



1. P105 DISCLOSURE OF PUBLIC INTEREST (WHISTLE BLOWING) POLICY

1.1 Introduction

Peterborough Regional College is committed to operating in an ethical and principled way. The aim of this policy and procedure is to provide employees and workers (referred to as 'workers' in this policy) with a means for raising genuine concerns of suspected bribery, breaches of the law, radicalisation, actions of extremism, terrorism and other serious wrongdoings.

2. Purpose

- 2.1 The College encourages workers to raise genuine concerns about suspected wrongdoing at the earliest practicable stage. This policy and procedure is intended to provide safeguards to enable members of staff to raise concerns about malpractice in connection with the College (see Appendix A, AoC Whistleblowing: Guidance for Colleges).
- 2.2 This policy and procedure also aims to encourage workers to raise genuine concerns through internal College procedures without fear of adverse repercussions being taken against them. The law allows workers to raise such concerns externally and this policy informs workers how they can do so. However, a failure to raise a concern under this procedure may result in a disclosure losing its protected status under the law.
- 2.3 This policy and procedure also seeks to balance the need to allow a culture of openness against the need to protect other workers against vexatious allegations or allegations which are not well-founded.
- 2.4 The principles of openness and accountability which underpin legislation protecting whistleblowers are reflected in this policy and procedure. The College is also committed to ensuring compliance with the Bribery Act 2010.
- 2.5 Students at the College are also encouraged to raise genuine concerns about suspected wrongdoing, by expressing concerns to the Executive Director Students (this policy and procedure is designed for the use of workers of the College)
- 2.6 Any suspicion of radicalisation, actions of extremism or terrorism within their peer groups that students at the College may have, or suspicion had by staff members, should be reported to a member of the Safeguarding team.

3. Scope

3.1 This policy applies to all workers of the College, including apprentices; and

3.2 Workers which includes any casual workers; home-based casual workers; and employees of subcontractors; and

3.3 Agency workers engaged by the College.

4. Protected Disclosures

4.1 The law protects workers who, out of a sense of public duty, want to reveal suspected wrongdoing or malpractice.

4.2 The law allows workers to raise what it defines as a 'protected disclosure'. In order to be a protected disclosure, a disclosure must relate to a specific subject matter (See Section 5 below) and the disclosure must also be made in an appropriate way (See Section 6). A 'protected disclosure' must, in the reasonable belief of the worker making it, also be made in the public interest. A protected disclosure must consist of information and not merely be allegations of suspected malpractice.

5. Specific Subject Matter

If, in the course of employment, a worker becomes aware of information which they reasonably believe tends to show one or more of the following, they must use this policy and procedure:

- That a criminal offence has been committed, is being committed or is likely to be committed;
- That an individual has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- That a miscarriage of justice has occurred, is occurring, or is likely to occur.
- That the health or safety of any individual has been, is being, or is likely to be, endangered.
- That an individual has been, is being, or is likely to be influenced to the extent of being radicalised.
- That an act of extremism or terrorism has occurred, is occurring, or is likely to occur.
- That the environment, has been, is being, or is likely to be, damaged.
- That information tending to show any of the above, is being, or is likely to be, deliberately concealed.

6. Procedure for making a disclosure

- 6.1 Information which a worker reasonably believes tends to show one or more of the situations given in Section 5 should promptly be disclosed to their line manager so that any appropriate action can be taken.
- 6.2 If it is inappropriate to make such a disclosure to their line manager, a worker can raise the issue with the Executive Director HR.
- 6.3 If the disclosure relates to the Principal and Chief Executive, a worker can raise the issue with the Director of Governance. In the event that the disclosure relates to the Director of Governance, a worker can raise the issue with the Chair of the Corporation.
- 6.4 Workers are encouraged to identify themselves when making a disclosure. If an anonymous disclosure is made, the College will not be in a position to notify the individual making the disclosure of the outcome of action taken by the College. Anonymity also means that the College will have difficulty in investigating such a concern. The College reserves the right to determine whether to apply this procedure in respect of an anonymised disclosure in light of the following considerations:
- The seriousness of the issues raised in the disclosure;
 - The credibility of the concern; and
 - How likely it is that the concern can be confirmed from attributable sources.

For further guidance in relation to this policy and procedure, or concerning the use of the disclosure procedure generally, employees should speak in confidence to the Executive Director HR.

- 6.5 If a member of staff has concerns about safeguarding practices within College and does not feel able to raise the issue in College or feels that their genuine concerns are not being addressed, other whistleblowing channels are open to them:
- General advice can be found at www.gov.uk/whistleblowing
 - The NSPCC whistleblowing helpline is available for staff to call 0800 0280254 – the line is available from 8.00 am to 8.00 pm, Monday to Friday and email: help@nspcc.org.uk

7. Procedure for investigation of a disclosure

- 7.1 When a worker makes a disclosure, the manager/Executive Director HR/Director of Governance/Chair of Governors (as appropriate) to whom the disclosure was made will acknowledge its receipt, in writing, within a reasonable time. In the event of a disclosure made relating to radicalisation, extremism or terrorism, the disclosure will be communicated immediately to the Designated Safeguarding Lead.
- 7.2 The College will then determine whether or not it believes that the disclosure is wholly without substance or merit. If the College considers that the disclosure does not have sufficient merit to warrant further action, the worker will be notified in writing of the reasons for the College's decision and advised that no further action will be taken by the College under this policy and procedure. Considerations to be taken into account when making this determination may

include the following:

- If the College is satisfied that a worker does not have a reasonable belief that suspected malpractice is occurring; or
- If the matter is already the subject of legal proceedings or appropriate action by an external body; or
- If the matter is already subject to another, appropriate College procedure

7.3 When a worker makes a disclosure which has sufficient substance or merit warranting further action, the College will take action it deems appropriate (including action under any other applicable College policy or procedure). Possible actions could include internal investigation; referral to the College's auditors (internal or external); or referral to relevant external bodies such as the police, Local Authority, OFSTED, NSPCC, Health and Safety Executive or the Information Commissioner's Office.

7.4 If appropriate, any internal investigation would be conducted by a manager of the College without any direct association with the individual to whom the disclosure relates, or by an external investigator appointed by the College as appropriate.

[Note: Depending on the seriousness of the concern raised and the seniority of the worker making the disclosure, it may be appropriate for a senior manager or a designated officer, such as the Director of Governance, to investigate the concern].

7.5 Any recommendations for further action made by the College will be addressed to the Principal or Chair of the College's Corporation as appropriate in the circumstances. The recipient will take all steps within their power to ensure the recommendations are implemented unless there are good reasons for not doing so.

7.6 The worker making the disclosure will be notified of the outcome of any action taken by the College under this policy and procedure within a reasonable period of time. If the worker is not satisfied that their concern has been appropriately addressed, they can appeal against the outcome by raising the issue with the Principal within ten working days. The Principal, will make a final decision on action to be taken and notify the worker making the disclosure.

[Note: The procedure should encourage the expeditious investigation of disclosures and can specify timelines for different stages of the procedure. However, timescales should be flexible, taking into account that different types of concerns will require varying time for investigation.

All communications with the worker making the disclosure should be in writing and sent to the worker's home address rather than through the College's internal mail. If investigations into the concern are prolonged, the College should keep the worker concerned updated as to the progress of the investigation and an estimated timeframe for its conclusion]

8. Safeguards for workers making a disclosure

8.1 A worker making a disclosure under this procedure can expect their matter to be treated confidentially by the College and, where applicable, their name will not be disclosed to anyone implicated in the suspected wrongdoing, without their prior approval.

[Note: For confidentiality purposes, if the worker requests to raise their concern verbally, it would be appropriate for the College to allow the worker to do so]

- 8.2 The College will take all reasonable steps to ensure that any report of recommendations, or other relevant documentation, produced by the College does not identify the worker making the disclosure without their written consent, or unless the College is legally obliged to do so, or for the purposes of seeking legal advice.
- 8.3 No formal disciplinary action will be taken against a worker on the grounds of making a disclosure made under this policy or procedure. This does not prevent the College from bringing disciplinary action against a worker where the College has grounds to believe that a disclosure was made maliciously or vexatiously, or where a disclosure is made outside the College without reasonable grounds.
- 8.4 A worker will not suffer dismissal or any detrimental action or omission of any type (including informal pressure or any form of victimisation) by the College for making a disclosure in accordance with this policy and procedure. Equally, where a worker is threatened, bullied, pressurised or victimised by a colleague for making a disclosure, disciplinary action will be taken by the College against the colleague in question.

9. Disclosure to external bodies

- 9.1 This policy and procedure has been implemented to allow workers to raise disclosures internally within the College. A worker has the right to make a disclosure outside of the College where there are reasonable grounds to do so and in accordance with the law.
- 9.2 Workers may make a disclosure to an appropriate external body prescribed by the law. This list of 'prescribed' organisations and bodies can be found in information in Appendix A.
- 9.3 Workers can also make disclosures on a confidential basis to a practising solicitor or barrister.
- 9.4 If a worker seeks advice outside of the College, they must be careful not to breach any confidentiality obligations or damage the College's reputation in so doing.

10. Accountability

The College will keep a record of all concerns raised under this policy and procedure (including cases where the College deems that there is no case to answer and therefore that no action should be taken) and will report to the Corporation Board on an annual basis as appropriate.

11. Further assistance for workers

- 11.1 The College will not tolerate any harassment or victimisation of workers who make disclosures. If, at any stage of this procedure a worker feels that they are being subject to informal pressures, bullying or harassment due to making a disclosure, they should raise this matter, in writing, to the Principal.

11.2 A worker making a disclosure may want to request counselling or other support; staff are encouraged to seek support from their trade union, ECG Representative or professional association. They can also access the Zurich Municipal Counselling service using the free phone number 0117 9342121 that is available 24 hours a day, 365 days a year. Any such request should be made directly to them and would be made in confidence.

11.3 Workers can also contact the charity Public Concern at Work for confidential advice on whistleblowing issues. Contact details are as follows:

3rd Floor, Bank Chambers
6 - 10 Borough High Street
London
SE1 9QQ
Whistleblowing Advice Line: 020 7404 6609
<http://www.pcaw.org.uk>

12. Related Documents

- Policy 103 College Complaints Resolution Procedure
- Policy 306 Financial Regulations
- Policy 500 Anti-Harassment and Bullying Procedures
- Policy 505 College Disciplinary Procedure
- Policy 511 Personal Gifts and Hospitality
- Policy 524 Grievance Procedure
- Policy 800 Academic Appeals Procedure
- Policy 806 Anti-bullying and Harassment Policy for Students
- Policy 820 Safeguarding Children, Young People and Vulnerable Adults
- Policy 825 The Investigation of Potential Irregularities including Fraud and Corruption
- Peterborough Safeguarding Children Board (PSCB) Managing Allegations or Serious Concerns in Respect of an Adult who Works or Volunteers with Children (<http://www.peterboroughlscb.org.uk/>)
- PREVENT Strategy

13. Responsibilities

13.1 Once the College is made aware of a concern it is required to carry out an impartial investigation by individuals not directly involved in, or compromised by, the allegation.

13.2 All staff, students and members of the Board have a duty to report any safeguarding concerns.

13.3 The following posts are defined as a senior postholder: Principal, Deputy Principal, Vice Principal (Curriculum), Managing Director Business Services, and the Director of Governance. Senior postholders are responsible for conducting investigations in to alleged maladministration or malpractice.

13.4 The College will report concerns of potential terrorism or radicalisation to the appropriate authorities.

14. Risk Analysis

- 14.1 Effective implementation of this policy ensures that the College is seen to operate a system that will allow an individual who has serious concerns about potential maladministration, malpractice, fraud or safeguarding within the College to have their concerns addressed appropriately. The risk of not having this policy would be to expose the College to bad publicity and risk reputational damage and financial exposure or to put at risk a learner of significant harm.

15. Equal Opportunities Impact Assessment

- 15.1 A Section 1 Equality Impact assessment has been completed on this policy.

16. Data Protection

- 16.1 During the investigation the College will attempt to maintain the confidentiality of the discloser and any details provided will not be shared with any other party.
- 16.2 If the allegation becomes a police matter the College will disclose the personal data of the discloser if requested by the police to do so and the request complies with the Data Protection Act.



Whistleblowing Guidance for Colleges

September 2013



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1 Introduction

The law seeks to protect workers who, out of a sense of public duty, reveal serious wrongdoings in the workplace ('whistleblowers').

Broadly speaking, a worker must usually make a disclosure to their employer, their legal adviser or to an appropriate public authority. It is only if the suspected malpractice is exceptionally serious that a worker be justified in disclosing the information to the general public.¹

This guidance provides Colleges with an overview of the current whistleblowing legislation. Recent legislative amendments have been introduced with the aim of increasing protection for 'genuine' whistleblowers, as well as addressing a loophole that protected workers who effectively complained about personal grievances, rather than matters in the public interest.

This guidance also seeks to assist Colleges by providing a model whistleblowing policy and procedure (see Appendix 1). It is prudent for Colleges to implement a whistleblowing policy and procedure to positively encourage workers to make disclosures internally.²

1 The definition of a 'worker' covered by the whistleblowing legislation is broad and includes employees, agency workers, home-based workers, freelance workers, seconded workers and trainees but not job applicants. By [Section 20](#) of the Enterprise and Regulatory Reform Act 2013, the definition of 'worker' was further extended to encompass new NHS contractual arrangements. The Government also introduced a power allowing it to amend the definition of 'worker' without having to enact primary legislation.

2 By implementing an effective whistleblowing policy, Colleges can also rely on this policy as a procedure designed to prevent bribery and thereby avoid any potential liability under the [Bribery Act 2010](#).

2 Definition of whistleblowing

The law does not define the term ‘whistleblowing’. Whistleblowing can be described as the action of an individual exposing evidence of wrongdoing by employers or third parties in the context of the workplace.

3 Relevant legislation

The [Public Interest Disclosure Act 1998](#) (‘PIDA’) inserted [Part 4A](#) into the [Employment Rights Act 1996](#) (‘ERA 1996’) to provide protection, in certain circumstances, for whistleblowers. The ERA 1996 defines the type of disclosures that are protected and also seeks to regulate to whom the disclosures can be made.

More recently, the [Enterprise and Regulatory Reform Act 2013](#) (‘ERRA’) has amended the whistleblowing provisions of the ERA 1996. The amendments made by the ERRA will only apply to ‘protected disclosures’ made after 25 June 2013.

For a worker to bring a successful whistleblowing claim against a College, a worker would need to prove that their disclosure amounted to a ‘protected disclosure’. In order to do so, a worker would first need to prove that their disclosure was a ‘qualifying disclosure’.

3.1 What is a qualifying disclosure?

Under [Section 43B\(1\)](#) of the ERA 1996 a disclosure will be a ‘qualifying disclosure’ if it discloses information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the prescribed ‘relevant failures’ stipulated in Section 43B(1)(a)–(f) of the ERA 1996.

A ‘qualifying disclosure’ means any disclosure which, in the reasonable belief of the worker making it, tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed – S.43B(1)(a)
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject – S.43B(1)(b)
- that a miscarriage of justice has occurred, is occurring or is likely to occur – S.43B(1)(c)
- that the health or safety of any individual has been, is being or is likely to be endangered – S.43B(1)(d)
- that the environment has been, is being or is likely to be damaged – S.43B(1)(e)
- that information tending to show any matter falling within any one of the above has been, is being or is likely to be deliberately concealed – S.43B(1)(f).³

³ However, even if the disclosure relates to one of the specified categories stated above, it will not constitute a qualifying disclosure if the individual making the disclosure commits an offence by making it.

3.2 Requirements of qualifying disclosures

3.2.2 Disclosure of information

To be a 'qualifying disclosure', the disclosure must consist of information, rather than merely being an allegation. The disclosure must convey information in the form of facts and the disclosure must also identify which of the above situations the worker is relying on.

3.2.3 Reasonable belief held by the whistleblower

The whistleblower must prove their 'reasonable belief' that the information being disclosed 'tends to show' one or more of the situations specified above. Reasonable belief relates to the worker's belief in the accuracy of the information about which he or she is making the disclosure. The focus is on what the worker in question believed rather than what anyone else might or might not have believed in the same circumstances. There must be some substantiated basis for the worker's belief. Rumours, unfounded suspicions, uncorroborated allegations would not be sufficient. It does not, however, matter if the reasonable belief turns out to be mistaken.

In **Babula v Waltham Forest College 2007 ICR 1026** the Court of Appeal held that B, who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed, could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong. Provided the whistleblower's belief is objectively reasonable, the fact that it turns out to be wrong is not sufficient to render it unreasonable and thus deprive the whistleblower of protection.

3.2.4 Disclosure is made in the 'public interest'

In the past, case law has established that breaches of a contract of employment by an employer could count as 'a failure to comply with any legal obligation' under Section 43B(1)(b) of the ERA 1996. In turn, this meant that a much wider range of disclosures were protected than was envisaged when the PIDA was drafted.

Since the ERRA amendments, any disclosure made after 25 June 2013 will only be a qualifying disclosure if the worker reasonably believes that the disclosure is in the 'public interest'. The effect of the amendments enacted by the ERRA is to ensure that whistleblowing claims which can be characterised as being of a personal rather than public interest will not be protected. For example, if a worker does not receive the correct amount of holiday pay (which might be a breach of their contract of employment) this is a personal grievance rather than a disclosure made in the wider, public interest.

The worker must also show that the belief that the disclosure was made in the public interest was reasonable in the circumstances. Currently, there is no case law guidance on what amounts to 'reasonable belief' in this context. If the approach is similar to that taken when assessing the reasonable belief of the worker of the existence of one of the scenarios set out in Section 43B(1)(a)–(f) of the ERA 1996, the worker will have to point to some substantiated basis for their belief that the disclosure was made in the public interest.

Arguably, criminal offences, miscarriages of justice, matters of health and safety, damage to the environment are, by nature, matters of public interest. Accordingly, a worker may genuinely believe that raising a concern about a health and safety breach is in the 'public interest', even though the worker's motivation for making the disclosure is actually personal in nature and it is in fact a

personal grievance. It follows that the introduction of this public interest test might not reduce the number of whistleblowing claims filed at employment tribunals.⁴

3.2.5 No 'good faith' requirement after 25 June 2013

Since 25 June 2013, disclosures do not need to be made in 'good faith' to be qualifying disclosures. The requirement that all qualifying disclosures had to be made in 'good faith' requirement was removed by [Section 18](#) of the ERA 2013.⁵

3.3 Protected disclosures

If a worker successfully proves that they made a qualifying disclosure, they will only be protected by the whistleblowing legislation (i.e. protected from suffering an unlawful detriment or dismissal) if the disclosure is made in a way prescribed by the law.

Qualifying disclosures that are disclosed in an acceptable manner are called 'protected disclosures' under [Section 43A](#) of the ERA 1996.

There are seven permissible methods of disclosure, which are set out in Sections 43C–43H of the ERA 1996:

1. Disclosure to the employer – S.43C(1)(a)

The ERA 1996 specifies that a qualifying disclosure is a protected disclosure if the whistleblower makes it to the employer.

2. Disclosure to the person believed to be responsible for the relevant failure – S.43C(1)(b)

Where a worker reasonably believes that a third party (such as a charity or public authority where they might be based) is responsible for the suspected wrongdoing, they can report it to the third party without notifying their employer.

3. Disclosure to a legal adviser – S.43D

Workers can disclose matters to their legal adviser in the course of obtaining advice.

4. Disclosure to a Minister of the Crown – S.43E

This provision applies to workers in government departments and bodies.

5. Disclosure to a prescribed person – S.43F

Parliament has approved a [list of 'prescribed people'](#) to whom any worker can make a disclosure, provided the worker believes the information is substantially true and concerns a matter within that person's area of responsibility. This list includes bodies such as the HMRC, the Health and Safety Executive and the Office of Fair Trading.

6. External disclosure in other cases – S.43G

The range of people falling under this provision is potentially vast. It could include the media, the police, a professional body, a regulatory body that is not in the list of 'prescribed people', a union official, or a Member of Parliament.

7. Disclosure of exceptionally serious failures – S.43H.

4 Colleges can refer to statistics on [whistleblowing claims filed at employment tribunals](#) on the website of Public Concern at Work.

5 Before 25 June 2013, apart from disclosures to legal advisers made in accordance with Section 43D of the ERA 1996, all qualifying disclosures had to be made in 'good faith'.

A worker would be expected, in the first instance, to turn to their employer when making a disclosure; then their legal adviser, and so on through the seven methods of disclosure in the order set out above. A worker who makes a qualifying disclosure to their employer or their legal adviser will have fewer hoops to jump through in order to secure protection under the whistleblowing legislation than someone making a disclosure to a complete outsider.

The PIDA encourages disclosure to be made to the employer as the primary method of disclosure and a 'qualifying disclosure' made to an employer would certainly be a 'protected disclosure'.

4 Scope of legal protection for whistleblowers

Whistleblowers who make a protected disclosure have the right not to be dismissed or subjected to an unlawful detriment.

4.1 Unfair dismissal of a whistleblower by an employer

Under [Section 103A](#) of the ERA 1996, a dismissal of a worker will be automatically unfair if the reason, or a principal reason for the dismissal, is that they made a protected disclosure. Equally, a worker will also be unfairly dismissed if the reason or principal reason for selecting them for redundancy is that they made a protected disclosure (under [Section 105\(6A\)](#) of the ERA 1996).

At an employment tribunal, once the worker has given evidence to support their claim that the reason for the employer's actions was their protected disclosure, the burden of proof moves to the employer to prove otherwise.

Under Section 103A of the ERA 1996, a worker may bring an unfair dismissal claim whatever their length of service. The qualifying period normally required to bring an unfair dismissal claim (two years for employment that began on or after 6 April 2012) does not apply.

Concerning the level of compensation that a whistleblowing claimant can be awarded after successfully claiming unfair dismissal, the usual statutory cap on compensation does not apply (under Section 124(1A) of the ERA 1996). However, since 25 June 2013, an employment tribunal can reduce the level of compensation by up to 25% if it decides that a protected disclosure was not made in good faith and the tribunal considers it 'just and equitable' to do so (see [Section 18](#) of the ERA).

4.2 Unlawful detriment against a whistleblower by an employer

Under [Section 47B](#) of the ERA 1996, workers are protected from being 'subjected to any detriment by any act, or any deliberate failure to act' by their employer because the worker has made a protected disclosure.

The ERA 1996 does not define what constitutes a detriment. Employment tribunals have taken a similar approach to that adopted in discrimination cases by considering whether a reasonable worker would or might conclude that they had been disadvantaged by reason of their employer's actions. Detrimental treatment commonly includes being disciplined, being passed over for promotion, informal pressure, being relocated, loss of work or pay, or damage to their career prospects.

The Court of Appeal has held that whistleblowers are protected against such a detriment not only during employment but also after the employment has ended (see **Woodward v Abbey National plc (No.1) 2006 ICR 1436**).⁶

If a worker has suffered a detriment, they can bring a claim to an employment tribunal within 3 months from the date of the detrimental act (or omission to act), or where this act was one of a series of acts, the date of the last of such acts or omissions.

4.3 Unlawful detriment against a whistleblower by a colleague

The ERRA amended S.47B of the ERA 1996 so that where a worker is subjected to a detriment by a colleague on the ground that the worker made a 'protected disclosure' and the detriment is done in the course of the colleague's employment, claims can be brought against both the employer and the colleague.⁷ Therefore, the act of a colleague in subjecting a whistleblower to a detriment is now treated by the law as having been done by the employer.

Therefore, the ERRA has made employers vicariously liable for the actions of one worker taken against another worker (the whistleblower).⁸ An employer will have a defence if it took all reasonable steps to prevent the detrimental treatment.

5 Steps to encourage disclosures being made internally

Colleges should actively ensure that workers are not discouraged from raising concerns about suspected wrongdoing in an appropriate manner. In order to do so, Colleges can ensure that procedures are in place for investigating such concerns.

Whistleblowing policies and procedures also need to be clearly communicated to workers for Colleges to be in a position to prove that they have taken all reasonable steps to prevent whistleblowers from being subjected to an unlawful detriment.

5.1 Implementing a whistleblowing procedure for workers

One rationale behind implementing a whistleblowing procedure is to provide a mechanism for concerns to be investigated. Unlike a grievance procedure, a whistleblowing procedure is not a mechanism allowing a worker to prove their case. A whistleblowing procedure helps workers understand that a whistleblower is a witness (to the suspected wrongdoing giving rise to their disclosure), in contrast to a complainant (such as an employee raising a grievance under a grievance procedure).

⁶ In *Onyango v Adrian Berkeley t/a Berkeley Solicitors* UKEAT/0407/12/ZT the Employment Appeal Tribunal held that an employment tribunal has the jurisdiction to hear a whistleblowing complaint under S.47B of the ERA 1996 where the alleged disclosure was made post-employment.

⁷ An employer will also be liable for any detriment done by an agent acting with the employer's authority (i.e., someone appointed by the employer to perform duties on its behalf, such as a contractor).

⁸ Vicarious liability of an employer means that when an employee commits a wrong in the course of their employment, not only may that employee be directly liable for their action but also their employer may be held vicariously liable for that employee's wrongdoing.

If a College has an adequate whistleblowing procedure, it will be difficult for a whistleblowing claimant to prove that they reasonably believed they would have suffered a detriment if they had not used it. However, if a College has not implemented a whistleblowing procedure, a worker would be justified in having made a disclosure outside of the College.

In light of the ERRA 2013 introducing vicarious liability for employers (as explained in Section 4.3 above) policies should make it clear that colleagues cannot mistreat, bully or harass a whistleblower and that such behaviour may lead to the College taking disciplinary action. Colleges should also consider whether a procedure should give options as to the seniority of the manager that the disclosure is made to, depending on the seriousness of the disclosure and who is implicated by the issue being disclosed.

5.2 Implementing a whistleblowing procedure for learners

It is prudent for Colleges to develop a mechanism that allows learners to raise genuine concerns as well as for members of staff. Colleges should publicise this mechanism to students, ensuring that students know where to access the procedure. Like the procedure for workers, Colleges can clarify that this procedure is not the appropriate mechanism for learners to raise personal grievances or complaints. It should be noted that learners would not be protected by the whistleblowing protection in the same way as workers and employees.

6. Further Information

This guidance document has been written to support Colleges in understanding the key legal framework around whistleblowing. This document is also available in other formats, available by emailing employment@aoc.co.uk

Further guidance can be found via www.aoc.co.uk/employment

AoC Employment Helpline

Colleges can contact the AoC Employment Team for further information and advice on this or any other employment related matter by telephone on 020 7034 9900 or by email employment@aoc.co.uk