

Whistleblowing (Public Interest Disclosures) Policy

Document Control

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Version number:	V3.2
Approval date:	24 July 2024
Approved by:	Board of Governors (via SLT, then Audit Committee)
Date of next review:	For August 2026

Raising a Whistleblowing Concern

Should individuals wish to raise a concern under this Policy, they may do so by contacting one of the reportees listed below:

- Chief People Officer: Danny Griffiths (dgriffiths@lincoln.ac.uk)
- Chief Students Officer / Academic Registrar: Judith Carey (jcarey@lincoln.ac.uk)
- Vice Chancellor: Professor Neal Juster (njuster@lincoln.ac.uk)
- Chair of the Board of Governors: via Head of Legal and Compliance Services and Secretary to the Board (see below)
- Chair of the University's Audit Committee: via Head of Legal and Compliance Services and Secretary to the Board (see below)
- Student's Union Chief Executive Officer: James Brooks (jabrooks@lincoln.ac.uk)

The Head of Legal and Compliance Services and Secretary to the Board is the University's Whistleblowing Officer and can be contacted via aarsmith@lincoln.ac.uk where an individual wishes to seek advice or raise a concern.

For advice, staff may contact their Department of People, Performance and Culture Business partner, or may wish to contact the Eleanor Glanville Institute where they relate to Equality, Diversity and Inclusion issues.

For advice, students may contact the Advice Service in the Student Support Centre via advice@lincoln.ac.uk or via <https://studentservices.lincoln.ac.uk/>; or may wish to contact the Students' Union Advice Centre.

1. Introduction

- 1.1 The University of Lincoln acknowledges its duty to conduct its affairs in accordance with high standards of integrity, propriety, accountability and openness, taking full account of the recommendations of the Committee on Standards in Public Life and the requirements of the HE regulatory bodies. Moreover, the Board of Governors is committed to the principles of academic freedom as guaranteed in the University's Articles of Government and in legislation.

- 1.2 This policy is intended to promote throughout the institution a culture of openness and a shared sense of integrity, by inviting all employees and students to act responsibly in order to uphold the reputation of the University and maintain public confidence.
- 1.3 The University encourages members of staff and students to raise genuine and serious concerns about malpractice in the workplace at the earliest practicable stage. This policy sets out a process whereby employees and students who have concerns about malpractice may raise those concerns at a high level in the University, outside of normal line management, and without fear of detriment. The policy also seeks to balance the need to provide safeguards for members of staff and students who raise genuine concerns about malpractice against the need to protect other members of staff, students, members of the Board of Governors, and the University against uninformed or vexatious allegations.
- 1.4 This policy applies to disclosure by an employee, an agency contract worker, a self-employed homemaker employed or engaged by the University, or by a student at the University, who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the University, and that disclosure would be in the public interest. For the purposes of this policy, the term 'student' includes sabbatical officers of the Students' Union.

2. Legal Framework

- 2.1 The Public Interest Disclosure Act 1998 introduced new protections for whistleblowers, by amending the Employment Rights Act 1996 (which has been further amended since). Sections 43A to 43K of the 1996 Act explain what falls within the definition of a 'qualifying disclosure', 'protected disclosure' and a 'worker'. Section 47B gives protection to workers from being subjected to a detriment for making a protected disclosure. Section 103A protects employees from being dismissed for making a protected disclosure. To be protected, the worker must make a 'qualifying disclosure' and ensure that it is made in one of the ways described in the Act. Similarly, the University applies the same principle to its students where they may raise a 'qualifying disclosure' under this policy (see Section 4).
- 2.2 A disclosure made other than in accordance with the Act and this Policy, will not be protected under 'whistleblowing' legislation.

3. Qualifying Disclosure

- 3.1 A qualifying disclosure is any disclosure of information which the worker making the disclosure reasonably believes to be in the public interest to disclose, and which shows one or more of the following:
 - That a criminal offence has been, is being or is likely to be committed;
 - 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. This includes any contractual or other common law obligation, statutory duty or requirement or administrative law requirement. It could include academic or professional malpractice or a failure to comply with any rules, regulations or codes of practice of the institution;
 - 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; or,
- That information tending to show any of the above has been is being or is likely to be deliberately concealed.

3.2 The law places responsibilities upon the worker making a disclosure. In most cases, the worker must raise the matter internally first (see Section 5). The matter must not be motivated by personal antagonism and the worker must have a reasonable belief that it is in the public interest to disclose the matter.

3.3 Personal grievances and complaints are not usually covered by the Act.

3.4 The University of Lincoln already has in place policies and procedures relating to the conduct of its staff and students under its disciplinary and grievance processes, the Financial Regulations (including procedures for dealing with financial misconduct) and the bullying and harassment policy. Allegations of injustice, discrimination or other misconduct made against individuals should normally be raised under these established procedures. The Public Interest Disclosure Act, which this University's Whistleblowing policy is intended to reflect, relates to serious concerns about matters of public interest which may need, at least initially, to be investigated separately by senior managers with corporate responsibilities or by Governors of the University. Such matters could include:

- Corruption, bribery or blackmail
- Criminal offences
- Failure to comply with a legal or regulatory obligation
- Miscarriage of justice
- Endangering the health or safety of any individual
- Endangering the environment
- Improper use of authority
- Serious financial maladministration arising from the deliberate commission of improper conduct
- Research misconduct

3.3 If the whistleblower has not complied with the conditions of the Public Interest Disclosure Act in any respect, he or she may have committed a fundamental breach of contract by disclosing confidential information belonging to the employer. As an employee, the whistleblower may also have fundamentally breached the duty of trust and confidence owed to the employer and may therefore be liable to the University's disciplinary procedures.

4. Safeguards and Confidentiality in Respect of the Whistleblower

4.1 The University wishes to offer support to workers or students who may be considering whether to make a disclosure, but have reservations about raising concerns at a high level, or other difficulties which might affect their ability to initiate action under this policy. This could include issues relating to ethnicity, culture or disability. The University strongly encourages such potential whistleblowers to seek support; students can contact the Student Support Advice Service or Student Wellbeing, and staff can contact the Head of People Relations in the Department of People Performance and Culture.

4.2 Subject to the paragraph below, the University will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the whistleblower to any detriment on the grounds of the disclosure of information under this policy. In this context, 'detriment' includes any disadvantage in respect of the whistleblower's

position as a worker or their workplace activities, or as a student. The person making the disclosure should report any complaints of such treatment to the reportee. In such circumstances, with the whistleblower's consent and co-operation, the University may take action to sanction any member of staff who has improperly sought to subject a whistleblower to any detriment. The whistleblower may be asked to consent in writing to the reportee revealing the whistleblower's identity for the purposes of any such action.

- 4.3 No disciplinary action will be taken against anyone for making a disclosure in accordance with this policy. This will not prevent the University from bringing disciplinary action in cases where there are grounds to believe that a disclosure has been made maliciously or vexatiously or where an external disclosure is made in breach of this policy without reasonable grounds or otherwise than to an appropriate public authority. An individual who persists in making allegations which have been found to be unsubstantiated after due process may face disciplinary action for pursuing malicious or vexatious allegations.
- 4.4 Any investigation under this policy, and any report or recommendations in relation to a disclosed matter, will not normally identify the whistleblower except, where necessary, on a strictly confidential basis to the investigator, reportee's administrative assistant or to a professionally qualified lawyer for the purpose of obtaining legal advice, unless:
- the whistleblower consents;
 - there are grounds to believe that the whistleblower has acted maliciously;
 - the reportee is under a legal obligation to do so;
 - the information is already in the public domain;
 - it is necessary to do so in order to deal appropriately with the matter disclosed (for example, if the anonymity of the whistleblower is incompatible with a fair investigation of allegations against a named individual).
- 4.5 Where the whistleblower involves a local trade union representative or other colleague in the procedures under this policy, the whistleblower will be under an obligation to use all reasonable endeavours to ensure that the representative or colleague keeps the matter strictly confidential save, as permitted under this policy, as required by law or until such time as it comes into the public domain.

5. Making a Qualifying Disclosure

- 5.1 An individual may seek a confidential meeting with the Deputy University Secretary (as designated Whistleblowing Officer) to discuss whether their concern constitutes a formal disclosure under this policy. An individual seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as is given under the policy to someone making a formal disclosure, whether or not a formal disclosure follows.
- 5.2 The person making the disclosure should as soon as practicable disclose, in confidence, the grounds for the belief of malpractice in the workplace to one of the 'reportees' identified below. Any disclosure under this policy shall, wherever possible, be made in writing, electronically. The person making the disclosure should provide as much supporting written evidence as possible about the grounds for his or her the belief.
- 5.3 Whilst the University takes all concerns that are brought to its attention seriously, anonymous whistleblowers will not normally be able to receive feedback and any

action taken to look into a disclosure could be limited.

5.4 Disclosures should be made, as the whistleblower deems appropriate, to one of the following reportees:

- the University Secretary;
- the Chief People Officer;
- the Academic Registrar and Executive Director for Students;
- the whistleblower's Head of College or Head of Professional Services department;
- the Chief Executive Officer of the Student's Union;
- the Vice Chancellor, or;
- the Chair of the Board of Governors.

If for a particular reason none of these individuals are appropriate – for example if they are all involved in the matter being disclosed – the disclosure should be made to the Chair of the University's Audit Committee, in confidence, via the Deputy University Secretary.

Reportees' and relevant other individuals' contact details can be found at the start of this policy.

5.5 A reportee may decline to become involved on reasonable grounds. Such grounds include previous involvement or interest in the matter concerned, incapacity or unavailability or that the reportee is satisfied that a different reportee would be more appropriate to consider the matter in accordance with this policy. In such circumstances, the original reportee will arrange for an alternative reportee to act instead.

6. Reportee's Review

6.1 On receipt of the disclosure, the reportee will offer to meet, in confidence, with the person making the disclosure. This will take place as soon as practicable after the initial disclosure. The purpose of the meeting will be for the reportee to ensure they have enough information to understand the disclosure. The person making the disclosure is permitted to be accompanied by a member of the University Community, such as a fellow student, work colleague or their local trade union representative (including the University of Lincoln Students' Union). The reportee may be accompanied by a member of staff whose responsibility is to take notes. The notes will not identify the person making the disclosure. For safeguards in relation to confidentiality, see below.

6.2 The reportee may make any such further preliminary enquiries as they deem reasonable and appropriate.

6.3 Where the reportee is satisfied that this whistleblowing policy is appropriate, that there is a public interest in the matter(s) and that there are sufficient grounds for proceeding further, they shall decide on the nature of the investigation of the allegations. This may be an internal investigation by University staff; or referral of the matter to the police or other appropriate public authority; or the commissioning of an independent enquiry, for example by the University's auditors. The reportee will ensure that the investigation is not carried out by any person with an involvement in the matter disclosed or who might ultimately have to reach a decision in regards to the matter disclosed. The reportee will advise the whistleblower and appointed investigator as to whether the investigation should take place on an 'open' basis as under paragraph 4.4, consulting the Deputy University Secretary, in confidence, if required.

- 6.4 If the reportee decides that the whistleblowing policy is not appropriate in respect of the matter disclosed, they shall so inform the whistleblower, giving reasons in writing. These could be on grounds that that the matter should be, is already or has already been the subject of appropriate proceedings under one of the institution's other procedures relating to staff or students; or that it is already the subject of legal proceedings, or has already been referred to the police or other public authority; or that there does not appear to be sufficient evidence, or the reasonable prospect of sufficient evidence being found, to substantiate the allegation(s) of malpractice; or of reasonable doubt as to the whistleblower's reasonable belief about the alleged malpractice and/or about its relation to the public interest.
- 6.5 If the whistleblower is not satisfied with the reportee's decision, they may ask the Deputy University Secretary to nominate an independent member of the Audit Committee who will review the matter of the disclosure, the information and evidence presented, the process followed by the reportee and the grounds for the reportee's decision. If the Governor decides that the matter should be investigated under the whistleblowing policy, they shall direct a second reportee to arrange an appropriate investigation. If the Governor decides to uphold the view of the original reportee, no further action will be taken under the University's processes. The whistleblower may then consider whether to refer the allegations of malpractice to an external agency (see Section 8 below).

7. Investigation

- 7.1 Once it has been confirmed that an investigation under this policy should take place, the reportee will provide the Chair of the Audit Committee (via the Deputy University Secretary) with an anonymised summary of the allegation(s) and the evidence, and the nature of the investigation.
- 7.2 Where the whistleblower participates in an investigation, that participation will usually be required to be on an 'open' rather than a confidential basis, although the obligations of the reportee will remain in relation to the identity of the individual as the original whistleblower of information under this policy. Where the investigation proceeds on a confidential basis, both the investigator and reportee are obliged to safeguard the whistleblower's identity as under Section 4 of this policy.
- 7.3 The person or persons against whom an allegation is made under this policy will be told of it and of the evidence supporting it, and will be given full opportunity to offer refutation, explanation or mitigation before the investigation is concluded.
- 7.4 The investigator must carry out a thorough, robust and impartial investigation, ensuring that all of the evidence relating to the matter is examined.
- 7.5 The investigator will normally complete their investigation within 20 working days. Where it is anticipated this will take longer, i.e. where the investigation needs to engage a number of individuals or is particularly complex, then the investigator will advise the reportee accordingly as such that the whistleblower and the Chair of the Audit Committee can be kept reasonably informed of progress.
- 7.6 The investigator will prepare a written report for the reportee, setting out their conclusions and recommendations for further action. The reportee will liaise with appropriate members of the University's Senior Leadership Team as to the implementation of any recommendations. The reportee will also inform the whistleblower of the recommendations. Where allegations of malpractice on the part

of a named individual are substantiated, the reportee will consider whether the matters should be referred for action under the staff or student disciplinary procedures.

- 7.7 A formal account of the investigation and outcomes shall be made at the subsequent meeting of the Audit Committee.

8. External Disclosure

- 8.1 If, having followed the procedure under this policy, the whistleblower is not satisfied with the outcome of any investigation or further action taken by the University, they may raise the matter on a confidential basis directly with the police, the Office for Students, the Department for Business Innovation and Skills, a Member of Parliament or other appropriate public authority. Before taking any such action, it is recommended that the whistleblower informs the reportee. The reportee will advise the whistleblower on the requirements of the Public Interest Disclosure Act relating to external disclosures, with support of the Deputy University Secretary (in confidence) where required.
- 8.2 The whistleblower may also raise the matter externally, as set out in the paragraph above, if they have reasonable grounds for believing that they will be subjected to a detriment as a result of making the disclosure, or that all the available reportees (including Governors) are involved in the alleged malpractice. The Department for Business Innovation and Skills' 'Whistleblowing: Guidance for Employers and Code of Practice' advises that:

'Where a worker goes to the media, they can expect in most cases to lose their whistleblowing law rights. It is only in exceptional circumstances that a worker can go to the media without losing their rights. They must reasonably believe that the information they disclose and any allegation contained in it are substantially true. They cannot be acting for personal gain. Unless the wrongdoing is exceptionally serious, if they have not already gone to their employer or a prescribed person, they must reasonably believe that their employer will subject them to "detriment" or conceal or destroy evidence if they do so. And even then, their choice to make the disclosure must be reasonable.'

- 8.3 The whistleblower may at any time disclose the matter on a confidential basis to a legal representative for the purpose of taking professional legal advice.