



PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING)

1.0 POLICY SCOPE

This policy has been introduced to follow recommendations of Lord Nolan in his second report “Standards in Public Life”. It is drawn up to conform with the “Public Interest Disclosure Act 1998” **which came into force on 2nd July 1999 and** which protects employees and other workers from dismissal or other unfavorable treatment **in response to raising concerns about matters in the public interest, so long as the concerns disclosed are genuine and have been raised in good faith, in accordance with the Act.**

1.1 Background

This policy is intended to apply to disclosure by an individual (the Discloser) who is a governor, an employee, an agency contract worker or a self-employed worker engaged by the College, or a student who has grounds to believe that serious malpractice has occurred, is occurring or is likely to occur in connection with the College, **parents of students at the College.**

Whilst members of staff may be amongst the first to identify serious malpractice occurring within the College, they may be reluctant to express their concerns because they feel that speaking up would be disloyal or because they fear harassment or victimisation. The College is, however, anxious that staff raise any such concerns and are able to do so at an early stage rather than wait for proof.

If a disclosure is made maliciously or vexatiously (or where an external disclosure is made in breach of the procedure without reasonable grounds or otherwise than to one of the appropriate bodies stated in paragraphs 2.13 and 2.14) the governor, member of staff or student who raised the concern is at risk of disciplinary action.

This procedure is intended to provide a rapid mechanism under which genuine concerns can be raised internally and, if necessary, externally without fear of repercussions (e.g. victimisation, subsequent discrimination or disadvantage) to the individual. It is also intended to promote throughout the College a culture of openness and a shared sense of integrity by inviting all governors, staff and students to act responsibly in upholding the reputation of the College and maintaining public confidence.

Examples of serious malpractice are:

- i. Fraud or other financial irregularity (e.g. misappropriation of money) – **refer to Anti-Fraud and Corruption Policy for details;**
- ii. Corruption and **Bribery** (blackmail or serious breach of academic standards, such as consistent and deliberate award of unjustifiably high or low marks for student work);
- iii. **Financial irregularities**
- iv. **Dishonesty**
- v. **Bullying and harassment**
- vi. **Abuse of position/authority**
- vii. Conduct which is an offence or breach of the law (e.g. theft);
- viii. Causing danger to the environment or individuals;
- ix. **Breach of health and safety regulations;**

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- x. Unethical conduct ***or practice and deliberate concealment of information about malpractice.***

1.2 Aims

The aims are:

- i. to provide safeguards to protect individuals who raise genuine concerns about malpractice in connection with the College;
- ii. to require management to act swiftly and constructively to address breaches of key standards;
- iii. to lead, where appropriate, to the use of other procedures e.g. the Disciplinary Procedure, and to more formal investigations, e.g. by Internal Audit, but will not replace them;

It is NOT:

- i. intended that an individual should be asked to “prove” that his/her suspicions are well founded;
- ii. designed to replace the Grievance Procedure, which should be used where an employee is aggrieved about an issue relating to his/her employment;
- iii. designed to deal with routine Health and Safety issues, which are currently dealt with by the Health and Safety Committee.
- iv. ***designed to tackle in the first instance, cases of bullying and harassment. These are dealt with in the Bullying and Harassment Policy/procedures.***
- v. ***Designed to cover complaints against the College arising from dissatisfaction about its services, for which a separate Complaints Policy/procedures exists.***

1.3 Assurances and Safeguards

The College will make every effort to keep the Discloser’s identity confidential unless the Discloser otherwise consents in writing or unless there are grounds to believe that the Discloser has acted maliciously. In the absence of such consent or grounds, the Designated Assessor will not reveal the identity of the Discloser except in extreme circumstances such as:

- i. where the Designated Assessor is under a legal obligation to do so;
- ii. where the information is already in the public domain;
- iii. on a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice;
- iv. where it is essential that the Discloser provide evidence at a Disciplinary Hearing.
- v. ***The Discloser otherwise consents in writing;***
- vi. ***There are grounds to believe that the Discloser has acted maliciously;***
- vii. ***On a strictly confidential basis to a Designated Assessor’s administrative assistant.***

The College will not tolerate harassment or victimisation of anyone raising a concern in good faith, whether or not it proves well-founded.

- ***1.3a Any documentation (including computer files and discs) kept by the Designated Assessor relating to the matter will be kept securely, so that as far as practicable only the Designated Assessor and his/her assistant have***

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access to it. Documentation prepared by the Designated Assessor will not reveal the identity of the Discloser.

- **1.3b** 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/her consent, unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice.
- **1.3c** Where a Discloser participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis. The obligations of the Designated Assessor will remain in relation to the identity of the individual as the original Discloser of information.
- **1.3d** Subject to the next sub-clause (1.3e) 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 this procedure. 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.
- **1.3e** No disciplinary action will be taken against a Discloser on the grounds of a disclosure made by the Discloser 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; where 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.

1.4 What the College Requires of Members 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.

Staff who raise a concern need to be clear as to what the issue is and which procedure applies, e.g. whether it is a matter that would be better dealt with through this procedure or through the Grievance Procedure. If in doubt, staff should ask for procedural advice from the Principal, **their line manager, a designated assessor (see paragraph in procedures 2.2)**, a trade union or staff association representative, or Public Concern at Work, a registered charity **and independent authority** which advises on serious malpractice within the workplace (Tel No. 0207 404 6609, www.pcaaw.co.uk).

A member of staff who raises a concern must declare any personal interest he/she has in the matter.

Where the Discloser involves a local trade union representative or work-based colleague to assist him/her, the Discloser will be under an obligation to use all reasonable means to ensure that the representative or colleague keeps the matter strictly confidential except as required by law. **The Discloser should inform the other party that disciplinary action may be brought against them in the event of a breach of confidence.**

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1.5 Protected Grounds for Disclosure

To qualify for protection in disclosure individuals must be acting in good faith and have reasonable grounds for believing that the information disclosed indicates the existence of one or more of the following:

- i. That a criminal offence has been committed, is being committed, or is likely to be committed;
- ii. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject;
- iii. That a miscarriage of justice has occurred, is occurring or is likely to occur;
- iv. That the health and safety of any individual has been, is being or is likely to be damaged. It must indicate a greater danger than is associated with the normal use of the process/product, or a danger that is not usually associated with it;
- v. That the environment has been damaged, is being damaged or is likely to be damaged;
- vi. That information tending to show any matter falling within i to v above is being or is likely to be deliberately concealed.

In addition, protection will also arise if one or any of the following conditions is met:

- (i) the individual has previously raised the matter with the College; or
- (ii) the individual has not done so because he/she reasonably believes that:
 - (a) he/she would be penalised for doing so, or
 - (b) the evidence would be concealed or destroyed if he/she did and there is no regulatory body to which genuine concerns can be expressed.

In such a case, there is no specific restriction on the identity of the party to whom the disclosure can be made.

In determining the 'reasonableness' of the above, the following factors will be taken into consideration:

- (i) the identity of the person to whom the disclosure was made;
- (ii) the seriousness of the problem;
- (iii) whether it is continuing or likely to reoccur;
- (iv) whether the individual has complied with any Public Interest Disclosure procedures authorised by the College.

1.6 RELATED COLLEGE POLICIES/PROCEDURES

- **Grievance**
- **Disciplinary**
- **Complaints**
- **Anti-Fraud, Corruption and Irregularity**
- **Data Protection**
- **Equality and Diversity**
- **Bullying and Harassment**
- **Child Protection**
- **Safeguarding**

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2.0 PROCEDURE

2.1 As a first step the member of staff should normally raise concerns where it is inappropriate to raise them through other procedures, such as grievance, with his/her line manager. A governor should normally raise concerns with the Clerk to the Governors. Students should contact the Guidance Director. This may be done orally or in writing.

2.2 If a member of staff feels unable to follow this route, for good reason, or would like to discuss his/her concerns in confidence, he/she can refer the matter of concern to one the College's Designated Assessors

The Designated Assessors are:

- (i) Clerk to the Governors (The Clerk to the Governors is the Reporting Assessor who reports to the Audit Committee);
- (ii) Two other members of staff, **with appropriate experience and standing**, nominated by the Principal (one male/one female), ;
- (iii) Guidance Director (but only in cases where the concerns are about malpractice falling under the child protection legislation or where a student raises a concern).

(See Appendix 1 for guidelines on the designation and selection of appropriate Assessors).

2.3 The role of Designated Assessors is to:

- (i) advise the Discloser of the appropriate route to lodge the complaint if it does not fall under the College's Public Interest Disclosure Procedure;
- (ii) initiate investigations into complaints which do fall within the scope of the Public Interest Disclosure Procedure;
- (iii) make recommendations to management for appropriate remedial action if required, and monitor management action to implement these recommendations;
- (iv) make regular reports to the Chair of the Corporation and the Chair of the Audit Committee; this will be done by the Clerk to the Governors.

2.4 Concerns are best raised in writing to one of the Designated Assessors. The Discloser should provide as much supporting evidence as possible about the disclosure and the grounds for the belief of malpractice. (See Appendix 2 for the pro forma). If the Discloser feels unable to put his/her concerns in writing, he/she can telephone or meet one the Designated Assessors.

2.5 In the event that an allegation is made against one of the Designated Assessors, the complaint should be made to one of the other Designated Assessors.

2.6 On receipt of the concern, the Designated Assessor will offer to interview the Discloser within seven working days, in confidence, 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

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Discloser about the grounds for the belief of malpractice. (See Appendix 3 for a pro forma).

2.7 The Discloser may be accompanied by a trade union representative or work-based colleague at the interview. ***If the accompanying person is a legal adviser, this should be made known to the Designated Assessor in advance.*** The Designated Assessor may be accompanied by an administrative assistant to take notes. These notes will not identify the Discloser.

2.8 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, the Designated Assessor will recommend what further steps should be taken. Such recommendations may include one or more of the following:

- (i) that the matter should be investigated internally using appropriate College Managers, the Audit Committee or other investigators appointed by the College (see paragraph 2.10) ***and also refer to Appendix 5;***
- (ii) that a member of staff should be given the opportunity to seek redress through the College's Grievance Procedure ***or a student through the Complaints Procedure;***
- (iii) that the matter should be reported to the Young People's Learning Agency (YPLA), Department for Education or other relevant public authority;
- (iv) that the matter should be reported to the Police.

(See Appendix 4 for the pro forma)

2.9 The grounds on which the Designated Assessor may recommend that no further action by the College should be taken are as follows:

- (i) that the Designated Assessor is satisfied that on the balance of probabilities, there is no evidence that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur;
- (ii) that the Designated Assessor is satisfied that the Discloser is not acting in good faith;
- (iii) that the matter is already (or has been) the subject of proceedings under one of the College's other procedures;
- (iv) that the matter concerned is already the subject of legal proceedings, or has already been referred to the YPLA, Department for Education, other relevant public authority or the Police.

2.10 If the Designated Assessor considers an investigation to be the appropriate step to take, he/she will initiate this investigation, aiming to convey an initial conclusion to the Discloser within 28 days. However, if there is any danger of loss of life or serious injury, the investigation will be completed within less than 14 days.

2.11 Any recommendations made under this procedure should be made by the Designated Assessor to the Principal unless it is alleged that the Principal is involved in the alleged malpractice or unless there are other reasonable grounds for not doing so, in which case the recommendations should be made to the Chair of the Audit Committee. In any case, the recommendations will be made without

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revealing the identity of the Discloser except as provided in paragraph 1.3 above. The recipient of the recommendations will take all steps within his/her powers to ensure that, in the view of the recipient, there are good reasons for not doing so. If the Principal decides not to implement fully any such recommendations, that decision will be notified in writing by the Reporting Assessor to the Chair of the Corporation and the Chair of the Audit Committee, together with the reason for it.

- 2.12 All responses to the Discloser will be made in writing and sent to the Discloser's home address rather than through the internal mail. If no further steps by the College are proposed, the Designated Assessor will give the reason for this.
- 2.13 If the Discloser has not had a response within the above stated time limits or otherwise feels that the complaint is not dealt with appropriately:
- (i) the Discloser may appeal within 21 days to the Chair of the Corporation;
 - (ii) alternatively the Discloser may raise the matter in confidence directly with the Learning & Skills Council, Department for Education and Skills, other relevant public authority or the Police. Before taking any such action, the Discloser will inform the Designated Assessor.
- 2.14 The Discloser may also raise the matter in accordance with paragraph 2.13 above if the Discloser has reasonable grounds for believing that all Designated Assessors are or were involved in the alleged malpractice or that the Discloser will be subject to a detriment as a result of making the disclosure.
- 2.15 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.

3.0 IN CONCLUSION

- 3.1 Governors, staff and students are encouraged to use the procedure. The remedial action may be simple and the solution straight forward and if individuals express genuine concern to the right people at an early stage, the benefits to the College can be enormous.
- 3.2 Governors, staff and students should not take concerns outside of the College, especially to the press or media, until the procedure has been exhausted. With respect to any communication with the media, staff and students must ensure that they refer the matter to the Principal and obtain approval before providing any personal response. Governors should refer the matter to the Chair of the Corporation and obtain approval before providing any personal response.
- 3.3 This policy and procedure will be reviewed in line with the Corporation Policy Review Schedule.

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Appendix 1

VARNDEAN COLLEGE

Public Interest Disclosure Procedure

Guidelines for the Designation and Selection of Appropriate Assessors

1. The Principal of the College will ensure that at least three senior staff are designated as Assessors for the purpose of this procedure. It is vital that there is more than one Assessor in the event that a case is made against an Assessor.
2. The Assessors should be senior staff who have access to governors.
3. The Assessors should include both male and female managers.
4. The Principal may revoke any designation from time to time and designate new Assessors. The Principal will report any such revocation to the next meeting of the Corporation, together with brief reasons for the revocation.
5. ***A Designated Assessor may decline to be involved on reasonable grounds, including possible previous involvement or interest in the matter concerned, incapacity or unavailability. Another Designated Assessor might be considered more appropriate qualified to deal with the matter.***

The Designated Assessors are:

- | | | |
|----|-------------------|------------------------------|
| 1. | Mrs L. Pennington | Clerk to the Governors |
| 2. | Mr S J Hinks | Curriculum Director |
| 3. | Ms J Sawyer | Director of Student Progress |
| 4. | Ms J E Arnold | Director of HR & Quality |

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Appendix 2

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Public Interest Disclosure Procedure

Confidential Memorandum

To:
(Please name the Designated Assessor you would like to address)

From:

Date:

CONCERN ABOUT MALPRACTICE UNDER THE COLLEGE'S PUBLIC INTEREST DISCLOSURE PROCEDURE

I would like to notify you as one of the College's Designated Assessors for concerns under the College's Public Interest Disclosure Procedure of the following malpractice that has come to my attention:

1. Category (please tick relevant box(s)):

- Fraud
- Corruption
- Actions or omissions which have potential for loss of life or serious injury
- Breach of a legal requirement
- Other

2. Details of malpractice occurring:

.....
.....
.....
.....

3. Dates or period of time when malpractice occurred:

.....

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.....
4. The allegation is made against:

.....
5. Evidence:

Supporting evidence is attached (list the documents below)

.....
.....
.....
.....
Please contact me as soon as possible to arrange a date for a meeting. (The Public Interest Disclosure Procedure requires the Designated Assessor to offer an interview within seven working days).

Signature:

Name:

Date:

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Appendix 3

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Public Interest Disclosure Procedure

Confidential Memorandum

To:

From:
(Designated Assessor for concerns under the College's Public Interest Disclosure Procedure)

CONCERN ABOUT MALPRACTICE UNDER THE COLLEGE'S PUBLIC INTEREST DISCLOSURE PROCEDURE

Your Memorandum dated:

Thank you for raising your concern about malpractice with me.

To discuss the matter further, I suggest the following date for a meeting:

.....

This will take place in my office unless you would prefer an alternative venue. Please indicate whether you will be accompanied by a trade union representative or work-based colleague.

Please note that the purpose of this meeting is for me to obtain as much information about your concern as possible and to discuss any further steps that could be taken with you. If you have any additional evidence that supports your concern, please bring this with you to the meeting.

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Appendix 4

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Public Interest Disclosure Procedure

Confidential Memorandum

To:

From:
(Designated Assessor for concerns under the College's Public Interest Disclosure Procedure)

CONCERN ABOUT MALPRACTICE UNDER THE COLLEGE'S PUBLIC INTEREST DISCLOSURE PROCEDURE

Our meeting dated:

Thank you for attending the above meeting:

I have carefully considered the allegations made by you under the College's Public Interest Disclosure Procedure and have recommended the following action;

(Please tick relevant box(s))

- to investigate the matter internally using appropriate College Managers, the Audit Committee or other investigators appointed by the College
- to report the matter to the YPLA
- to report the matter to the Department for Education
- to refer the matter to
(Please specify relevant public authority)
- to refer the matter to the Police
- to take no further action

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Appendix 5

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Public Interest Disclosure Procedure

Guidelines for Investigating Alleged Malpractice

This appendix outlines the procedures to be followed in formal investigations, internal and external, of alleged malpractice. Prompt action is important.

An investigator should be someone who has had no connection with the case. On occasion it may be necessary to appoint an external person to conduct an investigation,

An investigation needs to be focused and comprehensive. Its aims are:

- *To take a considered view of the likely facts and whether there is a case to answer;*
- *To find out as much as possible about what happened.*

Investigations, both internal and external, should comply as far as possible with the Rules of Natural Justice. This means informing the individuals concerned of the nature of the alleged misconduct, of their right to be accompanied at the investigation by a friend, College Trade Union representative or work colleague, and giving him/her a chance to state their case before any decision is made.

Preparation for an Investigatory Interview

Having received their brief an investigator should:

- *Identify the key issues to be investigated;*
- *Identify the people who need to be seen;*
- *Obtain a copy of the policies and procedures at issue; check whether the student/s or employee/s involved have been given them and, if so, when;*
- *Decide whether to relieve the stress and pressure on other or both parties and to ensure the smooth progress of the investigation, a person under investigation should be redeployed elsewhere in the College or removed from the College during the investigation. If the person suspended is an employee, the suspension should be on full pay;*
- *Consider the following factors relating to any employee: age, start date and length of service, current position and time in that position, any previous counseling sessions or disciplinary warnings, medical or domestic circumstances;*

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- *If a search of an individual's desk, cupboard etc is needed, obtain their consent to do this and ensure that the search is done in their presence and that of a witness;*
- *Decide the order of people to be interviewed. Normally this will be – the person who raised the issue (if evidence gained by the Designated Assessor is insufficient), the person alleged to have acted incorrectly, anybody named by the student/employee/any other person as relevant to the issue;*
- *Arrange suitable accommodation so that the meeting can be held in private, inform those to be interviewed of time and place, and arrange for an administrator to take concise notes of the meeting/s (NB witness statements may be used where they are felt to be useful);*
- *Ensure that the meeting is expressly described as an “investigatory interview”;*
- *Ensure interviewees know they have the right to be accompanied by a friend, work colleague or Trade Union representative;*
- *Take into account and plan to accommodate any difficulties in understanding or answering questions which may arise for an interviewee with a disability.*

Code of Investigatory Interviews

Investigators should:

- *Introduce the meeting as an “investigatory interview”*
- *Introduce all people present*
- *Defer an interview if it is apparent that the interviewee is sick and/or under the influence of alcohol or drugs and make a note of the reason for deferment*
- *Clarify that anyone accompanying an interviewee may not answer questions on the latter's behalf, though they may offer advice on whether a question should be answered and on whether the questioning is fair*
- *Clarify that the interviewee has a right to remain silent or to decline or to end an interview*
- *Describe the format of the meeting as follows: “I am going to explain the relevant issues, ask you some questions, note your replies, and then ask you to review the notes to see if they accurately record what was said.”*
- *Ask clear and focused questions relevant to the investigation – preferably start with open questions. Questions should never be leading, accusatory or intimidatory. All questions should be asked one at a time and only after the interviewee has finished replying to the previous one. No question should be repeated more than once.*
- *Only ask interviewees to comment on facts as they appear rather than speculate or theorise*
- *Make an effort to understand every reply and seek clarification if necessary*

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- *In cases of suspected breach of procedure, ask the employee concerned: to explain the procedure; to explain its purpose and seriousness; when he/she first knew of the procedure; whether he/she knows of anyone who has broken the procedure in the past, whether he/she has always complied with it and, if not, when and why;*
- *After all questions and replies have been given, ask the interviewee to read the notes of the meeting, amend them if necessary, and to agree and sign that they are accurate. If there is a difference of opinion as to what was said, the notes should record this and be signed by both parties.*