



# THE UNIVERSITY *of* EDINBURGH

## **CODE OF PRACTICE ON REPORTING MALPRACTICE AND RAISING CONCERNS UNDER THE PUBLIC INTEREST DISCLOSURE LEGISLATION ('WHISTLEBLOWING')**

### **1. INTRODUCTION**

**1.1** The University is committed to tackling malpractice and will treat expressions of concern about it as a serious matter. This Code of Practice takes account of the recommendations made by the Nolan Committee on Standards in Public Life, which advised that all higher education institutions should have a 'Code of Practice on Whistleblowing', and the provisions of the Public Interest Disclosure Act 1998. It reflects the University's commitment to openness in its affairs and is based on the premise that individuals must feel able to draw attention to perceived malpractice openly and normally within existing procedures and be supported in so doing. Indeed, staff have a duty to report malpractice and are encouraged so to do.

**1.2** No detrimental action of any kind will be taken against a person within the institution raising a concern in the "public interest" under this code, provided that it is done with a reasonable belief that it is true. The University will support the employees concerned and protect them from reprisals. It acknowledges the formal protections provided to employees by the Public Interest Disclosure Act 1998. This Code of Practice is intended to reflect the spirit as well as the letter of that legislation, and it seeks to offer protection to staff in wider circumstances than are provided for by the Act.

**1.3** The University seeks to define all its relevant procedures in such a way that they already cover the majority of cases where the actions of others could be brought into question. In particular, there are agreed procedures or codes of practice in regard to Harassment, Grievances and Staff Discipline. Thus, opportunities for management action should already be available and ideally should largely eliminate the need for concerns to be raised via other routes.

**1.4** The University also recognises that its willingness to address concerns in this way raises the risk of vexatious or malicious reports. Not only are such reports unfair to the person about whom they are made, but investigating and dealing with them can consume considerable amounts of senior staff time. For these reasons, deliberate submission of a false report will be regarded as a breach of discipline, and anonymous reports unsupported by evidence will not normally be pursued (see paragraph 4.6).

## **2. WHAT AREAS DOES THIS CODE OF PRACTICE COVER?**

2.1 Broadly, the Code is intended to promote the identification of, and assist the University in investigating and, where appropriate, acting upon, concerns expressed about any of the following matters:

- commission of a criminal offence;
- failure to observe a legal obligation, or to comply with the Universities (Scotland) Acts or Ordinances made under those Acts;
- miscarriage of justice;
- endangerment of health, safety or the environment;
- financial or non-financial maladministration and malpractice;
- obstruction or frustration of the exercise of academic freedom;
- academic or professional malpractice of a serious nature;
- improper conduct or unethical behaviour of a serious nature;
- suppression or concealment of any information relating to any of the above.

These concerns may relate to the University itself or an individual or individuals.

2.2 However, it is not possible to give a comprehensive list of actions covered by the Code. Indeed, its purpose is not so much to define inappropriate actions as to ensure that paths are available by which individuals can pursue any concerns in the “public interest” they have about the actions of others. The outcome could be use of the disciplinary or grievance procedures in some cases, and in others that appropriate remedial action is taken.

### **WHAT IT DOES NOT COVER**

2.3 This Code does not cover concerns about an individual’s or collective terms of employment, since these are covered elsewhere. It is also not intended as a route to re-examine the findings of other formal procedures, such as disciplinary or grievance proceedings.

2.4 It is not possible to give definitive guidance on whether a particular matter should be pursued under this code or through the disciplinary, capability, grievance or harassment procedures or some other similar procedure. This will depend on the particular circumstances. Senior staff, including in particular the Director of Human Resources, will always be willing to give guidance on this question, in strict confidence if necessary.

### **3. REPORTING MALPRACTICE AND RAISING CONCERNS**

3.1 Two important principles underlie this Code of Practice:

- i As far as possible, concerns should be raised and resolved at the lowest appropriate level in the organisational and management structure of the University;
- ii Nevertheless, staff have a right formally to draw a serious matter to the attention of a senior officer without working through the normal line-management structure.

3.2 This means that, as far as possible, formal processes and existing communication and management channels should be used for reporting malpractice, especially where these are defined by another code of practice. If they are not so defined, the matter causing concern should normally be raised with the relevant head of department or line manager.

3.3 However, it is recognised that there may be occasions when an individual does not feel able to act on this advice, for example where the person believed to be indulging in malpractice is in some position of authority or seniority over him or her. This situation might occur for three distinct reasons:

- Where malpractice is believed to be occurring which, whilst apparently wrong, is not explicitly covered by existing procedures;
- Where procedures do exist to cope with the matter, but attempts to use them appear to have been ignored or frustrated;
- Where there appears, for reasons of expediency, to be institutional tolerance of malpractice.

3.4 This code is intended to embrace all of these. The approach which should be taken will depend on whether the matter of concern relates to financial matters or to other matters.

#### **FINANCIAL MATTERS**

3.5 The Director of Finance is responsible for the proper conduct of the financial affairs of the University and concerns about the financial conduct of an individual should normally be made to him or her. If, however, the person expressing a concern deems it more appropriate, the matter may be raised with the Convener of the Audit and Risk Committee which has the responsibility among others of keeping under review arrangements for the investigation of financial irregularity or impropriety. If the matter is raised with the Director of Finance, the Director will inform the Convener of the Audit and Risk Committee of the fact and report in outline what is being done to investigate the matter; an early report to the Audit and Risk Committee may be necessary, according to the circumstances. The Director will seek the assistance of the Internal Audit service in investigating expressions of concern

wherever necessary. Although the person expressing a concern might feel that they should approach the Internal Audit service direct, this will not normally be appropriate. This is because it would not normally be possible for the Internal Audit service to investigate a matter without first referring to the relevant senior manager for guidance, and informing the Director of Finance if he is not the relevant manager.

## **NON-FINANCIAL MATTERS**

3.6 Concerns about non-financial issues should be raised, as the person expressing a concern deems appropriate, with the Head of College or the senior manager in the relevant administrative area (for example the Director of Human Resources, Director of Health and Safety Services, the University Security Officer).

3.7 In particularly serious cases, the person expressing a concern may feel he or she has to bring a matter directly to the attention of a very senior officer such as the Principal or the University Secretary to the University. The University is clear, and supports the view, that staff have a right to contact senior officers directly if they think it appropriate.

## **OTHER CHANNELS**

3.8 There might, from time to time, be circumstances in which the individual considers it necessary to bring a matter to the attention of a designated lay member of the Court, rather than through either of the routes described above. Such a lay member will be appointed by the Court for a period of three years. He or she will be bound by the guidance on confidentiality set out in paragraph 4.7 but, within that guidance, will be free to investigate the problem as he or she sees fit, including contacting any relevant senior University staff in order to obtain information. Alternatively, he or she will have discretion to refer the problem through either of the routes described above, or direct to the Principal or University Secretary. If it is impossible for the lay member to act because of existing commitments, or inappropriate because of possible conflict of interests, he or she is empowered to pass the matter to another lay member of Court to be dealt with as described above.

3.9 In exceptional cases, where the matter involves the Principal directly, the concern could be raised with the Vice-Convenor of Court or the Convenor of the Audit and Risk Committee.

## **4. INVESTIGATION OF REPORTS OF MALPRACTICE**

4.1 Against the background laid out in section 1, a member of staff who invokes this Code of Practice will be initiating a formal process, and he or she will need to understand that the manner in which a complaint is pursued and investigated will not be under his or her control, although the individual's views and personal position will be taken into account.

4.2 Subject to the comments on anonymous reports, set out in paragraph 4.6 below, reports of malpractice will be taken seriously and will be investigated. Some matters may require immediate referral to an outside body for consideration and investigation (see section 7 below. Such bodies include the police, General Medical Council, Health and Safety Executive, National Audit Office, Funding Council), but usually a preliminary internal investigation will first be necessary.

4.3 Whatever the route by which a concern is raised, the person who may ultimately have to reach a decision on the matter should not carry out the investigation. In cases relating to financial conduct, the Director of Finance will arrange an investigation by himself, his professional staff or the Internal Audit service, as appropriate. In other cases, the recipient of the expression of concern should determine who should carry out the investigation. This would normally be delegated to a Vice-Principal, a Deputy Secretary, a Head of College or to the appropriate professional officer, according to the nature of the report. In all cases consideration of the action to be taken will need to take account of the University's disciplinary procedures and the roles of senior officers in initiating the various stages of those procedures.

4.4 In cases where the recipient believes that he or she is best placed to investigate the matter raised, rather than investigation being delegated, then he or she should inform a senior officer, normally the University Secretary or the Principal, of the complaint and the intention to investigate it, and should request that senior officer to be prepared to reach a decision in the light of the investigation.

4.5 Recipients of reports of malpractice under this code will take them seriously, and be seen so to do. Their attitude will be one of accepting, prima facie, that the person expressing a concern genuinely believes that a problem exists, and that, if the individual has bypassed the normal line management structure, they may have had good reason to do so. This will require the recipient to record both the receipt of an expression of concern and what subsequent action was taken. The recipient will, after investigation, prepare a report on the action taken for the Audit and Risk Committee, or the University Secretary or Principal according to the nature of the concern raised. Individuals should therefore feel confident that a report of malpractice will be taken seriously and properly investigated, and that they will not suffer any criticism or disadvantage for raising concerns genuinely held, even if they prove to be unfounded.

4.6 Against this background, it will not normally be necessary for individuals to raise matters anonymously. Whilst evidence presented anonymously will be treated seriously and investigated as far as is practicable and as seems warranted by the information provided, anonymous reports are not covered by this Code of Practice because it will usually be very difficult to investigate them effectively. Wholly anonymous allegations unsupported by any evidence will not normally be pursued.

4.7 The confidentiality of staff reporting malpractice will be guaranteed up to the point where a formal investigation is launched. Thereafter every effort will be made to respect confidentiality, if sought, although this might in some cases make investigation more difficult. Should the investigation reveal behaviour of a potentially criminal nature or of a very serious internal nature, confidentiality is unlikely to be compatible with full investigation of the matter and/or with prosecution. In such circumstances the University will fulfil its obligations under the law, it will not stand in the way of investigations by the police/procurator fiscal, and the person expressing a concern could come under pressure to forego confidentiality as a consequence.

4.8 Investigations will be conducted as speedily as possible consistent with fairness and having regard to the nature and complexity of the matter under investigation. As far as is consistent with necessary confidentiality regarding personal matters, the person expressing a concern will be informed of the outcome of the investigation: if no action is taken, an explanation will be offered.

4.9 The University is fully committed to observing the principles of natural justice in its handling of such matters. This applies equally to those about whose actions concerns are expressed as well as those expressing a concern. For this reason, whatever the circumstances, there will come a point in the investigation of an allegation where the person, or persons, about whom concern has been expressed must be told of the allegation, shown the evidence supporting it and be allowed to comment before the investigation is completed and a report made. It will be a matter of judgement at what point this is necessary, in the light of the circumstances and the need to avoid giving an alleged wrong-doer the opportunity to thwart the enquiry in some way.

4.10 In cases where financial misconduct is alleged, the results of the investigation, and where relevant the action taken, will be reported by the Director of Finance to the Convener of the Audit and Risk Committee and to the Principal as Accounting Officer. They will normally be reported to the Audit and Risk Committee and then to the Court. They will also be reported to the Scottish Further and Higher Education Funding Council to the extent that it so requires in its Financial Memorandum with the University and its Code of Audit Practice, or to any other external agency where the University is required so to do.

## **5. FALSE AND MALICIOUS REPORTS**

5.1 Deliberately false or malicious unfounded reports of malpractice are a breach of discipline, and action under the relevant procedure may be taken against the individual concerned.

## **6. ACADEMIC MATTERS AND JUDGEMENTS**

### **6. Academic Matters and Judgements**

6.1 Ordinance 208 underpins the freedom of <sup>1</sup>academic staff within the law to hold and express opinion, to question and test received wisdom, and to present controversial or unpopular points of view, without placing in jeopardy the appointments they hold or any entitlement or privileges.

6.2 In a University community, disagreements on matters of academic judgement are not uncommon, and on occasion these can manifest themselves as deep divisions between colleagues who strongly hold opposing views. In implementing this Code of Practice, the University will take care to ensure that it is not abused by one or more parties to a disagreement on a matter of academic judgement: the holding of academic views contrary to those of another individual is not malpractice. Any such views must be articulated in a fully professional manner.

6.3 The University encourages staff to speak freely, and without being subject to disciplinary action, about academic standards and related matters, provided that they do so lawfully, without malice, in the public interest, and with due regard to the accepted need for confidentiality in respect of individuals in an academic environment.

## **7. EXTERNAL REPORTS OF MALPRACTICE**

7.1 An effective code of practice for the reporting and investigation of malpractice should make it very rare for an individual to conclude that they must raise a matter outwith the University. Other than in exceptional circumstances, all concerns should be raised internally in the first instance. If an individual believes that they have no choice but to raise a matter externally, he or she should exercise caution and responsibility in so doing. The avenues open include:

- the Scottish Further and Higher Education Funding Council (<http://www.sfc.ac.uk/>);
- a Member of the Scottish Parliament (<http://www.scottish.parliament.uk/>);
- the police (<http://www.scotland.police.uk>);
- The Quality Assurance Agency for Higher Education (<http://www.qaa.ac.uk/>);

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<sup>1</sup> “Academic staff” means any person holding a contract of employment with the University Court as a Professor, Reader, Senior Lecturer or Lecturer of the University and any other person holding a contract of employment with the University Court engaged in teaching, the provision of learning or research in the University.

- Audit Scotland (<http://www.audit-scotland.gov.uk/> );
- Public Concern at Work (a registered charity which seeks to ensure that concerns about serious malpractice are properly raised and addressed in the workplace) (<http://www.pcaw.co.uk/> );
- the person expressing a concern's Trade Union or professional body; or
- such office-holders or bodies designated under the Public Interest Disclosure Act (1998) (<https://www.gov.uk/government/publications/the-public-interest-disclosure-act/the-public-interest-disclosure-act>).

7.2 Most external bodies are likely to ask whether a matter being brought to them had been raised internally, and if not, why not. Therefore, if a report of malpractice is to be made externally, it would seem sensible for the person expressing a concern to prepare an explanation of why internal routes have been exhausted or are not appropriate. It should be noted that in certain circumstances disclosures to some or all of the external agencies mentioned in this paragraph may not be protected by the Public Interest Disclosure Act.

Requests for additional information should be addressed to Dr Lewis Allan e-mail: [Lewis.Allan@ed.ac.uk](mailto:Lewis.Allan@ed.ac.uk).

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