

**GLASGOW COLLEGES REGIONAL BOARD
GUIDANCE ON WHISTLEBLOWING
(PUBLIC INTEREST DISCLOSURE ACT)**

BACKGROUND

1. GCRB is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of the sponsoring department and the standards in public life set out in the reports of the Nolan Committee.
2. One report issued by the Nolan Committee covered the area of whistleblowing, in which the following best practices were identified and recommended. That the body:
 - Possesses a clear statement that malpractice is taken seriously in the organisation, and an indication of the sorts of matters regarded as malpractice
 - Respects the confidentiality of workers raising concerns, and provides the opportunity of raising concerns outwith established line management
 - Ensures that there are known penalties for making false and malicious allegations and
 - Provides an indication of the correct procedures in which concerns may be raised outwith the organisation if necessary.
3. The Nolan Committee reports led to the implementation of the Public Interest Disclosure Act 1998, which became law on 2 July 1998, effective 1 January 1999. The terms of the Act provide protection in law to workers who make certain disclosures of information in the public interest (an action commonly referred to as whistleblowing). In order to comply with the terms of the Act GCRB is required to have in place formal procedures for dealing with instances of whistleblowing. The 1998 Act has been amended by the Enterprise and Regulatory Reform Act 2013. The right to make a public interest disclosure is extended to anyone within the workplace – this includes employees of GCRB, secondees, agency workers and contractors.
4. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employers' affairs. Where, however, a worker discovers information which they believe shows malpractice/wrongdoing within the organisation then this information should be disclosed without fear of reprisal, and may be made independently of line management.
5. The Act is designed to offer protection to a person who discloses such concerns, if:

- The disclosure is not made for the purposes of personal gain
 - Given the circumstances of the case, it is reasonable for the disclosure to be made and
 - The person reasonably believes that they will be subject to a detriment of his employer if they make a disclosure to the employer, or if evidence relating to the disclosure will be concealed or destroyed.
6. Whistleblowing can be defined as ‘the act of bringing to the attention of an appropriate body a concern over a threat to the public interest caused by malpractice or misconduct’.
7. Qualifying disclosures – the Act provides protection for a worker who raises a legitimate concern about specified matters. A qualifying disclosure is one made in the public interest by a worker who has a reasonable belief one of the following is being, has been or is likely to be committed:
- A criminal offence
 - A miscarriage of justice
 - An act creating risk to health and safety
 - An act causing damage to the environment
 - A breach of any other legal obligation or
 - Concealment of any of the above.
8. Investigation – the worker making the disclosure has no responsibility for investigating the matter – it is GCRB’s responsibility to ensure that an investigation has taken place.
9. Note: From June 2013, Whistleblowing is about a disclosure which is in the public interest. This means that employees will generally be precluded from raising issues about their terms and conditions of employment via the whistleblowing procedure – such claims should instead be raised via the relevant grievance procedure.

GCRB’S APPLICATION OF THE ACT

10. GCRB fully acknowledges and implements the application of the Public Interest Disclosure Act in the procedures detailed in the following paragraphs. GCRB considers relevant acts as matters of a serious nature and would seek to resolve such matters in an efficient and effective manner. The *Code of Conduct for Staff* summarises such acts as listed below:

If a worker believes that they are being required to act in a way which:

- is illegal, improper or unethical

- is in breach of a professional code
- may involve possible maladministration, fraud or misuse of public funds
- threatens to endanger the health and safety of any worker or damage the environment and/or
- is otherwise inconsistent with the *Code of Conduct for Staff*

or, they believe there is:

- evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved
- evidence of criminal or unlawful activity by others

or:

- they are otherwise required to act in a way which, for them, raises a fundamental issue of concern.

11. GCRB will treat all such disclosures in a confidential and sensitive manner. The identity of the worker 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 worker making the disclosure may need to provide a statement as part of the evidence required.

12. This policy encourages workers to put their name to any disclosure they make. Concerns expressed anonymously are less powerful, but they will be considered at the discretion of the Executive Director, the Board Secretary and the Chair of GCRB, who are required to take into account:

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

13. If any of the above office-holders are the subject of the anonymous disclosure they would not be involved in considering it.

14. The identity of a worker raising a concern who requests at the time of raising the concern with the Board Secretary, or another post-holder with responsibility for whistleblowing concerns within the organisation, that their identity remains confidential will not be disclosed except where disclosure is required by law.

15. If a worker makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that worker. If, however, a worker

makes malicious or vexatious allegations, and particularly if they persist with making them, disciplinary action may be taken against the worker concerned.

16. A worker raising a whistleblowing concern is afforded protection against suffering any detriment, bullying or harassment from other workers of GCRB as result of raising the concern. GCRB will sanction, as appropriate, any worker proven to have subjected another worker to such detriment.

PROCEDURES FOR MAKING A DISCLOSURE

17. There are five steps to the disclosure procedures. It is important that these procedures are followed to ensure that the person/s making the disclosure are afforded the full protection of the Act.

- Initial step
- Process
- Investigation
- Feedback
- Reporting outcomes.

18. Initial Step: The worker should make the disclosure to the Board Secretary, who is responsible for the investigation of workers' concerns about illegal, improper or unethical behaviour. The Board Secretary is required to inform the Executive Director and Chair of GCRB, unless:

- Requested not to do so by the discloser or
- If the Executive Director is the subject of the disclosure, in which case the Board Secretary will inform the Chair of GCRB.

19. If the disclosure pertains to the Board Secretary then the disclosure should be made directly to the Executive Director, who will inform the Chair of GCRB. If the Chair is the subject of the disclosure, the Board Secretary should be informed and the matter will be raised with the Scottish Funding Council.

20. The Chair of the Audit and Assurance Committee should also be informed of all cases of alleged financial impropriety and should be directly involved in any related investigation. Concerns may also be raised with the Chair of the Audit and Assurance Committee in the first instance or with the External Auditor in circumstances where other named office-holders may be considered to have a conflict of interest.

21. Process: In all instances, there should be at least two people involved in the initial decision whether to investigate further an allegation. Normally the Executive Director, Board Secretary and the Chair of GCRB will consider the information made

available to them and decide on the form of the investigation to be undertaken, this may be:

- To investigate the matter internally
- To refer the matter to the Scottish Funding Council
- To refer the matter to GCRB's Internal Auditor or
- To call for an independent investigation.

22. If the Executive Director, Board Secretary and Chair decide that the investigation should be conducted by more than one of these means, they should satisfy themselves that such a course of action is warranted. The decision and underpinning reason is required to be appropriately documented.

23. Where the matter is to be the subject of an internal investigation, the Board Secretary will consider how to conclude whether there is a prima facie case to answer. This consideration will include determining:

- Who should undertake the investigation
- The procedures that should be followed and
- The scope of the concluding report.

24. All such decisions and determinations are to be appropriately documented by the Board Secretary. If either the Executive Director or the Board Secretary are the subject of the disclosure then they will not be involved in determining the process.

25. Investigation: An independent officer, either internal or external, will be appointed by the Board Secretary to perform the investigation. It is the responsibility of this independent officer to investigate the matter and report the findings back to the Board Secretary. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigation is to be conducted as sensitively and speedily as possible.

26. A worker who has raised a concern shall be informed within ten working days of whether and how an investigation will be carried out, by whom, and the proposed timescale for completion of any investigation. Where it is not possible for a response to be provided within ten working days, the worker shall be informed of the date by which they will receive a response. Where an investigation is carried out, the worker who raised the concern shall, where appropriate, be informed of the outcome within a reasonable timescale, which shall normally be within ten working days of completion of the investigation.

27. As a result of any investigation, other procedures may also have to be followed, e.g. disciplinary, grievance/complaints or harassment, or it might form the basis of a special investigation.
28. In cases alleging misuse of public funds, Audit Scotland may wish to undertake its own investigation.
29. Feedback: The designated officer will inform the worker making the disclosure of what action, if any, is to be taken. If no further action is to be taken then the worker making the disclosure should be informed of the reason for this and allowed the opportunity to remake the disclosure to another appropriate person. It is the responsibility of this other appropriate person to review all the information presented; the procedures originally followed; and the reasons for not taking any further action. The outcome of this review will be to either confirm that no further action is required or that further investigation is required. Should further action be required the procedures outlined in this manual should be followed. However, prior to a further investigation or further action being made, the person/s who have been investigated will be told of the disclosure and the evidence supporting it and will then be given the opportunity to comment on the disclosure prior to further investigation or action being undertaken.
30. Where a worker has reported a matter and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to a nominated official in the Scottish Funding Council. In such cases the report should be addressed to the Secretary to the Council at the Scottish Funding Council.
31. Reporting of Outcomes: A report of each disclosure and any subsequent actions taken will be made by the Board Secretary who will retain them for a minimum of three years. In all cases, a report of the outcomes of any investigation will be made to the Audit Committee; reports pertaining to those disclosures made which fall within the Committee's remit will be made in detail, and other reports will be summarised. The monitoring of the effectiveness of this procedure forms part of the remit of the Audit Committee.

CONCERNS RAISED BY WORKERS OF ASSIGNED COLLEGES

32. It is recognised that in some circumstances workers of colleges assigned to GCRB may choose to raise whistleblowing concerns with GCRB.
33. In the event of such a concern being raised, GCRB will:

- a. where the area of concern is within the scope of GCRB’s authority, deal with it under this procedure;
- b. where the area of concern is within the authority of an Assigned College, refer the whistleblower to the College’s own procedures or to the appropriate external body, for example, the Health & Safety Executive;
- c. where appropriate, seek the advice of the Scottish Funding Council, auditor or another body in the interests of ensuring that the concern is dealt with in an appropriate manner.

FURTHER ACTIONS

34. In accordance with the Act we would hope that a worker would make their disclosure via GCRB’s procedure; however, disclosure to certain other organisations may be protected by law. These organisations are laid out in the regulations and depending on the nature of the concern e.g. the Health and Safety Executive if it concerns safety, the Scottish Environmental Protection Agency if it is about damage to the environment, Audit Scotland if it concerns public administration, misuse of public funds, fraud or corruption. Further details of relevant organisations can be obtained from the Gov.UK website.

35. Further guidance on Public Interest Disclosure can be obtained from the relevant organisations including:

- Protect (formerly Public Concern at Work) - www.protect-advice.org.uk
- Audit Scotland – www.audit-scotland.gov.uk
- The Advisory Conciliation and Arbitration Service (ACAS) - www.acas.org.uk
- Your trade union

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