



DERBY COLLEGE GROUP POLICY

Public Interest Disclosure (Whistleblowing)

Policy Number:	HRS-014
Executive Owner:	Deputy CEO
Owning Strategy / Department:	Human Resources
Approval Board / Committee / Group:	Audit Committee / Corporation
User Group:	All Derby College Employees
Relevant To:	All Derby College Employees
Implementation Date:	August 2011
Approval Date:	March 2020
Next Review Period Start Date:	October 2023
Expiry Date:	January 2024

Date:	February 2020
Ref:	BD/V5
Originator:	Executive Director of Human Resources
Area:	Human Resources

Once printed, this is an uncontrolled document. Refer to Policy Portal for latest version.

Policy Accountability and Implementation

Policy Title:	Public Interest Disclosure (Whistleblowing) Policy
Policy Author / Reviewers:	Executive Director HR / Chief Finance Officer
Policy Implementation:	Executive Director of HR
Policy Monitoring and Compliance:	Executive Director of HR
Policy Review Timeline:	Three Yearly

Synopsis:

Derby College (“the College”) is committed to the highest standards of openness, probity and accountability. In conducting its business, the College takes account of the requirements of its funding bodies for the proper use of public funds and of the standards in public life set out in the Reports of the Government’s Committee on Standards in Public Life (the Nolan Committee). The College takes malpractice very seriously and expects employees, and others, who have genuine and serious concerns about any aspect of the College’s operations to come forward and voice these concerns.

Policy Classification and Publication

Classification

- Strongly Recommended (SR)

Publication

- Intranet – Policy portal

Empowering/related legislative and/or authoritative references:

The Public Interest Disclosure Act 1998

Periodic Policy Review / Change History

Note: Please make it clear if change/review relates to procedures, guidelines and associated documents only or it is a rationale for a new or substantive policy review

Version	Reviewed / Modified by:	Change History	Advisory committee / groups or specialists	Review / Meeting Date/s
2	Chief Finance Officer/Director HR	Policy moved from Finance Strategy November 2015. Complete review completed	Audit Committee	November 2015
3	Chief Finance Officer/Director HR	Ownership of Policy transferred to Director of HR Total review with legal support to ensure in line with legislation. Amendment to two designated persons (from previous four) Complete review completed	Audit Committee	August 2017
4	Policy Controller and Compliance Manager	No amendments, Policy renewed for new term	Audit Committee Corporation	November 2020 14/12/20
5	Executive Director of HR	Page 9 – Stage 2, text added (in italics) The Discloser may be accompanied at the interview with the Designated Person by a trade union representative or work colleague. <i>Any such companion must respect the confidentiality of the disclosure and any subsequent investigation.</i> Change in the name of the independent whistleblowing charity updated from “Public Concern at Work” to “Protect”.	Executive Recommended to Audit Committee and Corporation	March 2021 Audit 16/03/21 and Corporation 22/03/21

1. Policy Statement

Derby College (“the College”) is committed to the highest standards of openness, probity and accountability. In conducting its business, the College takes account of the requirements of its funding bodies for the proper use of public funds and of the standards in public life set out in the Reports of the Government's Committee on Standards in Public Life (the Nolan Committee). The College takes malpractice very seriously and expects employees, and others, who have genuine and serious concerns about any aspect of the College's operations to come forward and voice these concerns.

Employees are often the first to realise that there may be something seriously wrong within a College. They may not, however, express their concerns because they feel that speaking up would be disloyal to their colleagues or to their employer. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

This policy and procedure is, accordingly, intended to provide safeguards to enable employees to raise concerns about malpractice in connection with the College. The aim is to provide a rapid mechanism under which genuine concerns can be raised internally, and, if necessary, externally without fear of adverse repercussions to the individual. It is also intended to promote throughout the College a shared sense of integrity by inviting all employees to act responsibly in order to uphold the reputation of the College and maintain public confidence.

The procedure also seeks to balance the need to provide safeguards for employees who raise genuine concerns about malpractice against the need to protect other employees, members of the Corporation, students and the College against uninformed or vexatious allegations which can cause serious difficulty to innocent individuals.

2. Definitions

Employee under the Act ‘employee’ includes:

- current employees
- former employees
- workers
- agency employees
- contractors
- consultants
- people seconded to the College
- volunteers
- members of the Corporation.

The Public Interest Disclosure Act 1998 (widely referred to as the Whistleblowers' Act)

The Act is intended to encourage employees to raise their concerns in a responsible way where there is a practice within an organisation which threatens the public interest.

If employees do raise such concerns, they will be protected from subsequent victimisation, provided that their case falls within the detailed criteria in the legislation.

The intention of the Act is that employees will raise their concerns internally. It strictly regulates the situations in which they may raise the matter externally.

Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers (‘malpractice’) at work.

Discloser is the person raising their concerns of malpractice through a disclosure.

Qualifying Disclosures are disclosures of information about serious wrong-doing in the College which, in the reasonable belief of the employee, tends to show that one or more of the following categories of malpractice is either happening now, took place in the past, or is likely to happen in the future and it is in the public interest:

- a criminal offence
- the breach of a legal obligation
- a miscarriage of justice
- a danger to the health and safety of any individual
- damage to the environment
- deliberate concealment of information tending to show any of the above five matters

Examples of the above can include, but are not limited to, the following malpractice:

- Corruption, bribery or blackmail
- Financial fraud or mismanagement
- Negligence
- Fraud or financial irregularity
- Failure to comply with a legal or regulatory obligation
- Conduct likely to damage the College's reputation
- Unauthorised disclosure of confidential information

Protected Disclosures are qualifying disclosures where the employee:

- makes the disclosure in good faith
- reasonably believes that the information disclosed and any allegation contained in it are substantially true

Designated Person is the person to whom a disclosure is made and who has responsibility for the review and handling of the disclosure. For the purposes of this policy and procedure the Designated Person is the Director of Human Resources. Where there is a valid reason for not making the disclosure to the Designated Person, the employee may make the disclosure to the Clerk to the Corporation and, if appropriate, they will take on the role of the Designated Person in these circumstances.

3. Principles

- Employees are to be encouraged to raise concerns about malpractice in the College.
- The College will not tolerate the harassment or victimisation of anyone raising a genuine concern.
- The College will be given the opportunity to investigate any concerns raised and take appropriate action.
- All concerns will be treated fairly and properly within a transparent and confidential process.

4. Scope and Limitations

This policy and procedure applies to all employees as defined above. It does not form part of any employee's contract of employment and the College may amend it at any time.

The Public Interest Disclosure Act (in force from July 1999) is the applicable legislation on which this policy and associated procedures are based.

This policy and procedure is not designed to question financial or business decisions taken by the College, nor may it be used to reconsider any matters which have already been addressed under harassment, complaint, grievance or disciplinary procedures.

This policy and procedure should not be used for complaints relating to an individual's own personal circumstances, such as the way they have been treated by the College, where there

is no additional public interest dimension. In those cases, employees should raise their concerns through the Grievance Procedure as appropriate.

Queries as to whether something is within the scope of this policy should be directed to a Designated Person.

Where the concern is related to child protection issues, the matter should be reported to a designated safeguarding officer and dealt with under the College's Safeguarding Policy.

If in the course of the review and or investigation stages the concern raised appears to relate more appropriately to other procedures, these will be invoked.

5. Responsibilities

Employees - any employee who has a genuine concern related to suspected malpractice within the College has a responsibility to report it under this procedure.

Designated Person - the Designated Person has responsibility for managing all disclosures made in accordance with this policy and procedure and has the following responsibilities:

- **Good Faith:** To act in good faith in responding to disclosures
- **Confidentiality:** To protect the identity of the person(s) involved in the disclosure process.
- **Objectivity:** To remove him/herself from disclosures if a conflict of interest exists.
- **Timeliness:** To follow the time period requirements (as outlined in the Procedure) for responses to disclosures and the completion of disclosure reviews/investigations.
- **Review and Investigation:** To manage the review of disclosures, as well as the investigation of disclosures as required
- **Taking Action on the Subject Matter of a Disclosure:** To identify and address matters requiring action by the department, regardless of resolution of the disclosure.

Audit Committee - the Audit Committee of the Corporation, as part of its annual report to the Corporation, is responsible for highlighting any instances of whistleblowing with the College as may be appropriate. In respect of this notification the Audit Committee will seek information from the Designated Person.

6. Implementation Arrangements

The roles and responsibilities of employees in the implementation of this policy and procedure are set out within this document. A copy of the policy and procedure is made available to all employees through the employee portal and by request to the HR Department.

7. Monitoring and Review

A report of all disclosures and any subsequent actions taken will be made to the Audit Committee as a means of allowing the Committee to monitor the effectiveness of the procedure. Through this Committee the report will also be made to the Board of Governors.

8. Guidelines

There are no guidelines related to this Policy.

9. Procedures

The Procedures relating to this Policy can be found at the end of this Policy.

- Stage One - Making a Disclosure
- Stage Two - Interviewing the Discloser
- Stage Three - Initial Consideration of the Disclosure
- Stage Four - Investigation
 - Internal Investigation
 - External Investigation
 - Outcomes of the Investigation
- Stage Five - Reporting of Outcomes
- Stage Six – Appeal
- Additional Information
 - External Disclosure
- Confidentiality
- Safeguards
- Help for Individuals
- Contact Details

10. Templates / Forms

There are no specific templates or forms related to this Policy.

11. Related Documents

Disciplinary Policy for Employees
Grievance Policy for Employees
Employee Bullying and Harassment Policy
Financial Regulations
Employee Code of Conduct

Procedures

Stage One - Making a Disclosure

The Discloser should, as soon as possible, disclose in writing in confidence to the Designated Person the grounds for their belief of malpractice.

The Director of HR is the Designated Person and contact details for the current post holder can be found at the end of this policy under Contact Details.

Alternatively, the disclosure can be made to the Clerk to the Corporation and contact details for the current post holder can be found at the end of this policy under Contact Details.

The disclosure must consist of information rather merely being an allegation. It must convey the information in the form of facts and include:

- A description of the wrongdoing.
- The name of the person(s) alleged to have committed the wrongdoing or to be about to commit the wrongdoing.
- The date of the wrongdoing.
- Whether the wrongdoing has already been disclosed and a response received.

The Discloser should also identify which of the following concern(s) their disclosure relates to:

- That a criminal offence has been committed, is being committed or is likely to be committed.
- That a person has failed, is failing or is likely to fail to comply with any legal obligation.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health and safety of any individual has been, is being or is likely to be endangered.
- That the environment has been, is being, or is likely to be damaged.
- 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.

The Designated Person will acknowledge receipt of the disclosure as soon as is reasonably practicable and will inform the CEO of the nature of the disclosure without disclosing the identity of the Discloser. If the disclosure contains allegations which involve the CEO, the Chair or Vice Chair of Governors will be informed rather than the CEO.

The Designated Person in conjunction with the CEO will consider whether any other person or body needs to be informed e.g. the police; the Corporation's Audit Committee; an examination awarding body, etc.

Stage Two - Interviewing the Discloser

As soon as is reasonably practicable after receipt of the disclosure, the Designated Person will interview the Discloser unless advised not to do so by any external person/body who they have notified. The purpose of the interview will be for the Designated Person to obtain as much information as possible from the Discloser about the grounds of the belief of malpractice. The interview will be used to obtain key details, including:

- when the concern first arose and, where relevant, what is prompting the decision to speak up now;
- whether the information is first hand or hearsay;
- whether the employee has raised the concern with their line manager and (a) if not, why and (b) if so, with what effect;
- whether and when the employee wants feedback and how that feedback is to be given;
- confirming mutual expectations surrounding confidentiality

- confirming how the College proposes to deal with the matter and
- if there is anything else relevant the employee should mention.

The Discloser may be accompanied at the interview with the Designated Person by a trade union representative or work colleague. Any such companion must respect the confidentiality of the disclosure and any subsequent investigation.

The Designated Person may be accompanied at the interview by an administrative assistant to take notes, which will not identify the Discloser.

Stage Three - Initial Consideration of the Disclosure

The Designated Person must decide whether, on initial consideration of the information made available and consultation as appropriate, there is

- a) sufficient basis to indicate that a case to answer exists;
- b) the disclosure falls within the definition of a “qualifying disclosure”; and if so
- c) whether the disclosure also falls within the definition of a “protected disclosure”.

If the disclosure does not meet the above criteria, it does not require further action under the Act and the Designated Person will inform the CEO that the case will be closed. The Discloser will be notified of this by the Designated Person.

The Designated Person must, however, determine whether any other action regarding the subject matter of the disclosure may need to be taken and will advise the appropriate parties accordingly.

Alternatively, if the criteria is met but:

- the matter concerned is already the subject of legal proceedings, or has already been referred to the police, the College’s Funding Body/Bodies, the Department for Education or other public authority or external person/body; or
- the matter is already (or has already been) the subject of proceedings under one of the College’s other procedures relating to employees or students.

the Designated Person will inform the CEO that the case will be closed and the Discloser notified of this by the Designated Person.

If a disclosure meets the criteria, the Designated Person will make a recommendation to the CEO on what further action is required and seek their approval for the next steps to be taken – this may include any immediate action required and or whether an investigation is required.

Stage Four - Investigation

Where an investigation is deemed necessary, the Designated Person will make a recommendation to the CEO on the form of investigation to be undertaken and seek their approval for this. The recommendation may be that:

- a) The matter should be investigated either **internally**
 - by the College; or
 - by the Audit Committee of the Corporation; or
 - by external or internal auditors appointed by the College; or
 - independently of the College.
- b) or the matter should be referred **externally**
 - to the police

- to an appropriate external person/body (e.g. Ofsted / relevant funding agency / HSE / Environment Agency / Serious Fraud Office / Inland Revenue / Local authority).

In appropriate circumstances, the CEO may decide that more than one of these actions is necessary.

The investigation process will be overseen by the Designated Person with appropriate, and where necessary specialised assistance, depending on the nature of the disclosure.

Internal Investigation

Where an internal investigation is required, it will be conducted in accordance with the requirements of the College's Disciplinary Policy and Procedure except that in 2.3 of that policy the Designated Person will decide who the Investigating Officer will be; and in 2.7 of that procedure the Investigating Officer will refer the matter to the Designated Person.

External Investigation

If a disclosure is to be externally referred to any other person or body, the College will co-operate fully with and be guided by any enquiries and procedures that are required of them. Any action under these College procedures will be suspended pending the completion of such enquiries and procedures.

The employee(s) against whom the disclosure is made will normally be told of it and of the evidence supporting it. However, where such disclosure would jeopardise the ability of the external person/body to conduct a proper investigation, the person or persons against whom the disclosure is made may not be told prior to an initial investigation.

In instances where there is suspicion of a criminal act the police will be notified. In the event of a decision to refer the matter directly to the police, the provision of a copy of the disclosure and any evidence in support of it to the person against whom the allegation is made, will be at the absolute discretion of the police.

The Designated Person will feedback to both the Discloser and any employee(s) named within the disclosure (or named through the disclosure process) on the progress and outcome of any external investigation wherever possible.

Where employees are interviewed as part of an external investigation, they may have the right to be accompanied by a work colleague or trades union representative.

Outcomes of the Investigation

Following consideration of the report of any investigation, the Designated Person will make a recommendation to the CEO, and seek their approval for, that one of the following courses of action provided within the College's Disciplinary Policy and Procedure be taken:

- there is no case to answer in which case no further action will be taken
- recommendations will be made to the individual and their line manager
- reprimand – where the issue is of a minor nature or one that does not require the Formal Procedure
- convene a formal disciplinary hearing

Alternatively, the Designated Person can make a recommendation to:

- refer the matter to the police;
- refer the matter to an interested external body e.g. Ofsted / relevant funding agency / HSE / Environment Agency / Serious Fraud Office / Inland Revenue / Local authority;

- review and modify appropriate College procedures, taking account of any recommendations made in the report of the investigation;

Stage Five - Reporting of Outcomes

The Designated Person may inform the Discloser of what action, if any, is to be taken. If no action is to be taken then the employee concerned should be informed of the reason for this. There may be certain situations where the Discloser may not be informed of the outcome, for example where such information may prejudice personal privacy or other investigations or actions.

The person or persons against whom the disclosure is made will normally be told of the outcome. However, where such disclosure would jeopardise the ability of the College, the police or other independent investigator to conduct a proper investigation, the person or persons against whom the disclosure is made may not be told.

A report of all disclosures and any subsequent actions taken will be made to the Audit Committee as a means of allowing the Committee to monitor the effectiveness of the procedure. Through this Committee the report will also be made to the Board of Governors.

Stage Six – Appeal

If the Discloser is dissatisfied with the decision of the Chief Executive Officer (or other recipient), the Discloser may, within five working days of receiving the decision from the Designated Person, appeal against the decision. If this happens, then the Designated Person will arrange to present the appeal to the Audit Committee of the Corporation. In the event of the involvement of the Audit Committee, consideration of whistleblowing matters shall be dealt as a confidential item.

The Audit Committee will consider the decision of the Chief Executive Officer (or other recipient) and may confirm, modify or overturn that decision. The Designated Person will inform the Discloser of the decision of the Audit Committee.

Additional Information

External Disclosure

The aim of this procedure is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing or malpractice in the workplace. In most cases the Discloser should not find it necessary to alert anyone externally.

If, after having followed this procedure including the appeal, 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 College's Funding Body/Bodies, the Department for Education, the Police, a Member of Parliament or other appropriate public authority. Before taking such action the Discloser will inform the Designated Person.

The law recognises that in some circumstances it may be appropriate for the Discloser to report their concerns to an external body such as a regulator. It will very rarely if ever be appropriate to alert the media. We strongly encourage a Discloser to seek advice before reporting a concern to anyone external. The independent whistleblowing charity, Protect, operates a confidential helpline. They also have a list of prescribed regulators for reporting certain types of concern. Their contact details are at the end of this policy.

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

Confidentiality

Discloser

The College 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 be kept 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 have to reveal the source of the information, and the individual making the disclosure may need to make a statement as part of the evidence required.

The Discloser also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.

Named Individual

Whenever an allegation is made as part of this procedure against a named individual, that person will be told of the allegation and of the evidence supporting it, and will be allowed to respond before any investigation or further action is concluded. The point at which the individual is informed will depend on the nature of the case.

Anonymous Allegations

Individuals are encouraged to put their name to any disclosure they make since part of its purpose is to promote openness and discourage a fear of reprisals. Concerns expressed anonymously are much less powerful and far less capable of being addressed, but they will be considered at the College's discretion. In exercising this discretion, the College 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

Any report or recommendations by the Designated Person in relation to the matter will not identify the Discloser, unless the Discloser otherwise consents in writing or unless there is evidence to support the belief that the Discloser has acted maliciously. In the absence of such consent or grounds, the Designated Person will not reveal the identity of the individual as the Discloser of information under this procedure except:

- where the Designated Person is under legal obligation to do so; or
- if the information is already in the public domain; or
- on a strictly confidential basis to the Designated Person's administrative assistant; or
- on a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.

Any documentation (including computer files and electronic storage media) kept by the Designated Person relating to the matter will be kept secure, so that as far as is practicable only the Designated Person and his or her administrative assistant shall have access to it.

As far as is practicable, any documentation prepared by the Designated Person or administrative assistant will not reveal the identity of the individual as the Discloser of information under this procedure.

Where the Discloser involves a local trade union representative or work colleague in this procedure, the Discloser will be under an obligation to use all reasonable endeavours to ensure that they and their representative or work colleague keep this matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain. Failure to comply with this obligation may lead to disciplinary action.

The Discloser will not be required by the College, without his or her consent, to participate in any enquiry or investigation into the matter established by the College, unless there are grounds to believe that the Discloser may have been involved in misconduct or malpractice.

Where the Discloser participates in any such enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis, although the obligations of the Designated Assessor under 'Safeguards' within this procedure will remain in relation to the identity of the individual as the original Discloser of information under this procedure.

Subject to 'Safeguards' below, the College will not (and it will use all reasonable endeavours to ensure that its employees 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 Person. If the Discloser wishes the Designated Person to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Designated Person revealing the Discloser's identity for the purposes of any such action.

Safeguards

The Public Interest Disclosure Act gives legal protection to employees against dismissal or other detriment by their employer or fellow worker as a result of disclosing certain concerns. The College will not tolerate any harassment or victimisation, including informal pressures, from whatever source within the College, and will take appropriate action to protect a whistleblower when they raise a concern in the public interest. Any employee who causes detriment, bullying or harassment to someone who makes a disclosure under this Policy will be subject to disciplinary proceedings.

The College recognises that the decision to make a disclosure can be a difficult one. However, if this is done in good faith and is based on genuine belief of malpractice, employees have nothing to fear. They will be acting in a manner which is consistent with their duty to the College and the public. In such circumstances the College will neither initiate nor tolerate harassment or victimisation of disclosers and will invoke disciplinary procedures against those who might react in this way.

This Policy provides protection to employees who disclose such concerns provided the disclosure is made in the reasonable belief of the employee making the disclosure that it tends to show malpractice and is in the public interest.

If an employee makes a disclosure which he or she reasonably believes is in the public interest and tends to show malpractice and is in the public interest, which is not confirmed by subsequent investigation, no action will be taken against that employee.

If, however, an employee

- makes a disclosure which does not satisfy those criteria, and particularly if he or she persists with making them; or
- where there has been a breach of confidentiality under section 8 above; or
- where an external disclosure is made in breach of this procedure without reasonable grounds; or
- otherwise than to an appropriate public authority.

the College reserves the right to initiate disciplinary procedures against the employee.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect the whistleblower.

Help for Individuals

Protect (previously 'Public Concern at Work') is a whistleblowing charity which offers free confidential advice to people concerned about crime, danger or wrongdoing at work. Protect may be contacted at:

Protect
The Green House
224 - 254 Cambridge Heath Road
London
E2 9DA

Tel (general enquiries and helpline)

020 3117 2520 (option 1)**Email**

UK enquiries: info@protect-advice.org.uk

Contact online

<https://protect-advice.org.uk/contact-protect-advice-line/>

Hours

The Protect advice line is open on Mon, Tues, Thurs: 9:30am – 1:00pm, 2:00pm – 5:30pm and Weds, Fri: 9:30am – 1:00pm. Anyone in need of advice out of those times can reach Protect using their online contact form and arrangements can be made for a call back.

Contact Details

Designated Person

Executive Director of HR – Bernadette Doyle

Email: bernadette.doyle@derby-college.ac.uk

Alternative Designated Person

Clerk to the Corporation – Rose Matthews

Email: rose.matthews@derby-college.ac.uk