

## Whistleblowing Policy and Procedure

### 1. Introduction

The University of Kent, like other public bodies, has a duty to conduct its affairs in a responsible and transparent way and to take into account both the requirements of regulatory bodies and the standards set out in the reports of the Committee on Standards in Public Life. In addition, it is committed to the principles of academic freedom embodied in its own charter, statutes and articles of government, and enshrined in the Education Reform Act 1988.

The University understands that it can be difficult for members of staff to express concerns about the actions of other members of staff, particularly those more senior than themselves, and so it encourages those who have genuine and serious concerns, to raise them, in the knowledge that this will not result in any form of direct, indirect or soft retaliation.

### 2. Definition and scope

- 2.1 The act of whistleblowing is when someone reports suspected wrongdoing in a workplace and “blows the whistle” about it. Officially this is known as “making a disclosure in the public interest”, as defined in the Public Interest Disclosure Act 1998. This refers specifically to workers and was intended to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes.

This Policy is designed to ensure that those who have genuine concerns about the conduct of others and believe that disclosure is in the public interest, have a safe and secure mechanism to raise this without fear of victimisation or detriment. The Policy applies to students of the University, visitors and members of Council as well as members of University staff, including temporary workers, agency staff, people working for sub-contractors, those training with the University but not employed (such as those on work placements), and self-employed workers, if supervised or working off-site. Legal protection for disclosure under the Act does not extend to students and other non-workers, but the University will provide a comparable level of protection under its internal procedures to prevent any disadvantage to anyone raising genuine and serious concerns.

- 2.2. It is recognised that members of staff are often the first to know when things are going wrong in an institution, whether this concerns financial malpractice, the abrogation of appropriate and agreed procedures, or departures from the statutory or other requirements for good governance. Similarly students can become aware of issues and concerns that may not be apparent to the wider University and which should be raised. This Policy has been introduced to help those who have genuine concerns raise issues about possible malpractice such as fraud; conflict of interest; dangers to health, safety or the environment; failure to comply with a legal or statutory obligation; academic, professional or management malpractice; deliberate concealment or suppression of crime; as well as serious breaches of the University’s own policies and regulations; where the concern is risking the interests of others; such as students; members of the public; other members of staff or the University.
- 2.3 From the Public Interest Disclosure Act 1998, a “qualifying disclosure” means any disclosure of 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 has been committed, is being committed 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 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, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

To be covered by whistleblowing law, a worker would need to have made a “qualifying disclosure” (a disclosure that qualifies for protection). To do this they must reasonably believe that they are acting in the public interest and that their disclosure tends to show past, present or likely future wrongdoings in the categories listed in a) to f) above. This includes alleged failures outside the UK.

Qualifying disclosures must convey facts. Merely stating an allegation, rumour or opinion is not a disclosure of information, however a disclosure may be made without substantiating evidence.

It should be noted that a disclosure will not necessarily qualify for protection if the person making the disclosure commits an offence in making it, for example, by breaching the Official Secrets Act, or if legal professional privilege applies in respect of information contained in the disclosure.

A qualifying disclosure will be protected if the worker discloses it; in the course of obtaining legal advice; to their employer; in certain circumstances to a Minister of the Crown; to any person or body provided that a number of detailed conditions are satisfied (including that the disclosure is not made for personal gain, that it is reasonable in the circumstances and that the worker reasonably believes that he will be subject to a detriment by his employer); or to a “prescribed person”, if they reasonably believe that the information and any allegation contained with it are substantially true. The list of prescribed persons is shown under Point 12 External Disclosure (below). There is also the provision for a disclosure of an exceptionally serious failure to any person or body.

The Public Interest Disclosure Act 1998 makes it unlawful for an employer to dismiss or subject a worker to detriment for having made a protected disclosure of information.

For more information, the Public Interest Disclosure Act can be consulted here: <http://www.legislation.gov.uk/ukpga/1998/23/contents>

### 3. Policy

This Policy seeks to balance the need to provide safeguards for individuals who raise genuine concerns about malpractice, against the need to protect the University, its staff and its interests against uninformed, inaccurate or vexatious allegations which can cause serious difficulties for innocent individuals.

**The University will treat all disclosures seriously, consistently and fairly and is wholly committed to the protection of all bona fide whistleblowers, whatever their status, and will regard any subsequent victimisation or reprisal as a disciplinary offence.**

**The University aims to promote an environment and culture where individuals can feel safe in the knowledge that raising serious concerns will not result in any form of direct, indirect or “soft” retaliation.**

## 4. Procedure

- 4.1 In the normal course of events, concerns should be raised as soon as possible via line managers, or via Heads of Schools or professional service departments, at official committees or through staff or student representatives, including the accredited trades unions and Kent Union. However in some cases members of staff may feel, rightly or wrongly, that their own position in the institution could be jeopardised if they raise a particular concern in this way, and sometimes the usual channels may indeed be inappropriate. Similarly students may feel that it is not in their own best interests to raise a concern.
- 4.2 The University is committed to achieving the highest possible standards of quality, integrity, openness and accountability in all of its practices and has its own established Regulations, Codes of Practice, Policies and Procedures. This Whistleblowing Policy and Procedure makes provision for students, members of staff and those listed in 2.1 to raise concerns about serious malpractice and to do so with the knowledge that they will be protected from victimisation. However, if other University Policies and Procedures apply and are more appropriate, these other channels should be followed in the first instance. For example, allegations of injustice or discrimination against individuals should be dealt with under established Policies and Procedures. For students, issues can be raised using the Complaints Procedure for Students and the Dignity at Study Policy. For members of staff, issues can be raised using the Dignity at Work Policy and Ordinance 42 Grievance Resolution.
- 4.3. If the usual mechanisms (such as those listed above) are felt to be inappropriate, an internal disclosure may be made under this Policy using the following approaches:
- a. Allegations about an individual's financial conduct should normally be made to the Director of Finance, who has a direct reporting relationship both with the Vice-Chancellor, as the officer designated by the governing body and by the Office for Students to be accountable for the control of the institution's funds, and with the Audit Committee established by Council. Where, for whatever reason, the person making the allegation considers it inappropriate to make it to the Director of Finance, the provisions of subparagraph b apply.
  - b. Allegations about other issues could concern, for example, the behaviour of a senior officer of the institution, or a lay/independent member of the Council, or the propriety of committee or other collective decisions. Such allegations should be made, as the person making the allegation deems appropriate, to the Vice-Chancellor, or to the Secretary of the Council, or to the Chair of the Council. If for any reason none of these individuals is deemed to be appropriate, the allegation should be made to the Chair of the Audit Committee. The Chairs of the Council and of the Audit Committee can be contacted via Council Secretariat.
- 4.4. In any case where an allegation is made under sub-paragraphs 4.3(a) and (b), the person to whom the allegation is made should make a record of its receipt and of what action is taken. If any correspondence is received by the University regarding a whistleblowing disclosure, receipt should be acknowledged as soon as possible, giving an idea of the time frame for handling the disclosure, normally around 21 days.
- 4.5 Any allegation made under this procedure should normally be the subject of a preliminary investigation either by the person to whom the allegation is made (the commissioning manager) or more usually by a person or persons appointed by him/her (the investigating officer), unless it is deemed more appropriate to review the matter under an alternative procedure. As far as possible, the investigation should be undertaken with reference to the University documentation on [Conducting Formal Investigations](#). The initial investigation by the investigating officer should take place as expeditiously as possible in the interests of all concerned, and every effort should be made to preserve the anonymity of any members of University staff who may be implicated while the investigation is

underway. The investigating officer would not normally contact the member(s) of staff against whom allegations had been made at this stage.

The whistleblower should be told how and by whom the concern will be handled and be given an estimate of how long the investigation will take. They should also be told that if the whistleblower believes that he or she is suffering a detriment for having raised a concern, they should report this and that they are entitled to seek independent advice, for example from Public Concern at Work (see Point 11 below). The Kent Union Advice Centre provides free, confidential and impartial advice for students studying at the University of Kent.

- 4.6 In the interests of best practice it would be appropriate for the investigating officer to hold a meeting with the whistleblower and, if so, the whistleblower should be allowed to be supported, advised, accompanied or represented by another nominated individual such as a workplace colleague (employee) or union official. If this is the case then the companion should be asked to respect the confidentiality of the disclosure and any subsequent investigation.

The preliminary investigation should produce a report with recommendations for the commissioning manager to consider, either for further action or to inform best practice for the future. The recommendations might (without limitation) include one or more of the following:

- a. a further, formal investigation, either by a single person, by a group or by a panel set up for the purpose;
  - b. an internal investigation by the University, or by the Audit Committee, or some other Committee of the Council and/or external or internal auditors appointed by the University;
  - c. that the matter be reported to the Office for Students, the Office of the Independent Adjudicator, the Department for Business, Energy & Industrial Strategy, the National Audit Office or some other public authority;
  - d. that the matter be reported to the Police.
- 4.7 Where the initial investigation provides reasonable grounds for suspecting a member or members of staff of involvement in an offence such as those listed in 2.3 above, the investigating officer should advise the commissioning manager as soon as practicably possible to prevent any further loss, danger or damage. Subsequent action taken might involve suspension, but this suspension should only be undertaken in accordance with Ordinance 44 Suspension and in full consultation with Human Resources.
- 4.8 Where no further investigation is carried out, and the allegation is effectively dismissed, the person who made the allegation should be informed and given feedback where possible.
- 4.9 Where the issue is to be the subject of a formal investigation within the University, the person to whom the allegation was first made (the commissioning manager) should then consider how the further investigation might be conducted, with reference to the University documentation on Conducting Formal Investigations. This consideration will include determining:
- a) Who should, and would, undertake the investigation;
  - b) The procedure to be followed;
  - c) The point in the investigation when the person(s) implicated in the disclosure would be informed as to the nature of the disclosure and that an investigation has been initiated;
  - d) The potential scope of the final investigation report (scope and terms of reference).

Regarding who should lead the formal investigation, an independent person within the University with appropriate experience and approved by the Director of HR could be appointed to conduct the investigation. Independent in this context means a person with demonstrably no relevant connection to the disclosure and individual(s) making the report. If a suitable independent person within the University could not be found a suitable person would be found who was external to, and independent of the University.

The formal investigation would not usually be carried out by the person who would have to reach a decision on the matter. The investigation and its conclusions would normally be reported to the commissioning manager, to whom the allegation was first made, for them to make a decision.

The person or persons against whom the allegation was made should be told of it (at the formal investigation stage) and the evidence supporting it. They should be allowed to comment before the formal investigation is concluded and a formal report made.

Any investigation must be conducted as sensitively and speedily as possible, with proper regard to the need for thoroughness and with no presumption of guilt. A written record should be kept of interviews, evidence gathered and documents obtained.

As a result of the formal investigation, other internal procedures might be invoked, such as Ordinance 42 Grievance Resolution. Mediation and/or dispute resolution might also be necessary.

If disciplinary or other action is taken (following a formal investigation) the feedback to the whistleblower would take account of data protection requirements and might be limited to a statement that action is being taken.

Reasons for a formal investigation recommending that no further action should be taken by the University:

- a) That the individual had not demonstrated a reasonable case that wrongdoing within the meaning of this procedure had occurred, is occurring or is likely to occur.
- b) That the issue concerned was already the subject of legal proceedings and/or an appropriate external referral.
- c) That the issue was already (or had already been) the subject of proceedings under one of the University's other procedures relating to staff or students.
- d) There was no evidence that wrongdoing had occurred or was likely to occur.

## **5. Review**

If the individual making the disclosure remained dissatisfied after the above procedures were exhausted, the individual could request a final internal review, which would be referred to the Chair of the Audit Committee, provided that the Chair had no prior involvement.

## **6. Reporting and record keeping**

The University, as part of its governance process, will maintain a full record of all whistleblowing disclosures and reports together with subsequent investigations, conclusions and actions. This overall record will be based on a record of all disclosures and any subsequent actions taken made by the appropriate person, who will retain such material for a period of not less than three years.

In all cases a report of the outcomes of any investigation will be made to the Audit Committee, in detail where the issue falls within its purview, and in summary in other cases. This will allow the Committee to monitor the effectiveness of this Policy and Procedure. The Audit Committee will also receive an annual overall summary report on whistleblowing.

## **7. Confidentiality**

Any person making an allegation under sub-paragraphs 4.3(a) or (b) should be guaranteed that the allegation will be regarded as confidential to the receiver until a formal investigation is launched. Thereafter, the identity of the person making the allegation may be kept confidential (if requested), unless this is incompatible with a fair investigation; or if there is an overriding reason for disclosure, for example when the University is under a legal obligation, when the individual making the disclosure has consented to it not remaining confidential (in writing), when there are grounds for believing that the individuals have acted maliciously or when the information is already in the public domain.

Where an office or area of the University is small it can be relatively easy to identify an individual making a whistleblowing report by a simple process of elimination once the issue is investigated locally. This should be taken into account by the person making the allegation and the person to whom the allegation is originally made.

## **8. Malicious and/or untrue allegations**

Provided the allegation has been made lawfully, in the public interest and with reasonable grounds, the employment position or academic progress of the person making the allegation would not be disadvantaged because he/she made the allegation.

Anyone who maliciously raises a matter they know to be untrue may be liable to disciplinary action. Raising a concern under this Policy will not provide anyone with immunity for wrongdoing that they have committed, although the University may take into account the fact that they have raised the matter themselves.

## **9. Detriment**

Disciplinary processes will be applied to those who subject the whistleblower to detriment because they have raised a concern and discrimination against a whistleblower might give rise to a personal liability.

## **10. Anonymous reporting**

Individuals making disclosures are always encouraged to give their names and contact details wherever possible as anonymous disclosures are not as strong and may prove difficult to investigate. However, concerns can be expressed anonymously and these will be investigated to determine whether there is a "prima facie" case for further enquiry. Factors to determine this will include the seriousness of the issue raised, the credibility of the information disclosed, the likelihood of confirming the information, and what supporting evidence is/could be available from other sources.

## **11. Independent opinions**

Independent advice regarding whistleblowing is available for members of staff via trade unions or professional bodies (such as the AUA). Alternatively, there is the independent charity Public Concern at Work (PCAW), which can be contacted via its website <http://www.pcaw.org.uk/> or via the telephone number 0207 404 6609. PCAW offers advice on raising a concern about serious malpractice at work and would be able to advise on the circumstances (for example criminal activity) in which actions could be reported directly to an outside body, such as a regulator or to the Police.

## **12. External disclosure**

The University would expect that any disclosures be raised internally under this Policy and Procedure in the first instance, however disclosures can be made to an external regulator or prescribed body or person. Further information about the prescribed people and bodies to which external disclosures can be made can be found using the following link:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

If an individual raises an issue with an external body, they may be required to demonstrate why it was not appropriate to invoke this Policy and Procedure.

In certain circumstances a worker might choose to approach the media with their concerns. If a worker goes to the media they can expect in most cases to lose their legal protection as it is only in exceptional circumstances that a worker can go to the media without losing this.

## **13. Contact details within the University**

For further information about Whistleblowing at the University of Kent, contact Council Secretariat on 01227 823903 or [councilsec-staff@kent.ac.uk](mailto:councilsec-staff@kent.ac.uk).

## **14. Monitoring**

The University Council will monitor this Policy and will retain responsibility for the Policy, with no amendments made to it without Council approval. Significant incidents will be reported to the Audit Committee and Council and the Policy reviewed after a formal investigation or at intervals of three years.

Periodic audits of the effectiveness of whistleblowing arrangements will be conducted, reporting to the Audit Committee, to include a record of the number of types of concerns raised and the outcomes of investigations, the nature of whistleblowing disclosures received, the date and content of feedback provided to whistleblowers, feedback from individuals who have used the arrangements, any complaints of victimisation, any complaints of failures to maintain confidentiality, a review of other existing reporting mechanisms, such as fraud, incident reporting and health and safety reports, a review of other adverse incidents that could have been identified, a review of any relevant litigation and a review of awareness, trust and confidence in the whistleblowing arrangements.

Council Secretariat

Email: [councilsec-staff@kent.ac.uk](mailto:councilsec-staff@kent.ac.uk)

31/8/2017, 9/2/2018

Published May 2018