

PROTECTED DISCLOSURE (Whistleblowing)

Member of Staff Responsible	Principal
Board of Directors' Committee Responsible	Board of Directors
Related policies	
Implementation date	November 2016
Review date	November 2019

PURPOSE

The UTC is committed to conducting its business with honesty and integrity and we expect all staff to maintain high standards. However, all organisations face the risk of things going wrong from time to time, or unknowingly harbouring illegal or unethical conduct. A culture of openness and accountability is essential in order to prevent such situations occurring or to address them when they do.

All staff (for the purposes of this policy will include employees, governors, consultants, contractors, casual workers and agency workers, and any other worker) are encouraged to raise genuine concerns about possible illegal behaviour or malpractice at the earliest opportunity and in an appropriate manner.

This policy is designed to:

- Support the UTC's values.
- Promote throughout the UTC a culture of openness and a shared sense of integrity by inviting all staff to act responsibly in order to uphold the reputation of the UTC and maintain public confidence.
- Encourage staff to raise concerns without fear of suffering retribution.
- Provide a transparent and confidential process for dealing with concerns.

The type of disclosure covered by this policy involves information which, in the reasonable belief of the member of staff making the disclosure **is made in the public interest and** tends to show that one of the following types of "malpractice" has taken place, is taking place or is likely to take place:

- (a) Criminal offence.
- (b) Breach of legal obligation.
- (c) Miscarriage of justice.
- (d) Danger to the health or safety of any individual.
- (e) Damage to the environment.
- (f) The deliberate concealing of information of any of the above.

That information tending to show any matter falling within any of the above categories has been is being or is likely to be deliberately concealed.

This policy is not for the resolution of personal grievances which should be raised through the UTC's **Grievance Procedure**. Legitimate concerns should be raised if they are in the interests of the UTC, staff, learners or the public, and must not be raised in the furtherance of any private dispute.

If any employee requires further information in relation to this policy, they should contact the HR Adviser.

SCOPE

This policy applies to all individuals working at all levels of the UTC including senior management, employees whether part-time or full-time, governors, consultants, contractors, casual and agency staff. This policy does not form part of any employee's contract and may be amended at any time. Should the UTC decide not to apply this policy, either in its entirety or in part, that will not amount to a breach of contract.

Any breach of this policy will be taken seriously and may result in action being taken under the UTC's Disciplinary Procedure.

Responsibility for ensuring the UTC's compliance with this policy rests with the Governing Body. The Governing Body has delegated day-to-day responsibility for compliance to the Principal.

The Principal will ensure that, at any time, at least two but not more than five employees of appropriate experience or seniority within the UTC are designated as UTC Public Interest Assessors (Assessor) (please refer to the Procedure at paragraph 6 of this policy). One of the UTC Public Interest Assessors shall also be the Lead Assessor.

The Principal may revoke any designation, with good reason, and appoint a new Designated Assessor.

The Principal will report any such revocation to the next meeting of the Governing Body, together with brief reasons for the revocation. Where a revocation arises from the termination of a Designated Assessor's employment (whether by the UTC or by the officer) brief reasons for the termination will be given to the Governing Body.

The Lead Assessor has day-to-day operational responsibility for this policy and must ensure that all managers and other staff who may deal with concerns or investigations under this policy receive regular and appropriate training. The Lead Assessor will co-ordinate the training of the Assessors in the procedure to be followed in the event that a complaint is made and will produce an annual report to the Governing Body, detailing the number of occasions that the formal procedure set out under this policy has been invoked and the outcome of each investigation made.

Line Managers are responsible for ensuring that they deal with any notifications of malpractice or wrongdoing made to them in accordance with the spirit of this policy and that they bring this policy to the attention of the employee making the complaint.

All members of staff are responsible for the success of this policy and should ensure that they use it to disclose any suspected danger or wrongdoing. Comments and suggestions about how this policy can be improved should be directed to the Lead Assessor.

LEGISLATIVE CONTEXT

This policy has been drawn up in the context of the Public Interest Disclosure Act 1998. All employees and workers are protected under the Public Interest Disclosure Act 1998 when they make a *protected disclosure*. To be a *protected disclosure*, the disclosure must:

- Convey facts and not be mere allegations.
- Have the "reasonable belief" of the member of staff making that disclosure that one of the types of malpractice has taken place; and be made in good faith.

POLICY

A member of staff shall be protected from disciplinary action as a result of his/her disclosure, even if it proves to be incorrect, provided that s/he follows this procedure and at all times acts in good faith, and believes on reasonable grounds the information to be accurate. However, if a member of staff is found not to be acting in good faith, for example if the disclosure is false and malicious, to support a personal vendetta or to avoid disciplinary proceedings, or where an external disclosure is made in breach of this policy without reasonable grounds or otherwise than to an appropriate public authority then the disclosure may make him/her liable to disciplinary action, which could include dismissal.

All responses shall be made to the member of staff in complete confidence and shall be confirmed in writing to his/her home address.

The UTC shall make every effort to keep the member of staff's identity confidential, except as specified below, unless the member of staff otherwise consents in writing or unless there are grounds to believe that the member of staff acted maliciously. In the absence of such consent or grounds, the Assessor shall not reveal the identity of the member of staff except in the following circumstances:

- (a) Where the Assessor is under a legal obligation to do so.
- (b) Where knowledge of his/her identity in relation to the disclosure is already in the public domain.
- (c) On a strictly confidential basis to the UTC's professional representatives.

Members of staff who are not sure if the Public Interest Disclosure Procedure is the correct one through which to articulate their concern should in the first instance contact the Lead Assessor (see Procedure below) for advice. Other sources of advice are local trade union representatives or the charity Public Concern at Work which advises on serious malpractice in the workplace; their number is 0207 404 6609.

THE PROCEDURE

The UTC hopes that in many cases a member of staff would be able to raise any concerns informally in the first instance with the HR Adviser. The HR Adviser may be able to agree a way of resolving the employee's concern quickly and effectively. Where appropriate, the HR Adviser may refer the

matter to an Assessor. However, where the matter is more serious, the employee should contact one of the Assessors directly.

The member of staff (Discloser) should contact an Assessor to make a protected disclosure (or seek more information or advice about protected disclosures). The following member of staff is the Lead Assessor:

- Clerk to the Governing Body.

The following members of staff have been designated as Assessor:

- Deputy Principal.

It will be for the Discloser to decide which Assessor they speak to. However, 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 the Assessor reasonably believes there is good reason why another Assessor would be more appropriate to consider the concern raised.

The Discloser should provide as much supporting written evidence to the Assessor as possible about the disclosure and the grounds for the belief of the malpractice.

When notified of a concern, the Assessor shall as soon as possible acknowledge the communication in writing; all written communications shall be sent confidentially to the Discloser's home address. The Assessor shall arrange to meet the Discloser as soon as possible and normally within five working days. Where there is an immediate danger of loss of life or serious injury the interview and responses shall be arranged as a matter of absolute urgency.

The Discloser may bring a colleague or trade union representative as a companion to any meetings held under this policy. However, the companion must respect the confidentiality of the disclosure and any subsequent investigation. The Discloser and their companion (if any) should make every effort to attend the meeting. If the Discloser or their companion cannot attend at the time specified, the Discloser should inform the Deputy Principal immediately and the UTC will try, within reason, to agree an alternative time.

The Assessor may be accompanied to meetings under this policy by an administrative assistant for the purpose of note-taking.

At the meeting, a written summary of the concern will be made and the Discloser provided with a copy after the meeting.

Once the Discloser has met with an Assessor an initial assessment will be made to determine the scope of any necessary investigation. The Discloser may be required to attend additional meetings to provide further information. The Discloser and their companion (if any) should make every effort to attend the meeting. If the Discloser or their companion cannot attend at the time specified, the employee should inform the Deputy Principal immediately and the UTC will try, within reason, to agree an alternative time.

The Assessor shall make reports to the Principal, the Chair of the Finance Committee and Chair of Governors (Senior Personnel) (provided they are not implicated in the disclosure) and the Lead Assessor of any disclosure under this procedure (keeping the name of the Discloser confidential unless the Discloser has agreed otherwise) and of the progress of the case and the outcome, including any notification of malpractice to an outside body. If all three Senior Personnel are involved in the disclosure, the Assessor shall report the matter to the Director of the relevant office of the Education Funding Agency. The report shall be made and delivered within 28 days of the outcome of the investigation.

The Assessor shall within ten working days of the initial interview advise the Discloser in writing of what action s/he will be taking, if any. The Assessor's options include the following:

- (a) That no further action will be taken, giving the reasons for this, for example:
 - The Discloser is genuinely mistaken in his/her belief that malpractice has occurred, is occurring or is likely to occur.
 - The Assessor is satisfied that the Discloser does not have a genuine belief that malpractice (of the kind described in this policy) has occurred, is occurring or is likely to occur.
 - The Assessor is satisfied that the Discloser is not acting in good faith.
 - The matter concerned is already the subject of legal proceedings or has already been referred to the police, Education Funding Agency, Department for Education and their successor bodies or another appropriate body; or
 - that the matter is already (or has already been) the subject of proceedings under one of the UTC's other procedures relating to staff or students.
- (b) To advise the Discloser to pursue the matter through a more appropriate UTC procedure e.g. the Grievance Procedure.
- (c) To advise the Discloser that further investigations shall be carried out within the UTC, setting out, where possible, the likely timeframe for such investigations.
- (d) To advise that s/he supports the Discloser's case and of the action taken in response, which may include notification to an appropriate outside authority i.e. the Education Funding Agency, the Department for Education, the Health & Safety Executive, the UTC's Audit Service, the National Audit Office, an appropriate Examining Body, the Police, Local Councillor or MP, or other public authority. The Assessor will advise the Lead Assessor, the Principal, the Chair of the Finance Committee and the Chair of Governors before taking this step.
- (e) To advise the Discloser that there are grounds for believing that the case has been brought maliciously and an investigation will take place, the result of which investigation may be the instigation of disciplinary proceedings.

The above examples are illustrative and not intended to be exhaustive.

At this stage, if the Discloser is unhappy with the Assessor's response s/he shall have the right to raise the matter directly and in confidence with the Lead Assessor. Alternatively the Discloser may raise the matter with the Chair of the Finance Committee. The Discloser shall also have the right to ask the Chair of the Finance Committee to refer the matter to UTC Auditors who shall investigate the matter within a reasonable time period and where possible, within 5 working days of the referral.

In such circumstances the Chair of the Finance Committee shall have the power to incur such reasonable expenses as are necessary to gain legal or professional advice.

If the Discloser is not happy with the findings of the Auditors s/he may raise the matter in confidence directly with the person or regulatory body prescribed by the Secretary of State for these purposes provided that s/he can show that s/he:

- (a) Reasonably believes that the alleged malpractice falls within the remit of the person or body.
- (b) Reasonably believes that the disclosure is substantially true.
- (c) Did not make the disclosure for personal gain.

If the Discloser wishes to make a disclosure to anybody outside the UTC other than that identified in 6.11(d) above i.e. the Health& Safety Executive, the Department for Education, the Education Funding Agency, the National Audit Office, an appropriate Examining Body, the Police, Local Councillor or MP, or other appropriate public authority, the Discloser must also show that:

- (a) At the time of disclosure, s/he reasonably believes that s/he will be subjected to a detriment, whether it be detrimental treatment short of dismissal, termination of the contract or victimisation, if s/he raises the matter internally or externally with a prescribed regulator.
- (b) Where there is no appropriate prescribed regulator and s/he reasonably believes that relevant evidence will be concealed or destroyed if the matter is raised with the employer; or
- (c) That s/he has previously made a disclosure of substantially the same information to his/her employer or a prescribed regulator and in all the circumstances it is reasonable for him/her to make the disclosure.

Whilst there are some circumstances in which it may be appropriate for a member of staff to make a disclosure to an external organisation, these are likely to be rare. The UTC strongly encourages any member of staff intending to make an external disclosure to seek advice before doing so. The independent whistleblowing charity Public Concern at Work operates a confidential helpline. They also have a list of prescribed regulators for reporting certain types of concern.

The NSPCC whistleblowing helpline is available for staff who do not feel able to raise concerns relative to child protection internally. Staff can call 0800 028 0285, 8.00am – 8.00pm, Monday to Friday or email help@nspcc.org.uk

The requirements for disclosure are set out above will not apply provided the member of staff can show all of the following:

- (a) That s/he reasonably believes the disclosure is substantially true; and
- (b) that s/he has not made the disclosure for personal gain; and
- (c) that the relevant failure is of an exceptionally serious nature.

The Clerk to the Governing Body shall keep a register of any disclosures under this Policy, which shall be reported annually to the Finance Committee.

PROTECTION AND SUPPORT FOR WHISTLEBLOWERS

The UTC encourages openness and will support members of staff who raise genuine concerns in good faith and in line with this policy, even if they turn out to be mistaken.

Members of staff must not be treated less favourably because they have raised a concern in good faith under this policy. Less favourable treatment might include dismissal, disciplinary action, or other unfavourable treatment connected with raising a concern. If a member of staff believes they have suffered any such treatment, they should inform one of the Assessors immediately. If the matter is not remedied the member of staff may raise it formally through the UTC's Grievance Procedure.

Members of staff must not threaten or retaliate against whistleblowers in any way. Any member of staff involved in such conduct will be subject to action under the UTC's Disciplinary Procedure, up to and including dismissal.