

Audit Committee Meeting

Date of Meeting	Friday 7 October 2016
Paper Title	Review of GCRB Procedure on Corporate Governance and Public Interest Disclosure
Agenda Item	15
Paper Number	AC1-K
Responsible Officer	Robin Ashton, GCRB Executive Director
Status	Disclosable
Action	For Discussion

1. Report Purpose

- 1.1.** This paper provides for member review the approved GCRB procedure on corporate governance and public interest disclosure (commonly referred to as 'whistleblowing').

2. Recommendations

- 2.1.** The Committee is invited to:

- **review** the approved GCRB procedure on corporate governance and public interest disclosure;
- **identify** any changes it wishes to make to the procedure;
- **request** the Executive Director to update the procedure, make it publicly available and notify members of the GCRB Performance and Resources committee of any changes; and
- **consider** and **agree** the next review date for the procedure.

3. Background

- 3.1.** GCRB is required to have adequate procedures in to implement the recommendations of the Committee of Standards in Public Life.
- 3.2.** The Committee's terms of reference give it an advisory role in relation to "whistle-blowing processes".
- 3.3.** The attached procedure on corporate governance and public interest disclosure was approved by the Audit Committee at its meeting on August 31st, 2015.
- 3.4.** This procedure forms part (Section 15) of the GCRB Financial Procedures Manual.

3.5. At its meeting on 13 June, 2016, the Committee asked to review the attached procedure at its next meeting.

4. Procedure on corporate governance and public interest disclosure

4.1. The attached procedure was developed with reference to related documents from similar organisations.

4.2. Pages 1 to 6 describe the aspects of GCRB's governance framework with are relevant to the recommendations of the Committee of Standards in Public Life. Pages 6 to the end set out how GCRB will handle public interest disclosures.

4.3. Members should note that in relation to 'standards of conduct', the 'Code of Practice for Staff' referred to in paragraph 19 has not yet been developed by GCRB.

4.4. The attached procedure was approved by the Audit Committee at its meeting on August 31st, 2015, subject to minor amendment. The proposed review date is specified as January 2017. Taking into account that members have requested to review this procedure in September 2016, it is suggested that the next proposed review date is amended to January 2017.

5. Risk Analysis

5.1. The attached procedure is designed to raise awareness of the importance of good governance and thereby reduce the risk poor governance occurring.

6. Legal Implications

6.1. The procedure provides guidance on how to respond to public interest disclosures.

7. Financial Implications

7.1. There are no specific financial implications arising from the draft paper.

8. Regional Outcome Agreement Implications

8.1. Through the conditions of grant associated with the Regional Outcome Agreement, GCRB is required to conduct its affairs in accordance with the expected standards of good governance, which include establishing appropriate arrangements in relation to public interest disclosure.

SECTION 15

CORPORATE GOVERNANCE & PUBLIC INTEREST DISCLOSURE

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Key Documents Referred to in Corporate Governance Section of Manual	Location
<ul style="list-style-type: none"> The Further and Higher Education (Scotland) Act 2005 	http://www.legislation.gov.uk/asp/2005/6/contents
<ul style="list-style-type: none"> Financial Memorandum between SFC and GCRB 	http://www.sfc.ac.uk/guidance/GovernanceGuidance/FinancialMemorandum/financialmemorandum.aspx
<ul style="list-style-type: none"> GCRB Code of Conduct for Board Members 	http://www.gcrb.ac.uk/reports-and-publications/governance-documents
<ul style="list-style-type: none"> GCRB Board regulations 	http://www.gcrb.ac.uk/reports-and-publications/governance-documents
<ul style="list-style-type: none"> GCRB Scheme of Delegated Authority 	http://www.gcrb.ac.uk/reports-and-publications/governance-documents
<ul style="list-style-type: none"> Nomination & Remuneration Committee's terms of reference 	http://www.gcrb.ac.uk/nominations-committee/meeting-papers
<ul style="list-style-type: none"> Audit Committee's terms of reference 	http://www.gcrb.ac.uk/audit-committee/meeting-papers
<ul style="list-style-type: none"> Register of Interests of GCRB Board Members (included within the page for each individual Board member) 	http://www.gcrb.ac.uk/boardmembers/

SECTION 15

CORPORATE GOVERNANCE & PUBLIC INTEREST DISCLOSURE

CORPORATE GOVERNANCE – GENERAL BACKGROUND

1. In line with HM Treasury's general principle that best practice regarding accounting and reporting requirements in the private sector should be reflected in the public sector, HM Treasury has issued guidance on how the recommendations of the Turnbull Committee should be implemented. The Turnbull Report '*Internal Control: Guidance for Directors on the Combined Code*' was published in September 1999 by the Institute of Chartered Accountants of England and Wales. The Report recommends how specific requirements within the Combined Code should be implemented ('*The Combined Code – principles of good governance and code of best practice*' was published June 1998 by the London Stock Exchange).
2. GCRB is also required to implement the recommendations of the Committee of Standards in Public Life.
3. The three key principles of sound corporate governance are:
 - Openness
 - Integrity and
 - Accountability.

GCRB - BACKGROUND

4. This section of the manual describes the broad corporate governance framework within which GCRB operates. In the body of the text reference is made to a number of key documents, which should be consulted for more detailed information, and which carry equal weight with this principal document. A list of these documents is provided at the beginning of the section along with their electronic locations.

Legislation

5. The establishment and the key functions and duties of the Glasgow Colleges' Regional Board (GCRB) are defined by the Further and Higher Education (Scotland) Act 2005 (as amended).

Financial Memorandum

6. A Financial Memorandum exists between GCRB and the SFC. The Memorandum sets out the terms and conditions subject to which the SFC will make funds available to GCRB for the discharge of GCRB's functions as defined in the relevant legislation. The Memorandum records the understanding of the SFC and GCRB as to the manner in which funds will be granted to GCRB and expended and accounted for by GCRB.

Regional Outcome Agreement

7. The Regional Outcome Agreement between SFC and the Glasgow region defines how GCRB's performance will be measured.

Governance and performance framework

8. Taken together, the legislation, the Financial Memorandum and the Regional Outcome Agreement set out the broad policy, managerial and financial framework within which GCRB operates in particular:
 - The rules and guidelines relevant to the exercise of GCRB's powers, functions and responsibilities
 - The conditions under which public funds are paid to GCRB and
 - How GCRB will account for its performance.

EXECUTIVE DIRECTOR

9. Under the terms of the Financial Memorandum between SFC and GCRB:
 - as well as being accountable directly to the Board of GCRB for the proper conduct of GCRB's affairs, the Executive Director is also accountable directly to SFC's Accountable Officer for GCRB's proper use of funds deriving from the Scottish Ministers and its compliance with the requirements of the Financial Memorandum; and
 - the Executive Director must inform SFC's Accountable Officer without delay of any circumstance that is having, or is likely to have, a significant adverse

effect on the ability of GCRB to deliver its education programmes, research and other related activity, including delivery of its Outcome Agreement with SFC. He or she must also notify SFC's Accountable Officer of any serious weakness, such as a significant and immediate threat to the institution's financial position, significant fraud or major accounting breakdown or any material non-compliance with any requirement of the Financial Memorandum.

GOVERNING BODY: THE BOARD OF GCRB

10. GCRB's functions and responsibilities are set out in the Further & Higher Education (Scotland) Act 2005 (as amended).
11. GCRB is required, under the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000, to submit to the Commissioner for Ethical Standards in Public Life in Scotland (for approval by Scottish Ministers) a draft Code of Conduct for the Members of GCRB. The GCRB's Code of Conduct was approved by Ministers and a copy is given to each members of the Board on appointment.
12. Board Regulations have been established for GCRB and its committees to enable effective conduct of meetings.
13. Non-Executive Members of GCRB are independent of the Government and are not involved in the day to day operations of GCRB. They are responsible for the strategic oversight of GCRB's operations.

SCHEME OF DELEGATION

14. GCRB has established a Scheme of Delegation to the Executive Director to allow GCRB's business to proceed efficiently and effectively. The scheme of delegation is based on the following principles:
 - Delegation should reduce the amount of detailed decision-making required of the Board of GCRB itself, enabling GCRB to focus on strategic policy issues
 - Delegation will only take place within a policy and budgetary framework agreed by GCRB
 - Delegation of financial matters will be subject to appropriate financial limits
 - The Executive Director may seek and obtain assistance from other officers of GCRB in discharging delegated functions whilst retaining the responsibility to GCRB for action thus delegated; and
 - GCRB should receive regular reports on the use of delegated authority.

15. The delegated authority provisions are contained in the Scheme of Delegation.

16. The Board of GCRB will review, amend and approve the delegated authority documents on a regular basis.

PROCEEDINGS OF THE BOARD OF GCRB

17. To perform their duties Members must review and make comment on reports issued to the Board by GCRB management. The reports must:

- Comply to the predetermined format and content requirements of GCRB
- Be provided to the Board on a timely basis and
- Contain all the pertinent information, be succinct, and include recommendations made by management.

18. For Members to perform their duties effectively they should receive an agenda and any supporting papers one week prior to each meeting. Late submission of papers should be avoided wherever possible. All discussions and reasons underpinning agreed decisions must be minuted in a clear, concise and focused manner, and be reviewed and approved at the next Board meeting.

STANDARDS OF CONDUCT

19. In accordance with the recommendations of the Committee on Standards in Public Life, all staff and members of GCRB must abide by a code of conduct that governs their actions on a day to day basis. GCRB has established the following codes for this purpose:

- Code of Conduct for Board Members
- Code of Practice for Staff

20. Each code is based on the eight principles of public life:

- Selflessness
- Integrity
- Objectivity
- Accountability & Stewardship
- Openness
- Honesty
- Leadership
- Respect

21. GCRB will review these standards of conduct on a regular basis and is responsible for ensuring that all staff are aware of their content and application.

22. GCRB is responsible for ensuring that all staff and non-executives are appropriately trained on these standards of conduct, and that these standards are incorporated in the employment contracts and appraisal systems.
23. Staff and Members are responsible for ensuring that they adhere to the relevant Code of Conduct.

REMUNERATION COMMITTEE

24. GCRB has established a Nominations & Remuneration Committee whose remit includes oversight of remuneration levels, salary awards, pensions, terms and conditions of employment and any other related matters for the executive and other senior posts within the organisation.
25. The remuneration of the Chair and members is decided by the Government and we have no locus in it
26. GCRB will review the Nominations & Remuneration Committee's remit and terms of reference on a regular basis.
27. For members to perform their duties effectively they should receive an agenda and any supporting papers one week prior to each meeting. Late submission of papers should be avoided wherever possible. All discussions and reasons underpinning agreed decisions must be minuted in a clear, concise and focused manner and reviewed and approved at the next committee meeting.

AUDIT COMMITTEE

28. The Financial Memorandum between SFC and GCRB requires GCRB to establish an Audit Committee to ensure, as part of its remit, that proper internal audit arrangements have been put in place within GCRB.
29. GCRB has an Audit Committee. A copy of the committee's remit and terms of reference is available on GCRB's website (see the table at the beginning of this document).
30. The Audit Committee is an advisory body with no executive powers. It is, however, authorised by GCRB to investigate any activity within its terms of reference, and to seek any information it requires from staff, who are required to co-operate with the committee in the conduct of its enquiries.
31. For Members to perform their duties effectively they should receive an agenda and any supporting papers one week prior to each meeting. Late submission of papers should be avoided wherever possible. All discussions and reasons

underpinning agreed decisions must be minuted in a clear, concise and focused manner and reviewed and approved at the next committee meeting.

OPENNESS POLICY

32. GCRB has made a commitment that it should be open and transparent and operate to the highest standards of public sector administration and management.
33. The Freedom of Information (Scotland) Act 2002 requires every Scottish public authority to adopt and maintain a Publication Scheme, and publish information in accordance with that scheme. A copy of GCRB's Publication Scheme can be found on GCRB's website <http://www.gcrb.ac.uk/reports-and-publications/governance-documents>.

REGISTER OF INTERESTS

34. A Register of Interests is maintained for Board members. The register documents the declared interests of all GCRB Board and Committee Members.
35. The Secretariat within GCRB is responsible for the maintenance of this register and for ensuring that:
- The public are made aware of the existence of the register and how they can gain access to it
 - The register is updated yearly and reflects changes to Board membership and
 - The Code of Practice for Board Members outlines the procedures for dealing with conflict of interest.

GUIDANCE ON 'WHISTLE-BLOWING' (PUBLIC INTEREST DISCLOSURE ACT)

Background

36. GCRB 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 sponsoring department and the standards in public life set out in the reports of the Nolan Committee.
37. One report issued by the Nolan Committee covered the area of "*whistle-blowing*", in which the following best practices were identified and recommended. That the body:
- Possesses a clear statement that malpractice is taken seriously in the organisation, and an indication of the sorts of matters regarded as malpractice
 - Respects the confidentiality of staff raising concerns, and provides the opportunity of raising concerns outwith established line management

- Ensures that there are known penalties for making false and malicious allegations and
- Provides an indication of the correct procedures in which concerns may be raised outwith the organisation if necessary.

38. The Nolan Committee reports led to the implementation of the Public Interest Disclosure Act 1998, which became law on 2 July 1998, effective 1 January 1999. The terms of the Act provide protection in law to individuals who make certain disclosures of information in the public interest (an action commonly referred to as “*whistle-blowing*”). In order to comply with the terms of the Act GCRB is required to have in place formal procedures for dealing with instances of whistle-blowing. The 1998 Act has been amended by the Enterprise and Regulatory Reform Act 2013. The right to make a public interest disclosure is extended to anyone within the workplace – this includes employees of GCRB, secondees, agency workers and contractors.

39. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employers’ affairs. Where, however, an individual discovers information which they believe shows malpractice/wrongdoing within the organisation then this information should be disclosed without fear of reprisal, and may be made independently of line management.

40. The Act is designed to offer protection to a person who discloses such concerns, if:

- The disclosure is not made for the purposes of personal gain
- Given the circumstances of the case, it is reasonable for the disclosure to be made and
- The person reasonably believes that they will be subject to a detriment of his employer if they make a disclosure to the employer, or if evidence relating to the disclosure will be concealed or destroyed.

41. ‘*Whistle-blowing*’ can be defined as ‘*the act of bringing to the attention of an appropriate body a concern over a threat to the public interest caused by malpractice or misconduct*’.

42. Qualifying disclosures – the Act provides protection for an individual who raises a legitimate concern about specified matters. A qualifying disclosure is one made in the public interest by a worker who has a reasonable belief one of the following is being, has been or is likely to be committed:

- A criminal offence
- A miscarriage of justice
- An act creating risk to health and safety

- An act causing damage to the environment
- A breach of any other legal obligation or
- Concealment of any of the above.

43. Investigation – the individual making the disclosure has no responsibility for investigating the matter – it is GCRB’s responsibility to ensure that an investigation has taken place.

44. Note: From June 2013, Whistleblowing is about a disclosure which is in the public interest. This means that employees will generally be precluded from raising issues about their terms and conditions of employment via the whistleblowing procedure – such claims should instead be raised via the relevant grievance procedure.

GCRB’S APPLICATION OF THE ACT

45. GCRB fully acknowledges and implements the application of the Public Interest Disclosure Act in the procedures detailed in the following paragraphs. GCRB considers relevant acts as matters of a serious nature and would seek to resolve such matters in an efficient and effective manner. The *Code of Conduct for Staff* summarises such acts as listed below:

If staff of GCRB believe that they are being required to act in a way which:

- Is illegal, improper or unethical
- Is in breach of a professional code
- May involve possible maladministration, fraud or misuse of public funds
- Threatens to endanger the health and safety of any individual or damage the environment and/or
- Is otherwise inconsistent with the *Code of Conduct for Staff*
- They believe that there is evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved
- There is evidence of criminal or unlawful activity by others
- They are required to act in a way which, for them, raises a fundamental issue of concern.

46. GCRB will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

47. This policy encourages individuals to put their name to any disclosure they make. Concerns expressed anonymously are less powerful, but they will be considered at the discretion of the Executive Director, the Board Secretary and the Chair of GCRB, who are required to take into account:

- The seriousness of the issues raised
- The credibility of the concern and
- The likelihood of confirming the allegation from attributable sources.

48. If any of the above individuals are the subject of the anonymous disclosure they would not be involved in considering it.

49. If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. If, however, an individual makes malicious or vexatious allegations, and particularly if they persist with making them, disciplinary action may be taken against the individual concerned. The protection afforded to an individual also extends to cover them suffering any detriment, bullying or harassment from other employees of GCRB.

PROCEDURES FOR MAKING A DISCLOSURE

50. There are five steps to the disclosure procedures. It is important that these procedures are followed to ensure that the person/s making the disclosure are afforded the full protection of the Act.

- Initial step
- Process
- Investigation
- Feedback
- Reporting outcomes.

51. Initial Step: The individual should make the disclosure to the Board Secretary, who is responsible for the investigation of staff concerns about illegal, improper or unethical behaviour. Alternatively the matter may be raised through the management line. The Board Secretary is, in turn, required to inform the Executive Director and Chair of GCRB, unless:

- Requested not to do so by the discloser or
- If the Executive Director is the subject of the disclosure, in which case the Board Secretary will inform the Chair of GCRB.

52. If the disclosure pertains to the Board Secretary then the disclosure should be made directly to the Executive Director, who will inform the Chair of GCRB. If the

Chair is the subject of the disclosure, the Board Secretary should be informed and the matter will be raised with the Scottish Funding Council.

53. The Chair of the Audit Committee should also be informed of all cases of alleged financial impropriety and should be directly involved in any related investigation.
54. Process: In all instances, there should be at least two people involved in the initial decision whether to investigate further an allegation. Normally the Executive Director, Board Secretary and the Chair of GCRB will consider the information made available to them and decide on the form of the investigation to be undertaken, this may be:
- To investigate the matter internally
 - To refer the matter to the Scottish Funding Council
 - To refer the matter to GCRB's Internal Auditor or
 - To call for an independent investigation.
55. If the Executive Director, Board Secretary and Chair decide that the investigation should be conducted by more than one of these means, they should satisfy themselves that such a course of action is warranted. The decision and underpinning reason is required to be appropriately documented.
56. Where the matter is to be the subject of an internal investigation, the Board Secretary will consider how to conclude whether there is a prima facie case to answer. This consideration will include determining:
- Who should undertake the investigation
 - The procedures that should be followed and
 - The scope of the concluding report.
57. All such decisions and determinations are to be appropriately documented by the Board Secretary. If either the Executive Director or the Board Secretary are the subject of the disclosure then they will not be involved in determining the process.
58. Investigation: An independent officer, either internal or external, will be appointed by the Board Secretary to perform the investigation. It is the responsibility of this independent officer to investigate the matter and report the findings back to the Board Secretary. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigation is to be conducted as sensitively and speedily as possible.
59. As a result of any investigation, other procedures may also have to be followed, e.g. disciplinary, grievance/complaints or harassment, or it might form the basis of a special investigation.

60. In cases alleging misuse of public funds, Audit Scotland may wish to undertake its own investigation.

61. Feedback: The designated officer will inform the individual making the disclosure of what action, if any, is to be taken. If no further action is to be taken then the individual making the disclosure should be informed of the reason for this and allowed the opportunity to remake the disclosure to another appropriate person. It is the responsibility of this other appropriate person to review all the information presented; the procedures originally followed; and the reasons for not taking any further action. The outcome of this review will be to either confirm that no further action is required or that further investigation is required. Should further action be required the procedures outlined in this manual should be followed. However, prior to a further investigation or further action being made, the person/s who have been investigated will be told of the disclosure and the evidence supporting it and will then be given the opportunity to comment on the disclosure prior to further investigation or action being undertaken.

62. Where a member of staff has reported a matter and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to a nominated official in the Scottish Funding Council. In such cases the report should be addressed to the Secretary to the Council at the Scottish Funding Council.

63. Reporting of Outcomes: A report of each disclosure and any subsequent actions taken will be made by the Board Secretary who will retain them for a minimum of three years. In all cases, a report of the outcomes of any investigation will be made to the Audit Committee; reports pertaining to those disclosures made which fall within the Committee's remit will be made in detail, and other reports will be summarised. The monitoring of the effectiveness of this procedure forms part of the remit of the Audit Committee.

FURTHER ACTIONS

64. In accordance with the Act we would hope that an individual would make their disclosure via GCRB's procedure; however, disclosure to certain other organisations may be protected by law. These organisations are laid out in the regulations and depending on the nature of the concern e.g. the Health and Safety Executive if it concerns safety, the Scottish Environmental Protection Agency if it is about damage to the environment, Audit Scotland if it concerns public administration, misuse of public funds, fraud or corruption. Further details of relevant organisations can be obtained from the Gov.UK website.

65. Further guidance on Public Interest Disclosure can be obtained from the relevant organisations including:

- Public Concern at Work
- Audit Scotland
- The Advisory Conciliation and Arbitration Service (ACAS)
- Your trade union

DOCUMENT CONTROL AND REVIEW

Approval Status	Draft		
Approved by	Executive Director		
Signature			
Date Approved			
EQAI Status	Initial Screening Conducted?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
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Board Committee	Audit Committee		