

# POLICY AND PROCEDURE 12



## WHISTLEBLOWING AND PUBLIC INTEREST AND DISCLOSURE POLICY AND PROCEDURE

### 1. Introduction

- 1.1 The College is committed to operating in an ethical and principled way. The aim of this policy and procedure is to provide employees and workers (referred to as 'workers' in this policy) with a means for raising genuine concerns of suspected bribery, breaches of the law and other serious wrongdoings.
- 1.2 The College encourages workers to raise genuine concerns about suspected wrongdoing at the earliest practicable stage. This policy and procedure is intended to provide safeguards to enable members of staff to raise concerns about malpractice in connection with the College.
- 1.3 This policy and procedure also aims to encourage workers to raise genuine concerns through internal College procedures without fear of adverse repercussions being taken against them. The law allows workers to raise such concerns externally and this policy informs workers how they can do so. However, a failure to raise a concern under this procedure may result in a disclosure losing its protected status under the law.
- 1.4 This policy and procedure also seeks to balance the need to allow a culture of openness against the need to protect other workers against vexatious allegations or allegations which are not well-founded.
- 1.5 The principles of openness and accountability which underpin legislation protecting whistleblowers are reflected in this policy and procedure. The College is also committed to ensuring compliance with the Bribery Act 2010.
- 1.6 Students at the College are also encouraged to raise genuine concerns about suspected wrongdoing by making a complaint to the Head of Quality using the College's complaints procedure.  
[https://oaklandsacuk0.sharepoint.com/:w:/r/sites/Quality/\\_layouts/15/Doc.aspx?sourcedoc=%7B85FBD065-D8DA-4E69-91C6-F27ABACFBA93%7D&file=46%20Complaints%20Procedure.docx&action=default&mobileredirect=true&DefaultItemOpen=1](https://oaklandsacuk0.sharepoint.com/:w:/r/sites/Quality/_layouts/15/Doc.aspx?sourcedoc=%7B85FBD065-D8DA-4E69-91C6-F27ABACFBA93%7D&file=46%20Complaints%20Procedure.docx&action=default&mobileredirect=true&DefaultItemOpen=1)

### 2. Applicability of this policy and procedure

- 2.1 This policy applies to all employees of the College, including apprentices; and
- 2.2 Workers which includes any casual workers; associate contractors, volunteers, home-based casual workers; and employees of subcontractors; and agency workers.
- 2.3 Workers might be unsure whether it is appropriate to raise their concern under this policy and procedure or whether it is a personal grievance, which is more appropriate to raise under the College's Grievance Procedure. Any worker in this situation is encouraged to approach the Vice

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Principal HR & Organisational Development in confidence for advice.

## 3. Protected disclosures

- 3.1 The law protects workers who, out of a sense of public duty, want to reveal suspected wrongdoing or malpractice.
- 3.2 The law allows workers to raise what it defines as a 'protected disclosure'. In order to be a protected disclosure, a disclosure must relate to a specific subject matter (See Section 4 below) **and** the disclosure must also be made in an appropriate way (See Section 5). A 'protected disclosure' must, in the reasonable belief of the worker making it, also be made in the public interest. A protected disclosure must consist of factual information and not merely be allegations of suspected malpractice.

## 4. Specific Subject Matter

If, in the course of employment, a worker becomes aware of information which they reasonably believe tends to show one or more of the following, they must use this policy and procedure:

- That a criminal offence has been committed, is being committed or is likely to be committed;
- That an individual has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- That a miscarriage of justice has occurred, is occurring, or is likely to occur.
- That the health or safety of any individual has been, is being, or is likely to be, endangered.
- That the environment, has been, is being, or is likely to be, damaged.
- That information tending to show any of the above, is being, or is likely to be, deliberately concealed.

## 5. Procedure for making a disclosure

- 5.1 Information which a worker reasonably believes tends to show one or more of the situations given in Section 4 should promptly be disclosed to a Designated Officer so that any appropriate action can be taken.
- 5.2 Any disclosure should be submitted to the [Whistleblowing@oaklands.ac.uk](mailto:Whistleblowing@oaklands.ac.uk) mailbox – access to this mailbox is limited to the Lead Designated Officer and any Designated Officers listed below.
- 5.3 The Designated Officers are:

Lead Designated Officer	Vice Principal HR & Organisational Development
Designated Officer	Clerk to the Corporation

- 5.4 If the disclosure relates to the Principal and CEO or the Clerk to the Corporation, a worker can

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raise the concern with the Chair of the Corporation.

5.5 Workers are encouraged to identify themselves when making a disclosure. If an anonymous disclosure is made, the College will not be in a position to notify the individual making the disclosure of the outcome of action taken by the College. Anonymity also means that the College will have difficulty in investigating such a concern. The College reserves the right to determine whether to apply this procedure in respect of an anonymised disclosure in light of the following considerations:

- The seriousness of the issues raised in the disclosure;
- The credibility of the concern; and
- How likely it is that the concern can be confirmed from attributable sources.

5.6 For further guidance in relation to this policy and procedure, or concerning the use of the disclosure procedure generally, employees should speak in confidence to the Vice Principal HR & Organisational Development.

### 6. Procedure for investigation of a disclosure

6.1 When a worker makes a disclosure, the College will acknowledge its receipt, in writing, within 5 working days.

6.2 The College will then determine whether or not it believes that the disclosure is wholly without substance or merit. If the College considers that the disclosure does not have sufficient merit to warrant further action, the worker will be notified in writing of the reasons for the College's decision and advised that no further action will be taken by the College under this policy and procedure. Considerations to be taken into account when making this determination may include the following:

- If the College is satisfied that a worker does not have a reasonable belief that suspected malpractice is occurring; or
- If the matter is already the subject of legal proceedings or appropriate action by an external body; or
- If the matter is already subject to another, appropriate College procedure.

6.3 When a worker makes a disclosure which has sufficient substance or merit warranting further action, the College will take action it deems appropriate (including action under any other applicable College policy or procedure). Possible actions could include internal investigation; referral to the College's auditors; or referral to relevant external bodies such as the Police, OFSTED, Health and Safety Executive or the Information Commissioner's Office.

6.4 If appropriate, any internal investigation would be conducted by a senior manager of the College without any direct association with the individual to whom the disclosure relates, or by an external investigator appointed by the College as appropriate.

6.5 Any recommendations for further action made by the College will be addressed to the Principal or Chair of Corporation as appropriate in the circumstances. The recipient will take all steps within their power to ensure the recommendations are implemented unless there are good reasons for not doing so.

6.6 The worker making the disclosure will be notified of the outcome of any action taken by the College under this policy and procedure within a reasonable period of time. If the worker is not satisfied that their concern has been appropriately addressed, they can appeal against the outcome by raising the issue in writing with the Principal within 10 working days. The Principal will make a final decision on action to be taken and notify the worker making the disclosure.

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- 6.7 The procedure will be undertaken in an expeditious manner. However, timescales will need to be flexible, taking into account that different types of concerns will require varying time for investigation.
- 6.8 All communications with the worker making the disclosure should be in writing and sent to the worker's home address and if appropriate by email. If investigations into the concern are prolonged, the College should keep the worker concerned updated as to the progress of the investigation.

### 7. Safeguards for workers making a disclosure

- 7.1 A worker making a disclosure under this procedure can expect their matter to be treated confidentially by the College and, where applicable, their name will not be disclosed to anyone implicated in the suspected wrongdoing, without their prior approval.
- 7.2 The College will take all reasonable steps to ensure that any report of recommendations, or other relevant documentation, produced by the College does not identify the worker making the disclosure without their written consent, or unless the College is legally obliged to do so, or for the purposes of seeking legal advice.
- 7.3 No formal disciplinary action will be taken against a worker on the grounds of making a disclosure made under this policy or procedure. This does not prevent the College from bringing disciplinary action against a worker where the College has grounds to believe that a disclosure was made maliciously or vexatiously, or where a disclosure is made outside the College without reasonable grounds.
- 7.4 A worker will not suffer dismissal or any detrimental action or omission of any type (including informal pressure or any form of victimisation) by the College for making a disclosure in accordance with this policy and procedure. Equally, where a worker is threatened, bullied, pressurised or victimised by a colleague for making a disclosure, disciplinary action will be taken by the College against the colleague in question.

### 8. Disclosure to external bodies

- 8.1 This policy and procedure has been implemented to allow workers to raise disclosures internally within the College. A worker has the right to make a disclosure outside of the College where there are reasonable grounds to do so and in accordance with the law.
- 8.2 Workers may make a disclosure to an appropriate external body prescribed by the law. This list of 'prescribed' organisations and bodies can be found in information on [the GOV.UK website](#).
- 8.3 Workers can also make disclosures on a confidential basis to a practising solicitor or barrister.
- 8.4 If a worker seeks advice outside of the College, they must be careful not to breach any confidentiality obligations or damage the College's reputation in so doing.

### 9. Accountability

- 9.1 The College will keep a record of all concerns raised under this policy and procedure (including cases where the College deems that there is no case to answer and therefore that no action should be taken) and will report to the Corporation on an annual basis as appropriate.

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## 10. Further assistance for workers

- 10.1 The College will not tolerate any harassment or victimisation of workers who make disclosures. If, at any stage of this procedure a worker feels that they are being subject to informal pressures, bullying or harassment due to making a disclosure, they should raise this matter, in writing, to the Principal.
- 10.2 A worker making a disclosure may want to confidentially request counselling or other support from the College's occupational health service. Any such request for counselling or support services should be addressed to the Vice Principal HR & Organisational Development. Such a request would be made in confidence. Additionally all workers have access to an independent employee assistance partner (EAP) which provides confidential and accessible support : [www.lifeworks.com](http://www.lifeworks.com) (User ID: oaklands Password: college).
- 10.3 Workers can also contact the charity Protect for confidential advice on whistleblowing issues. Contact details are as follows:
- The Green House, 244-254 Cambridge Heath Road, London, E2 9DA
- Whistleblowing Advice Line: 020 3117 2520
- <https://protect-advice.org.uk>

## 11. Further assistance for exams

Whistleblowing at Oaklands College is encouraged, not penalised, and staff are made aware that they have a duty to report any concerns they have about the conduct of examinations.

The head of centre and governing board at Oaklands College aim to create and maintain an approach to examinations that reflects an ethical culture, and encourages staff and students to be aware of and report practices that could compromise the integrity and security of examinations.

In compliance with section 5.11 of the JCO's **General Regulations for Approved Centres**<sup>1</sup>, Oaklands College will:

- take all reasonable steps to prevent the occurrence of any malpractice (which includes maladministration) before, during and after assessments have taken place
- inform the awarding body **immediately** of any alleged, suspected or actual incidents of malpractice or maladministration, involving a candidate or a member of staff, by completing the appropriate documentation
- as required by an awarding body, gather evidence of any instances of alleged or suspected malpractice (which includes maladministration) in accordance with the JCQ publication **Suspected Malpractice: Policies and Procedures**<sup>2</sup> and provide such information and advice as the awarding body may reasonably require

This policy requirement has been added within **General Regulations for Approved Centres** in response to the recommendations within the report of the *Independent Commission on Examination Malpractice*<sup>3</sup>.

This policy sets out the whistleblowing procedures at Oaklands College. It has been produced by the Vice Principal HR & Organisational Development who is also a member of the Senior Leadership Team

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<sup>1</sup> Reference [www.jcq.org.uk/exams-office/general-regulations/](http://www.jcq.org.uk/exams-office/general-regulations/)

<sup>2</sup> Reference [www.jcq.org.uk/exams-office/malpractice/](http://www.jcq.org.uk/exams-office/malpractice/)

<sup>3</sup> Reference [www.jcq.org.uk/examination-system/imc-home/](http://www.jcq.org.uk/examination-system/imc-home/)

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and responsible for handling any cases of whistleblowing. They are fully aware of the contents of this policy and will escalate any instances of malpractice to the relevant awarding body/bodies.

This policy also sets out the principles which allow members of centre staff and students to feel confident in reporting instances of actual, alleged or suspected malpractice to relevant members of senior leadership.

## 11.1 Purpose of the policy

This policy:

- encourages individuals to raise concerns, which will be fully investigated by appropriately trained and experienced individuals
- identifies how to report concerns
- explains how such concerns will be investigated and sets expectations regarding the reporting of outcomes
- provides details of relevant bodies to whom concerns about wrongdoing can be reported, including awarding organisations and regulators
- includes a commitment to do everything reasonable to protect the reporter's identity, if requested
- sets out how those raising concerns will be supported.

This policy also details the steps that could be taken by an individual involved in the management, administration and/or conducting of examinations if Oaklands College fails to comply with its obligation to report any alleged, suspected or actual incidents of malpractice or maladministration.

## 11.2 Reporting

If a member of centre staff involved in the management, administration and/or conducting of examinations (such as exams officer, exams assistant or invigilator), a student or a member of the public (such as a parent/carer) has a concern or reason to believe that malpractice has or will occur in an examination or assessment, concerns should normally be raised initially with the Exams/Achievement Manager and Head of Quality

However, there may be times when it may be more appropriate to refer the issue direct to the governing board, most often when the allegation is against the head of centre.

## 11.3 Examples of malpractice

In addition to the centre wide Whistleblowing Policy, this exams-specific policy, includes reference to exams-related breaches including, but not limited to, the following:

- Failure to comply with exam regulations as set out by the Joint Council for Qualifications (JCQ) and its awarding bodies
- A security breach of the examination paper
- Conduct of centre staff which undermines the integrity of the examination
- Unfair treatment of candidates by either giving an advantage to a candidate/group of candidates (e.g. by permitting a candidate an access arrangement which is not supported by appropriate evidence), or disadvantaging candidates by not providing access to the appropriate conditions (providing a 'level playing field')
- Possible fraud and corruption (e.g. accessing the exam paper prior to the exam to aid teaching and learning)
- Abuse of authority (e.g. the head of centre/members of the senior leadership team overriding JCQ and awarding body regulations)
- Other conduct which may be interpreted as malpractice/maladministration

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## 11.4 Whistleblowing procedure

If the individual does not feel safe raising the issue/reporting malpractice within the centre, or they have done so and are concerned that no action has been taken, that individual could consider making their disclosure<sup>4</sup> to a malpractice expert at the awarding body for the qualification where malpractice is suspected.

For members of centre staff, it is likely that the Public Interest Disclosure Act (PIDA)<sup>5</sup> offers you legal protection from being dismissed or penalised for raising certain serious concerns ('blowing the whistle'). Whistleblowing rights under PIDA are day one rights<sup>6</sup>. This means that the worker does not need the same two years' service that is needed for other employment rights.

In order to investigate concerns effectively, the awarding body should be provided with as much information as possible/is relevant, which may include:

- The qualifications and subjects involved
- The centre involved
- The names of staff/candidates involved
- The regulations breached/specific nature of suspected malpractice
- When and where the suspected malpractice occurred
- Whether multiple examination series are affected
- If the issue has been reported to the centre and what the outcome was
- How the issue became apparent

Members of the public are not protected by PIDA, but the awarding body will make every effort to protect their identity if that is what they wish, unless the awarding body is legally obliged to release it<sup>7</sup>.

Alternatively, a worker could consider making a disclosure to Ofqual<sup>8</sup> as a prescribed body for whistleblowing to raise a concern about wrongdoing, risk or malpractice.

## 11.5 Anonymity

In some circumstances, the whistleblower might find it difficult to raise concerns with the nominated member of the senior leadership team. If a concern is raised anonymously, the issue may not be able to be taken further if insufficient information has been provided. In such instances, and if appropriate, the allegation may be disclosed to a union representative, who could then be required to report the concern without disclosing its source. Alternatively, whistleblowers or others with concerns about potential malpractice can report the matter direct to Ofqual, who is identified as a 'prescribed body'<sup>9</sup>. Awarding organisations are not prescribed bodies under whistleblowing legislation; however, awarding organisation investigation teams do give those reporting concerns the opportunity for anonymity.

A whistleblower can give his/her name, but may also request confidentiality; the person receiving the information should make every effort to protect the identity of the whistleblower.

## 11.6 Students

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<sup>4</sup> Reference [www.jcq.org.uk/exams-office/malpractice/public-interest-disclosure-act/](http://www.jcq.org.uk/exams-office/malpractice/public-interest-disclosure-act/)

<sup>5</sup> Reference **Public Interest Disclosure Act 1998** [www.legislation.gov.uk/ukpga/1998/23/contents](http://www.legislation.gov.uk/ukpga/1998/23/contents)

<sup>6</sup> Reference <https://protect-advice.org.uk/pida/>

<sup>7</sup> Reference [www.ocr.org.uk/administration/general-qualifications/assessment/malpractice/whistleblowing/](http://www.ocr.org.uk/administration/general-qualifications/assessment/malpractice/whistleblowing/)

<sup>8</sup> Reference [www.gov.uk/guidance/ofquals-whistleblowing-policy](http://www.gov.uk/guidance/ofquals-whistleblowing-policy)

<sup>9</sup> Reference [www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies](http://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies)

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Students at Oaklands College are made to feel comfortable discussing/reporting malpractice issues of which they are aware. The regulations surrounding their assessments, and wider academic integrity, will be reiterated to students who are undertaking, or who are about to undertake, their courses of study.