



<b>POLICY: WHISTLE-BLOWING AND ERADICATION OF IMPROPER ACTIVITIES</b>	
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<b>RELATED DOCUMENTS</b>	
<b>UJ Documents</b>	<b>Other</b>
<ul style="list-style-type: none"> <li>• UJ Vision, Mission and Values;</li> <li>• Standard Institutional Statute;</li> <li>• Financial Policy and Procedure;</li> <li>• Conditions of Service for Employees of UJ;</li> <li>• Academic Regulations;</li> <li>• UJ Student Regulations;</li> <li>• Regulations for Student Discipline;</li> <li>• Policy on Plagiarism;</li> <li>• Procurement Policies and procedures as part of Supply Chain Management;</li> <li>• Sexual Harassment Policy;</li> <li>• Policy: Electronic Communications;</li> <li>• Policy: Electronic Evidence;</li> </ul>	<ul style="list-style-type: none"> <li>• Constitution of South Africa Act 108 of 1996;</li> <li>• Higher Education Act 101 of 1997 (as amended);</li> <li>• Electronic Communications and Transactions Act 25 of 2002;</li> <li>• Protected Disclosures Act 26 of 2000;</li> <li>• Promotion of Access to Information Act 2 of 2000;</li> <li>• Prevention and Combatting of Corrupt Activities Act 12 of 2004;</li> <li>• Criminal Law (forensic procedures) Amendment Act 6 of 2010;</li> </ul>

<ul style="list-style-type: none"> <li>• Policy on Risk Management.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA);</li> <li>• Prevention of Organised Crime Act 121 of 1998</li> <li>• All legislation pertaining to Labour, Finance and Taxation of the Republic of South Africa.</li> <li>• Intimidation Act 72 of 1982</li> </ul>
<p><b>Divisions, Constituents and/or individuals affected by the Policy</b></p>	<ul style="list-style-type: none"> <li>• Council Members</li> <li>• All University Employees</li> <li>• Students</li> <li>• External Stakeholders</li> </ul>
<p><b>Website Address for this document</b></p>	<p><b>Intranet</b></p>

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## **1. PREAMBLE**

The University of Johannesburg (UJ), as a respected and responsible corporate citizen, its employees, students and other stakeholders are morally and ethically bound to the principle of public accountability. Subsequently all parties have a responsibility, duty and obligation (both legally and morally) to respect, protect, promote and fulfil all the rights enshrined in the Constitution and to eradicate crime and other improper activities that undermine such rights, endanger the stability and security of the institution and contribute to the erosion and deterioration of morality and ethical values.

UJ therefore embraces a zero-tolerance approach towards any form of improper activity or contravention of law amongst its employees, applicants, students, alumni and external third parties. UJ is committed to compliance with the laws and regulations of the Republic of South Africa. It aims to promulgate and adopt policies and procedures to interpret and apply these laws and regulations within the context of UJ. To strengthen its stance against improper activities, the VC signed The Corruption Watch Pledge in September 2012.

This policy governs reporting and investigation of allegations of suspected and actual improper activities and especially resonates the ambitions of the Protected Disclosures Act No 26 of 2000 and the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (PRECA).

This policy should be read and applied in conjunction with established HR- and Student policies and procedures.

## **2. PURPOSE**

2.1 The purpose of this Policy is to:

2.1.1 formalise UJ's position on improper activities;

2.1.2 reinforce existing systems, policies and procedures aimed at deterring and preventing fraudulent and corrupt activities;

2.1.3 implement a zero tolerance approach to these activities;

2.1.4 provide avenues for employees, students, alumni and external third parties to raise concerns and receive feedback on any action taken;

2.1.5 provide reassurance that employees, students, alumni and external third parties will be protected from reprisals or victimisation for whistle blowing in good faith.

2.2 UJ has a responsibility to investigate and report to appropriate parties' allegations of suspected improper activities and the actions taken by UJ in response thereto.

2.3 Employees and others are encouraged to use the guidance provided by this policy for reporting all allegations of suspected improper activities.

2.4 While the scope of this policy is intended to be limited to the statutory definition of improper activities, serious or substantial violations of University policy may also constitute improper activities as determined upon review or through investigation.

2.5 This policy does not fundamentally change the responsibility for conducting investigations but clarifies normal jurisdictional interests.

## **3. SCOPE**

This policy has institutional wide application. In all instances, the management of UJ retains the prerogative to determine when a matter warrants an investigation and, in compliance with this policy and applicable laws and regulations, to decide on the appropriate investigative process to be employed.

#### 4. DEFINITIONS AND ABBREVIATIONS

Definitions contained herein are meant to clarify and amplify the definitions contained in the applicable legislation and is not intended to substitute or replace such definitions.

- 4.1 **“Improper Activity”** is the generally accepted term for any act, conduct or omission which directly or indirectly violates any legislation, Common Law or the letter and spirit of the Bill of Rights [Chapter 2 of the SA Constitution] and includes, but is not necessarily limited to, transgressions such as bribery, fraud, falsification, theft, extortion, etcetera and “Improper Activities” has a similar and corresponding meaning. For greater certainty, Addendum A attached hereto contains examples of improper activities.
- 4.2 **“ELG Member”** means the Executive Leadership Group;
- 4.3 **“Occupational Detriment”** means being victimised as a result of whistleblowing and includes being:
  - 4.3.1 subjected to any disciplinary action;
  - 4.3.2 dismissed, suspended, demoted, harassed or intimidated;
  - 4.3.3 transferred against her/his will;
  - 4.3.4 refused transfer or promotion;
  - 4.3.5 denied appointment to any employment, profession or office;
  - 4.3.6 otherwise adversely affected in respect of her/his employment, profession or office, including employment opportunities and work security;
  - 4.3.7 subjected to a term or condition of employment or retirement which is altered, or kept altered, to his or her disadvantage;
  - 4.3.8 refused a reference, or being provided with an adverse reference;
  - 4.3.9 threatened with any of the actions mentioned above.
- 4.4 **“Locally Designated Official” (LDO)** means the person designated in respect of each campus as the employee with primary responsibility to receive reports of allegations of suspected improper activities.
- 4.5 **“PRECA”** means the Prevention and Combating of Corrupt Activities Act 12 of 2004;
- 4.6 **“University Resources”** for purposes of this policy means (including but not limited to):
  - 4.6.1 cash and other assets (whether tangible or intangible; real or personal property);
  - 4.6.2 receivables and other rights or claims against third parties;
  - 4.6.3 intellectual property rights;
  - 4.6.4 effort of University employees and of any non-University entity that bills UJ for its efforts;
  - 4.6.5 facilities and the rights to use UJ’s facilities;
  - 4.6.6 UJ’s name;
  - 4.6.7 UJ’s records, including student records.
- 4.7 **“Whistle-blower”** means a person or entity making a protected disclosure, which is commonly referred to as a whistle-blower. Whistle-blowers may be University employees (academic or employees), applicants for employment, students, vendors, contractors, any other external third party or the general public. The whistle-blower’s role is as a reporting party. He/she is neither an investigator nor a finder of fact, nor does he/she determine the appropriate corrective or remedial action that may be warranted.
- 4.8 **“Investigation subject”** means a subject is a person who is the focus of investigative fact finding either by virtue of an allegation made or evidence gathered during the course of an investigation.
- 4.9 **“Investigator”** means persons authorised by UJ to conduct fact finding and analysis related to cases of alleged improper activities.

## **5. OBJECTIVES**

5.1 The principle objectives of this policy are to:

5.1.1 promote and encourage reporting of improper activities in order to ultimately eradicate such activities that prejudices UJ and other persons;

5.1.2 create, cultivate and encourage a culture of zero-tolerance for improper activities.

5.2 UJ further supports the objectives of the *Protected Disclosure Act* and the *Prevention and Combating of Corrupt Activities Act (PRECA)* and adopts these as the ancillary objectives of this policy:

## **6. PRINCIPLES**

6.1 The basis of this policy is a zero tolerance approach to all improper activities.

6.2 UJ is committed to investigate all alleged incidents of suspected improper activities.

6.3 UJ complies with all relevant legislation in the investigation and prosecution of offenders under this policy

6.4 UJ does not tolerate fraud within the institution and will apply appropriate prevention and detection controls.

6.5 The investigation is followed up by the application of all remedies available within the full extent of the law. These prevention controls include the existing financial and other controls and checking mechanisms as prescribed in UJ's systems, policies, procedures, rules and regulations.

## **7. CONFIDENTIALITY**

7.1 All information relating to fraud, corruption or other improper activities that is received and investigated is treated confidentially.

7.2 Anonymous reports may also be made to the designated fraud reporting hotline, [0800 204 975] which operates independently from the University. The designated service provider is reflected on the UJ Website.

7.3 The progression of investigations is handled in a confidential manner and will not be disclosed or discussed with any person(s) other than those who has a legitimate right to such information.

7.4 No person is authorised to supply any information with regard to allegations or incidents of fraud to the media without the express permission of the Vice-Chancellor and knowledge of those accused.

## **8. APPLICATION OF PREVENTION CONTROLS**

In respect of all reported incidents of fraud, corruption or other improper activities, managers have to immediately review, and where possible, improve the effectiveness of the controls which have been breached in order to prevent similar irregularities from taking place in future.

## **9. CREATING AWARENESS**

9.1 It is the responsibility of all managers and the overall responsibility of the Vice-Chancellor to ensure that all employees are aware of and receive appropriate training and education with regards to this policy.

9.2 UJ's zero-tolerance policy towards fraud, corruption and other improper activities will also be made visible by means of UJ's website and other available publications.

## **10. DUTY TO REPORT CRIME AND SUSPECTED IMPROPER ACTIVITIES**

10.1 Section 34 (1) of PRECA states that any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any person has committed an offence under Part 1, 2, 3 or 4 or section 20 or 21 or Chapter 2 of the Act, or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100, 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion via Campus Protection Services to any police official.

- 10.2 For purposes of section 34(1) of PRECA the person holding authority for UJ is the Vice-Chancellor.
- 10.3 According to section 34(2), any person who fails to comply with section 34(1) is guilty of an offence.

## **11. ADMINISTRATION**

The custodian of this policy is the Registrar and the DVC: Finance who is supported in its implementation by all line managers and other stakeholders.

## **12. REVIEW**

This policy is reviewed every five years or earlier if an urgent need arises.

3 December 2013

Reviewed February 2014, April 2014, 15 May 2014, 6, 11 June 2014, April 2015.

Approved by the UJ Council on 11 June 2015.

## EXAMPLES OF IMPROPER ACTIVITIES

**For greater certainty, the following direct or indirect acts, or omissions constitute improper activities.**

Insofar as an act or omission has not been included in the list below, the general accepted test to establish whether a deed is considered to be an improper activity, the following test applies: Whether in the opinion of a reasonable person, such deed (act or omission) constitutes a violation of legislation and/or the general morals and ethical foundation of society.

### **Corruption or Corrupt Activities:**

Directly or indirectly accepting or agreeing or offering to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or giving or accepting or offers 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 that amounts to:

- (a) 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; or
- (b) abuse of a position of authority, a breach of trust, or the violation of a legal duty or set of rules; or
- (c) designed to achieve an unjustified result; or
- (d) any other unauthorised or improper inducement to do or not to do anything.

### **Bribery:**

Involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of persons, irrespective of whether this benefit accrues to an employee, student, other person or an entity.

### **Extortion:**

Involves coercing a person or entity to provide a benefit to an employee, student, other person or an entity in exchange to acting (or failing to act) in a particular manner.

### **Theft:**

Involves the unlawful and intentional appropriation of moveable, corporeal or incorporeal property, including information in electronic format which belongs to and is in the possession of another; which belongs to but is in the perpetrator's own possession; or which belongs to the perpetrator but is in the possession of another person who has the right to possess it and where such right legally prevails against the perpetrator's own right of possession, i.e. theft of funds, supplies, or other assets.

### **Financial Offenses:**

Includes:

- (a) Maladministration or financial misconduct in handling of money, financial transactions or other assets and any other fraudulent financial issues, including any fraudulent or improper activities pertaining to bursaries.
- (b) Contractors invoicing for work not done or contractors "fronting" (acting as a front for another person or entity).
- (c) Fraudulent reallocation of funds.

(d) Simulating employment (“ghost employees or contractors”)

**Fraud:**

Means the unlawful and intentional making of a misrepresentation, either verbally or in written format, which causes actual or potential prejudice to another and included and includes deliberately omitting to correct a person who acts in error as a result of incorrect information.

**Dishonesty.**

**Making a profit from insider knowledge.**

**Disclosing confidential or proprietary information to outside parties whether or not for financial or other advantage.**

**Requesting or accepting anything of material value from other persons providing goods or services to UJ without proper written disclosure thereof.**

**Any cybercrime as defined in the Electronic Communications and Transactions Act 25 of 2002.**

**Irregular destruction, removal or abuse of records, facilities, equipment or property or an act which is economically wasteful.**

**Deliberately omitting or refusing to report or act upon reports of any irregular, dishonest or improper activity or conduct.**

**Blackmail.**

**Secret commissions.**

**Copyright infringements, plagiarism, writing exams for another person or other misconduct that constitutes research fraud.**

**Creating or failing to disclose a conflict of interest.**

**Installation of pirated or illegal software or other electronic content.**

**Illegal Order:**

Involves any directive to violate or assist in violating an applicable law, rule or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health and safety of any person.

**Falsification of documents.**

**Coercion, collusion, manipulation, malicious prosecution, abuse of power of office or designation, or willful omission to perform a duty.**

**Abuse of leave.**

**Irregular manipulation of student marks.**

**Non-compliance with policies and procedures.**

**Witness or evidence tampering.**

**Intimidation:**

Involves-

- (a) without lawful reason and with intent to compel or induce any person or persons of a particular nature, class or kind or persons in general to do or to abstain from doing any act or to assume or to abandon a particular standpoint-
  - (i) assaults, injures or causes damage to any person; or
  - (ii) in any manner threatens to kill, assault, injure or cause damage to any person or persons of a particular nature, class or kind; or
- (b) acts or conducts himself in such a manner or utters or publishes such words that it has or they have the effect, or that it might reasonably be expected that the natural and probable consequences thereof would be, that a person perceiving the act, conduct, utterance or publication-
  - (i) fears for his own safety or the safety of his property or the security of his livelihood, or for the safety of any other person or the safety of the property of any other person or the security of the livelihood of any other person.