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Human Resources Policy Statement HRPS21

WHISTLEBLOWING / CONFIDENTIAL REPORTING POLICY AND PROCEDURE

1. Introduction

- 1.1 Middlesex University is committed to the highest standards of quality, probity, openness and accountability.
- 1.2 As part of that commitment, we encourage workers or others with concerns about any aspect of our work to take appropriate action by coming forward and expressing those concerns. In many cases, concerns or complaints will be dealt with through our Grievance Procedure or Disciplinary Procedure. However, in some cases, we recognise that workers will need to come forward on a confidential basis about suspected or actual wrongdoing. We want to make it clear that they can do so without fear of reprisal or victimisation. This Policy refers to the disclosure internally or externally by workers or former workers of wrongdoing, illegal acts or omissions at work as listed below under Scope of the Policy.

2. Objectives of having a Whistleblowing Policy and Procedure

- To promote a working environment where workers can feel safe in raising concerns without fear of being seen as troublemakers and to encourage freedom of speech without workers being subject to any detriment, including victimisation and/or disciplinary action.
- To promote the use of informal, internal mechanisms in order to prevent concerns being publicly disclosed with all the resultant negative publicity when the issues could have been resolved at an early stage internally.
- To provide for any genuine and legitimate concerns to be fully investigated and appropriate action taken towards resolving them.
- To deter wrongdoing.
- To promote accountability throughout Middlesex University.

3. Scope of the Policy

- 3.1 This policy and procedure extends to all workers and former workers. It also covers all consultants, contractors and agency workers.

(Students should use the [Student Complaint and Grievance Procedure](#) and members of the public should use the [External Complaints Policy](#)). The University's counter fraud response plan will be invoked when disclosures are made about fraud.

- 3.2 Workers are actively encouraged to report any wrongdoing (whether past, present or future) which fall within any the statutory definition of a qualifying disclosure as set out in [Part IVa of the Employment Rights Act 1996](#):
- (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 he is 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, or
 - (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.

4. Designated Assessors

- 4.1 The Vice-Chancellor will ensure that at least three but not more than six members of staff of appropriate experience and standing within the University are designated at any time for the purposes of this procedure as Assessors.

The current Assessors are Teresa Kelly (Lead Assessor), Celia Bell, David Malpas, Dave Lewis, James Kennedy and Sioban O'Farrell-Pearce.

- 4.2 The Vice-Chancellor, in consultation with the Chair of the Board, may revoke any such designation from time to time and appoint new Designated Assessors. The Vice-Chancellor will report any such revocation to the next meeting of the Board of Governors, together with brief reasons for the revocation. Where a revocation arises from the termination of a Designated Assessor's employment (whether by the University or by the officer) brief reasons for the termination will be given to the Board of Governors.
- 4.3 The Lead Assessor will co-ordinate the training of the Designated Assessors in the use of this policy and procedure and will produce a report to the Board of Governors, via the Audit & Risk Committee, when this policy has been formally invoked and the outcome. Reports of whistleblowing are a standing agenda item for the Audit & Risk Committee.

5. Procedure for Raising a Concern

- 5.1 The procedure set out in this policy applies to disclosure by an individual ("the Discloser") who is a worker or former worker employed by or engaged at the University, and who has grounds to believe that wrongdoing has occurred, is occurring or is likely to occur in connection with the University, as defined under Scope of the Policy. This wrongdoing may be associated with another worker, a student, a member of the Board of Governors, or any other person or persons.

6. Initial Step

- 6.1 The Discloser should as soon as practicable disclose in confidence the reasons for suspecting wrongdoing to any one of the Designated Assessors. An Assessor may decline to become involved on reasonable grounds, including possible previous involvement or interest in the matter concerned, incapacity or unavailability or if a Designated Assessor is satisfied, after consulting the Lead Assessor, that some other Designated Assessor would be more appropriate to consider the matter in accordance with this procedure.

- 6.2 If the disclosure relates to wrongdoing by the Clerk to the Board of Governors or the Vice-Chancellor, the disclosure should be made direct to the Chair or (in the Chair's absence) the Deputy-Chair of the Board of Governors who will then decide what action should be taken.
- 6.3 Any disclosure to a Designated Assessor under this procedure should normally be in writing by email, however a telephone call or discussion in person is acceptable.
- 6.4 On receipt of the disclosure, the Designated Assessor will, without revealing the identity of the Discloser, offer to interview the Discloser in confidence. If the Discloser agrees to an interview this will take place as soon as practicable after the initial disclosure. The purpose of the interview will be for the Designated Assessor to obtain as much information as possible from the Discloser about the grounds of the belief of wrongdoing and to consult with the Discloser about further steps which could be taken. The Discloser may be accompanied by a local trade union representative or work colleague at the interview. The Designated Assessor may be accompanied by an administrative assistant to take notes, which will not identify the Discloser. For safeguards in relation to confidentiality, see below.

7. Further Steps

- 7.1 As soon as practicable after the interview (or after the initial disclosure if no interview takes place) the Designated Assessor will recommend to the Vice-Chancellor what further steps should be taken, while not disclosing the Discloser's name. Such recommendations may (without limitation) include one or more of the following:-
- that the University's disciplinary procedures should be invoked;
 - that the discloser should be given the opportunity to seek redress through the University's Grievance procedure;
 - that the matter should be investigated either internally by the University or by the Audit and Risk Committee or some other committee of the Board of Governors and/or by external or internal auditors or investigators appointed by the University;
 - that the matter should be reported to the Higher Education Funding Council for England, the Privy Council, the Department for Innovation Universities and Skills, the National Audit Office, the Quality Assurance Agency or other appropriate public authority; and/or
 - that the matter should be reported to the police.
- 7.2 Before making any recommendation the Designated Assessor will consider whether any person who is the subject of an allegation of wrongdoing should be interviewed.
- 7.3 The grounds on which the Designated Assessor may recommend that no further action by the University should be taken are as follows:
- that the Designated Assessor is satisfied that the Discloser does not demonstrate a reasonable belief that wrongdoing within the meaning of this procedure has occurred, is occurring or is likely to occur
 - that the matter concerned is already the subject of legal proceedings, or has already been referred to the police, the Higher Education Funding Council for England, the Privy Council, the Department for Innovation Universities and Skills, the National Audit Office, the Quality Assurance Agency or other public authority
 - that the matter is already (or has already been) the subject of proceedings under one of the University's other procedures relating to staff or students;
 - there is no evidence that wrongdoing has occurred or is likely to occur
- 7.4 Any recommendations made under this procedure will be made by the Designated Assessor to the Vice-Chancellor unless it is alleged that the Vice-Chancellor is involved in the alleged

wrongdoing or unless there are other reasonable grounds for not doing so, in which case the recommendations will be made to the Chair or (in the Chair's absence) the Deputy-Chair of the Board of Governors. In any case the recommendations will be made without revealing the identity of the Discloser unless the Discloser has given their permission.

- 7.5 If the Vice-Chancellor (or other recipient) decides not to implement fully any such recommendations that decision will be notified in writing to the Chair of the Board of Governors as soon as practicable, together with the reasons for it.

8. Feedback

- 8.1 Once the Vice-Chancellor (or other recipient) has decided what further steps should be taken, the Designated Assessor will inform the Discloser of the outcome in writing. If no further steps by the University are proposed, the Designated Assessor will give the reasons for this.

9. External Disclosure

- 9.1 If, having followed this procedure, the Discloser is not satisfied with the further steps (if any) decided upon or the outcome of any such steps, the Discloser may raise the matter concerned on a confidential basis directly with the police, the Higher Education Funding Council for England, the Privy Council, the Department for Innovation Universities and Skills, the National Audit Office, the Quality Assurance Agency, a Member of Parliament or other appropriate public authority.

- 9.2 Without prejudice to the rights contained in Part IVa ERA 1996 the Discloser may also raise the matter externally if:-

- the Discloser has reasonable grounds for believing that all of the available Designated Assessors are or were involved in the alleged wrongdoing or that the Discloser will be subjected to a detriment as a result of making the disclosure using this procedure; and
- it is not reasonably practicable for the Discloser in such circumstances to make the disclosure to the Vice-Chancellor or to the Chair or (in the Chair's absence) the Deputy Chair of the Board of Governors.

- 9.3 The Discloser may be required to demonstrate to the external body why the outcome of this policy and procedure was not satisfactory or why it not appropriate to invoke this procedure as the Public Interest Disclosure Act only affords protection to whistleblowers in prescribed circumstances. It is rarely appropriate to contact the media and the Discloser may lose their protection from detriment in such circumstances.

- 9.4 The Discloser may at any time disclose the matter on a confidential basis to a professionally qualified lawyer for the purpose of taking legal advice.

- 9.5 PROTECT is an independent authority on whistleblowing. It provides free help to prospective whistleblowers and advice on whistleblowing laws. Their website is at: www.pcaw.org.uk/

10. Confidentiality

- 10.1 It is hoped that a worker will feel confident in openly raising a concern.

However, confidentiality will be assured and the Discloser's name will not be disclosed without their written consent during the course of this procedure, except where:

- the Designated Assessor is under a legal obligation to do **OR**
 - there are grounds for believing the Discloser has acted maliciously **OR**
 - the information is already in the public domain **OR**
 - it is essential to do so in order to deal appropriately with the matter disclosed e.g. disclosing the name to a professionally qualified lawyer for the purpose of obtaining legal advice
- 10.2 Any documentation (including computer files and disks) kept by the Designated Assessor relating to the matter will be kept secure, so that as far as practicable only the Designated Assessor and his or her administrative assistant shall have access to it. As far as practicable, any documentation prepared by the Designated Assessor will not reveal the identity of the individual as the Discloser of information under this procedure.
- 10.3 A Discloser is entitled to be accompanied by a workplace colleague (University employee) or union representative at any meeting with a Designated Assessor under this procedure. The companion will be asked to respect the confidentiality of the disclosure and any subsequent investigation.
- 10.4 Where the Discloser participates in any such enquiry or investigation e.g. by providing a witness statement or by assisting in the gathering of evidence, that participation will usually be required to be on an open rather than a confidential basis, although the identity of the individual as the original Discloser of information will still remain confidential.

11. Anonymous Reporting

- 11.1 Raising a concern anonymously (where the Discloser does not identify him or herself to the Assessor) makes it difficult to investigate the concern, difficult to deter misuse and impossible to liaise with the Discloser (to seek clarification or more information or to give feedback.)

However, where an anonymous report is received the information will be assessed and investigated where appropriate.

12. Protection Against Reprisals and/or Disciplinary Action

- 12.1 No disciplinary action will be taken against a Discloser on the grounds of a disclosure made by the Discloser in accordance with this procedure. This will not prevent the University from bringing disciplinary action in cases where there are grounds to believe that a Discloser has provided information that he or she knows to be false.
- 12.2 The University will not (and it will use all reasonable endeavours to ensure that its workers do not) subject the Discloser to any detriment, on the grounds of the Discloser's disclosure of information under this procedure. The Discloser should report any complaints of such treatment to a Designated Assessor. If the Discloser wishes the Designated Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Designated Assessor revealing the Discloser's identity for the purposes of any such action.

13. Report of Outcomes

13.1 A report of all disclosures and any subsequent actions taken will be made by the Lead Assessor who will retain such reports for a period of not less than three years. In all cases a report of the outcomes of any investigation will be made to the Audit and Risk Committee in detail where the issue falls within its remit, and in summary in other cases as a means of allowing the Audit and Risk Committee to monitor the effectiveness of the procedure. Any reports of whistleblowing are reported to the Board of Governors through the Audit & Risk Committee where whistleblowing is a standing agenda item.

14. Contact details

14.1 The assessors can be contacted as followed:

Teresa Kelly / t.kelly@mdx.ac.uk / 020 8411 6018

Celia Bell / c.bell@mdx.ac.uk / 020 8411 6710

David Malpas / d.malpas@mdx.ac.uk / 020 8411 5830

Dave Lewis / d.lewis@mdx.ac.uk / 020 8411 5983

James Kennedy / j.kennedy@mdx.ac.uk / 020 8411 5642

Sioban O'Farrell-Pearce / s.ofarrell-pearce@mdx.ac.uk / 020 8411 3217

Whistleblowing/confidential reporting procedure

