

Whistleblowing Policy

(Public Interest Disclosure)

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1 Whistleblowing – Definition and Legal Basis

- 1.1 You are a 'whistleblower' if you are a worker and you report certain types of wrongdoing. The wrongdoing you disclose must be in 'the public interest'. This means it must affect others, eg the general public.
- 1.2 As a whistleblower, you are protected by law, which means that you shouldn't be treated unfairly or lose your job because you 'blow the whistle'. The particular law that provides this protection is the Public Interest Disclosure Act 1998, commonly known as the PIDA. The Public Interest Disclosure Act (PIDA) is designed to give protection to workers who disclose confidential information about malpractice in the workplace, whether carried out by other workers or by the employer. As noted above, such disclosures are commonly referred to as "whistleblowing".
- 1.3 You are protected as a Whistleblower if the matter that you are disclosing meets the particular requirements of the Public Interest Disclosure Act. The Public Interest Disclosure Act sets out rules on what counts as "malpractice" for the purposes of the Act and prescribing the person(s) or bodies to whom a protected disclosure can be made. Sections 2 to 4 below provide further detailed information on what kinds of disclosures are covered by the Act, and therefore, by this policy, and to whom such disclosures can be made.
- 1.4 When someone blows the whistle they are raising a concern about danger or illegality that affects others (e.g. employees, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others.
- 1.5 This is very different from a complaint. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves.

This whistleblowing policy should not be used to pursue a personal grievance. Such complaint should be pursued through the appropriate University procedure.

- 1.6 If you wish advice at any stage, you can contact the University Secretary, who is responsible for the operation of this policy within the University. You may also wish to seek advice, or to discuss your disclosure, with your Trade Union representative, or with the contacts listed at Section 8 of this policy.

2 Whistleblowing Policy

- 2.1 This Whistleblowing policy was developed originally following the introduction of the Public Interest Disclosure Act 1998 [PIDA]. This policy was previously known as the Public Interest Disclosure policy.
- 2.2 This policy was updated following the enactment of the Enterprise and Regulatory Reform Act in 2013 (ERR). That Act introduced a Public Interest test requirement on Whistleblowers. So, in order to receive the protection of the Act, whistleblowers have to show that they reasonably believe that the disclosure they are making is in the 'Public Interest'.

Further information on the ERR can be found at www.legislation.gov.uk

- 2.3 This policy allows employees of Queen Margaret University to raise concerns or to disclose information which they believe shows wrongdoing by the university or its staff that is of public interest. In the first instance, you are encouraged to bring any matter of concern falling within the categories detailed in the Act to the attention of the university as set out in this policy.
- 2.4 The policy is in addition to other policies and procedures in place, including those relating to staff grievance, discipline and complaints.
- 2.5 You can raise your concern at any time about an incident that happened in the past, is happening now, or you believe will happen in the near future. Information on how you raise your concern with the University is set out in Section 3 below.
- 2.6 There are other options if you don't want to report your concern through this policy. You can get legal advice from a lawyer, or tell a 'prescribed person' or body. However, the prescribed person or body does need to be the correct person or body related to the particular concern. For the purposes of this policy, the prescribed person is the Auditor General for Scotland. A full list of prescribed people and bodies are listed at the following website:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

- 2.7 If you raise a concern under the provisions of this policy, you will be protected from suffering any detriment for having raised that concern, unless it is later proved that the information you provided was known to be false. Any person who believes that they are suffering or have suffered any detriment as a result of having raised a concern under this policy should report this to the University Secretary. Any person

who subjects an individual to detriment on the grounds of raising a whistleblowing report will be subject to disciplinary action.

- 2.8 Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). It provides the right for a worker to take a case to an employment tribunal if they have been victimised at work or they have lost their job because they have 'blown the whistle' (see also paragraph 3.2.4 below).
- 2.9 The Chair of the Court and the Principal will be informed of all qualifying disclosures submitted under the provisions of this policy. All cases investigated under the provisions of the policy will be reported to the Convener of the Audit and Risk Committee, and to the Chair of the University Court.

3 Reporting a Concern under the Whistleblowing Policy

This policy is designed to clarify for individuals the route through which concerns can be raised, to assure them that such matters will be taken seriously and acted upon within the University, and that they will be protected, provided that any disclosure meets the particular requirements of the Public Interest Protection Act.

3.1 Qualifying disclosure

To be protected as a Whistleblower under the Public Interest Disclosure Act, the matter that you are reporting has to be what is called a 'qualifying disclosure'. This means that any disclosure you make must, in your reasonable belief, show one or more of the following:

- a) that a criminal offence has been committed, is being committed or is likely to be committed;
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) that the health or safety of any individual has been, is being or is likely to be endangered;
- e) that the environment has been, is being or is likely to be damaged;
- f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

3.2 Protection

- 3.2.1 Under the Public Interest Disclosure Act, you are protected if you disclose concerns that you reasonably believe are in the public interest.

3.2.2 Individuals who raise genuinely-held concerns under this policy will not be dismissed or subjected to any detriment as a result of such action. Detriment includes unwarranted disciplinary action and victimisation.

3.2.3 If you believe that you are being subjected to a detriment as a result of raising concerns under this Code, you should raise the matter with the University Secretary, who is responsible for this policy and is the University's 'designated person' in relation to this policy.

3.2.4 If a whistleblower believes that they have been unfairly treated because they have blown the whistle, they may decide to take their case to an employment tribunal. The process for this would involve attempted resolution through the Advisory, Conciliation and Arbitration Service (Acas) early conciliation service. Information can be found at: www.acas.org.uk/conciliation

3.2.5 Harassment or victimisation of individuals who have raised concerns will not be tolerated and will be treated as a serious disciplinary offence which will be dealt with under the relevant disciplinary procedure.

3.2.6 If an investigation under this procedure concludes that an individual has made false allegations which are malicious or made with a view to personal gain, the individual concerned may be subject to disciplinary action.

3.3 People to whom you may make a disclosure

If you reasonably believe that you have a disclosure that qualifies under the terms of the Public Interest Disclosure Act (as set out in Section 3.1 above), and that the matter is substantially true, then you are permitted to make a disclosure to the following:

- a) your employer, or another responsible person approved by your employer;
- b) a lawyer in the course of getting legal advice;
- c) a person or body prescribed by the Secretary of State¹.

3.4 Disclosure in other circumstances

If you make your disclosure in other circumstances, it will only be protected if:

- you have previously disclosed the matter to your employer or a prescribed person as described above;

¹ For Universities in Scotland, this is the Auditor General for Scotland.

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- you did not do so because you reasonably believed that you would have been victimised;
 - the evidence would have been concealed or destroyed as a result.

In addition, you must:

- reasonably believe that the information and any associated allegations are true;
- not act for personal gain;
- in all the circumstances of the case, act reasonably in making your disclosure.

However, a disclosure may be protected even if made for the first time to a person other than your employer if:

- it is not for personal gain, and
- it is reasonable for you to make the disclosure to that person;
- the wrongdoing is of an exceptionally serious nature.

If you raise matters of concern outside the University, without first using this procedure, you may be in breach of the procedure. In such circumstances, you may be deemed as having waived your rights under the Public Interest Disclosure Act. In particular, it would not usually be considered appropriate for matters to be raised publicly in the media before an investigation is completed. That is potentially a disciplinary offence, especially if it causes unnecessary reputational damage to a member of the University or to the institution.

3.5 Your duty to maintain confidentiality

Although the Public Interest Disclosure Act contains protections, you should bear in mind that its provisions provide an exception to the general rule that employees will keep confidential any information related to your employment.

4 Making a Whistleblowing disclosure

4.1 Designated person with the University

This policy names the University Secretary as the person designated by the University to receive any Whistleblowing disclosures. The University Secretary performs that role in their capacity as Secretary to the University Court.

You should make your disclosure to the University Secretary. The University Secretary will inform² the Principal and Chair of the University Court unless:

- you request them not to do so for good reason;
- the Chair of the University Court is likely to be involved at any subsequent appeal.

4.2 Disclosure about the Secretary to the University Court

If your disclosure is about the Secretary to University Court, then you should make your disclosure to the Principal.

4.3 Alternative designated person within the University

If you do not wish to raise the matter with either the University Secretary or the Principal because it involves either or both of them, then you may raise it with the Convener of the Audit and Risk Committee* or with the Chair of the University Court.

If you need advice on this matter, you can seek the advice of your Trade Union representative, or the other sources of advice listed under paragraph 8 of this policy.

4.4 Financial wrongdoing

In cases involving alleged financial wrongdoing, the University Secretary will act throughout in close consultation with the Principal, who is the designated Accounting Officer for the University's public funding.

In addition, the Principal will report the matter to the Convener of the Audit and Risk Committee, and if appropriate, inform the Scottish Funding Council (SFC).

4.5 Form of investigation

The University Secretary will consider the information given to them, and may well ask for the disclosure to be recorded to make sure the details are fully understood.

An assessment will be made as to whether or not the disclosure falls within the scope of this policy. It may be that it is appropriate to address the matter that has been disclosed through another University policy. For example, the University has policies and procedures in place covering staff grievances, complaints and discipline matters, so such matters will not be considered under the Whistleblowing Procedures. If a

disclosure falls outside this procedure but within another, then the individual making the disclosure will be informed and advised of the appropriate process.

If the matter falls within the grounds of this procedure, then the University Secretary will decide on the form of investigation to be undertaken. This may be:

- to investigate the matter internally;
- to call for an external inquiry;
- to refer the matter to the police.

The investigation could involve more than one of these if warranted.

4.6 Internal investigation or external Inquiry

Where the matter is to be the subject of an internal investigation or external inquiry, the University Secretary, as the designated person, will determine³:

- who should undertake the investigation;
- the procedure to be followed;
- the scope of the concluding report.

In all cases, the matter disclosed will be investigated as soon as is reasonably practicable. The exact timescale will depend on the nature of the disclosure made and the facts and circumstances of that particular case. An investigation will normally commence within two weeks of the issue being reported, and in all cases, an attempt will be made to resolve matters as soon as possible.

The person making the disclosure does not have to provide evidence in support of the disclosure for the concerns to be investigated.

Internal investigation

Normally, a senior officer will undertake this investigation and report their findings to the University Secretary as the designated person. The person who will have to reach a decision on the matter should not carry out the investigation. Any investigation will be conducted as sensitively and speedily as possible.

The person carrying out the investigation will:

- tell the person or persons against whom the disclosure is made about the disclosure;

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- tell them the evidence supporting it, including any written evidence;
 - allow them to comment verbally or in writing before any investigation is concluded or further action taken.

External inquiry

The procedure is similar to that for the internal inquiry, with a person independent of Queen Margaret University conducting the investigation.

4.7 Feedback

If you have made the disclosure, the University Secretary will tell you what action, if any, is to be taken as a result of the investigation. In the event of a lengthy investigation, you will get regular interim feedback on progress.

4.8 Outcomes

The outcome of the investigation may be as follows:

- no further action is taken;
- other internal procedures may be invoked, such as disciplinary, grievance or complaints;
- a special investigation is initiated;
- to refer the matter to an external authority for further investigation;
- other appropriate action, such as a change to procedures.

The list of outcomes is indicative rather than exhaustive.

Should an investigation or referral lead the University to conclude there has been a breach of University discipline, the member or members of staff responsible may, in addition to any civil or criminal proceedings, be subject to disciplinary action.

4.9 Reporting of outcomes and opportunity for review

If there is to be no action taken, you will be told of the reasons.

You will be provided with the opportunity to remake the disclosure to a person other than the original designated person, ie the University Secretary. You may make a subsequent disclosure to the Convener of the Audit and Risk Committee or the Chair of the University Court.

This other person will consider all the information presented, the procedures that were followed and the reasons for not taking any further action. The outcome of this

will be either to confirm that no further action is required, or that there should be further investigation. The person will follow the procedures referred to above.

A detailed report of all disclosures and any subsequent actions taken will go to the Audit and Risk Committee, and to the Chair of University Court. This will allow the Chair of the University Court to monitor the effectiveness of the procedure and to report to the University Court as appropriate.

In all cases, the University Secretary, as the designated person will retain the written report for three years.

In cases of financial wrongdoing or misuse of public funds, the Scottish Funding Council (SFC) may also be informed of the outcome of an investigation.

5 Confidentiality

A worker raises a concern *confidentially* if he or she gives his or her name only on condition that it is not revealed without their consent. A worker raises a concern *anonymously* if he or she does not give his or her name. Usually, the best way to raise a concern is to do so openly.

We will treat all disclosures confidentially and sensitively. If you make a disclosure, we will keep your identity confidential, unless required by law. However, the investigation process may reveal the source of the information and you may need to provide a statement as part of the evidence required.

We will also keep confidential the identity of the person against whom the disclosure is made, as far as is practicable.

6 Anonymous allegations

This policy strongly encourages you to put your name to any disclosure you make. Concerns expressed anonymously are much less powerful. It may be difficult to provide feedback where a disclosure has been made anonymously and action to investigate the disclosure could be limited.

However, anonymous complaints may be investigated or acted upon, as the designated person sees fit, having regard to the seriousness of the issue raised, the prospects of being able to investigate the matter, and fairness to any individual mentioned in the complaint. In such circumstances, it is possible to provide feedback by telephone appointment, or through anonymised email.

7 Responsibility for policy

The University Secretary, who is Secretary to the University Court.

8 Further information and advice

If you are unsure whether or not to use this procedure, or if you want independent advice at any stage, you may wish to contact one of the following, as appropriate:

- an appropriate TU representative;
- a local Citizens Advice Bureau;
- 'Public Concern at Work' – which provides independent and confidential advice to workers who are unsure whether or how to raise a public interest concern:
<http://www.pcaw.org.uk/>

As advised above, advice can also be sought from the University Secretary, who is Secretary to the University Court and the designated person under this policy.