

THE UNIVERSITY OF LEEDS

Code of Practice on Whistleblowing

Set out below is the University's code of practice on whistleblowing. It accords with current legislation, and especially with the Public Interest Disclosure Act 1998 (as incorporated into the Employment Rights Act 1996) ("PIDA"), but is not intended to be a simple replication of the PIDA. Instead, it sets out the way in which the University will implement its responsibilities in respect of whistleblowing. Indeed, the code is in parts broader in application than the PIDA: it covers students, for example, who are not protected under the PIDA. However, the code is not a substitute for the legal protection afforded by the PIDA, the statutory provisions of which apply irrespective of anything set out below.

The code falls into two sections. The first, covered in paragraphs 1-15, constitutes a statement of general policy, the underlying theme of which is that the University encourages, and will support, responsible whistleblowing. The second section, covered in paragraphs 15-21, outlines the procedure by which the University will handle concerns expressed by any whistleblower.

POLICY

Introduction

1. The University of Leeds is committed to conducting its affairs in accordance with the highest possible standards of probity and integrity, and to maintaining governance arrangements which are efficient, effective and economic, expeditious and timely, open and transparent, and collegial; which meet relevant legal requirements and obligations; which provide for proper accountability; and which promote integrity and objectivity in the conduct of University business.
2. In this context, the University is committed to ensuring that it has procedures in place to help to expose any malpractice, misconduct, corruption, maladministration or other impropriety.
3. Usually, members of staff or students are the first to become aware of suspected malpractice or impropriety. The University recognises that it is by no means an easy task to 'blow the whistle' on such suspicions. It recognises, for example, that a person suspecting malpractice or impropriety might be reluctant to take steps which might lead to action being taken against fellow members of the institution; similarly, it recognises that individuals suspecting malpractice or impropriety might be deterred from reporting it by a fear that they themselves might be victimised. Nonetheless, if the University is to maintain the highest standards of conduct, it must be given the opportunity to investigate any suspected instance of malpractice or impropriety. It might be that an allegation proves to be unfounded, but it is in everyone's interests - and those of the University as a whole - that all allegations are investigated and properly resolved. The University therefore affirms that, unless he or she is acting maliciously, anyone raising concerns about malpractice or impropriety is acting responsibly and properly; this is true even if the concern turns out to be due to a misunderstanding or otherwise groundless. The University has a moral and legal responsibility to protect whistleblowers from harassment, and will be held liable for any detrimental treatment of a member of staff by colleagues on the grounds that they have made a protected disclosure ('blown the whistle'). Harassment will not be tolerated and may lead to the University's disciplinary procedures being invoked.

4. The University also has a duty to protect its employees from malicious complaints; and appropriate disciplinary action may be taken against anyone found to have acted maliciously in bringing forward an unfounded allegation. Against this background, it should be understood that every member of staff has a role to play in protecting the integrity of the University's activities; and all staff are strongly encouraged to report any suspected malpractice or impropriety.
5. This document has been drawn up in order to provide staff and students with the support and guidance they will need if they suspect that malpractice or impropriety has taken place. All such concerns will be taken seriously, and will be handled fairly and with the appropriate level of confidence.

What is whistleblowing?

6. Whistleblowing has been defined as
the disclosure ... of confidential information which relates to some danger, fraud, or other illegal or unethical conduct connected with the workplace, be it of the employer or ... employees.
7. The PIDA was designed to encourage employees to raise such concerns internally in the first instance, and regulates the situations in which they may raise the matter externally (see below). Among other things, the PIDA defines the type of 'qualifying disclosure' covered as one which is made
in the public interest and which fulfils the remaining provisions set out under paragraph 3 of the Annex.
8. This definition provides one of the underlying assumptions for the policy and procedures set out in this document, in that they are intended not only to provide guidance and protection to those making disclosures, but to ensure that disclosures are made with good reason, genuinely in the public interest and not for trivial, vexatious or malicious reasons.

What type of incident or behaviour is covered by the University's Code?

9. Although the list is not exhaustive, instances where whistleblowing may be appropriate might include:
 - ◇ criminal activity
 - ◇ financial malpractice or fraud, bribery, and non-financial maladministration or other impropriety
 - ◇ failure to comply with legal obligations, or with those of the University's constitution
 - ◇ danger to health, safety and the environment
 - ◇ professional malpractice
 - ◇ improper conduct or unethical behaviour
 - ◇ concerns about the University's fundraising activities
 - ◇ harassment or work-place bullying
 - ◇ abuse or misuse of University property
 - ◇ attempts to conceal any of the above.

This Code does not apply to personal grievances relating to staff or their terms, or any other aspect, of their working relationships. The University has existing policies to deal with these matters including the *Policy on dignity and mutual respect*¹; the grievance procedure² for academic and professional members of staff, set out under [Statute VII](#) and Ordinance XX; and the [Support staff procedure agreement](#).³

Who is covered by University's procedures?

10. The procedures set out below apply to all staff⁴ and students of the University, to members of the Court and the Council, to retired and honorary staff and to staff employed by subsidiary companies of the University.

Principles informing the University's approach

11. The University is committed to investigating disclosures **fully, fairly, quickly**, and (as far as is practicable) **confidentially**, and to protect those making allegations from detrimental treatment, including victimisation. The University will take all reasonable steps to ensure that the identity of those raising allegations, and of those against whom such allegations are made, will be kept secret except insofar as disclosure is judged appropriate for the purpose of carrying out a full and fair investigation (or for taking appropriate action against anyone found to have acted improperly).

Anonymous disclosures

12. There may be occasions when members of staff feel that the circumstances of any allegation of malpractice or impropriety are such that they can only make a disclosure anonymously. Unfortunately, it can be difficult to investigate anonymous disclosures properly and there may be instances in which, having taken all the information available into account, the University might not be able, or may consider that it is inappropriate, to pursue anonymous allegations.

External disclosure

13. As noted in paragraph 7 above, the PIDA regulates the situations in which employees can make external disclosures. The University is confident that the procedure for internal disclosure of allegations of malpractice or impropriety set out in this document is sufficiently robust to ensure that suspicions are properly dealt with. Nonetheless, a paper setting out the criteria within which legal protection is afforded under the PIDA for external disclosures is attached as an Annex.

Support and advice

14. Within the University, advice and guidance to those contemplating blowing the whistle is available from staff unions and Leeds University Union as appropriate. Personal

¹ <https://equality.leeds.ac.uk/wp-content/uploads/sites/64/2014/03/Dignity-and-respect.pdf>

² <http://www.leeds.ac.uk/secretariat/ordinances.html>

³

http://hr.leeds.ac.uk/info/26/conduct_capability_and_grievance/236/support_staff_procedure_agreement

⁴ Including: all employees, workers, staff contracted to work at the University by an external body (e.g. an employment agency); contractors engaged by the University and those undertaking work experience at the University.

support may also be available from the Staff Counselling and Psychological Support Service.

15. Externally, a charity entitled *Public Concern at Work* offers, among other things, help and advice for staff and employers in connection with whistleblowing. Members of staff who wish to do so can contact the organisation either on ☎ 0207 404 6609 or *via* website www.pcaw.org.uk

PROCEDURE

Raising concerns

16. In general, members of the University wishing to 'blow the whistle' should contact the University Secretary⁵, though they may if they wish contact another senior officer of the University (in particular, the Chief Financial Officer, the Director of Finance, the Director of Human Resources or the Deputy Secretary may be appropriate) and, if they wish to avoid going through the Administration, they may raise their concerns with any member of the University's Audit and Risk Committee (ARC) or the Pro-Chancellor. (Membership of the ARC can be found via the [Secretariat website](#)⁶. Details of the senior officers of the University can be found via the University website⁷.) Whistleblowers will normally be asked to put their concerns in writing, and, unless the concern relates to the Secretary, will be referred to him or her to take forward as described below. The Secretary may delegate to another officer of the University his or her responsibilities under this Code.

What action will be taken at this stage?

17. The whistleblower may have the opportunity to articulate his or her concerns, in person, to the individual or individuals investigating the case; where appropriate the whistleblower may also invite their TU representative or other supporter to such meetings. A written record will be kept of each stage of the procedure.
18. If the disclosure relates to suspected misconduct in academic research, the matter will be taken forward under the University's [Protocol for investigating and resolving allegations of misconduct in academic research](#)⁸. If the disclosure relates to suspected financial misconduct, it will be investigated under the procedures set out in the anti-fraud policy in the '[Risk](#)' section⁹ of the University's Financial Procedures. If it relates to harassment or workplace bullying, it will be investigated through the University's *Policy on dignity and mutual respect*¹⁰. If it relates to other matters, it will normally be dealt with by the Secretary or his or her nominee, who will first meet the whistleblower and establish the basis of his or her concern, and then undertake such other enquiries as he or she considers necessary to determine whether or not there are *prima facie* grounds for considering that the concern is well-founded. If the conclusion is reached that there are such *prima facie* grounds, the Secretary or his or her nominee may
 - (a) refer the matter to an external authority, for example the Police or;
 - (b) initiate an investigation through the University itself.

⁵ The University Secretary, Jennifer Sewel, can be contacted [at university-secretary@leeds.ac.uk](mailto:university-secretary@leeds.ac.uk)

⁶ http://www.leeds.ac.uk/secretariat/other_committees.html

⁷ http://www.leeds.ac.uk/info/110000/senior_lay_officers_and_the_executive/

⁸ http://www.leeds.ac.uk/secretariat/documents/academic_misconduct_in_research.pdf

⁹ http://www.leeds.ac.uk/finance/policies/risk/anti_fraud.htm

¹⁰ See footnote 1

If, on the other hand, the conclusion is reached that there are no *prima facie* grounds for considering that the concerns are well-founded, the complainant and the Chair of the ARC will be advised accordingly. If the person who raised the concerns is not satisfied with the basis of that conclusion, he or she may ask the Pro-Chancellor to appoint another person to review the decision. (The Pro-Chancellor plays a key role in the business of the University; he or she chairs the Council (the University's governing body) while remaining outside the day-to-day executive management of the organisation.)

19. Any investigation under 18 (b) will be carried out in accordance with the principles of natural justice, and with due regard to the statutory rights of all individuals involved in the case. The University will take all reasonable measures to ensure that an investigation is concluded as quickly as possible, and that it is impartial.
20. Although the form of an investigation under 18 (b) will vary depending on the nature of the allegations, the University will normally involve people independent of the University's management in the investigation. The default will be to invite the Pro-Chancellor to appoint, as appropriate, an individual or a panel of up to three individuals to hear the evidence and prepare a report with recommendations as appropriate.
21. On completion of an investigation, a formal report will be submitted to the Secretary, with a copy made available to the whistleblower. The Secretary may make copies available to others at his or her discretion, but will in all cases send one to the Chair of the ARC. The Secretary and the Chair of the ARC will review the report and the actions taken to resolve the issue, and may request further actions or require a further report to satisfy themselves that the matter has been fully resolved. In particular, and in collaboration with other officers as appropriate, the Secretary will ensure that appropriate action is taken if the investigation finds that the whistleblower's concerns have substance such action may include action under the University's disciplinary procedures.

December 1999 (JRG/MKM)
Amended May 2015 (MKM/RMC)
Amended September 2017 (MKM)

THE UNIVERSITY OF LEEDS

Whistleblowing: legal protection for disclosure

Introduction

1. The Public Interest Disclosure Act 1998 (as amended and consolidated in the Employment Rights Act 1996) (PIDA) gives protection to whistleblowers but only if certain conditions are met. First, the disclosure has to be about a particular category of concern (see paragraph 2 below). Second, the disclosure must be made in a certain way (see paragraphs 3-8 below).

Qualifying disclosures

2. The Act provides protection for a *worker*¹ if he/she makes a *qualifying disclosure*, which is the disclosure of any information which the worker reasonably believes to indicate one or more of the following:
 - a criminal offence
 - a failure to comply with a legal obligation
 - a miscarriage of justice
 - a breach of health and safety regulations
 - damage to the environment
 - attempts to conceal any of the above.

Protected disclosures

3. When making a *qualifying disclosure* a worker is *protected* under the Act if the disclosure is made in the public interest and if he or she uses one of the following specified internal or quasi-internal routes of disclosure (not all of which are necessarily applicable in the university context):
 - to the employer,
 - where the relevant failure relates solely or mainly to the conduct of another person/body or to something for which that other person/body is legally responsible, to that person/body, or
 - to some other person in accordance with the employer's procedure
 - to a legal adviser in the course of taking legal advice to a Minister of the Crown (where the employer is an individual or a body appointed by the Minister)

Additional statutory requirements for external disclosure

4. Certain external disclosures may also be protected under the PIDA. There are additional *statutory requirements* where a disclosure is made *externally*. The PIDA provides for the following three separate situations.

¹ As defined under section s43K ERA 1996 which generally includes employees, other staff contracted for personal services, self-employed contractors working on University premises, agency staff and work experience staff.

Disclosure to a prescribed person

5. This covers disclosure to a *prescribed person*² or regulatory body prescribed by an order made by the Secretary of State for these purposes. In this case, to be covered by the protection afforded by the Act, a worker will have to show that he/she
- reasonably believes that the allegation falls within the remit of that person or body
 - reasonably believes that the allegation is made in the public interest and is substantially true.

General external disclosures

6. If making a *general external disclosure* (e.g. through the press), to be covered by the Act a worker
- must fulfil the conditions set out in paragraph 5 above,
 - must not be making the disclosure for personal gain

and in addition must also show *either* that

- he/she believes that he/she will be treated to his/her detriment if disclosure is made to the employer internally or to a prescribed person; *or*
- where there is no *prescribed person*, he/she reasonably believes that relevant evidence will be concealed or destroyed if he/she makes the disclosure to the employer; *or*
- he/she has already made substantially the same disclosure to an employer or prescribed person

and in all the circumstances it is reasonable to make the disclosure.

7. In this context, reasonableness will be determined in relation to a variety of considerations including, *inter alia*: the identity of the person to whom the disclosure is made; the seriousness of the failure and whether or not it is likely to recur; whether the disclosure was in breach of an obligation of confidentiality owed by the employer to another person; whether, in making a disclosure to an employer, the whistleblower has complied with his/her employer's whistleblowing procedure; and any action which the recipient of any previous disclosure has taken.

Exceptionally serious failures

8. While an *exceptionally serious failure* essentially falls into the category of a *general external disclosure*, the gravity of such a disclosure means that the requirements under the Act are different. In such a case, paragraphs 6 and 7 above do not apply, and a worker is protected under the Act if he/she can demonstrate that
- he/she reasonably believes that the allegation is substantially true
 - he/she is not acting for personal gain
 - the disclosure is of a very serious nature
 - in all the circumstances of the case, it is reasonable for him/her to make the disclosure.

² Regulations define the *prescribed persons* to whom workers may make disclosures.

Summary

9. The PIDA provides statutory protection for a *worker*³ making a disclosure provided that
- (a) the disclosure is covered by one or more of the six categories of *qualifying disclosures* set out in paragraph 2 above, *and*
 - (b) the disclosure is *either*
 - (i) an internal or quasi-internal *protected disclosure* as set out in paragraph 3 above; *or*
 - (ii) an external disclosure covered by the *statutory requirements* set out in paragraphs 5-8 above.
10. In essence, to gain protection under the PIDA, the requirements for external disclosure (other than to a legal adviser) are more stringent than those for internal or quasi-internal disclosure, and the effect of the PIDA is therefore to encourage whistleblowers so far as possible to raise their concerns internally.

Dec 1999 (MKM)
Amended May 2015 (MKM/RMC)

³ See footnote 1