

Briefing Note for Board Members

Whistleblowing Policies and the Senior Independent Board Member (SIM)

May 2021

1 Introduction

In 2020, New College Lanarkshire's revised Whistleblowing Policy was presented to the Resources and General Purposes Committee of the Board of Management for ratification. While the policy was approved, a request was made that some additional guidance for Board Members be developed, in relation to the extent to which the policy covered concerns raised by Board Members and with particular consideration of the role of the Senior Independent Board Member in resolving such concerns. This advice note has been prepared to provide this additional guidance and clarity.

As the Lanarkshire Board operates as the Board of Management for New College Lanarkshire, this document refers to the NCL Whistleblowing Policy. However the same legal framework and the wider sectoral governance guidance referred to will also apply at South Lanarkshire College.

2 Summary of NCL Whistleblowing Policy

The NCL Whistleblowing Policy was developed to provide guidance to members of staff and other relevant parties on how to inform management if they are concerned about serious malpractice, fraud or corruption within NCL. It does not amend or alter the role of the Senior Independent Board Member, and does not explicitly refer to this role, recognising that most concerns can and should be resolved within the operational line management structures of the College, rather than at Board level.

In accordance with the Public Interest Disclosure Act 1998 (as amended), the specific types of wrongdoing or malpractice covered by the policy are:

- The commission of a criminal offence (including financial impropriety, bribery or fraud);
- Failure to comply with a legal obligation set out in law;
- Miscarriages of justice
- Danger to the health and safety of any individual
- Damage to the environment
- Concealment of any wrongdoing in the above categories.

The policy also explains the principles and legal basis for protected disclosures and the legal protections from victimisation for those making whistleblowing disclosures.

The policy deals with concerns raised either internally or externally and provides a clear route for raising both types of concern. Recognising that it is important to deal with concerns as close to the source as possible, for internal concerns the route would be to the line manager in the first instance, to the Assistant Principal: Organisational Development if it is not appropriate to raise concerns with the line manager and to the Principal and Chief Executive should the disclosure relate to a member of the Executive Board. Should it be considered that the matter should be raised outwith the NCL management structure, the

policy makes provision for disclosures to be made to the Chair of the Board, or the Chair of the Audit and Risk Committee. It would then be for these officers of the Board to instruct whatever enquiries or investigation was considered necessary, through appropriate means and after taking appropriate legal or professional advice.

Should there be a need to raise a disclosure externally, the policy sets out a number of public bodies and regulatory agencies to whom it may be appropriate for whistleblowing disclosures to be made. These are drawn from HM Government's list of prescribed bodies and those listed as examples in the policy are:

- Office of the Scottish Charity Regulator (OSCR)
- Scottish Information Commissioner
- Care Inspectorate (in relation to nursery provision)
- Scottish Environmental Protection Agency (SEPA)
- Scotland's Commissioner for Children and Young People
- The Auditor General for Scotland / Audit Scotland
- The Commissioner for Ethical Standards in Public Life

Although not explicitly listed in the government guidance, the NCL Whistleblowing Policy also includes the Scottish Funding Council, the Scottish Qualifications Authority (in relation to malpractice in the delivery of national qualifications) and Education Scotland as appropriate agencies for concerns to be raised externally. However, where the concerns relate to the alleged commission of a criminal offence, the policy states that it is always open for a disclosure to be made directly to Police Scotland.

The NCL Whistleblowing Policy is available to everyone with an NCL network account here:

<https://nclan.interactgo.com/Interact/Pages/Content/Document.aspx?id=9355> and hard copies can be made available on request via the Board Secretary or the Assistant Principal: Organisational Development.

3 Role of Senior Independent Member

The concept of a Board's appointment of one of its non-executive directors to be the senior independent director was a recommendation from the [Higgs Review 2003](#)¹, which was subsequently included in what is now the [UK Corporate Governance Code](#)². Originally aimed at publicly listed businesses, the appointment of a Senior Independent Director has been taken up by Boards across a number of sectors and is referred to in both the College Development Network [Guide for Board Members in the College Sector](#) and in the [Code of Good Governance for Scotland's Colleges](#) published by Colleges Scotland.

Mirroring the wording of the UK Corporate Governance Code, the Code of Good Governance for Scotland's Colleges states that:

A.14 The board must appoint of one the non-executive members to be the senior independent member to provide a sounding board for the chair and to serve as an intermediary for the principal, other board members and the board secretary when necessary. The senior independent member should also be available where contact

¹ HIGGS, Derek [2003], "Review of the role and effectiveness of non-executive directors", Stationery Office, London [a copy of the Higgs Review report is available from the European Corporate Governance Institute {ECGI} via their website here <https://ecgi.global/sites/default/files/codes/documents/higgsreport.pdf>

² The UK Corporate Governance Code (last updated in 2018) is overseen by the Financial Reporting Council, www.frc.org.uk

through the normal channels of chair, principal or secretary has failed to resolve an issue or for which such contact is inappropriate.

The CDN Guide for Board Members in the College Sector adds that if the Board chooses to appoint a Vice Chair, the role of Senior Independent Board Member may also be held by the same person. This is the current position for the Lanarkshire Board.

4 Raising Concerns as a Board Member

The Board of Management is a collective decision making body, and in making decisions it is expected that there will be appropriate opportunity for debate and scrutiny, so that the contribution and views of every board member have been taken into account in any decision making process (recognising that individual contributions to any particular decisions will vary according to professional expertise and backgrounds of Board Members). As set out in the CDN Guide for Board Members in the College Sector, Board Members have a duty to accept and share corporate collective responsibility, once the board has made a decision on anything.

However, this does not mean that any Board Member must be complicit in decisions that would fall within the scope of the types of wrongdoing covered by the NCL Whistleblowing Policy and described above in Section 2. As College Board Members are also Charity Trustees, they must also always act in the interests of the charity.³ While the whistleblowing policy is primarily for staff, there is also a clear process for Board Members to raise concerns regarding wrongdoing, fraud or corruption.

Should a Board Member have concerns at the operation of the Board or its approach to decision making, it is open for Board Members to raise this at the time that the circumstances give rise for concern, for example, if they consider that a particular decision is inappropriate, or that the board is acting inappropriately or outwith its authority and statutory powers. More generally, Board Members can also raise concerns with the Board Chair, or via the Senior Independent Member.

In the same way as for concerns raised internally using the NCL Whistleblowing Policy, it would be expected that concerns raised by a Board Member at a meeting of the Board of Management or any of its committees, to the Board Chair directly or via the Senior Independent Member would be taken seriously, properly considered and discussed in a spirit of openness, with a focus on reaching a resolution of those concerns. However, notwithstanding the collective responsibility of the Board for decisions taken, it is also open to Board Members to raise concerns externally where it is appropriate to do so and where these cannot be resolved satisfactorily with board colleagues.

In such circumstances, the CDN Guide for Board Members in the College Sector states that should a Board Member have serious concerns about the propriety, regularity⁴ or governance of the college which cannot be resolved within the Board and its officers, they should inform the Scottish Funding Council (SFC). SFC would then be responsible for determining what action was necessary in relation to considering and investigating the concerns raised, which could ultimately lead to intervention by the Scottish Government and the removal of one or more Board Members under the mismanagement provisions set out under Section 24(2) of the [Further and Higher Education \(Scotland\) Act 1992](#) (as amended).

³ The full general duties of a charity trustee are set out in Section 66 of the Charities and Trustee Investment (Scotland) Act 2005. More information and further guidance can be found at the Office of the Scottish Charity Regulator (OSCR) here <https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/>

⁴ Regularity in this sense means properly and honestly conducted, i.e. the absence of irregularity in the conduct of the Board's affairs.