

Whistle-blowers policy

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The University has established a 24-hour 'Ethics Hotline' and has for this purpose engaged the services of Mazars Forensic Services. The following communication channels are available should you wish to make use of this service (with the option of remaining anonymous should you so prefer):

- A toll-free telephone number: 0800 227 007
- A fax number: 086 510 4291
- A secure email address: confidential@wisecall.eu.com
- A free-post address: JHZ 1815, Helderkruin, 1733

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1. GLOSSARY

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column or below them, as the case may be (and cognate expressions shall bear corresponding meanings):

- 1.1 Act : The Protected Disclosures Act 26 of 2000;
- 1.2 Policy : The Whistle-blowers Policy of the University of Pretoria;
- 1.3 SAPS : The South African Police Service; and
- 1.4 UP : The University of Pretoria.
- 1.5 Fraud and corruption includes, but is not limited to, the following legal definitions –
 - 1.5.1 Fraud, i.e. the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.
 - 1.5.2 Theft, i.e. the unlawful and intentional appropriation of movable corporeal property, including information in electronic format, which belongs to and is in the possession of another; which belongs to another but is the perpetrator's own possession; or which belongs to the perpetrator but is in the possession of another person who has a right to possess it and where such right legally prevails against the perpetrator's own right of possession.
 - 1.5.3 Offences in respect of *corrupt activities* as defined in the Prevention and Combating of Corrupt Activities Act 12 of 2004, including but not limited to:
 - 1.5.3.1 The general offence of corruption (section 3), which can be summarised as directly or indirectly accepting or agreeing or offering to accept any gratification from any other person, whether for the benefit of himself/herself or for the benefit of another person; or giving or agreeing or offering to give to any other person any gratification, whether for the benefit of that

other person or for the benefit of another person, in order to act, personally or by influencing another person to act, in a manner –

- (a) that amounts to the illegal, dishonest, unauthorised, incomplete, or biased; or misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (b) that amounts to the abuse of a position of authority; breach of trust; or violation of a legal duty or set of rules;
- (c) designed to achieve an unjustified result; or
- (d) that amounts to any other unauthorised or improper inducement to do or not to do anything.

1.5.3.2 Specific corrupt activities (sections 4-16), relating to –

- (a) public officers;
- (b) foreign public officials;
- (c) agents;
- (d) members of the legislative authority;
- (e) judicial officers;
- (f) members of the prosecuting authority;
- (g) receiving or offering of unauthorised gratification from or to a party to an employment relationship;
- (h) witnesses and evidential material during certain proceedings;
- (i) contracts;
- (j) procuring and withdrawal of tenders;
- (k) auctions;
- (l) sporting events; or
- (m) gambling games or games of chance.

1.5.3.3 Miscellaneous offences relating to a possible conflict of interest and other unacceptable conduct (sections 17-19), namely:

- (a) acquisition or holding of a private interest by any public officer in any contract, agreement, transaction or

investment emanating from or connected with the public body in which he/she is employed;

- (b) unacceptable conduct relating to witnesses; or
- (c) intentional interference with, hindering or obstruction of the investigation of an offence.

1.5.3.4 Other offences relating to corrupt activities (sections 20-21), namely:

- (a) being an accessory to or after an offence;
- (b) attempt, conspiracy and inducing another person to commit an offence; or
- (c) failure to report corrupt transactions (section 34).

1.5.4 Contraventions of the Higher Education Act 101 of 1997 (as amended).

1.5.5 Cyber-crime as defined in the Electronic Communications and Transactions Act 25 of 2002, including but not limited to:

1.5.5.1 Unauthorised access to, interception of or interference with data in terms of section 86(1) can be summarised as the following:

- (a) the intentional accessing or intercepting of any data without authority or permission to do so;
- (b) the intentional and unauthorised interference with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective;
- (c) to unlawfully produce, sell, offer to sell, procure for use, design, adapt for use, distribute or possess any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or to perform any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilise such item to contravene this section of the said act;
- (d) to utilise any device or computer program mentioned above in order to unlawfully overcome security measures designed to protect such data or access thereto; or

- (e) to commit any act described above with the intent to interfere with access to an information system so as to constitute a denial, including partial denial, of service to legitimate users.

1.5.5.2 Computer-related extortion, fraud and forgery in terms of section 87(1) can be summarised as meaning to perform an act or to threaten to perform an act as described in section 86 for the purpose of obtaining any unlawful proprietary advantage by undertaking to cease or desist from such action, or by undertaking to restore any damage caused as a result of those actions. This further includes any of the acts described in section 86 performed for the purpose of obtaining any unlawful advantage by causing fake data to be produced with the intent that it be considered or acted upon as if it were authentic.

1.5.5.3 Attempt and aiding and abetting can be summarised as an attempt to commit any of the offences referred to in sections 86 and 87. This further includes any act performed by a person in order to aid and abet someone to commit any of the offences referred to in sections 86 and 87.

1.5.6 Irregularities related to –

1.5.6.1 Systems issues: i.e. where an existing process/system is prone to abuse by employees, students, the public or other stakeholders, e.g. –

- (a) forging UP degrees;
- (b) abuse of leave;
- (c) abuse of the system of “flexi-time”;
- (d) abuse of the system of “limited private practice” and “external work”;
- (e) non-compliance with delegated authority limits;
- (f) manipulation of pass rates by fraudulently altering student marks;
- (g) procurement fraud;

- (h) abuse of the system of general claims or claims for services rendered;
- (i) deliberate material non-compliance with policies and procedures;
- (j) falsification of qualifications;
- (k) abuse or mismanagement of development funds from donors/external funders;
- (l) mismanagement of long-term investments;
- (m) mismanagement of monies in suspense or dormant accounts;
- (n) fraudulent raising of funds by students/employees;
- (o) disclosing confidential information, e.g. examination papers, research etc. to external parties;
- (p) theft of blank cheques;
- (q) any other fraudulent systems issues not specifically mentioned above; or
- (r) irregular use of consultants.

1.5.6.2 Financial issues: i.e. where individuals or entities have fraudulently obtained money from UP, e.g. through –

- (a) theft of money;
- (b) fraudulent travel and general claims;
- (c) submission of claims for services rendered for activities which are part of the staff member's existing employment relationship with UP;
- (d) contractors invoicing for work not done;
- (e) contractors "fronting" (acting as a front for another person or entity);
- (f) fraudulent reallocation of funds;
- (g) opening and/or operating a bank account in the name of UP without the prior written authorisation of Council;
- (h) self-approval of expenditure, whether through the general claims or procurement process, without appropriate line manager authority;
- (i) simulating employment ("ghost employees"); or

- (j) any other fraudulent financial issues not specifically mentioned above.

1.5.6.3 Equipment and resource issues: i.e. where equipment of UP is utilised for personal benefit or stolen, e.g. by –

- (a) theft of assets, e.g. art, laboratory equipment, computer equipment etc;
- (b) deliberate damaging, substandard workmanship, unnecessary repairs/orders or destruction of property by facilities and services contractors in order to secure additional work;
- (c) use of UP resources and equipment for private gain; or
- (d) any other fraudulent equipment and resource issues not specifically mentioned above.

1.5.6.4 Other issues: i.e. activities undertaken by UP employees and students which contravene existing policies and/or established ethical standards, e.g. –

- (a) copyright infringements;
- (b) committing plagiarism;
- (c) collusion between students and lecturers;
- (d) writing of exams by one student on behalf of another;
- (e) creating or failing to disclose a conflict of interest;
- (f) non-disclosure of private work;
- (g) installation of pirated or illegal software or other electronic content (e.g. DVDs, music, etc.);
- (h) misconduct that constitutes research fraud such as fabrication or inappropriate manipulation of research data, multiple publication of the same content with different titles, ghost-writing, misappropriation of research data or any other research misconduct; or
- (i) any other fraudulent issues not specifically mentioned above.

2. INTRODUCTION

2.1 UP recognises the fact that –

2.1.1 unethical conduct, fraud and corruption within UP is detrimental to good, effective, accountable and transparent governance and that such actions could endanger the economic stability of UP and potentially cause social and/or reputational damage;

2.1.2 there is a need for procedures in terms of which employees, students and external parties may, without fear of reprisal, disclose information relating to suspected or alleged unethical conduct, fraud and corruption affecting UP;

2.1.3 every employer and employee has a responsibility to disclose unethical conduct, fraud and corruption in the workplace; and

2.1.4 the employer (UP) and its representatives have a responsibility to take all the necessary steps to ensure that employees, students and external parties who disclose such information are protected from any reprisal that may result from the disclosure.

3. OBJECTIVES OF THE POLICY

3.1 The Protected Disclosures Act 26 of 2000 came into effect on 16 February 2001. In order to comply with the Act, UP shall –

3.1.1 strive to create a culture facilitating the disclosure of information by employees and other parties relating to unethical conduct, fraud and corruption in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information as well as protection against reprisal which may result from the disclosure; and

3.1.2 promote the eradication of unethical conduct, fraud and corruption within UP.

3.2 The Policy is intended to encourage and enable employees, students and external parties to raise concerns within UP rather than merely ignoring a problem or blowing the whistle through inappropriate channels.

3.3 The Policy aims to –

- 3.3.1 provide avenues for employees, students and external parties to raise concerns and receive feedback on any action taken;
- 3.3.2 inform employees, students and external parties on how to proceed with the matter further if they are dissatisfied with the response; and
- 3.3.3 reassure employees, students and external parties that they will be protected from reprisal or victimisation for whistle-blowing in good faith.

4. SCOPE OF THE POLICY

4.1 UP has formal grievance procedures which enable UP employees to raise grievances relating to their employment. This Policy is intended to cover concerns that fall outside the scope of the above-mentioned grievance procedures. In the Act (see section 1 with regard to the definition of “*disclosure*”), such concerns include that –

- 4.1.1 a criminal offence has been committed, is being committed or is likely to be committed;
- 4.1.2 a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- 4.1.3 a miscarriage of justice has occurred, is occurring or is likely to occur;
- 4.1.4 the health or safety of an individual in the workplace has been, is being or is likely to be endangered;
- 4.1.5 the environment has been, is being or is likely to be damaged;

4.1.6 unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 has been practised, is being practised or is likely to be practised; or

4.1.7 any matter referred to in paragraphs 4.1.1 to 4.1.6 immediately preceding has been, is being or is likely to be deliberately concealed.

5. POLICY STATEMENT

5.1 Harassment or victimisation

UP acknowledges the fact that the decision to report a concern may be difficult to make, not least because of fear of reprisal from those responsible for the alleged irregularity. UP shall not tolerate harassment or victimisation and shall take action to protect employees, students and external parties when they raise a concern in good faith. However, this does not mean that if an employee or student is already the subject of disciplinary or other action, such action will be halted as a result of such employee's or student's whistle-blowing.

5.2 Confidentiality

UP shall endeavour at all times to protect an individual's identity when he/she raises a concern but does not wish his/her identity to be disclosed. It should be appreciated, however, that the investigation process may inadvertently locate the source of the information and that a statement by the employee, student or external party concerned may be required as part of the evidence. However, no person may be compelled to give evidence in terms of this policy.

5.3 Anonymous allegations

UP encourages an employee, student or external party to put his/her name to allegations made by him/her. However, the whistle-blower is at liberty to alternatively provide an anonymous email address on which he/she may be contacted should further information be required during the course of the investigation. A concern expressed anonymously and without contact details is difficult to investigate. Nevertheless, it will be followed up at the discretion of UP. This discretion will be exercised by taking into account –

- 5.3.1 the seriousness of the issue raised;
- 5.3.2 the credibility of the allegation; and
- 5.3.3 the likelihood of confirming the allegation.

5.4 Untrue/false allegations

Managers should discourage employees or other parties from making allegations which are false and uttered with malicious intent. In instances where such allegations are proven to be untrue and malicious or vexatious, the employee or student who made them shall be subjected to firm disciplinary action, while appropriate action shall be taken in the case of external parties.

6. REPORTING OF CONCERNS

- 6.1 In respect of minor issues (e.g. personal use of UP equipment etc.), an employee or other individual should preferably raise the concerns with the immediate manager of the employee who is the subject of the concern. However, the employee is entitled to make use of the whistle-blowing process.
- 6.2 The first step in the whistle-blowing process will be for the employee to approach his/her immediate manager, or to inform the Registrar about the concern. Should a member of Senior Management be the subject of the allegation, the Vice-Chancellor and Principal and/or the Chairperson of the Audit, IT and Risk Management Committee should be informed. Should the allegation be found to be of substance, the individual(s) with whom the concern was raised, shall act in accordance with the relevant policies and procedures of the University.
- 6.3 The concerns of other individuals, which include students and external parties, can be reported to the Registrar or the Vice-Chancellor and Principal, who shall deal with the matter in accordance with the relevant procedures referred to in 6.2 above.
- 6.4 Concerns should preferably be raised in writing, but can also be reported anonymously by following one of the various communication channels available to employees, students and external parties indicated on the cover page of this policy document. The background and history of the concern, including names, dates and

places where possible, should be set out, as well as the reason why the whistle-blower is particularly concerned about the situation. The earlier the concern is reported, the easier it is to take action.

6.5 A whistle-blower is not expected to prove the truth of his/her allegation(s); however, he/she shall demonstrate to the person contacted that there are sufficient grounds for concern.

6.6 Advice and guidelines on how matters of concern may be pursued, can be obtained from the Head: Unit for Internal Audit.

7. HOW A CONCERN SHALL BE DEALT WITH

7.1 The action taken by UP will depend on the nature of the concern. Amongst others, the matters raised may be –

7.1.1 investigated internally (Management, Security Services, Legal Division or Unit for Internal Audit) ; and/or

7.1.2 referred to the SAPS or another relevant law enforcement agency.

7.1.3

7.2 In order to protect the individuals concerned as well as UP, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other procedures, will normally be referred for consideration in accordance with those procedures.

7.3 Some concerns may be resolved by means of agreed action thereby negating the need for investigation.

7.4 UP, upon receiving a complaint from a whistle-blower, will:

7.4.1 enter the complaint in the Whistle-blowing Register;

7.4.2 initiate a preliminary enquiry/review on the allegations; and

7.4.3 should the results of the preliminary review indicate the need for further investigation, refer the matter to the appropriate Department, internal or external auditors, or any other relevant party.

- 7.5 The amount of contact between the body investigating the issues and the whistle-blower will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the whistle-blower (where possible).
- 7.6 UP cannot undertake to automatically provide feedback to the whistle-blower on the outcome of the investigation of the complaint due to factors such as anonymity of the complainant, legal restrictions on distribution of privileged information and related considerations. Requests for feedback are therefore considered on a case by case basis in consultation, where necessary, with the Legal Advisors and/or other relevant parties.
- 7.7 UP accepts that every employee, student and/or external party concerned needs to be assured that the matter has been properly addressed. However, the progress made with investigations shall be handled in a confidential manner and shall not be disclosed to or discussed with any persons who have no legitimate claim to such information. This is important in order to avoid damaging the reputation of a suspected person who may subsequently be found to be innocent of the alleged wrongful conduct.

8. CREATING AWARENESS

- 8.1 In order to be sustainable, the Policy must be supported by a structured education, communication and awareness programme.
- 8.2 Managers shall be responsible for ensuring that all employees under their control are made aware of and receive the relevant policy documentation.

9. ADMINISTRATION

The custodian of the Policy is the Registrar, who shall be responsible for the administration, revision, interpretation, as well as implementation and monitoring of compliance with the Policy.

The Registrar, in cooperation with the Unit for Internal Audit, shall maintain a record of all concerns raised as well as of the outcome of all actions taken. This shall be

done in such a manner as not to compromise confidentiality and to ensure compliance with the applicable legislative and policy requirements.

The Policy shall be reviewed every three years and appropriate changes effected, should these be required.

10. DOCUMENT METADATA

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