

**IMPERIAL COLLEGE LONDON**

**ORDINANCE D18**

**INVESTIGATION OF PUBLIC INTEREST DISCLOSURES**

**PREAMBLE**

1. The College is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner, taking into account the requirements of the funding bodies and the standards in public life set out in the reports of the Committee on Standards in Public Life. This Ordinance constitutes the College's policy on, and procedures for, dealing with instances of Public Interest Disclosure and is intended to satisfy the recommendation made by the Nolan Committee that local public spending bodies, such as the College, should institute codes of practice on 'whistle blowing', that is, allegations made by individuals relating to the running of the institution or the activities of colleagues within the institution.

2. It is a College requirement that an employee will not disclose confidential information about the College's affairs. However, where an individual discovers information which he or she believes shows malpractice or wrongdoing within the College, then that information should be disclosed without fear of reprisal, and may be made independently of line management. Under the Public Interest Disclosure Act 1998 an employee making a qualifying disclosure is protected against being dismissed or penalised by their employers as a result of disclosing such concerns publicly, while a worker <sup>(1)</sup> is protected from suffering any detriment as a result of making a protected disclosure. This means that, where a disclosure is made to the College, the person making the disclosure ("the whistleblower") will be protected if he or she has a reasonable belief that malpractice has occurred, is occurring or is likely to occur and that disclosure is in the public interest.

3. The Public Interest Disclosure Act also protects disclosures made to certain prescribed regulatory bodies such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority, where the whistleblower reasonably believes that the information and any allegations in it are substantially true and that disclosure is in the public interest. Wider disclosures (*e.g.* to the police, the media, MPs, and non-prescribed regulators) may be protected if, in addition, they are reasonable in all the circumstances and they are not made for personal gain, the whistleblower reasonably believed he or she would be victimised if the matter was raised internally or with a prescribed regulator, reasonably believed a cover-up was likely and there was no prescribed regulator; or had already raised the matter internally or with a prescribed regulator.

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<sup>1</sup>. The Public Interest Disclosure Act 1998 provides protection for 'workers' rather than just 'employees'. This means that, in addition to all College employees, the protections provided by the Act apply to any contractors, trainees or agency staff working at the College who make a qualifying disclosure. However, these protections do not include the genuinely self-employed or volunteers.

4. This Ordinance is intended to assist individuals who believe they have discovered malpractice or impropriety in Imperial College London. It is not designed to allow them to question financial, strategic or business decisions taken by the College; nor may it be used to enable them to require reconsideration of any matters which should have already been addressed under the College's grievance or disciplinary procedures. Where an employee making a qualifying disclosure is seeking personal redress as a result of the disclosure, the complaint should be considered under the College's grievance procedures. There is an expectation that workers and other members of the College will follow the provisions of this Ordinance rather than make their disclosures outside the College.

5. Although the protections provided by the Public Interest Disclosure Act only apply to workers, as defined in the Act, it is expected that other members of the College, such as Governors and students as well as volunteers and self-employed persons providing services for the College will use the procedures set out in this Ordinance to disclose to the College any information which they believe shows malpractice or impropriety in the College.

6. A worker who has discovered information which he or she believes shows malpractice or wrongdoing has a duty to bring this to the attention of the College. Normally this will be achieved by raising the matter with the appropriate College Officer, usually the worker's Head of the Faculty/Department/Division, concerned in the matter. The College recognises that the majority of such cases will be dealt with by this means. There will, however, be instances when the nature of the alleged malpractice or wrongdoing is such that the employee considers it necessary to make use of these Procedures. The College Officer receiving a disclosure should consider whether it falls within the criteria set out in Paragraph 9 below. If so, the College Officer should inform the College Secretary about the disclosure and, in consultation with the College Secretary, consider whether it should be investigated in accordance with the procedures set out in Paragraphs 18 – 33 below.

7. If a worker believes that he or she has discovered information which may show evidence of malpractice or wrongdoing, he or she may discuss their concerns in confidence with the College Secretary or the Director of HR before making a disclosure under this Ordinance. In certain circumstances, a worker may also wish to discuss his or her concerns with employees' representatives in the College (*i.e.* UCU, UNISON or UNITE) or with the organisation Public Concern at Work, before making a disclosure. <sup>(2)</sup>

### **SCOPE OF POLICY**

8. This Policy is designed to enable workers and other members of the College to raise, at a high level, concerns or to disclose information which the whistleblower believes shows malpractice or impropriety.

9. The College has a number of related policies and procedures already in place, including those for grievance and discipline, scientific misconduct and the treatment of fraud, corruption and irregularities. Allegations which fall within the scope of those procedures should normally

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<sup>2</sup> . Public Concern at Work (PCaW) is an independent authority on public interest whistleblowing, which was established as a charity in 1993. PCaW promotes compliance with the law and good practice in organisations across all sectors. PCaW offers free advice to people concerned about danger or malpractice in the workplace but who are unsure whether or how to raise the matter.

be made and considered in accordance with them. This Ordinance is intended to cover concerns which are in the public interest and may (at least initially) be investigated separately, but might then revert to such other existing procedures. Examples of these types of concern include instances where the whistleblower has a reasonable belief that tends to show one or more of the following:

- a. That a criminal offence has been committed, is being committed, or is likely to be committed;
- b. That a person has failed, is failing, or is likely to fail to comply with any legal obligation or with any obligation under the College's Statutes, Ordinances and/ or Regulations to which he or she is subject;
- c. That a miscarriage of justice has occurred or is likely to occur;
- d. That the health and safety of an individual or individuals has been or is likely to be endangered.
- e. That the environment has been or is likely to be endangered;
- f. That financial or non-financial maladministration and/ or malpractice has been committed, is being committed or is likely to be committed;
- g. That information tending to show any matter set out above has been, is being or is likely to be deliberately concealed.
- h. That disclosure is in the public interest.

### **PRINCIPLES**

10. No detrimental action of any kind will be taken against a person making a disclosure of the nature described above, provided that the disclosure is:
  - a. Made in the reasonable belief of the whistleblower that it is "substantially true" and tends to show malpractice;
  - b. Not made for personal gain;
  - c. Made in the public interest; and,
  - d. Made to an appropriate person or body as defined in Paragraphs 17 - 20 of this Ordinance.
11. The College will treat all disclosures made in accordance with these procedures in a confidential and sensitive manner. The identity of the whistleblower will be kept confidential, if so requested, for as long as possible provided that this does not hinder or frustrate a proper investigation. However, the investigation process may reveal the source of the information, and the whistleblower may need to provide a statement as part of the evidence required. If further action is taken under the College's disciplinary or

other procedures as a result of the disclosure, the whistleblower may also be required to provide a statement or give evidence as part of that process.

12. The College expects the whistleblower and all others involved in the consideration of the disclosure to act sensibly and appropriately and to keep the nature of the disclosure and the identity of those involved confidential. A worker who makes a qualifying disclosure under the Act has the right not to suffer any detriment; victimisation of a genuine whistleblower will therefore be treated as a disciplinary offence. Similarly it will also be a disciplinary offence for someone to maliciously make false or vexatious allegations.
13. Where a disclosure concerns another or other members of staff of the College, the person or persons identified in the disclosure will be informed of the allegation and of the evidence supporting it and will be allowed to comment before any investigation, or further action, is concluded - except in cases of alleged fraud or where there is a criminal investigation where this could provide the individual(s) concerned with an opportunity to destroy or conceal evidence.
14. Individuals are encouraged to put their name to any disclosure they make. Anonymous disclosures may be reported, investigated and acted upon or may be set aside at the discretion of the College, having regard to the seriousness of the issues raised, the credibility of the disclosure, the prospect of being able to conduct a proper investigation, and fairness to any individual mentioned in the disclosure.
15. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigations are to be conducted as sensitively and as speedily as possible, having regard to the nature and complexity of the disclosure.
16. An official written record will be kept of each stage of the procedure.

17 The College Secretary may review this Ordinance following the conclusion of an investigation if any procedural or other problems were experienced during the course of the investigation, or if there is a change to best practice or national guidance in respect of public interest disclosures. The College's trades' unions will normally be consulted on any substantive changes proposed to this Ordinance.

## **THE PROCEDURE**

### **STEP 1**

18. A person who believes that they have discovered evidence of malpractice within the College should make a disclosure in writing to the College Secretary as the Designated Person under this Ordinance. The College Secretary will, as soon as is practicable, inform the President and the Chair of the Council of the disclosure except where:
  - a. The allegation of misconduct concerns the President or the Chair; or
  - b. The President or the Chair is likely to be involved at any subsequent hearing or appeal.

19. In cases where financial malpractice is alleged, the College Secretary shall act throughout in close consultation with the President, as the Accounting Officer for the College's public funding, and with the College's Internal Auditors.

20. If the allegation concerns the actions of the College Secretary, or the whistleblower otherwise considers it inappropriate to refer the matter to the College Secretary, the disclosure should be made directly to the President. The President will then act as the Designated Person and inform the Chair of the Council of the disclosure, except where the provisions noted under Paragraph 18 above apply. The President will normally consult with the College's Internal Auditors in the event of a matter arising under the provisions of the College's Financial Ordinance, Regulations and Procedures or the College's Policy and Response Plan for the Treatment of Fraud, Bribery, Corruption & Irregularities.

21. If the allegation concerns the actions of the President, or the whistleblower has grounds to consider it inappropriate to refer the matter to the College Secretary or the President, the disclosure should be made to either the Chairman of the Audit Committee, where the allegation falls within the terms of reference of that Committee, or directly to the Chair of the Council. Whichever Chair receives a disclosure will then become the Designated Person for the purpose of these procedures.

## **STEP 2**

22. The Designated Person to whom the disclosure has been addressed will decide, after conducting a risk assessment and after appropriate consultation, whether the matter is to be investigated further and will determine the form such an investigation will take. This would normally be:

- a. To investigate the matter internally; or,
- b. To refer the matter directly to the police or other outside body;

23. Although a preliminary internal investigation will usually be necessary first, some disclosures may require **immediate** referral to an outside body for consideration and investigation (for example, the Police, the General Medical Council, the Health and Safety Executive, the Disclosure & Barring Service (DBS), children's social services, the Local Authority Designated Officer (LADO), the National Audit Office, or the Office for Students.

24. Where the matter is to be the subject of an internal investigation, the Designated Person will then consider how best to determine whether there is a *prima facie* case to answer. In doing so, the Designated Person should decide:

- a. Who should be appointed as the 'Investigating Officer' to undertake the investigation;<sup>(3)</sup>
- b. The procedure to be followed for the investigation; and,
- c. The scope and nature of the concluding report.

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<sup>3</sup> . Where the Designated Person is either the Chair of the Council or the Chairman of the Audit Committee and the allegation concerns senior members of the College, the Investigating Officer may be an independent person.

25. Where the allegation concerns a breach of the College's Financial Ordinance, Regulations and/ or Procedures, the College's Internal Auditor will normally undertake this investigation as the Investigating Officer.

26. Where the allegation does not involve a breach of the College's Financial Ordinances, Regulations and/ or Procedures, the investigation may be undertaken by another member of staff of the College appointed as the Investigating Officer by the Designated Person for this purpose.

27. Where a decision is taken not to investigate or take any further action, the whistleblower and the Audit Committee should be so informed.

### **STEP 3**

28. The Investigating Officer will report his or her findings in writing to the Designated Person who will, as a result of this report, determine whether there is a *prima facie* case to answer and, if so, what further action may be required. This may include:

- a. Appropriate management action to correct the error;
- b. Further action under the College's Disciplinary Procedures;
- c. Further action under the College's Policy and Procedures for the Investigation of Allegations of Research Misconduct; or,
- d. Referral to an outside body such as the police, the General Medical Council, the Health and Safety Executive, , the Disclosure & Barring Service (DBS), children's social services, the Local Authority Designated Officer (LADO), the National Audit Office, the Office for Students;

29. The Designated Person will inform the whistleblower in writing of what action, if any, is to be taken. Where the Designated Person's decision is that no action is to be taken the whistleblower shall be informed of the reasons for this.

### **STEP 4**

30. Where the decision is to confirm that no further action is to be taken the whistleblower has the right to raise their concern in good faith with an external body, such as the Office for Students, or the College's external auditors, provided they have sufficient evidence to support their concern.

31. However, the College would strongly advise that, before reporting a concern externally, the complainant seeks advice from one of the following:

- a. Employees' representatives in the College: *i.e.* UCU, UNISON or UNITE.
- b. Public Concern at Work (see Annex B).

**REPORTING OF OUTCOMES**

32. A report of all disclosures and any subsequent action taken will be made by the Designated Person who will retain such reports for a period of 6 years. A report of all disclosures and of the outcomes of any investigation will be made to the Audit Committee in confidence. Where the issue falls within its terms of reference or within the scope of the College Fraud Policy the Committee will receive a detailed report. In all other cases the Committee will receive a summary report so as to monitor the effectiveness of these procedures.

33. The College Secretary will maintain a register of all confirmed Public Interest Disclosure cases which are investigated within the College. This Register will be available for external inspection and should include the following information:

- a. The date the disclosure was made;
- b. The file reference number;
- c. The type of allegation made;
- d. The potential risks to the College;
- e. The status of the investigation.

**COMPLAINTS OF RETALIATION AS A RESULT OF A DISCLOSURE**

34. Under the Public Interest Disclosure Act 1998, a worker who makes a qualifying disclosure under the Act has the right not to suffer any detriment as a result of that disclosure. In addition, an employee who makes a qualifying disclosure also has the right not to be dismissed as a result of that disclosure.

35. If a worker who has made a qualifying disclosure feels that, as a result of that disclosure, he or she has suffered adverse treatment should submit a complaint under the College's grievance procedure, which will then be investigated under that procedure. A worker who has suffered a detriment as a result of a disclosure also has the right to submit a complaint to an employment tribunal. It will be for the Tribunal to determine the facts of the case including whether a 'qualifying disclosure' as defined under the Act, had been made, and any appropriate remedy for the worker.

Approved by the Council 23 March 2007

Effective from 8 July 2007

Revisions approved by the Council 19 September 2008

Revisions approved by the Council, 7 February 2014

Revisions approved by the Council, 14 September 2018

**Annex A****KEY COLLEGE CONTACTS UNDER THE POLICY**

(in order of approach)

	Designation	Contact details	Telephone No.& e-mail
1	College Secretary and Clerk to the Council	Room 4.11, Faculty Building South Kensington Campus	j.neilson@imperial.ac.uk
2	President	Room 4.17, Faculty Building South Kensington Campus	<a href="mailto:president@imperial.ac.uk">president@imperial.ac.uk</a>
3	Chairman of the Audit Committee <sup>(4)</sup>	c/o The Central Secretariat Level 4, Faculty Building South Kensington Campus	jonathan.hancock@imperial.ac.uk
4	Chair of the Council <sup>(4)</sup>	c/o The Central Secretariat Level 4, Faculty Building South Kensington Campus	jonathan.hancock@imperial.ac.uk

Contacts for concerns not necessarily arising under the Policy

Type of Concern	Contact	Telephone No. & e-mail
<b>Fraud, or other financial irregularity, breaches of financial regulations, or conflicts of interest</b>	Internal Auditor c/o The Clerk to the Council Room 4.11, Faculty Building South Kensington Campus	j.neilson@imperial.ac.uk
<b>Misuse of IT equipment or systems</b>	Chief Information Officer 436, 4th Floor, Sherfield Building, South Kensington Campus	mike.russell@imperial.ac.uk
<b>Unsafe working practices or environment</b>	Safety Director Level 5, Sherfield Building South Kensington Campus	<a href="mailto:s.johal@imperial.ac.uk">s.johal@imperial.ac.uk</a>

4. Where a disclosure is being sent to the Chairman of the Audit Committee or the Chair of the Council because the whistleblower considers it inappropriate to send it to the College Secretary or the President, it must be sent in hard copy only under confidential cover.

Type of Concern	Contact	Telephone No. & e-mail
<b>Health matters</b>	Director of Occupational Health Services Level 4, Sherfield Building South Kensington Campus	<a href="mailto:c.obrien@imperial.ac.uk">c.obrien@imperial.ac.uk</a>
<b>Breaches of data protection standards, corporate governance or Council Ordinances and Regulations</b>	Head of Central Secretariat Level 4, Faculty Building South Kensington Campus	<a href="mailto:jonathan.hancock@imperial.ac.uk">jonathan.hancock@imperial.ac.uk</a>
<b>Physical security issues</b>	Director of Estates Operations Level 5, Sherfield Building South Kensington Campus	<a href="mailto:n.roalfe@imperial.ac.uk">n.roalfe@imperial.ac.uk</a>
<b>Grievance or disciplinary issues</b>	Director of HR Level 3, Faculty Building South Kensington Campus	<a href="mailto:l.lindsay@imperial.ac.uk">l.lindsay@imperial.ac.uk</a>
<b>Child Protection &amp; Vulnerable Adults issues</b>	Child Protection Officers:  Director of HR Level 3, Faculty Building South Kensington Campus  Director of Student Services 3rd Floor, Sherfield Building South Kensington Campus	<a href="mailto:l.lindsay@imperial.ac.uk">l.lindsay@imperial.ac.uk</a>  <a href="mailto:h.bannister@imperial.ac.uk">h.bannister@imperial.ac.uk</a>

**PUBLIC CONCERN AT WORK**

1. *Public Concern at Work* is an independent charity which promotes good practice, compliance with the law and accountability in the workplace.
2. *Public Concern at Work* is recognised as a leader in its field and its work has been endorsed by Government, the Committee on Standards in Public Life, the TUC, the CBI and the Institute of Directors. Among the services it provides to organisations in the public, private and voluntary sectors is a helpline staffed by qualified lawyers providing advice, free of charge, to employees.
3. *Public Concern at Work* can be contacted at:

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16 Baldwin's Gardens  
London EC1N 7RJ

Tel: 020 7404 6609

Fax:020 7404 6576

e.mail: [whistle@pcaw.demon.co.uk](mailto:whistle@pcaw.demon.co.uk)