

## St George's, University of London

### WHISTLEBLOWING AND PUBLIC INTEREST DISCLOSURE POLICY & PROCEDURE

#### 1.0 Introduction - Public Interest Disclosure Act 1998

The Public Interest Disclosure Act, which became effective on 2 July 1999, gives legal protection to employees against being dismissed or penalised by their employers for publicly disclosing serious concerns falling in certain specified categories.

It is a fundamental term of the contract of employment that an employee will faithfully serve his or her employer, and will not disclose confidential information about the employer's operations which is calculated or likely to destroy the mutual trust and confidence on which the employment relationship is based. However, where an individual discovers apparent evidence of malpractice, impropriety or wrongdoing within the organisation, then the information should be disclosed appropriately without fear of reprisal.

(Institutional Affairs)

#### 2.0 Summary of Policy

St George's, University of London (St George's) is committed to the highest standards of openness, probity and accountability.

The purpose of this policy on Public Interest Disclosure is to offer advice about how such "public" disclosure should be made for protection under the Act and how cases will be handled. Members of St George's are expected to use the procedures detailed in the policy before raising outside St George's any concerns which they may have. Any member of St George's who chooses to make a disclosure outside St George's (including, for example, to the press) without using this procedure may not be protected under the Act and may be subject to internal disciplinary procedures. Member in this context includes students and others associated with St George's (see 3.0 below).

This policy, in accordance with the Public Interest Disclosure Act, is concerned with disclosures of alleged malpractice, impropriety or wrongdoing in the workplace. Individuals cannot use it to question publicly financial or business decisions taken by St George's. Neither may the policy be used to obtain a rehearing of matters which have already been addressed under other St George's procedures such as Harassment and Bullying, Grievance or Disciplinary procedures.

#### 3.0 Scope of the Policy

Although the Public Interest Disclosure Act limits protection to employees, agency workers and self-employed workers, St George's policy also provides a mechanism for students, lay members of St George's committees and providers of services to St George's through a profession or business to raise relevant issues in good faith. Employees, if they so wish, will have an opportunity to raise issues independently of their line management.

The policy covers all acts carried out by or on behalf of St George's. Concerns regarding actions carried out by associated bodies (for example, Kingston University or St

George's partner NHS Trusts) should be referred to those authorities under the terms of their relevant policies.

This policy covers concerns which are in the public interest and which may need to be addressed separately, at least initially, even if other policies and procedures are subsequently invoked. Concerns within the workplace which might prompt disclosure could include the following:

- Financial malpractice, impropriety or fraud
- Failure to comply with a legal obligation
- Serious failure to comply with the Scheme and Statutes or St George's regulations
- Endangering of health and safety
- Damage to the environment
- Criminal activity
- Academic or professional malpractice
- Miscarriage of justice
- Improper conduct or unethical behaviour
- Serious conflict of interest without disclosure
- Attempts to conceal any of the above

## **4.0 Safeguards**

### **4.1 Protection**

Protection is provided under the policy provided that:

- The disclosure is made in good faith and without malice in the reasonable belief of the person making the disclosure that the information available supports an allegation of malpractice, impropriety or wrongdoing; and
- The disclosure is made to an appropriate person or body (as set out in section 5 below)

### **4.2 Confidentiality**

#### ***Discloser***

St George's will treat all disclosures under this policy in a confidential and sensitive manner. The identity of the individual making the allegation (i.e. the discloser) will remain confidential insofar as this is compatible with making an effective investigation into the allegations which are the subject of the disclosure. The investigation process may however at some stage reveal the source of the information, and the individual making the disclosure will be required to make a written statement as part of the evidence required. Where necessary, help will be given to a discloser to enable him or her to prepare such a written statement.

#### ***Named Individual***

Before coming to a final conclusion following an allegation made under this policy against a named individual, that person will be told of the allegation and of the evidence supporting it, and will be allowed to respond. The point at which the individual is informed will depend

on the nature of the case.

### 4.3 Anonymous Allegations

It is the purpose of this policy to promote openness and discourage a fear of reprisals. Accordingly, individuals are encouraged to put their name to any disclosure. Concerns expressed anonymously are less powerful and less capable of being addressed, but they will be considered at St George's discretion. In exercising this discretion, St George's will take account of such matters as:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from alternative credible and/or attributable sources

### 4.4 Untrue Allegations

If an individual makes an allegation in accordance with 3.0 above, which is not confirmed by subsequent investigation, no action will be taken against the individual. An individual making malicious or vexatious allegations may however face disciplinary action, particularly if he or she persists in making them when they have been declared after due process to be without foundation. A disclosure may be declared malicious or vexatious at any stage of the procedure.

## 5.0 Procedure for Making a Disclosure

### 5.1 Initial Step

Any disclosure should initially be made to the Deputy Principal (Institutional Affairs), the responsible Officer for considering such allegations. The Deputy Principal (Institutional Affairs) will inform the Chief Operating Officer, and then the Principal and Chair of Council unless requested not to do so by the discloser, where possible within 3 working days. If the disclosure contains allegations against the Deputy Principal (Institutional Affairs), then the disclosure should be made to the Principal who will immediately inform the Chair of Council within the same time limit.

Normally, disclosures must be made within three months of the action or event complained of. But in exceptional circumstances, in particular where disclosures relate to the late discovery of malpractice, impropriety or wrongdoing, later disclosure may be considered at the discretion of the Deputy Principal (Institutional Affairs).

In exceptional cases the discloser may conclude that he/she must raise the matter externally (see section 6 below).

### 5.2 Process

The Deputy Principal (Institutional Affairs) will consider the information made available by the discloser and will decide whether there are grounds for proceeding further with the case.

If the Deputy Principal (Institutional Affairs) considers that there are **not** grounds for proceeding further, the discloser has the right to remake the case (see 5.6 below).

If the Deputy Principal (Institutional Affairs) considers that there **are** grounds for proceeding further, he/she will decide:

1. that the matter should be considered under another SGUL procedure, or
2. that an initial investigation should be conducted in order to gain further information before coming to a decision, and, if so, who should undertake it and what form it should take. The appropriate body to conduct the investigation will depend on the nature of the matter raised and may be:
  - An internal investigation
  - Referral to the police
  - An independent inquiry

### **5.3 Internal Investigation**

Where the matter is to be the subject of an internal investigation, the Deputy Principal (Institutional Affairs) may ask the Chief Operating Officer or another appropriate person to undertake an initial investigation to establish all the relevant facts, draw conclusions and, where appropriate, make recommendations.

The Deputy Principal (Institutional Affairs) should not conduct the investigation personally, since they are required to decide what action to take in the light of the investigation and must be able to assess the position objectively on the basis of the information gathered.

In determining the identities of the person or persons to carry out the initial investigation, due regard should be taken of the need to conduct the enquiry speedily, ideally reporting within three weeks of receipt of the disclosure. In the event of a longer investigation, regular reports of progress will be provided to the Deputy Principal (Institutional Affairs). A working party consisting of several people should only be used to carry out such an investigation if there are pressing reasons for so doing.

Those nominated by the Deputy Principal (Institutional Affairs) to carry out the initial investigation shall determine at what stage it is appropriate for the disclosure statements to be made available to those about whom disclosures have been made. It will normally be the case that the disclosure statements are not made available during the initial enquiry process.

Those nominated by the Deputy Principal (Institutional Affairs) to carry out the initial investigation should make sufficient enquiries to come to an initial view as quickly as possible. It is not their role to carry out detailed investigations, but to enable the Deputy Principal (Institutional Affairs) to come to an informed view at an early stage.

### **5.4 Investigation Findings**

On the basis of the findings of this initial investigation, the Deputy Principal (Institutional Affairs) will decide whether or not there is a case for taking the matter further.

If the Deputy Principal (Institutional Affairs) considers that there is **not** a case for taking the matter further, the discloser has the right to remake the case (see 5.6 below).

If the Deputy Principal (Institutional Affairs) considers that there **is** a case for taking the matter further, they will also decide the procedure for so doing. The internal St George's procedures include those listed under 2.0 above. If no suitable procedure is available, an *ad hoc* process may be required. In some instances, it might be necessary for the matter to be referred to an external authority for further investigation.

In any investigation undertaken directly under this procedure the discloser and the person

or persons against whom the disclosure has been made will be entitled to be accompanied by a colleague or Trade Union representative.

### **5.5 Feedback**

The Deputy Principal (Institutional Affairs) will inform the discloser in writing of what action, if any, is to be taken. The Deputy Principal (Institutional Affairs) may decide to take no action, either because he/she considers there is *prima facie* no case to consider, or because an investigation indicates that it is inappropriate to do so.

The discloser will be informed of the reason and allowed a second and final opportunity to remake the disclosure to the Vice-Chair of Council (unless the Vice-Chair of Council is a member of the Audit Committee, then the disclosure would be made to the Treasurer). The Vice-Chair of Council will have absolute discretion to decide on an appropriate form of action based on the circumstances of the case so far.

### **5.6 Reporting of Outcomes**

A record of all disclosures and of any subsequent action will be maintained by the Deputy Principal (Institutional Affairs) for a period of three years. A report of the outcomes of any investigation will be made to the Audit Committee in detail where the issue falls within its purview, and in summary in other cases as a means of allowing the Committee to monitor the effectiveness of the procedure.

### **6.0 External disclosures**

Other than in exceptional circumstances, all disclosures should be raised internally in the first instance. If a member of St George's concludes that he/she has no choice but to raise a matter externally, he/she should exercise caution and responsibility. The external avenues open include the Higher Education Funding Council for England, the Quality Assurance Agency for Higher Education, the Equality and Human Rights Commission, a Member of Parliament, the Police, the National Audit Office, a Trade Union, or an appropriate professional body. It is likely that the initial response would be to ask whether the matter had been raised internally, and if not, why not. The discloser would need to be able to explain why internal routes had been exhausted or had not been pursued if a disclosure is made externally. It should be noted that in certain circumstances, disclosures to some of the external agencies listed may not be protected by the Public Interest Disclosure Act 1998.

Public Concern at Work is a registered charity which seeks to ensure that concerns about serious malpractice are properly raised and addressed in the workplace. Members of St George's contemplating making an external disclosure are encouraged to approach Public Concern at Work for confidential and independent advice.

### **7.0 External Review**

Where all internal processes have been exhausted, the discloser, if dissatisfied with the outcome, may ask the Chief Operating Officer to refer the matter to external independent review.

The purpose of the independent review will be:

- To rule on whether St George's internal investigation has been adequately handled.
- Where it is judged that the investigation was adequately handled, to rule on whether the response to the complaint was reasonable in all the circumstances

The person nominated to carry out an external review shall be a person not employed by St George's holding, or having held, judicial office or being a barrister or solicitor of at least ten years standing.

The power of the person conducting the independent review will include making binding recommendations in the nature of the following;

- ordering a further internal investigation
- ordering St George's to reconsider the findings of the investigation

Additionally there shall be power for the person conducting the external review to make non-binding recommendations relating to the case for St George's to consider, and to rule in appropriate cases

- that the discloser was actuated by malice or some other improper motive, and whether the discloser should be required to make a contribution to the costs incurred in external review
- the disclosure was without substance or merit and whether the discloser should be required to make a contribution to the costs incurred in external review

The independent review will not entail oral hearings, but the reviewer will have the power to interview the discloser or any other persons, including those who had been involved in the handling of the issue. New evidence or relevant material will be considered at the discretion of the reviewer, but will normally be admitted only if it had not been reasonably available at the earlier stages of the internal investigation.

The report of the independent review will be submitted to the Principal, the Audit Committee and the Council.

## **8.0 Review of the Policy**

The Deputy Principal (Institutional Affairs) will review the operation of this policy every three years and will report thereon to the Audit Committee.

Any future changes to this policy will be made after due consultation within St George's and will be subject to the approval of Council.