

NCIUL WHISTLEBLOWING POLICY

ADM-WHIP 120

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WHISTLEBLOWING POLICY

NCIUL has been influenced by The Open University code of practice for whistleblowing, which has been informed by the good practice guidance on whistleblowing in higher education as outlined in the Higher Education Code of Governance (2014) issued by the Committee of University Chairs (CUC), the Scottish Code of Good Higher Education Governance (2013) and the CUC Guide for Members of Higher Education Governing Bodies (2009), as well as the Whistleblowing Commission Code of Practice (2013).

In more details, Annex A3 of the CUC Guide (2009) state:

‘Universities and colleges of higher education, like other public bodies, have a duty to conduct their affairs in a responsible and transparent way and to take into account both the requirements of funding bodies (including of course the Funding Councils) and the standards set out in the reports of the Committee on Standards in Public Life. In addition, they are committed to the principles of academic freedom embodied in their own charters, statutes and articles of government, and enshrined in the Education Reform Act 1988.

Members of staff are often the first to know when things are going wrong in an institution, whether these concern financial malpractice, the abrogation of appropriate and agreed procedures, or departures from the statutory or other requirements for good governance. All institutions should establish official channels through which such concerns should be raised, for example through heads of department, at official committees, or through staff representatives, including the accredited trades unions. In the normal course of events, concerns should be raised through these channels. But members of staff often feel, rightly or wrongly, that their own position in the institution will be jeopardised if they raise a particular concern in this way, and sometimes the usual channels may indeed be inappropriate.’

PURPOSE

The purpose of this policy is to provide guidance to all staff and students of NCIUL and any other associated person acting on NCIUL’s behalf wishing to raise reasonable concerns they may have about irregularities in the running of NCIUL or of the activities of colleagues within NCIUL. These parties are referred to as ‘members of NCIUL and associated persons’ below.

This policy is complementary and is not intended to replace NCIUL’s existing policies and procedures in relation to fraud, bribery, grievances, disciplinary matters or student complaints.

This policy should be used in conjunction with the Whistleblowing Procedures and Guidance (Appendices).

Under the Public Interest Disclosure Act 1998 (in Northern Ireland, the Public Interest Disclosure (Northern Ireland) Order 1998), staff will have protection

against dismissal and victimisation if they make 'protected disclosures' as defined in the Act and amended in The Enterprise and Regulatory Reform Act (2013). These Acts limit the type of disclosure they protect and NCIUL believes that members of NCIUL and associated persons should feel able to raise legitimate concerns which may not fall within the definitions set down in the Act, without fear of their position within NCIUL being jeopardised.

This policy sets out what any member of NCIUL and associated persons should do if they have such concerns.

DISCLOSURES

Whistleblowing is defined within NCIUL as the reporting by members of NCIUL or associated persons of suspected wrongdoing or dangers in relation to NCIUL activities. This includes perceived bribery, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment and any breach of legal or professional obligations.

MAKING A DISCLOSURE

Concerns raised by staff members of NCIUL and associated persons should normally be directed to the person's manager or the Associate Dean.

Concerns raised by undergraduate and taught postgraduate students should normally be directed to the Registrar.

These concerns are likely to be able to be escalated through normal management channels, and are unlikely to be made anonymously.

If, however, a member of NCIUL or associated person believes that a concern should not be raised in this manner, such allegations should normally be reported to NCIUL Vice Chancellor or their nominee, who will then be responsible for next steps to be taken in accordance with the Procedures and Guidance (Appendices).

If for any reason the person making the disclosure considers that none of these people are appropriate, then concerns should be raised with the Chair of the Ethics Committee via the whistleblowing mailbox (whistleblowing@nciul.ac.uk) who shall decide what action to take having regard to the particular circumstances. This may include, but is not limited to, the involvement of the external auditors, the funding councils, legal advisers or other members of the Ethics Committee (see Procedures and Guidance Appendices).

Anonymous disclosures are not encouraged but will be investigated at the discretion of the person to whom the disclosure is made, in consideration of the seriousness of the allegation.

EXTERNAL ADVICE

Public Concern at Work is an independent authority on public interest whistleblowing and offers free advice to people who may have concerns around whistleblowing. They have a website (www.pcaw.org.uk) which provides a range of advice to individuals including a contact telephone number. In addition, the Committee on Standards in Public Life's website (www.public-standards.gov.uk) provides advice on the ethical standards expected across the public sector.

INVESTIGATING DISCLOSURES

Disclosures arising under this Policy may include matters for which NCIUL already has dedicated procedures. For example:

- Financial irregularity, bribery and corruption: NCIUL has an Anti-Fraud Policy and an Anti-Bribery and Corruption Policy which set out the procedure to be followed if fraud, irregularity or bribery is suspected or alleged.
- Academic Malpractice: NCIUL has a formal procedure for the investigation of allegations of academic malpractice or misconduct.
- Bullying and Harassment: NCIUL has formal grievance procedures and a Code of Practice on dealing with bullying and harassment which apply to staff, and procedures under a Student Code for dealing with bullying and harassment which apply to students.

Consequently, where disclosures relate to existing NCIUL policy or procedure including that identified above, that relevant policy or procedure will be followed. Disclosures relating to all other issues as defined above will be handled in accordance with the Whistleblowing Procedures and Guidance (Appendices).

Disclosures will normally be the subject of a preliminary investigation to establish whether or not there is substance to the disclosure. If a preliminary investigation does not take place i.e. the disclosure is effectively dismissed summarily, the person making the disclosure shall be informed and given the opportunity to remake the disclosure to some other person or a higher authority in NCIUL.

A preliminary investigation will be conducted by an appropriate person and not by those who may be required to make a final decision on the matter or any person who may have a conflict of interest.

If the preliminary investigation finds that there is substance to a disclosure, the matter may be considered under the appropriate stage of the disciplinary procedures, may be the subject of a formal investigation and/or may be referred to the police.

The person making the disclosure will be informed of who will be handling the concern and an estimation of how long the investigation will take.

COMMUNICATION (INCLUDING TRAINING)

NCIUL ensures that its whistleblowing and associated policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risk it faces.

The HR Officer is responsible for ensuring all employees receive appropriate training and for the communication of NCIUL's Whistleblowing Policy and other relevant policies to associated person(s). They will also monitor and review their procedures and action plans to ensure their suitability, adequacy and effectiveness in relation to this Policy and implement improvements as appropriate.

REVIEW PROCESSES

This policy will be updated annually by the HR Office and, then reviewed by the Equality and Diversity Committee to ensure it meets Equality and Diversity policy standards.

APPENDIX 1: WHISTLEBLOWING PROCEDURES AND GUIDANCE

Purpose and responsibility

This document outlines what needs to be done, when, and by whom, when a whistleblowing disclosure is made under the Whistleblowing Policy. This includes disclosures made directly to the whistleblowing mailbox (whistleblowing@nciul.ac.uk).

Whistleblowing disclosures

The policy defines whistleblowing as “the reporting by members of NCIUL or associated persons of suspected wrongdoing or dangers in relation to NCIUL activities. This includes perceived bribery, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment and any breach of legal or professional obligations.” Concerns about the management of projects, programmes of work or change initiatives are in scope.

The policy outlines three ways in which whistleblowing concerns can be raised:

- a. Staff concerns should normally be raised with line managers or appropriate Associate Deans. Student concerns should normally be raised with the Registrar. This type of disclosure is referred to as a “first-line disclosure” within this document.
- b. If concerns cannot be raised in this way for any reason, allegations should normally be reported to appropriate Dean. This type of disclosure is referred to as a “second-line disclosure” within this document.
- c. If for any reason raising the concern with any of these people is deemed inappropriate, the concern should be raised with the Chair of Ethics Committee via the whistleblowing mailbox. This type of disclosure is referred to as a “mailbox disclosure” within this document.

Those making disclosures should be aware that there may be a delay in receipt and acknowledgement of any disclosures sent at weekends or during NCIUL closures, and that emails sent to any persons named above may be viewed by others responsible for managing their correspondence.

First- and second-line disclosures

A first-line disclosure (Associate Deans or the Registrar) may be made verbally or in writing (including by email). First- line disclosures are not likely to be made anonymously (although this may be possible in limited circumstances) and are more likely to be resolved through normal management channels.

If the Associate Dean is unavailable or is implicated, the Chair of Ethics Committee will be contacted.

A second-line disclosure may be made directly to NCIUL Dean, in case the person raising the allegation has deemed it inappropriate to raise as a first-line disclosure. A second-line disclosure may be made verbally or in writing (including by email), and may be made anonymously. Disclosures at this level may potentially be more serious in nature and less likely to be resolved through normal management channels.

Those receiving an initial first-line disclosure are first responsible for establishing whether other existing NCIUL policies and procedures apply to it (see “Investigating Disclosures” section of Whistleblowing Policy) or whether the matter falls under existing line management or project management responsibilities. If this is the case, the relevant policy, procedure or management line should be followed from this point.

If this is not the case, and the disclosure fits the definition in the Whistleblowing Policy, it should be treated as a whistleblowing disclosure.

Process

The receiver should acknowledge receipt of the disclosure, normally within one working day of receipt/discussion. Assurance should be given to the whistleblower that:

- a. Their disclosure will be taken seriously and treated sensitively;
- b. Their identity will be kept confidential if they have requested this; and
- c. They will not suffer a detriment because they have raised a concern, unless it is later found that this was done maliciously, in which case disciplinary action may be taken.

The person who has received the disclosure should then refer it to NCIUL Dean via the relevant Associate Dean if/as appropriate unless NCIUL Dean is implicated.

This should normally take place within two working days of its receipt.

Should notification to NCIUL Dean be inappropriate, the disclosure should be notified directly to the whistleblowing mailbox.

NCIUL Dean is responsible for deciding what action should be taken to address the substance of the disclosure. This could include, but not be limited to, action within his/her management responsibilities, consulting appropriate staff to determine action to be taken, appointing an appropriate member of staff to carry out a preliminary investigation, or escalating the disclosure to the Provost.

Mailbox disclosures

Disclosure to the Chair of the Ethics Committee using the whistleblowing mailbox (i.e. bypassing first- and second-line disclosure) is intended as a last resort after other methods of raising concerns have been exhausted, or where the other methods are reasonably deemed by the individual making the disclosure to be inappropriate.

The whistleblowing mailbox is managed by the Chair of the Ethics Committee.

Emails sent to the whistleblowing mailbox are forwarded directly to the appointed member(s) of the Ethics Committee by a mailbox rule. The appointed member will normally act as mailbox monitor and will be responsible for opening these emails and ensuring appropriate action is taken on the contents. Should the appointed member be unavailable e.g. on annual leave, the mailbox monitor responsibility passes to the Chair of the Ethics Committee nominee.

Mailbox monitor responsibility should not be passed to NCIUL Vice Chancellor, given that the opportunity to raise concerns with them directly may have been deliberately bypassed.

Any responses sent to emails via the mailbox will be sent from, and copied to, the mailbox for visibility.

Not every email sent directly to the mailbox will qualify as a whistleblowing disclosure. Some issues raised via the mailbox may relate to existing policy or procedure, and it may sometimes be appropriate to inform other members of NCIUL staff of the substance of an email outside the whistleblowing procedures depending on its nature.

The mailbox monitor will usually respond directly to any emails received via the mailbox which do not contain disclosures e.g. queries on process.

Upon receipt of a direct disclosure to the mailbox, the appointed member(s) of the Ethics Committee will discuss it confidentially as soon as is practical. This should normally be within one working day of receipt but may take longer depending on the nature of the disclosure.

The mailbox monitor will then contact the Chair of Ethics Committee by email via a secure email account, attaching a copy of the initial disclosure email and recommending a course of action. This communication will normally be shared with NCIUL Provost unless he/she is implicated in the disclosure. Again, this should normally be within one working day of receipt depending on the nature of the disclosure.

Thereafter it is the responsibility of the Chair of Ethics Committee to determine the action to be taken in relation to the disclosure, with due regard to the course of action recommended to him/her. This would normally involve delegating the matter to NCIUL Provost to handle onward if appropriate. Other actions may include, but not be limited to, setting a preliminary investigation in motion directly, and/or involving other members of NCIUL staff or the Ethics

Committee, external auditors, funding bodies, legal advisers or the police, depending on the nature of the disclosure.

Should the Chair of the Ethics Committee be unavailable for a significant period of time, the Provost will normally take on their role in relation to direct mailbox disclosures.

Acknowledgement and keeping whistle-blowers informed

Unless the disclosure has been made anonymously, receipt of disclosure should always be acknowledged by return email from the mailbox. The recipient should acknowledge receipt using neutral wording.

It is likely to be difficult to acknowledge disclosures made anonymously, though disclosures sent from a generic email address may warrant a reply.

Whistle-blowers will usually be kept informed of proceedings by the mailbox monitor at regular and appropriate intervals. Normally a fortnightly update will be considered reasonable, but timescales and the amount of detail it is possible to communicate will necessarily vary depending on the nature of the individual allegation(s) and investigation(s).

It may not be possible or appropriate to keep whistle-blowers informed of developments for some disclosures depending on their nature e.g. if criminal proceedings might be prejudiced, if the disclosure is made anonymously or the specific details and outcomes where disciplinary action is taken.

Whistle-blowers will normally be informed by the mailbox monitor when an investigation is completed and/or case concluded, with information on the general outcome and any further action to be taken if this is appropriate (see Appendix 2 on investigations below).

Reporting to the Ethics Committee

An annual report on whistleblowing cases will be made to the Ethics Committee alongside the annual review of the Whistleblowing Policy. This will normally include information on the number and types of disclosure, actions taken and resolution.

Individual whistleblowing cases may also be reported to the Ethics Committee as they occur, depending on the nature and complexity of the disclosure and the status of the investigation.

Reporting to the Ethics Committee on whistleblowing is the responsibility of NCIUL Registrar, but it could be submitted by other appointed members.

APPENDIX 2: PRINCIPLES FOR INVESTIGATING WHISTLEBLOWING DISCLOSURES

Any whistleblowing-related investigation should be carried out with reference to the principles outlined in this document and in line with the most recent guidance on conducting workplace investigations issued by the Advisory, Conciliation and Arbitration Service (ACAS, 2015).

A preliminary investigation will normally be required, with the purpose of establishing whether or not there is substance to a disclosure. This will normally be carried out on the instructions of NCIUL Registrar or the Chair of the Ethics Committee as per the procedures outlined in Appendix 1.

If there is no investigation and the disclosure is dismissed summarily, the person making the disclosure will be informed and given the opportunity to remake the disclosure at a higher stage of the process e.g. to the Chair of the Ethics Committee.

The person making the disclosure should be informed as soon as possible of who will be handling the concern and an estimation of how long the investigation will take. Investigations should take place and be concluded as soon as possible, but the timeframe involved will necessarily depend on the nature and complexity of the matters to be investigated.

A preliminary investigation should be conducted by a person of appropriate experience and seniority. They should not be anyone who may be required to make a final decision on the matter or who may have a conflict of interest.

The investigator should record the scope of the investigation and any action taken along with relevant dates and findings. A concise preliminary investigation report should be completed and sent to NCIUL Registrar and whistleblowing mailbox to ensure that appropriate records are kept. These records will be treated as formal complaints for the purposes of retention in line with NCIUL's Retention Schedule (current year plus six years).

If the preliminary investigation finds that there is substance to the disclosure, the matter may be referred for consideration at the appropriate stage of the disciplinary procedures, may be the subject of a formal investigation and/or may be referred to the police, depending on the nature of the matter. At this point there is an expectation that Human Resources support will be required in following appropriate process.

The person making the disclosure should be assured that their concerns will be treated seriously and sensitively.

If confidentiality is requested, the person making the disclosure should be assured that this will be respected as far as is possible, consistent with a fair investigation and a fair disciplinary procedure or legal action should this be

required, as there may be an overriding reason for disclosure of identity e.g. if police involvement is required. The person should be assured that although confidentiality cannot be guaranteed in all circumstances, NCIUL will support them and protect them from detriment for having raised a concern unless it is later proved information provided was knowingly false.

Normally the person against whom an allegation is made should be told of the allegation, of the evidence supporting it and be allowed to comment before the investigation is concluded and a report made (bearing in mind the potential need for confidentiality in respect of the identity of the person who made the original disclosure). However, there may be cases in which this is not appropriate action e.g. where revealing that an investigation is underway would provide an opportunity to conceal evidence.

The person making the allegation shall not suffer detriment for having raised a concern unless it is later proved information provided was knowingly false. Persons believing they have suffered detriment should report this.

Action by a manager or others to deter a member of NCIUL or associated person from raising a concern about an irregularity or other malpractice may be considered as a disciplinary offence.

Members of NCIUL or associated persons making allegations should be informed of the general outcome of the investigation, but are not entitled to receive a copy of the report which is confidential to the investigator, those responsible for initiating the investigation (normally NCIUL Registrar or Chair of the Ethics Committee), the staff responsible for administering the process, the appropriate disciplinary authority (if relevant) and the Chair of the Ethics Committee. The person against whom the allegation is made will be informed of the outcome of the investigation and will be entitled to receive a copy of the report if disciplinary action is to be taken. The results of any investigation, including those relating to research activity, will be reported to the Board of Directors and the Board of Governors.

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