

The University of Birmingham

Policy and Procedure on Public Interest Disclosure and "Whistleblowing"

1. Introduction

The University of Birmingham has a duty to conduct its affairs in a responsible and transparent way and to take account of the requirements of its funding bodies for the proper use of public funds and of the standards required in public life. In addition the University is committed to the principles of academic freedom embodied in its Charter, Statutes, Ordinances and Regulations, and enshrined in the Education Reform Act 1988.

The Public Interest Disclosure Act (1998) which came into effect on 2 July 1999 protects workers against detriment or dismissal for raising concerns about certain matters of public interest¹ and encourages the resolution of problems within the workplace.

The policy is designed to allow **staff, students and all members of University bodies** (eg University Committees) to raise, at high level, concerns or information which they believe in good faith provides evidence of malpractice or impropriety. Individuals discovering apparent evidence of malpractice, impropriety or wrongdoing within the University should feel able to disclose the information appropriately **without fear of reprisal**. This Policy and Procedure sets out how such disclosures should be made, and how cases will be handled by the University.

A person making a disclosure in good faith, without malice, and in accordance with this Policy will not be penalised for doing so.

This Policy is intended to be used to raise matters of general concern in the public interest. It is hoped that staff and students feel able to raise the majority of their concerns with their line manager (staff) or tutor / supervisor / Head of School (students). Students may also seek advice about any potential disclosure from the Academic Office or through the Guild of Students. A number of policies and procedures are already available to staff and students, through which individuals may raise and resolve many issues of concern. A list of relevant Procedures is attached.

2 External Disclosures

To avoid possible prejudice to any internal investigation process, a disclosure should not normally be made to external bodies before it is raised through the internal mechanisms set out in this Policy. However, under the Act, in limited circumstances,² an individual making a disclosure to an external body relating to one of the matters covered by the Public Interest Disclosure Act 1998, may be protected from detriment or dismissal.

3. Purpose of Policy

The purpose of this policy is:

- To enable individuals to raise concerns within the institution without fear of reprisals / victimisation.
- To provide a process for concerns to be raised, investigated and where appropriate acted upon.
- To give a clear message that allegations of malpractice / impropriety are taken seriously.
- To act as a deterrent to potential perpetrators of misconduct.
- To strengthen the confidence of all interested parties (funding bodies, students, members of staff, etc.) that the University maintains the highest standards of conduct.

4. **Matters Covered**

This policy is designed to be used to raise serious concerns which are in the public interest. Examples of serious misconduct, impropriety or malpractice which may prompt such a disclosure are those which tend to show one or more of the following matters is either happening now, took place in the past, or is likely to happen in the future:

- A criminal offence;
- The breach of a legal obligation;
- A miscarriage of justice;
- A danger to the health or safety of any individual;
- Damage to the environment;
- Financial or non-financial maladministration, malpractice or fraud;
- The exercise of academic freedom³ being obstructed or frustrated;
- Serious failure to comply with the Charter, Statutes, Ordinances or Regulations of the University;
- Evidence of academic or professional malpractice;
- Failure of (an) individual(s) to disclose a serious conflict of interest;
- Deliberate covering up or suppression of information relating to any of the above matters.

The procedure is **not** designed to be used:

- to reconsider any matters already addressed under other internal procedures, for example complaints or disciplinary or grievance procedures;
- by individuals to challenge decisions properly taken by the University.

5. **Confidentiality**

All disclosures under this Policy will be treated in a confidential and sensitive manner. If required, the identity of the person raising the matter will be kept confidential for as long as possible provided that this is compatible with an effective investigation. The investigation process may however at some stage have to reveal the source of the information and the individual making the disclosure may need to make a statement as part of the evidence required.

6. Anonymous Disclosures

Individuals are encouraged to put their name to any disclosures they make since part of the purpose of this policy is to promote openness and discourage a fear of reprisals. Disclosures raised anonymously are far less capable of being addressed effectively but may be considered after taking into account the seriousness of the issue, the credibility of the disclosure, the likelihood of being able to investigate the matter and confirm the allegation from alternative sources, and fairness to any individual mentioned in the disclosure.

Any individual wishing to make an disclosure orally or to give further details as the matter is investigated may be accompanied by a member of the University (as defined in University legislation, see footnotes).

7. Procedure for Making a Disclosure

Any relevant disclosure should initially be made to the person designated by the University to receive such disclosures. The "designated person" is the Registrar and Secretary. If a disclosure involves or implicates the Registrar and Secretary), then it should be made to the Vice-Chancellor and / or the Pro-Chancellor (who Chairs the University Council), as appropriate.

The designated person to whom the disclosure has been made will consider the matters disclosed and, if there is a *prima facie* case that there are grounds for proceeding further, will:

- decide whether an investigation should be conducted;
- determine what form the investigation should take;
- appoint a relevant person to carry out the investigation.

The relevant person selected will observe the rules of procedural fairness and natural justice, namely that they should have no personal interest in the outcome of the case and that there should be no real likelihood of bias.

If the designated person decides that there **are not** grounds for proceeding further, the person making the disclosure will be informed.

As the person conducting the investigation must not be the person who would ultimately take the decisions based on outcomes, the designated person to whom the disclosure has been made will not personally conduct the investigation and will remain separate from it.

Disclosures relating to financial matters will normally be investigated as set out in paragraphs 41 to 47 of the Council Code of Corporate Governance.

When the matter has been investigated the person to whom the disclosure was made will decide whether the matter should be taken further and if so how it should be handled. This may include the initiation of formal procedures within the University or reference to an outside agency. In any event the outcome will be reported, as appropriate, to the Vice-Chancellor, the Pro-Chancellor and to the Audit Committee.

Reporting on the findings of any investigation will depend on the nature of the disclosure as it is not appropriate to be prescriptive as to the correct level of reporting in every case.

This Policy does not remove the right of individuals to invoke the relevant statutory procedures.

8. Individuals Named in a Disclosure

When an allegation is made against a "named individual", s/he will be informed of the allegation and supporting evidence. The point at which this occurs will depend on the specific nature of the case. S/he will be given an opportunity to respond either in writing or orally and, if interviewed about the matter, will be given an opportunity to be accompanied by a member of the University (see footnotes).

9. Unfounded Disclosures

A disclosure made in good faith which is not confirmed by subsequent investigation will not lead to any action against the person making the disclosure. Individuals making disclosures which are found by subsequent investigation to be malicious and/or vexatious may be subject to disciplinary or other appropriate action.

10. Victimisation

Victimisation of a member of the University who has made a disclosure under this Policy may provide grounds for grievance, disciplinary or other appropriate action.

11. Timescales

Investigations will be conducted as speedily as possible having regard to the nature and complexity of the disclosure.

12. Feedback through the Process

The person making the disclosure will be kept informed as to the handling of the matter and of decisions taken throughout the process.

13. Records

All concerns raised and action taken in response to disclosures will be recorded and reports on all disclosures and investigations will be retained by the "designated person" for 5 years.

14. Independent Review

Further guidance from Universities UK is awaited before an Independent Review process can be determined. Until that guidance is received, the subject of a disclosure who believes there are grounds for appeal or for submitting a grievance concerning the procedure adopted in the investigation or in the outcome of a disclosure may have recourse to the University's existing procedures⁴.

15. Review of Policy

The implementation of this Policy will be subject to regular review.

Footnotes.

It should be noted that the Act refers throughout to "workers". For the purpose of the University's Policy, this should be taken to include all members of the University (as defined in University Section 6 of the Statutes) and members of University Committees, whether or not they are members of staff or students of the University.

1. The disclosures which qualify for protection are disclosures of information which the worker reasonably believes tend to show one or more of the matters listed in paragraph (4) of this policy is either happening now, took place in the past, or is likely to happen in the future.

In making the disclosure the worker must have reasonable belief that the information disclosed tends to show one or more of the offences or breaches listed above ('a relevant failure'). The belief need not be correct - it might be discovered subsequently that the worker was in fact wrong - but the worker must show that it was a reasonable belief in the circumstances at the time of disclosure.

2. Workers who are concerned about wrongdoing or failures can make disclosures to a person or body which has been prescribed by the Secretary of State for the purpose of receiving disclosures about the matters concerned. If the worker makes a qualifying disclosure to such persons, it will be a protected disclosure provided the worker:
 - makes the disclosure in *good faith*;
 - reasonably believes that the information, and any allegation it contains, are *substantially true*; and
 - reasonably believes that the matter falls within the description of *matters for which the person or body has been prescribed* (for example, breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority, or environmental dangers can be notified to the Environment Agency).

The list of prescribed persons, the description of the matters for which they are prescribed and contact details are shown in the Department of Trade and Industry's Guide to the Public Interest Disclosure Act 1998 PL502 (Rev1), viewable at <http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16186.html>

3. Academic freedom is defined in Statute 14 as "the freedom within the law to question and test received wisdom, and to put forward new ideas, including controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges."
4. The Grievance Procedure for Academic Staff is described in Section 3.27 of the University Ordinances. Students should make representations in the first instance through the Student Complaints Procedure. All members of the

University may submit a Grievance to University Council, although this should only be pursued when the matter has not been resolved at a lower level.

Attachment to Appendix (c) : Related Procedures and Documents

University Guidelines and Codes of Practice relevant to Disclosure include the following. (this list is indicative and is not exclusive of other University legislation or codes of practice):

1. The procedure for reporting financial irregularities, within the Code of Practice on Corporate Governance and Related Procedural Matters
http://www.council.bham.ac.uk/shared/shared_council/Council_Code_of_Corporate_Governance_07-08.pdf
2. The Complaints Procedure for Students
<http://www.ppd.bham.ac.uk/policy/cop/compproc.htm>
3. The University's Harassment Guidelines for Employees and Students
<http://www.hr.bham.ac.uk/empsupport/harassment/what.shtml>
4. University Regulation on Student Conduct, Regulation 8, available within the University Legislation at
http://www.as.bham.ac.uk/legislation/docs/regulations_part8.pdf
5. Academic Staff Grievance Procedure, Ordinance 3.27
http://www.as.bham.ac.uk/legislation/docs/ordinances_section3.pdf
6. Guidelines for Students on Plagiarism
<http://www.as.bham.ac.uk/study/support/sca/plagguide.shtml>
7. Procedures for those who are registered as students of the University may also be covered within the relevant Academic Code of Practice
<http://www.ppd.bham.ac.uk/policy/cop/>
8. Primary Appeals Procedure for Students
<http://www.ppd.bham.ac.uk/policy/cop/code6.htm>
9. Senate Appeals Procedure for Students
<http://www.ppd.bham.ac.uk/policy/cop/code7.htm>
10. Conditions of Use of Computing and Network Facilities
<http://www.is.bham.ac.uk/ppm/publications/computing/general.htm>
11. Procedure for Grievance to the University Council (staff and students)
<http://www.as.bham.ac.uk/study/assess/sca/grievance.shtml>