.8 At this stage, if the Discloser is unhappy with the response s/he shall have the right to raise the matter directly and in confidence with the Chair of the Audit Committee. The Discloser shall also have the right to ask the Chair of the Audit Committee to refer the matter to the College Auditors who shall investigate the matter within a reasonable time period, and normally within 15 working days of receiving the disclosure. In such circumstances the Chair of the Audit Committee shall have the power to incur such reasonable expenses as are necessary to gain legal or professional advice.
- 2.9 If the Discloser is not happy with the findings of the Auditors s/he may raise the matter in confidence directly with the person or regulatory body prescribed by the Secretary of State for these purposes (see 2.6 (d) above) provided that s/he can show that s/he :
- a) reasonably believes that the alleged malpractice falls within the remit of the person or body;
 - b) reasonably believes that the disclosure is substantially true;
 - c) did not make the disclosure for personal gain.
- 2.10 If the Discloser wishes to make a disclosure to any body outside the College, other than that identified in Section 2.7 (d) , the Discloser must also show that :
- a) at the time of disclosure, s/he reasonably believes that s/he will be subjected to a detriment, whether it be detrimental treatment short of dismissal, termination of the contract or victimisation, if he raises the matter internally or externally with a prescribed regulator;
 - b) where there is no appropriate prescribed regulator and s/he reasonably believes that relevant evidence will be concealed or destroyed if the matter is raised with the employer; or
 - c) that s/he has previously made a disclosure of substantially the same information to his employer or a prescribed regulator and in all the circumstances it is reasonable for him to make the disclosure.

2.11 The requirements for disclosure as set out in 2.9 & 2.10 above will not apply provided the Discloser can show all of the following :

- a) that s/he reasonably believes the disclosure is substantially true; and
- b) that s/he has not made the disclosure for personal gain; and
- c) that the relevant failure is of an exceptionally serious nature.

The Designated Assessors are:

Karen Brown, Governance Executive
(01908 637006; karen.brown@mkcollege.ac.uk)

Alison Wayman, Human Resources Manager
(01908 684328; alison.wayman@mkcollege.ac.uk)

GUIDANCE FOR ASSESSORS

Public Interest Disclosure Policy Log

The Governance Executive should be informed of any investigation carried out under this policy so that a record can be kept of all disclosures, together with what actions have been taken, when and why.

Note taking

The Assessor may be accompanied by an administrative assistant, or another Assessor, to take notes. The notes will not identify the person making the disclosure, unless this is so permitted by the Discloser. [It is preferable, but not necessary, for the relevant parties to also sign and date the notes as a true and accurate record.] For safeguards in relation to confidentiality, see below.

Anonymous Disclosures

Where a disclosure is made anonymously this should not be ignored and discarded. Rather, the Assessor should determine and document, following consultation with the Principal and any other pertinent parties, 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.

Third Party Disclosures

Third parties, with no direct involvement with the College, may also attempt to raise concerns under this procedure (or via the Anti-Fraud & Corruption 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 students 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.

Advice & Guidance to Assessors

As each disclosure will be unique, the Assessors will have automatic access to advice and guidance from the Principal and from the Chairs of the Governing Body 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.