

Askham Bryan College

Last Review: Nov 2015

Reviewed by R Howie, HRD

Next Review: Nov 2018

POLICY & PROCEDURE FOR BRIBERY, FRAUD, CORRUPTION & WHISTLEBLOWING HR20

Policy Statement

Malpractice or suspicion of malpractice within the College is taken very seriously. The College is committed to the principle of accountability. This Policy is designed to promote, throughout the College, a culture of openness and 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 College encourages members of staff to raise genuine concerns about malpractice at an early stage. It aims to provide protection from harassment and victimisation to any individual who raises their concerns using the procedure outlined below.

General Principles

- 2.1 Members of staff are often the first to realise that there may be something seriously wrong within a College. However, they may not 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.
- 2.2 The College encourages members of staff to raise genuine concerns about malpractice at the earliest practicable stage rather than wait for proof.
- 2.3 This procedure is, accordingly, intended to provide safeguards to enable members of staff 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.
- 2.4 This procedure also seeks to balance the need to provide safeguards for members of staff who raise genuine concerns about malpractice against the need to protect other members of staff, members of the Corporation, students and the College against uninformed or vexatious allegations which can cause serious difficulty to innocent individuals.
- 2.5 **Malpractice**
The types of matters regarded as “malpractice” for the purposes of this procedure are as follows:-
 - Fraud or financial irregularity
 - Corruption, bribery or blackmail

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- Criminal offences
- Issues which may compromise the College's safeguarding responsibilities as regard children and vulnerable adults
- Issues which may compromise the College's legal obligations and responsibilities under HM Government's *Prevent* strategy to combat extremism
- Failure to comply with a legal or regulatory obligation
- Miscarriage of justice
- Endangering the health or safety of any individual
- Endangering the environment
- Concerns regarding animal welfare

2.6 Designated Assessors

The Principal of the College will ensure that at least three members of staff of appropriate experience and standing within the College are designated at any time for the purposes of this procedure as designated assessors ("Designated Assessors"). In addition, one of the members shall be designated as lead designated assessor ("the Lead Assessor"). At the date of review of this procedure the Designated Assessors will be:-

- **first Designated Assessor (the Lead Assessor)** – Clerk to the Corporation
- **second Designated Assessor** – Director of Human Resources
- **third Designated Assessor** – Deputy Principal, Quality & Standards

The Principal may revoke any such designation from time to time and appoint new Designated Assessors. The Principal will report any such revocation to the next meeting of the Corporation, together with brief reasons for the revocation. Where a revocation arises from the termination of a Designated Assessor's employment (whether by the College or by the officer) brief reasons for the termination will be given to the Chair of the Corporation (or Vice Chair in his absence) as soon as possible.

The Lead Assessor will co-ordinate the training of the Designated Assessors in the use of this procedure and will produce an annual report to the Corporation on the number of occasions when this procedure has been formally invoked and their outcome.

3 Scope and Purpose

This procedure applies to disclosure by an individual ("the Discloser") who is an employee or an agency contract worker employed or engaged by the College, and who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the College (whether on the part of another employee, a member of the Corporation, or any other person or persons).

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4 The Bribery Act 2010

The above act makes it a criminal offence to give a promise or offer a bribe or request, or agree or receive a bribe. It also sets out a corporate offence of failing to prevent bribery by an organisation not having adequate preventative procedures in place. This includes operating through an “agent/subsidiary or other associated person”.

Staff are not required to categorise any concerns they have but may find it useful to know how the Bribery Act defines bribery. The Act defines three key offences with regard to bribery, which are:

- Active bribery (offering, promising or giving a bribe);
- Passive bribery (requesting, agreeing to receive or accepting a bribe); and
- Bribery of a foreign public official

It is also an offence for a corporate body not to have adequate preventative procedures in place to prevent bribery.

The reporting process outlined in this document should be followed for all genuine suspicions of bribery.

5. Bribery, Fraud and Corruption

The College is committed to the elimination of any bribery, fraud and corruption within the organisation and to the rigorous investigation of any such cases.

One of the basic principles of the College is the proper use of public funds and this would include the assets bought through public funds. It is therefore important that all employees are aware of the rules against any acts involving bribery, dishonesty, corruption or damage to College property. For simplicity all such offences are hereafter referred to as “fraud”.

The College wishes to positively encourage anyone with reasonable suspicions of fraud to report them, whilst ensuring that no employee will suffer in any way as a result of reporting reasonably held suspicions. All such concerns will be treated in confidence, wherever possible, and properly investigated.

Where instances of theft are identified these should be reported immediately to a line manager or in the event of the suspicion falling on that person, a Designated Assessor who, where appropriate, will arrange for the matter to be referred to the police for investigation.

6. Procedure

Where an individual working for the College genuinely and reasonably suspects that there is something wrong in the organisation and wishes to make a disclosure (hereafter called the Discloser), the following procedure should be followed:-

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- 6.1 The Discloser should, as soon as practicable, disclose in confidence the grounds for the belief of malpractice to one of the Designated Assessors. The choice of Designated Assessor will be for the Discloser. The Designated Assessor may decline to become involved on reasonable grounds, including possible previous involvement or interest in the matter concerned, incapacity or unavailability. In addition, if a Designated Assessor is satisfied, after consulting the Lead Assessor, that some other Designated Assessor would be more appropriate to consider the matter in accordance with this procedure he or she may decline.
- 6.2 Any disclosure to a Designated Assessor under this procedure shall, wherever possible, be in writing, but, if this is not practicable, any such disclosure may be oral, at the choice of the Discloser. The Discloser should provide as much supporting written evidence as possible about the disclosure and the grounds for the belief of malpractice.
- 6.3 On receipt of the disclosure, the Designated Assessor will offer to interview the Discloser in confidence, such interview to take place as soon as practicable after the initial disclosure. The purpose of the interview will be for the Designated Assessor to obtain as much information as possible from the Discloser about the grounds of the belief of malpractice and to consult with the Discloser about further steps which could be taken. The Discloser may be accompanied by a local trade union representative or work colleague at the interview. The Designated Assessor may be accompanied by a member of staff from Human Resources, whenever possible, to take notes, which will not identify the Discloser.

7. Further Steps

- 7.1 As soon as practicable after the interview (or after the initial disclosure if no interview takes place) the Designated Assessor will recommend to the Principal (unless s/he is the subject of the action) what further steps should be taken. Such recommendations may (without limitation) include one or more of the following:
- that the matter should be reported to the police;
 - that the matter should be reported to the EFA, or other appropriate governmental or public authority;
 - that the matter should be investigated either internally by the College, or by the Audit Committee or some other committee of the Corporation and/or by external or internal auditors or investigators appointed by the College;
 - that a member of staff should be given the opportunity to seek redress through the College's grievance or complaints procedures or other relevant College policy.
- 7.2 The grounds on which the Designated Assessor may recommend that no further action by the College should be taken are as follows:
- that the Designated Assessor is satisfied that the Discloser does not have a reasonable belief that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur; or
 - that the Designated Assessor is satisfied that the Discloser is not acting in good faith; or

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- that the matter concerned is already the subject of legal proceedings, or has already been referred to the police, or other public authority; or
- that the matter is already (or has already been) the subject of proceedings under one of the College's other procedures relating to staff.

7.3 Any recommendations made under this procedure will be made by the Designated Assessor to the Principal (unless it is alleged that the Principal is involved in the alleged malpractice) or unless there are other reasonable grounds for not doing so, in which case the recommendations will be made to the Chair or the Vice-Chair of the Corporation. In any case the recommendations will be made without revealing the identity of the Discloser save as provided in paragraph 9 below. The recipient of the recommendations will take all steps within his or her power to ensure that they are implemented except to the extent that in the view of the recipient there are good reasons for not doing so. If the Principal decides not to implement fully any such recommendations that decision will be notified in writing to the Chair of the Corporation as soon as practicable, together with the reasons for it.

7.4 Once the Principal (or other recipient) has decided what further steps (if any) should be taken, the Designated Assessor will inform the Discloser of the decision. If no further steps by the College are proposed, the Designated Assessor will give the reasons for this.

8. External Disclosure

8.1 If, having followed this procedure, 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 police, the Skills Funding Agency, the EFA, the Department for Education (DfE), a Member of Parliament or other appropriate public authority. Before taking any such action, the Discloser should inform the Designated Assessor who should then inform the Principal.

8.2 The Discloser may also raise the matter if the Discloser has reasonable grounds for believing that all of the available Designated Assessors are or were involved in the alleged malpractice or that the Discloser will be subjected to a detriment as a result of making the disclosure.

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

9. Safeguards

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

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

- 9.2 Any documentation (including computer files and discs) kept by the Designated Assessor relating to the matter will be kept secure, so that as far as practicable only the Designated Assessor [and his or her administrative support] will have access to it. As far as practicable, any documentation prepared by the Designated Assessor will not reveal the identity of the individual as the Discloser of information under this procedure.
- 9.3 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 endeavors to ensure that the representative or work colleague keeps 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.
- 9.4 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.
- 9.5 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 will remain in relation to the identity of the individual as the original Discloser of information under this procedure.
- 9.6 The College will not (and it will use all reasonable endeavors 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 Assessor. If the Discloser wishes the Designated Assessor to take action in relation to such complaints, the Discloser may be asked to consent in writing to the Designated Assessor revealing the Discloser's identity for the purposes of any such action.

10. Protection Against Disciplinary Action

No disciplinary action will be taken against a Discloser on the grounds of a disclosure made by the Discloser in accordance with this procedure. This will not prevent the College 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 procedure without reasonable grounds or otherwise than to an appropriate public authority).

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11. Amendments/Review

- 11.1 This procedure may be amended by the Corporation from time to time.
- 11.2 This procedure will be reviewed periodically. Any comments or suggestions about the procedure should be referred to a Designated Assessor.