



## Public Interest Disclosure Procedure (‘Whistleblowing’)

<b>Policy / Procedure</b>	Public Interest Disclosure Procedure (‘Whistleblowing’)
<b>Responsibility</b>	Richard Atkinson Assistant Principal - Marketing, Communication, Registry and Admissions & Clerk to the Corporation
<b>Who is affected</b>	All staff and learners.
<b>Number of Pages</b>	10

<b>Impact Assessed</b>	7 June 2011	<ol style="list-style-type: none"> <li>1. Age</li> <li>2. Disability</li> <li>3. Gender Reassignment</li> <li>4. Marriage and civil partnership</li> <li>5. Pregnancy and maternity</li> <li>6. Race</li> <li>7. Religion or belief</li> <li>8. Sex and sexual orientation</li> </ol>
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<b>Approved by the Senior Management Team</b>	20 June 2011.
<b>Approved by the Governing Body</b>	11 July 2011.
<b>Posted on the Staff Intranet / Blackboard</b>	12 July 2011.  <b>This document is available in large print, Braille or alternative formats upon request.</b>
<b>Review Date</b>	12 months.



## **Public Interest Disclosure Procedure (‘Whistleblowing’)**

### **1 Introduction**

Members of staff and learners may be the first to realise that there may be something wrong within Middlesbrough College. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues, tutors or to the institution. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

Middlesbrough College encourages members of staff to raise genuine concerns about malpractice at the earliest practicable stage rather than wait for proof. Malpractice within the college is taken very seriously.

It is not, however, meant to be another mechanism for employees or others to raise personal grievances.

This procedure aims to provide a rapid mechanism under which genuine concerns can be raised internally, and, if necessary, externally, without fear of adverse repercussions to the individual. It is also intended to promote throughout the institution a culture of openness and a shared sense of integrity, by inviting all employees and learners to act responsibly in order to uphold the reputation of the institution and maintain public confidence.

This procedure also seeks to balance the need to provide safeguards for members of staff and learners who raise genuine concerns about malpractice against the need to protect other members of staff, members of the Governing Body, learners and the institution against uninformed or vexatious allegations.

### **2 Malpractice**

The types of matters regarded as malpractice for the purposes of this procedure are as follows

- Fraud or financial irregularity.
- Corruption, bribery or blackmail.
- Criminal offences.

- Failure to comply with a legal or regulatory obligation.
- Miscarriage of justice.
- Endangering the health or safety of any individual.
- Endangering the environment.
- Improper use of authority.
- Serious financial maladministration arising from the deliberate commission of improper conduct.
- Academic / professional misconduct.

### 3 Designated Assessors

The Principal / Chief Executive will ensure that three members of staff of appropriate experience and standing within the institution are designated at any time for the purposes of this procedure as Assessors.

These assessors should also generally be considered to be approachable by staff and learners alike, and should not necessarily be at a senior management level. Nor should they be in positions within the College which require them to maintain a professional independence, or where they may subsequently be involved in any possible Disciplinary Hearing or Appeals Process.

One of these shall be designated as Lead Assessor.

At the date of the adoption of this procedure the Assessors will be.

Assessor	Name	Position	Contact
1 (Lead)	Richard Atkinson	Assistant Principal (Marketing, Communication, Registry and Admissions & Clerk to the Corporation)	(01642) 333269
2	Jacky Gardner	Director of Programme (Commerce & Training)	(01642) 333526
3	Steve Brady	Assistant Principal (Student Services, Teaching & Learning)	(01642) 333362

The Principal / Chief Executive may revoke any such designation from time to time and appoint new Assessors. This will be reported to the next meeting of the Governing Body, together with brief reasons for the revocation. Where a revocation arises from the termination of an Assessor's employment, brief reasons for the termination will be given to the Governing Body.

The Lead Assessor will co-ordinate the training of the Assessors in the use of this procedure i.e. in investigative and interviewing techniques; in maintaining evidentiary integrity; and in the use of correct documentation and will produce an annual report to the Governing Body on the number of occasions when the procedure has been formally invoked and the outcome in each case. Summary progress reports will be submitted to intervening meetings, as may be appropriate.

The Principal / Chief Executive will ensure that sufficient resources are available to the Assessors to assist them with managing both their regular College workloads, as well as to provide them with appropriate support should the nature of their involvement in the disclosure process prove stressful and drawn-out.

#### **4 Disclosures**

This procedure applies to disclosure by an employee, an agency contract worker, an independent consultant employed or engaged by the institution, a learner at the institution or a member of the Governing Body, who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the institution. This malpractice may be on the part of an employee, a learner, a member of the Governing Body or any other person or persons.

The person making the disclosure should, as soon as practicable, disclose in confidence the grounds for the belief of malpractice to any of the Assessors. An Assessor may decline to become involved on reasonable grounds.

Such grounds include

- previous involvement.
- interest in the matter concerned.
- incapacity or unavailability, or
- that an Assessor is satisfied, after consulting the Lead Assessor, that another Assessor would be more appropriate to consider the matter in accordance with this procedure.

Any disclosure to an Assessor under this procedure shall, wherever possible, be in writing. The person making the disclosure should provide as much supporting written evidence or other documentation as possible about the grounds for the belief of malpractice.

On receipt of the disclosure, the Assessor will offer to interview, in confidence, the person making the disclosure. Such an interview will take place as soon as practicable after the initial disclosure – preferably within 5 working days. All communications by the Assessor should be in writing, to the Discloser’s home address rather than via internal College communication channels. Consideration should be given by the Assessor to the timing, location and potential duration of any such interview, as well as any special requirements i.e. refreshments, access to toilets, disabled facilities, privacy and involvement of an advocate etc.

The purpose of the interview will be for the Assessor to obtain as much information as possible about the grounds for the belief of malpractice and to consult about further steps, which could be taken. The person making the disclosure may be accompanied by a local trade union representative or work colleague at the interview if they so wish.

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.

## **5 Anonymous Disclosures**

Where a disclosure is made anonymously this should not be ignored and discarded. Rather, the Lead Assessor should determine and document, following consultation with the Principal / Chief Executive 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.

## **6 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 learners 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.

## **7 Advice & Guidance to Assessors**

As each disclosure will be unique, the Assessors will have automatic access to advice and guidance from the Principal / Chief Executive 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.

## 8 Further Steps

As soon as practicable after the interview i.e. within no more than 2 working days, or after the initial disclosure if no interview takes place, the Assessor will recommend, perhaps following consultation with the Lead Assessor, what further steps should be taken.

Such recommendations may include one or more of the following

- that the matter should be more appropriately investigated internally by the institution and/or by the institution's external or internal auditors or other investigators appointed by the institution i.e. under the Fraud & Corruption Response Plan.
- that the institution's Disciplinary Procedures should be invoked.
- that a member of staff or a learner should be given the opportunity to seek redress through the institution's grievance or complaints procedures.
- that the matter should be reported to the police.
- that the matter should be reported to the Skills Funding Agency or the Young Peoples' Learning Agency, the Department for Education, the National Audit Office or some other appropriate public authority.
- no further action is taken.
- that simultaneous investigations i.e. under this procedure and under the disciplinary procedures are undertaken.

All such decisions should be documented for subsequent review.

The grounds on which the Assessor may recommend that no further action by the institution should be taken are as follows

- that the Assessor is satisfied that the person making the disclosure does not have a reasonable belief that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur, or
- that the Assessor is satisfied that the person making the disclosure is not acting in good faith, or
- that the matter concerned is already the subject of legal proceedings, or has already been referred to the police, the Skills Funding Agency or Young Peoples Learning Agency or other public authority, or
- that the matter is already (or has already been) the subject of appropriate proceedings under one of the institution's other procedures relating to staff or learners.

Any such recommendations will be made by the Assessor to the Principal / Chief Executive and documented within 2 working days, unless it is claimed that the Principal / Chief Executive is involved in the alleged malpractice or unless there are other reasonable grounds for not doing so, in which case the recommendations will be made to the Chairman or the Vice Chairman of the Governing Body. The recommendations will be made without revealing the identity of the person making the disclosure save as provided below.

The recipient of the recommendations will take all steps within his or her power to ensure that they are implemented, save to the extent that in the view of the recipient there are good reasons for not doing so – either way, this will be documented.

If the Principal / Chief Executive decides not to implement any such recommendations, that decision will be notified in writing to the Chairman of the Governing Body as soon as practicable and no more than a further 3 working days after the Principal / Chief Executive received notification of recommendations from the Assessor, together with the reasons for it.

Once the Principal / Chief Executive or other recipient has decided what further steps (if any) should be taken, the Assessor will inform the person making the disclosure of the decision in writing. If no further steps by the institution are proposed, the Assessor will give the reasons for this. Regardless, written notification to the Discloser, of the action to be taken (or not), should take place no more than 5 working days after the last interview/s occurred or from receipt of the initial disclosure if no subsequent interview/s took place.

It is the responsibility of the Assessor to keep the Discloser informed, on a timely basis, of any progress with investigations undertaken as a result of the initial disclosure. This notification should be at least weekly (i.e. every 5 working days), especially where such enquiries may be protracted. The Discloser should also be notified in writing of the outcome of the investigation – within 2 working days of any concluding report being received by the Principal / Chief Executive and Chairman of Governors.

Where a disclosure is subsequently investigated under another process other than this procedure, as allowed for above, then the Assessor should continue to keep the Discloser informed of such progress unless both the Assessor and Discloser agree that it is more appropriate to for some other individual to keep the Discloser advised. Again, this should be in writing every 5 working days as a minimum.

## **9 Access to the Governing Body**

Any Discloser who is not satisfied that their concern is being properly dealt with by the Designated Assessor has the right to raise it in confidence with the Chairs of either the Governing Body or the Audit Committee.

## 10 External Disclosure

If, having followed this procedure, the person making the disclosure is not satisfied with the further steps decided upon, or the outcome of any such steps, he or she may raise the matter on a confidential basis directly with the police, the LSC, the Department for Education and Skills, a Member of Parliament or other appropriate public authority. Before taking any such action, the Discloser will inform the Assessor in writing.

The person making the disclosure may also raise the matter externally, as set out in the paragraph above, if he or she has reasonable grounds for believing that he or she will be subjected to a detriment as a result of making the disclosure, or that all the available Assessors are or were involved in the alleged malpractice.

The person making the disclosure may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

## 11 Safeguards

Any report or recommendations by the Assessor in relation to the matter will not normally identify the person making the disclosure, save on a strictly confidential basis to the Assessor's administrative assistant or to a professionally qualified lawyer for the purpose of obtaining legal advice, unless

- the Discloser consents in writing.
- there are grounds to believe that the Discloser has acted maliciously.
- the Assessor is under a legal obligation to do so.
- the information is already in the public domain.
- it is essential to do so in order to deal appropriately with the matter disclosed.

Any documentation (including computer files and discs) kept by the Assessor relating to the matter will be kept secure, so that as far as practicable only the Assessor and his or her administrative assistant shall have access to it. As far as practicable, any documentation prepared by the Assessor will not reveal the identity of the individual as the Discloser of information under this procedure.

Where the person making the disclosure involves a local trade union representative or work colleague in this procedure, the Discloser will be under an obligation to use all reasonable endeavours to ensure that the representative or work colleague keeps the matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

The Discloser will not be required by the institution, without his or her written consent, to participate in any enquiry or investigation into the matter unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice.

Where the person making the disclosure participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis, although the obligations of the Assessor will remain in relation to the identity of the individual as the original discloser of information under this procedure.

Subject to the paragraphs below, the institution will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the Discloser to any detriment on the grounds of the disclosure of information under this procedure. The person making the disclosure should report any complaints of such treatment to an Assessor. If the Discloser wishes the Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Assessor revealing the Discloser's identity for the purposes of any such action.

## **12 Protection against Disciplinary Action**

No disciplinary action will be taken against anyone for making a disclosure in accordance with this procedure. This will not prevent the institution from bringing disciplinary action in cases where there are grounds to believe that a disclosure has been made maliciously or vexatiously or where an external disclosure is made in breach of this procedure without reasonable grounds or otherwise than to an appropriate public authority.

## **13 Amendments / Review**

This procedure may be amended by Governing Body of Middlesborough College from time to time, particularly following any disclosure, and will be reviewed after 12 months. Any comments or suggestions about the procedure should be referred to an Assessor.

