



## Whistle blowing policy

<b>Outcome requested:</b>	Council is asked to <b>approve</b> changes to the Public Interest Disclosure (Whistle Blowing) Procedure arising from the triennial review.
<b>Executive Summary:</b>	This paper recommends drafting changes to the Public Interest Disclosure (Whistle Blowing) Procedure arising from the triennial review.
<b>QMUL Strategy</b>	Effective governance underpins the achievement of the University's strategic aims.
<b>Internal/External regulatory/statutory reference points:</b>	Public Interest Disclosure (Whistle Blowing) Procedure Public Interest Disclosure Act 1998 Enterprise and Regulatory Reform Act 2013 Regulatory Framework for Higher Education in England
<b>Strategic Risks:</b>	Compliance with the ongoing conditions of registration with the Office for Students.
<b>Equality Impact Assessment:</b>	There are no equality and diversity issues arising from this paper.
<b>Subject to prior and onward consideration by:</b>	The proposed changes have been recommended for approval by Audit and Risk Committee
<b>Confidential paper under FOIA/DPA</b>	No
<b>Timing:</b>	The Public Interest Disclosure (Whistle Blowing) Procedure is reviewed triennially and was last reviewed in 2018.
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<b>Date:</b>	23 September 2021
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## QUEEN MARY UNIVERSITY OF LONDON

### ~~Public Interest Disclosure (Whistle-blowing)~~ Whistleblowing Procedure

#### 1. Introduction

- 1.1 Queen Mary University of London is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of regulators, funding bodies and the standards in public life set out in the reports of the Committee on Standards in Public Life (formerly known as the Nolan Committee).

[www.gov.uk/government/organisations/the-committee-on-standards-in-public-life](http://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life)

- 1.2 It is a fundamental term of every contract of employment that an employee will not disclose confidential information about their employer's affairs. However, where an individual discovers information which they believe shows malpractice or wrongdoing within the University, then this information should be disclosed without fear of reprisal and may be made independently of line management.

- 1.3 Individuals have protection under whistleblowing laws if they raise concerns in the correct way. This procedure is designed to give individuals the opportunity to raise concerns in the correct way, in accordance with an established procedure, thereby providing that protection. The Public Interest Disclosure Act 1998, which came into effect on 2 July 1999, gives legal protection to employees against being dismissed, victimised or suffering any other detriment from their employers as a result of making a "qualified disclosure" (i.e. disclosing information which is deemed to be in the public interest).

- 1.4 Individuals must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes dismissal, disciplinary action, threats or any other unfavourable treatment connected with raising a concern. Victimisation of any individual who has raised a concern using this procedure will not be tolerated and such action will be treated as a disciplinary offence irrespective of whether the concern raised is subsequently upheld. The Enterprise and Regulatory Reform Act 2013 made three key changes to the Public Interest Disclosure Act 1998:

- [a] — amended the definition of "qualifying disclosure" to introduce a public interest test;
- [b] — removed the requirement that certain disclosures be made in good faith, replacing this with a power to reduce compensation where disclosure is not made in good faith;
- [c] introduced vicarious liability for employers if a worker is subjected to detriment by a coworker for making a protected disclosure.

- 1.5 In addition to the ~~Public Interest Disclosure (Whistle-blowing)~~ Whistleblowing Procedure, the following policies are available on the University intranet, which may need to be referred to where relevant.

Financial Regulations  
Scheme of Delegation of Financial Authority  
Anti-Bribery and Corruption Policy  
Anti-Money Laundering and Criminal Finances Act Policy  
Standards of Business Conduct  
Fraud and Corruption Policy and Response Plan  
Policy and Procedures for the Protection of Children and Adults in Need of Safeguarding  
Grievance Resolution Policy and Procedure

Disciplinary Policy and Procedure  
Student Complaints Policy  
Procedure for Investigating Allegations of Misconduct in Academic Research

## 2. Scope

2.1 This procedure is designed to allow employees or other members (see 2.4 below) of the University to raise concerns or disclose information where the individual has a reasonable belief of malpractice or wrongdoing which is in the interest of the University or of the public to be investigated. These will usually include one or more of the following:

- a) a criminal offence, such as financial malpractice, impropriety or fraud;
- b) the breach of a legal obligation or failure to comply with the Charter, Ordinances and Regulations of the University;
- c) a miscarriage of justice;
- d) a danger to the health and safety of any individual;
- e) damage or potential damage to the environment;
- f) academic or professional malpractice, improper conduct or unethical behaviour;
- g) deliberate concealment of information relating to any of the above.

~~Matters relating to individual staff or student circumstances or concerns should be addressed through QMUL's Grievance Policy and Procedure or Student Complaints Policy respectively.~~

2.2 ~~There is a difference between making a disclosure which falls under this procedure and raising a grievance or a complaint about the personal position, circumstances or treatment of a member of staff or a student. Matters relating to individual staff or student circumstances or concerns should be addressed through the University's Grievance Policy and Procedure or Student Complaints Policy respectively. Victimization of any individual who has made a qualified disclosure using this procedure will be treated as a disciplinary offence irrespective of whether the allegations raised are subsequently upheld. Individuals must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes dismissal, disciplinary action, threats or any other unfavorable treatment connected with raising a concern.~~

2.3 A number of other policies and procedures are also in place, including the University's Discipline Policy and Procedure and Procedure for Investigating Allegations of Misconduct in Academic Research. Allegations which fall within the scope of those procedures should normally be made and considered in accordance with the relevant procedure. In all cases, the University reserves the right to determine which is the correct procedure to consider the concern raised dependent on the content on the information provided.

2.4 ~~The Public Interest Disclosure Act 1998~~ This procedure applies to employees, workers, trainees, agency staff, self-employed persons providing personal services for the University, and contractors. ~~Although not protected by the Act,~~ Even where individuals may not have whistleblowing protection under the law, it is expected that other members of the University community, such as members of Council and students as well as volunteers, will also use the procedure ~~set out~~ outlined at Section 3 below to

disclose any information which they believe shows malpractice or impropriety. This procedure does not form part of any employee's contract of employment and the University may amend it at any time.

- 2.5 It is emphasised that this procedure is intended to assist individuals who believe they have discovered malpractice, ~~or~~ impropriety or wrongdoing. It is not designed to question financial or business decisions taken by the University, nor may it be used to reconsider any matters which have already been addressed under grievance or disciplinary procedures, or any other relevant procedure.
- 2.6 This procedure is designed to ensure that individuals have an appropriate course of action to raise matters internally and therefore it is expected that members of the University will use this procedure to raise any concerns internally in the first instance rather than with agencies external to the University. It is strongly recommended that advice is sought before reporting a concern externally and it will rarely, if ever, be appropriate to alert the media. It is strongly recommended that advice is sought before reporting a concern to anyone external. The independent whistleblowing charity, Public Concern at Work Protect, operates a confidential helpline. Their contact details can be found online at [www.protect-advice.org.uk](http://www.protect-advice.org.uk) should confidential independent advice be needed.
- 2.6 The Criminal Finances Act 2017 ~~has~~ created a new corporate offence of failure to prevent the facilitation of tax evasion. This procedure should be used by those employees or other persons affiliated with the University who believe that any individual who provides services for or on behalf of the University has facilitated the commission of a tax evasion offence. Concerns relating to the evasion of tax should be reported as early as possible and in line with the procedure outlined at Section 3 below.
- 2.7 Any concerns about individuals or University events expressing extremist views that risk drawing people into terrorism or are shared by terrorist groups should be communicated to the University's Prevent lead, the ~~Academic Registrar and Council Secretary~~ Director of Student and Academic Services, rather than be reported under this ~~policy procedure~~. However, any concern that the University is failing to fulfil its duties in relation to the Prevent duty may be reported either under this ~~policy procedure~~, or directly to the Prevent lead as appropriate.

### **3. Procedure**

#### *Making a Disclosure*

- 3.1 Disclosures should normally be made in writing to the ~~Academic Registrar and Council Secretary~~ Chief Governance Officer and University Secretary, who will inform:
- a) the President and Principal or, where the allegation concerns the President and Principal, the Chair of Council, who will then become the designated person for the purpose of these procedures;
  - b) the Chair of the Audit and Risk Committee;
  - c) normally the ~~Chief Operating Officer and the~~ Director of Human Resources;
  - d) where the allegation relates to financial malpractice, impropriety or fraud, the ~~Director of Finance~~ Chief Financial Officer;
  - e) where the allegation relates to safeguarding, the Director of Student and Academic Services.

- 3.2 If the allegation concerns the ~~Academic Registrar and Council Secretary~~ Chief Governance Officer and University Secretary, or if it would be inappropriate to make the disclosure to them for any other reason, the disclosure should be made directly to the President and Principal or, where the issue falls within the review of the Council, to the Chair of Council, who will then become the designated person for the purpose of these procedures. ~~The designated person and~~ will inform the other office holders listed in 3.1[b] and, where appropriate, 3.1[c]–[e] ~~of the allegation~~.

#### *Confidentiality*

- 3.4 The University will treat all disclosures in a confidential and sensitive manner. The identity of the individual making the allegation will be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required. The individual making the disclosure will be informed if it is felt that their identity needs to be disclosed or is likely to become apparent in the progress of an investigation.
- 3.5 The University expects the individual making the disclosure and all others involved in any subsequent investigation to observe strict confidentiality in relation to the nature of the disclosure, the identity of those involved and any other information relating to the investigation.

#### *Anonymous Allegations*

- 3.6 ~~This procedure requires individuals to sign any disclosures they make and we~~ The University would encourage staff individuals to make disclosures raise concerns under this procedure openly to the University in order to facilitate thorough investigation. In exceptional circumstances, concerns expressed anonymously may be considered at the discretion of the University. In exercising this discretion, the factors to be taken into account will include the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from attributable sources.
- 3.7 Individuals can seek advice from ~~Public Concern at Work~~ Protect, the independent whistleblowing charity, who offer a confidential helpline. Their contact details can be found online at [www.protect-advice.org.uk](http://www.protect-advice.org.uk).

#### *Vexatious Allegations*

- 3.8 As indicated at 1.4 above, an individual raising a genuine concern in good faith must not suffer any detriment for having done so and even if the concern is not upheld or found to be untrue in a subsequent investigation. If an individual makes an allegation in good faith, but this is not upheld by subsequent investigation, no action will be taken against that individual. However, in order to ensure the protection of all individuals, if an individual makes malicious, vexatious or knowingly untrue allegations under this procedure and/or is which are found on the balance of probabilities to be motivated by personal gain or the desire to cause harm or damage to the reputation of other(s), and particularly if they persist in making them, disciplinary action may be taken against the individual concerned.

#### *Investigating a Disclosure*

- 3.9 Within 10 working days, or as soon thereafter if this timescale is not possible, the designated person will consider the information made available to them. They will and decide on, and whether the Whistleblowing Policy is the policy best suited to deal with the concerns raised and, if so, advise the individual who has made the disclosure of, the action and, if relevant, the form of investigation to be

undertaken. This will be communicated to the person who has made the disclosure and may be include:

- a) to investigate the matter internally;
- b) to refer the matter to the police;
- c) to arrange for an independent inquiry.

If the decision is that investigations should be conducted by more than one of these means, the designated person should satisfy themselves that such a course of action is warranted.

3.10 Where the matter is to be the subject of an internal inquiry, the designated person will then determine:

- a) who should undertake the investigation (see 3.11);
- b) the procedure to be followed; and
- c) the scope of the concluding report.

3.11 In deciding who should undertake the investigation, the designated person will check with the proposed investigator that they:

- a) are not responsible for or substantially connected to the matter raised;
- b) are able and willing to conduct the investigation in a timely way (see 3.13);
- c) are adequately experienced or knowledgeable about conducting investigations of this character;
- d) do not believe themselves to be conflicted in any other respect.

3.12 Where the allegation concerns a breach of the University's Financial Regulations and/or procedures, the University's Internal Auditor will normally undertake the investigation as the investigating officer. Where the allegation does not involve a breach of the University's Financial Regulations and/or procedures, the investigation may be undertaken by a member of staff of the University appointed as the investigating officer by the designated person for this purpose.

3.13 The investigating officer will report their findings to the designated person. Any investigation will be conducted as sensitively and speedily as possible and normally within 20 working days, albeit it is recognised dependent on the scope and complexity of the matter being investigated, this timescale may not always be possible.

3.14 A member of the Human Resources Directorate will be nominated to keep the individual who has made the disclosure advised of progress and likely timescales.

3.15 Where a disclosure is made, the person or persons against whom the disclosure is made will be informed of the nature of the allegation, the evidence supporting it and will be given the opportunity to comment on the evidence and present any explanation before any conclusions are reached.

- 3.16 In instances where there is reasonable belief that any individual implicated by the allegation raised through a disclosure could jeopardise the progress of an investigation, for example by destroying records, then that individual may be temporarily suspended from duty. Any such suspension will:
- a) be without prejudice (i.e. will not imply or assume any actual or potential wrong doing on the part of that individual);
  - b) be confirmed in writing to the individual in question, setting out the reason(s) for the suspension and any practical arrangements for the duration of their suspension;
  - c) be on full pay;
  - d) be of the shortest duration possible and reviewed on a regular basis.
- 3.17 As a result of this investigation, other internal procedures may be invoked, such as the University's Discipline Policy or Grievance Policy, or it might form the basis of a separate investigation. In this event any investigation report ~~from the use of~~ under this procedure may be used as the investigation stage under the Policies referred to above. In some instances it may be necessary to refer the matter to an external authority for further investigation.

#### *Reporting of Outcomes*

- 3.18 After the investigation report has been considered, the designated person will inform the individual making the disclosure, normally within 5 working days or as soon thereafter if this timescale is not possible, of what action is to be taken where this does not breach confidentiality for other individuals concerned (for example, if an outcome is that disciplinary action is to be instigated against another individual then it is unlikely that this will be disclosed).
- 3.19 If the allegation is not upheld following an investigation, the individual concerned will be informed of the reason for this.
- 3.20 The designated person will submit a report of all disclosures and any subsequent action taken to the Audit and Risk Committee, duly anonymised as appropriate. Where the issue falls within the purview of the Committee, a detailed report will be submitted, in other cases a summary report will be provided, ~~in order to~~ This will allow the Audit and Risk Committee to monitor the effectiveness of the procedure. Copies of the report will be retained for a minimum of three years by the designated person.

## **4. Appeal**

- 4.1 The individual will be given the opportunity to remake the disclosure, in writing, stating in full the grounds for appeal, within 10 working days. An appeal can be made on the grounds that either the procedure was applied incorrectly or the action taken was inappropriate in the circumstances.
- 4.2 The allegation should be remade to ~~a second appropriate person. For example, if the initial disclosure was made to an officer of QMUL then the subsequent disclosure might be made to the Chair of the Audit and Risk Committee or to the Chair of Council.~~
- 4.3 ~~This second designated officer~~ The Chair of the Audit and Risk Committee will consider all the information presented, the procedures that were followed and the reasons why the allegations were not upheld. The outcome of this review will be either to confirm that no further action is required or to decide that further investigation and/or action is required. In the latter case, the ~~second designated~~

~~officer~~ Chair of the Audit and Risk Committee will follow the procedures outlined at Section 3 above as a second designated person with modifications as appropriate recognising this is an appeal.

- 4.4 In the event that the disclosure is remade to ~~a second appropriate person~~ the Chair of the Audit and Risk Committee, the individual making the disclosure will not subsequently have access to the further University policies or procedures for the continued pursuance of the same matter.

## **5. Review**

- 5.1 The ~~Academic Registrar and Secretary to Council~~ Chief Governance Officer and University Secretary may review this ~~policy procedure~~ following the conclusion of an investigation if any procedural or other problems were experienced during the course of an investigation, or if there is a change to best practice or national guidance in respect of public interest disclosures. The University's trades unions will normally be consulted on any substantive changes proposed.

Document Owner: Chief Governance Officer and University Secretary

Date last approved by Council: ~~13 April 2018~~ Draft for review

Number of Years to Next Review: 3 Years