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Document Author:	Dee Povey
Responsible Person and Department:	Malcolm Willis – Director of HR
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Summary: <p>This policy is intended to encourage openness and communication within the University. It also seeks to provide University employees, and others who come within the scope of the Public Interest Disclosure Act 1998, with clearly defined routes for disclosing relevant information both within the University and external to it.</p>	

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY & PROCEDURE

**Original Policy approved by the Board of
Governors on 1 March 2000. This version
approved by the Board of Governors on 14
March 2012.**

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY & PROCEDURE

1 INTRODUCTION

1.1 The following Policy & Procedure is intended to encourage openness and communication within the University. It also seeks to provide University employees, and others who come within the scope of the Public Interest Disclosure Act 1998, with clearly defined routes for disclosing relevant information both within the University and external to it. The policy & Procedure follows the guidelines in the Committee of University Chairmen document 'Guide for members of Higher Education Governing Bodies in the UK' (HEFCE,2009), amended to take account of the particular structure of the University. It also complies with the requirements of the Public Interest Disclosure Act 1998. The aims of the Act are to encourage employees to raise their concerns internally and to regulate the situations in which they may raise the matter externally. It provides statutory protection for workers against detriment or dismissal for raising concerns about specific categories of matters deemed to be in the public interest.

1.2 While the term 'whistleblowing', has no legal definition, one provided by Lord Borrie, QC, is widely quoted:-

'the disclosure by an employee (or professional) of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of employer or his fellow employees'.

1.3 The Public Interest Disclosure Act 1998 provides statutory protection for the disclosure by a worker of information within a wide category of qualifying disclosures provided it is a protected disclosure *made in accordance with statutory requirements*. Any worker who has made a qualifying disclosure using one of the specified procedures outlined below will be protected from being subjected to any detriment by the employer as a result of making the disclosure. Any resulting dismissal will be automatically unfair and entitled to damages which may be unlimited. Detriment could include demotion, failure to promote, and, in the case of non-employees, any termination of contract.

2 QUALIFYING DISCLOSURE

A qualifying disclosure is the disclosure of information, made in good faith, which the worker reasonably believes indicates that one of the following has occurred or might occur:-

- 2.1** criminal offence;
- 2.2** failure to comply with a legal obligation;
- 2.3** miscarriage of justice;
- 2.4** a danger to the health and safety of any individual;
- 2.5** damage to the environment;
- 2.6** deliberate concealment of information tending to show any of the above.

3 PROTECTED ROUTES OF DISCLOSURE

3.1 As mentioned above, the aim of the Act is to encourage workers to disclose information to the University in the first instance, rather than to a third party. The Act provides for this by making it relatively easy for a worker to disclose information to an employer and gain protection against detriment or dismissal, but more difficult to disclose information to a third party and gain protection from disciplinary action by the University.

3.2 A qualifying disclosure will only be protected if a worker is acting in good faith and has followed one of six specified routes of disclosure:-

3.2.1 to the University as employer in accordance with this procedure, or to another person the worker reasonably believes to be solely or mainly responsible for the relevant failure. The Governing Body has agreed that the University's whistleblowing procedure should include reference to an external party.

3.2.2 to a legal adviser in the course of obtaining legal advice.

3.2.3 to a Minister of the Crown where the employer is an individual or body appointed by the Minister. This does not apply to the University.

3.2.4 to a "prescribed person". A list of such people is included in the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 and is available from the Human Resources Department. There is no such person prescribed specifically relating to higher education. Amongst the more obvious which might apply to higher education matters are the Audit Commission, Charity Commissioners and the Health and Safety Executive.

3.2.5 (a) a catch-all provision for other cases where the worker reasonably believes that the disclosure is substantially true, is not acting for personal gain, and meets at least one of the following three conditions:-

- (i) the worker reasonably believes s/he will be treated to her/his detriment by the University if the disclosure is made to the University or to a prescribed person;

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- (ii) where there is no "prescribed person", the worker reasonably believes that relevant evidence will be concealed or destroyed if the disclosure is made to the University;
 - (iii) where the worker has already made substantially the same disclosure to the University or to a "prescribed person".

(b) and

in all the circumstances of the case, it is reasonable for the disclosure to be made. Such reasonableness will take account of:-

- (i) the seriousness of the relevant failure and whether it is continuing or likely to occur again in the future;
- (ii) whether the disclosure breaches the employer's duty of confidentiality to others;
- (iii) any action taken or might have been taken by the employer or other person to when the previous disclosure was made;
- (iv) whether in making the disclosure the worker complied with the employer's Public Interest Disclosure (Whistleblowing) Policy & Procedure;
- (v) the identity of the person to whom the disclosure is made.

With respect to 3.2.5 (b) (iv) and (v), the legislation assumes that that employees should take advantage of internal procedures before making any external disclosure. It is also more likely to be considered reasonable for an employee to disclose to a professional body that has responsibility for a particular field than to the media. To ensure that employees who make disclosures relating to the University do not put their employment at risk, the University advises staff to ensure that the internal procedures of the Public Interest Disclosure (Whistleblowing) Policy & Procedure is exhausted before any external disclosure take place and, where there is an external disclosure, it is to the appropriate body rather than to the media.

3.2.6 "exceptionally serious" failures which are of such magnitude as to justify bypassing the other procedures. To have protection under this procedure, the worker must show that:-

- (a) s/he acted in good faith in making the disclosure;
- (b) s/he reasonably believed that the information disclosed, including any allegations made, was substantially true;
- (c) s/he was not acting for personal gain;
- (d) the matter disclosed is of an exceptionally serious nature;
- (e) that it is reasonable in all the circumstances for the disclosure to be made.

4 DISCLOSURE OF INFORMATION THROUGH THE UNIVERSITY'S PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY & PROCEDURES

4.1 Allegations of injustice(s) or discrimination against individuals should be dealt with under established University policies and procedures, for example the Grievance Policy & Procedure and the Complaints Handling Policy, or such other policies and procedures as may be approved by the Board of Governors. This Public Interest Disclosure (Whistleblowing) Policy & Procedure is not to be used as an alternative to any of the other policies and procedures.

4.2 It should be noted that disclosure includes allegations against others.

4.3 4.3.1 The following avenues are available within the University to workers who wish to disclose information concerning areas covered by the Public Interest Disclosure Act, that is a *qualifying disclosure viz.:-*

- criminal offence
- failure to comply with a legal obligation
- miscarriage of justice
- a danger to the health and safety of any individual
- damage to the environment
- deliberate concealment of information tending to show any of the above

4.3.2 These avenues should be exhausted before any attempt is made to disclose information outside of the University.

(a) In the interests of health and safety, disclosure of information concerning health and safety should be made immediately to the person's line manager, safety representative or directly to the University Security and Safety Officer. In the event that the person disclosing the information is not satisfied that the issue has been properly addressed, they should then avail themselves of this Public Interest Disclosure (Whistleblowing) Policy & Procedure.

(b) Qualifying disclosures about an individual's conduct, other than that of the Vice-Chancellor, should normally be made to the Vice-Chancellor.

(c) Where, for whatever reason, the person disclosing the information considers it inappropriate to disclose it to the Vice-Chancellor, the provisions of paragraph (d) apply.

(d) Disclosures about the conduct of the Vice-Chancellor, or those to which paragraph (c) applies, should be made to the Chair of the Board of Governors.

(e) Where, for whatever reason, the person disclosing the information considers it inappropriate to disclose it to the Vice-Chancellor or the Chair of the Board of Governors, they should make the disclosure to the Chair of the Audit Committee.

(f) The person to whom the disclosure is made should make a record of its receipt and of what subsequent action was taken. Any allegation made under this procedure shall normally be the subject of a preliminary investigation either by the person to whom the allegation is made or, more usually by a person or persons appointed by her/him.

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- (g) Where the person who receives the disclosure decides that an investigation is not warranted, and any allegations are thereby effectively dismissed, the person making the allegations shall be informed and given the opportunity to disclose the information to any of the three persons identified at (b), (d) and (e) above.
 - (h) Where all three of the persons identified at (b), (d) and (e) above decide that an investigation is not warranted, and any allegations are thereby effectively dismissed, the person making the allegations shall be informed and given the opportunity to disclose the information to an external adjudicator appointed by the University for this purpose.
 - (i) When an investigation is conducted, the person or persons against whom any allegation is made must be told of the allegation, the evidence supporting it, and be allowed to comment before the investigation is concluded and a report made.
 - (j) The person receiving the disclosure shall, upon completing an investigation, advise the person making the disclosure of the outcome, including what action, if any, is to be taken to remedy the situation.
 - (k) The results of the investigation shall be reported to the Audit Committee.
 - (l) Any person making a disclosure shall be guaranteed that the disclosure 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.
 - (m) Provided the disclosure has been made lawfully, in good faith and in line with the University's Public Interest Disclosure (Whistleblowing) Policy & Procedures, the employment position of the person shall not be disadvantaged by reason of making the disclosure.

Approved by the Board of Governors
14 March 2012 (minute BG58/11-12)