

**WHISTLEBLOWING
POLICY & PROCEDURE
FOR SPEAKING OUT**

Whistleblowing Policy & Procedure for Speaking Out

Policy Owner: The Resources Committee

Date Approved: 29 January 2020 (extension 29 June 2023)

Next Review: December 2024

Responsibility for Review: Head of Human Resources

Policy Review Frequency: 3 years

Applicable to staff: Yes

Applicable to students: Yes

Publish on College website: Yes

Consultation:

Undertaken with:	Yes/No:	Date:
Board/Committee	Yes – Resources	4 May 2023 28 November 2019
ELT	No	
CMT	No	
Unions	Yes	29 January 2020
Students	No	
Employees	No	
Employers/Stakeholders	No	

Any Associated Documentation, for Reference:

Resolution of Grievance Policy and Procedure
Disciplinary Policy and Procedure
Fraud Response Plan

Introduction

- 1.1 The Public Interest Disclosure Act of 1998 gave legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. A number of changes to whistleblowing protections came into force in June 2013 under the Enterprise and Regulatory Reform Act 2013 (ERRA).
- 1.2 Preston College takes malpractice and misconduct seriously. The College is committed to a culture of openness in which all College staff, students and stakeholders can report legitimate concerns without fear of penalty or punishments.
- 1.3 For the purpose of this policy/ procedure, College stakeholders refers to the list of individuals under section 2.
- 1.4 Preston College has endorsed the provisions set out below so that no members of staff, students or stakeholders should feel at a disadvantage in raising legitimate concerns.
- 1.5 This policy/ procedure is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not intended to question financial or business decisions taken by Preston College nor should it be used to reconsider any matters which have already been addressed under other College procedures such as the Resolution of Grievance Procedure or the Disciplinary Procedure.
- 1.6 The College aims to reflect the *Seven Principles of Public Life* in all its work as well as the Association of Colleges' code of good governance for English Colleges of being:
 - Respectful;
 - Professional;
 - Prudent;
 - Passionate about education and good governance.
- 1.7 This policy/ procedure is underpinned by the following expectations of good governance:
 - Putting the student first; promoting high expectations and ambitions for students and staff;
 - Ensuring inspirational teaching and learning;
 - Creating a safe environment for students to learn and develop;
 - Providing strong leadership to both the senior team and the community the College serves;
 - Setting the strategy and acting as guardians of the College's mission;
 - Demonstrating accountability to students, parents, staff, partners, employers, funders, trustees and other stakeholders, including publishing accurate and timely information on performance;
 - Listening to students, parents, employers and staff;

- Ensuring the achievement of equality of opportunity and diversity throughout the college;
- Using the College's autonomy and independence to meet local education and skills needs.

1.8 In implementing this policy/ procedure, the College will ensure that any personal data relating to the application of it will be obtained, processed and destroyed in line with the principles outlined in the General Data Protection Regulations and supplementary enacting Data Protection Legislation. The College is committed to being transparent about how it collects and processes the personal data of its learners, employees, visitors and other stakeholders to meet its data protection obligations. The College will ensure all processing is lawful, fair and transparent and individuals are informed of the legal basis for processing their data. Further information relating to the College's compliance with the General Data Protection Regulations can be found in the College's Data Protection Policy.

This policy/procedure is relevant to all Funding Agency Provision (including ESFA, ESF, OfS) as well as Non-Agency Funded Provision.

2. **Who Might Use This Policy?**

2.1 This policy/ procedure expands the provision of the Act and applies to any person who, in dealing with the College, has serious concerns about any aspect of the way the College is run. This may include, but is not limited to:

- Staff of the College;
- Students at the College;
- Members of the Corporation Board of Governors;
- Casual Workers and/ or contractors working on College premises;
- Suppliers and those providing services under a contract with the College in their own premises;
- Parents of students at the College, in line with GDPR;
- Representatives of organisations in partnership with the College.

3. **Aim of Policy and Procedure**

3.1 This policy/ procedure is designed for concerns to be raised internally and at a high level and to disclose information which the individual believes shows malpractice or impropriety. It is intended to cover concerns which are in the public interest and may at least initially be investigated separately, but may then lead to the use of other procedures e.g. disciplinary. The types of disclosure that are eligible for protection under the Whistleblowing: Policy/ Procedure for Speaking Out are known as 'qualifying disclosures'. These concerns could include:

- A Criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment

- Deliberate attempt to conceal any of the above

3.2 It aims to provide a clear framework so that any person who has concerns in relation to 3.1:

- Knows when it is appropriate to use the policy/ procedure;
- Has a clear set of procedures to follow when raising concerns;
- Is reassured that their concerns will be dealt with fairly, and that their welfare will be safeguarded.

4. **Safeguards**

4.1 **Protection**

This policy/ procedure is designed to offer protection to those employees (and others highlighted in section 2.1 in line with the appropriate parts of the Whistleblowing: Policy/Procedure for Speaking Out) who disclose such concerns provided the disclosure is made in the reasonable belief of the individual making the disclosure that it tends to show malpractice or impropriety and that they make the disclosure to an appropriate person (see paragraph 5.1). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use this procedure. In an extreme case, malicious or vexatious allegations could give rise to legal action on the part of the person(s) complained about.

4.2 **Confidentiality**

Preston College will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

4.3 **Anonymous Allegations**

This policy/ procedure encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the College. In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised;
- The credibility of the concern;
- The likelihood of confirming the allegation from attributable sources.

4.4 **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. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious or vexatious allegations, and particularly if they persist with making them, disciplinary action may be taken against that individual.

5. **Procedures for Making a Disclosure**

5.1 **Responsibilities of Staff**

It is the responsibility of all staff to raise concerns about serious malpractice and to do so in accordance with this policy and procedure.

5.2 Staff who raise a concern need to be clear about what the issue is and which procedure applies. If in doubt, staff should ask for procedural advice from:

- their line manager (unless the concern relates to this manager);
- the Designated Assessor (see paragraph 5.6);
- a Trade Union representative;
- “Protect”, a registered charity formerly known as ‘Public Concern at Work’ which advises on serious malpractice within the workplace. Tel 020 3117 2520 www.protect-advice.org.uk.

5.3 A member of staff who raises a concern must declare any personal interest they have in the matter.

5.4 Where a “Discloser” seeks assistance from a local Trade Union representative or work colleague, they are under an obligation to ensure that the assisting party keeps the matter strictly confidential except as required by law. The Discloser should inform the assisting party that disciplinary action may be brought against them in the event of a breach of confidence.

5.5 **Responsibilities of other Stakeholders**

It is the responsibility of College Stakeholders (see section 2.1) to raise concerns about serious malpractice in line with the appropriate parts of the Whistleblowing: Policy/ Procedure for Speaking Out.

5.6 **Designated Assessor**

The role of the Designated Assessor is to:

- advise the Discloser of the appropriate route to lodge the complaint if it does not fall under this policy/ procedure;
- initiate investigations into complaints which do fall within the scope of this policy/ procedure;
- make recommendations to management for appropriate remedial action if required, and monitor management action to implement these recommendations;
- make an annual report to the Corporation Board on the number of times that the procedure (see section 6) has been formally invoked, and of the outcomes.

5.7 The Designated Assessor is the Clerk to the Corporation Board.

5.8 **Corporation Board**

The Corporation Board will be responsible for ensuring that the policy/ procedure is implemented; and for reviewing and monitoring action taken under the procedure.

6. **Procedure for Implementing the Whistleblowing: Policy/ Procedure for Speaking Out**

- 6.1 As a first step, members of staff should raise concerns directly with their line manager and for students via their tutor. If an employee or student feels unable to follow this route, or where it has been raised with the line manager but the employee does not think it has been properly addressed, the concern should be raised with the College's Clerk as the Designated Assessor. Governors could raise concerns with the Chair of the Board, the Chair of Audit Committee or the Designated Assessor, depending on the nature of the concern.
- 6.2 Other College stakeholders should contact the Clerk, in their capacity as the Designated Assessor, directly. This may be done orally or in writing.
- 6.3 The Discloser should provide as much supporting evidence as possible about the disclosure and the grounds for belief of malpractice.
- 6.4 In the event that an allegation is made against the Clerk, the concern should be raised with the College Principal or Chair of Audit Committee.
- 6.5 The Discloser may be accompanied by a Trade Union representative, work colleague or friend at the interview. The Designated Assessor will take notes of the meeting. The confidentiality of the interview will not be affected in line with section 4.2.
- 6.6 On receipt of the disclosure, the Designated Assessor will offer to interview the Discloser, in confidence, within seven working days, or immediately if there is any danger of loss of life or serious injury. The purpose of the interview will be for the Designated Assessor to obtain as much information as possible from the Discloser about the grounds for the belief of malpractice.
- 6.7 The Designated Assessor will recommend what further steps should be taken within ten working days of the interview (or after the initial disclosure if no interview takes place), or immediately if there is any danger of loss of life or serious injury. Recommendations may include one or more of the following:
 - That the matter should be investigated internally using one of the College's designated Investigation Managers or other appropriate College Managers, the Audit Committee or other investigators appointed by the College;
 - That a member of staff should be given the opportunity to seek redress through the College's Resolution of Grievance Procedure, or a student through the Complaints Procedure;
 - That the matter should be reported to the Education and Skills Funding Agency (ESFA) or any other relevant public authority;
 - That the matter should be reported to the Police.
- 6.8 The grounds on which the Designated Assessor may recommend that no further action by the College should be taken are as follows:
 - That the Designated Assessor is satisfied that, on the balance of probabilities, there is no evidence of malpractice
 - That the Designated Assessor believes that the Discloser is not acting in the public interest

- That the matter is already (or has been) the subject of proceedings under one of the College's other procedures
 - That the matter concerned is already the subject of legal proceedings, or has already been referred to the ESFA, another relevant public authority or the Police
- 6.9 If the Designated Assessor considers an investigation to be the appropriate step to take, they will initiate this investigation, aiming to convey an initial conclusion to the Discloser within 28 days. Where necessary, a different timescale for investigation may be agreed with the Discloser. If, however, there is any danger of loss of life or serious injury, the investigation will be completed within 14 days. The investigation will be made without revealing the identity of the Discloser except as provided in paragraph 8.1.
- 6.10 The Designated Assessor should make recommendations under this procedure to the Principal unless it is alleged that the Principal is involved in the alleged malpractice or unless there are reasonable grounds for not doing so, in which case the recommendations should be made to the Chair of the Audit Committee. The recipient of the recommendations will take all steps within their powers to ensure that they are implemented. If the Principal's view is that full implementation is inappropriate, that opinion will be notified in writing to the Chair of the Corporation Board and the Chair of the Appeal Committee, together with the reason for it. The two Chairs will make a final decision.
- 6.11 All responses to the Discloser will be made in writing and sent to the Discloser's home address or to the Discloser's personal email address rather than through the College mail system. If no further steps by the College are proposed, the Designated Assessor will give the reasons for this.

7. Appeal and External Disclosure

- 7.1 If the Discloser has not had a response within the above stated time limits or if, having followed this procedure, the Discloser is not satisfied with the further steps (if any) decided upon or the outcome of any such steps, the Discloser may take the following action:
- The Discloser may appeal within 21 days direct to the Chair of the Corporation Board;
 - Or the Discloser may raise the matter in confidence directly with the ESFA, another relevant public authority or the Police. Before taking any such action, the Discloser will inform the Designated Assessor or the Chair of the audit Committee.
- 7.2 The Discloser may also raise the matter in accordance with paragraph 7.1 if the Discloser has reasonable grounds for believing that the Designated Assessor is or was involved in the alleged malpractice or that the Discloser will be subject to a detriment as a result of making the disclosure.
- 7.3 The Discloser may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

8. Assurances and Safeguards

- 8.1 Any report or recommendations by the Designated Assessor in relation to the matter will not identify the Discloser, unless:
- The Discloser otherwise consents in writing; or
 - There are grounds to believe that the Discloser has acted maliciously; or
 - The Designated Assessor is under a legal obligation to reveal the identity of the Discloser; or
 - The information is already in the public domain; or
 - On a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.
- 8.2 Any documentation (including electronic files) kept by the Designated Assessor relating to the matter will be kept secure, so that as far as practicable only the Designated Assessor, or their administrative assistant if applicable, will have access to it. Documentation prepared by the Clerk will not reveal the identity of the Discloser.
- 8.3 The Discloser will normally be expected to participate in any enquiry or investigation into the matter established by the College. The Discloser will not, however, be required to participate without his or her consent, unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice.
- 8.4 Where a Discloser participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than confidential basis. The obligations of the Designated Assessor will remain in relation to the identity of the individual as the original Discloser of information.
- 8.5 Subject to paragraph 8.6 the College will not (and will use all reasonable endeavours to ensure that its employees do not) subject the Discloser to any detriment, on the grounds of the individual's disclosure of information under the procedure outlined in sections 6 and 7. The Discloser should notify any complaints of such treatment to the Designated Assessor. If the Discloser wishes the Designated Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Designated Assessor revealing the Discloser's identity.
- 8.6 The College does not tolerate any reprisal against an employee because they have raised a concern under the procedure. Where a Discloser is the subject of victimisation or detrimental treatment, the matter will be investigated in consultation with the Discloser. Where appropriate and subject to the outcome of an investigation, the actions of the perpetrator may be referred to the College's disciplinary procedure, where one outcome may be dismissal.
- 8.7 Any employee who victimises a Discloser may be personally liable which means they may become parties to a claim along with the employer and have tribunal awards made against them personally.

8.8 No disciplinary action will be taken against a Discloser on the grounds of a disclosure made in accordance with this procedure. This will not prevent the College from bringing disciplinary action in cases where:

- There are grounds to believe that a disclosure has been made maliciously or for personal gain;
- An external disclosure is made in breach of this procedure without reasonable grounds or other than to an appropriate authority. The College will consider such actions to be gross misconduct.