

Title	Whistleblowing Policy
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Version	Date	Description
1.0	09/12/03	Policy presented to HRC
1.1	12/04/05	Policy updated through HCO network – authority from Jo Thorne
2.0	Feb 08	Policy updated to reflect OD, style guide and EIA
3.0	Nov 08	Policy reviewed, requested by Chair. Amendments made from Accounting Officer to Chief Executive
3.1	Aug 09	Policy amended to reflect the Council Members whistleblowing policy
3.2	Nov 09	Amendments made following EIA

## Aims of the Policy

1. The aims of this policy are to encourage staff to report matters of proper concern about serious malpractice without fear of reprisal or victimisation while protecting staff and the Higher Education Funding Council for Wales (HEFCW) from unfounded and malicious allegations.
2. The best way to achieve this aim is to put in place fair and flexible internal procedures so that concerned staff do not feel forced to turn to an external body, and staff named in mistaken allegations are not exposed to public criticism.

## **Background and scope**

3. It is recognised that from time to time, situations may arise where staff have genuine concerns about perceived irregularities in the running of HEFCW or the activities of colleagues. This policy and procedure has been formulated with reference to the Public Interest Disclosure Act 1998 (PIDA) to provide clear channels through which such concerns can be raised and dealt with properly without fear of reprisal or victimisation. This policy is only to be used where a potentially serious malpractice known as a “Qualifying Disclosure” as defined in Annex 1 has been exposed or is suspected. Concerns about a Qualifying Disclosure should be raised internally in accordance with this procedure.
4. All issues relating to personal grievances, relationships with colleagues or an individual’s employment contract will be dealt with under HEFCW’s Grievance Procedure and fall outside the scope and purpose of this policy.
5. HEFCW encourages staff to report any suspected wrongdoing by either Council members or other HEFCW staff (often referred to as “whistleblowing”). Staff who report a genuine concern, even if it turns out to be mistaken, are doing their duty as employees of an Assembly Government Sponsored Body (AGSB) and will not be disciplined or subjected to any other detriment. On the contrary, if a member of staff fails in his or her duty to report suspected criminal or unlawful activity, that failure could lead to disciplinary action and/or termination of the individuals employment.
6. However, it can be difficult for staff to report concerns about other staff. This policy is designed to address those difficulties and to reassure staff that they can expose wrongdoings without any risk to themselves.

## **What is meant by “whistleblowing” in this policy?**

7. In this policy, "whistleblowing" means an individual reporting a suspected wrongdoing, or an attempt to cover up wrongdoing, on the part of a Council member, another HEFCW employee, or another party acting on behalf of the HEFCW (such as a contractor). It will also apply to the Assembly, but in this context the reference to the Assembly means the Assembly exercising its powers through the Assembly Cabinet and members of staff. This does not include the acts or omissions of Assembly Members acting as individuals or in their individual capacity as Assembly Members.
8. "Wrongdoing" is not a technical term. The Assembly, and HEFCW, encourages members to report any genuine concern they may have, without worrying about technical definitions.
9. If a member of staff has reason to believe that he or she wishes to make a Qualifying Disclosure as defined in Annex 1, they should report the issue as soon as possible formally as explained below.

## **Roles and responsibilities of those involved in whistleblowing cases**

### **All members of staff**

10. Every member of staff is responsible for the practical implementation of this policy.

### **Line managers**

11. All line managers must ensure that where a concern is disclosed to them it is dealt with seriously, promptly and thoroughly. All line managers must ensure they adhere to the procedures laid down in this policy.

### **Works Council representatives**

12. Works Council representatives can assist, provide advice and support to all parties involved and to observe compliance with this procedure.

### **Nominated Officers**

13. The Nominated Officers have been specifically trained to support the Whistleblower and individual disclosed to. The Nominated Officer will offer guidance in line with this policy, they will also liaise between the parties involved.

### **Network Supervisor**

14. The Network Supervisor will offer confidential support and guidance to the Nominated Officers and Investigation Officers where required. Regular meetings will be held with the network to ensure best practice is maintained throughout the process. The Network Supervisor will maintain data on usage and, provide reports.

## **What to do if you suspect wrongdoing**

15. Members of staff should first report a qualifying Disclosure (See Annex 1), formally to their line manager. However, if they feel unable to go to their line manager, for whatever reason, they can raise it with their Head of Team (preferably their own Head of Team).
16. If the member of staff feels unable to go to any individual referred to above, or feels that the Qualifying Disclosure is so serious that it has to be reported directly to the highest levels, he or she can contact, formally, any of the following:
  - Director of Finance and Corporate Services;
  - Director of Strategic Development;
  - Chief Executive.
17. Where the Chief Executive is implicated the Qualifying Disclosure must be reported to the Chair of the HEFCW, who will subsequently manage the procedures as defined in this policy.
18. The member of staff can seek policy advice from one of HEFCW's Nominated Officers. The Works Council representative can also provide advice on how the member of staff may take their concern forward.

19. The member of staff will not be disciplined nor subjected to any detriment on the grounds that he or she did not choose the most appropriate individual from the above list. The important thing is that the member of staff raises his or her concern with one of them.
20. This policy must not be used as a basis for generating, circulating or testing unsubstantiated matters or rumours which fall outside the scope of a particular Qualifying Disclosure as defined in Annex 1.
21. Where a whistleblower raises a concern with a Nominated Officer and then refuses to take the concern forward, the Nominated Officer has a duty to take the concern forward to the relevant line manager or an individual listed in this policy. The Nominated Officer is then discharged of the concern and the line manager must take the concern forward.
22. Where an allegation is found to be mistaken or groundless, HEFCW will take all reasonable steps to protect any individual implicated in it from adverse consequences.

### **Chief Executive's undertaking to staff**

23. Provided that a member of staff raises a Qualifying Disclosure in good faith, and follows the procedures set out in this policy, the Chief Executive makes the following commitment:
  - that the member of staff will not be disciplined or subjected to any other detriment to his or her career as a result, even if the concern turns out to be mistaken;
  - that the identity of the whistleblower will be kept confidential for as long as the individual requires, whilst this is under HEFCW's control, subject to the requirements of criminal investigations, where applicable. (More detailed provisions as to confidentiality and anonymity are set out in this policy).
  - that HEFCW will take all other reasonable steps to protect members of staff from any harassment, victimisation or other personal detriment.
  - that the member of staff will be informed of the action being taken in response to their concern and of the outcome (subject to any legal constraints).

### **What HEFCW will do in response to a Qualifying Disclosure raised**

24. For the purposes of this policy, Nominated Officers will be appointed in fair and open competition. The Nominated Officers will be provided with training to undertake the role. The Nominated Officers will:
  - keep a record of all matters raised under the policy and of the action taken; and
  - carry out the commitment to inform whistleblowers of the action taken in response to their Qualifying Disclosure.

25. If a potential Qualifying Disclosure is reported to any of the individuals listed in this policy, the first step to be taken by the individual first disclosed to (other than a Nominated Officer/Works Council Representative) will be to hold informal initial inquiries. This will determine whether it is a Qualifying Disclosure and the most appropriate form of investigation (if any) and the most appropriate process for the consideration of the Qualifying Disclosure. Concerns that fall more appropriately within the scope of other formal procedures, such as the Grievance Procedure, will be referred for consideration under those procedures.
26. The individual disclosed to, must refer the matter to one of the Nominated Officers and must inform the whistleblower that they are doing so. (See section implicating Nominated Officers). The Nominated Officer must inform the Chief Executive immediately that a concern has been raised.
27. If it appears necessary to take interim measures urgently – for instance, to protect public funds or safety – this will be done immediately, before any inquiries or investigation process.
28. If it is decided that an investigation is necessary, the Qualifying Disclosure will be rigorously investigated by individuals who are not implicated and who are independent of those implicated. This may be done by:
  - members of Management Board;
  - internal audit;
  - individuals with specialist skills of the area in question;
  - trained investigation officers;
  - those identified within the disciplinary process,
  - or a combination of the above as considered appropriate.

Matters may also be passed to the police for investigation.

29. The investigation should last no longer than three months, unless it is impracticable to complete within this timescale and has been agreed by the Chief Executive. The whistleblower will be kept informed if the timescale is likely to exceed three months.
30. Where a Qualifying Disclosure is referred to the Nominated Officers they will act as a point of contact with the whistleblower until the individuals investigating consider the matter resolved.
31. All notes of meetings and records must be retained securely by the Nominated Officer and kept confidential.
32. Within 10 working days of the Qualifying Disclosure being drawn to the attention of the Nominated Officer, the Nominated Officer and the individual disclosed to will formally communicate with the whistleblower:
  - acknowledging the report or referral of the Qualifying Disclosure;
  - giving an indication of how HEFCW proposes to deal with the matter;
  - inform the whistleblower of any interim measures taken; and
  - indicating the likely time-scale for providing a final response.

33. If it is impossible to give the indications within 10 working days, the formal communication will say so, giving reasons, and the indications will be given as soon as possible thereafter.
34. If a decision is made not to investigate the Qualifying Disclosure i.e. if it falls under another policy, for example the Grievance Procedure, this will be notified to the whistleblower, formally, as soon as possible and within 10 working days.
35. The whistleblower will be given as much information as possible on the outcome of the investigation. However, there may be constraints because of HEFCW's duties of confidentiality or fairness or other legal considerations.
36. This policy and procedure is intended to protect HEFCW and its members of staff from false allegations, malicious allegations and unsubstantiated rumours. If a Qualifying Disclosure reported under this policy is found to have been made in bad faith or if an employee or worker deliberately misuses this policy then this will be treated as a serious disciplinary matter, which could result in dismissal. The matter will be viewed with even greater seriousness if the allegation is made externally.

### **Confidentiality and anonymity**

37. The Chief Executive undertakes to keep the identity of the whistleblower confidential for as long as the Whistleblower wishes, and so long as the matter remains under HEFCW's control. The only exception to this is that the Chief Executive reserves the right to reveal the whistleblower's identity to the police if this is necessary for the proper investigation of a suspected criminal offence. In that case, the Nominated Officer will inform the whistleblower that his or her identity is to be revealed to the police, and HEFCW will take all reasonable steps to protect them from harassment, victimisation or other personal detriment (except where he or she is charged with a criminal offence – for instance, where a whistleblower makes a false allegation to distract attention from his or her own criminal conduct).
38. Any member of staff who reveals the whistleblower's identity in breach of this policy will face disciplinary action, up to and including dismissal.
39. However, keeping the whistleblower's identity confidential may make it more difficult to carry out a full investigation into the matter or to take action against a wrongdoer. If the Chief Executive considers that the concern cannot be resolved without revealing the whistleblower's identity (other than to the police, where necessary, and as stated above) discussions with the whistleblower will be held on whether, and how, to proceed.
40. All Qualifying Disclosures expressed anonymously will be considered and will be investigated further if the Nominated Officer, in conjunction with an individual listed in this policy, considers it appropriate and worthwhile to do so. Concerns raised anonymously are often difficult to investigate properly and this is a factor that the Nominated Officer will take into account. Moreover, if a concern is raised anonymously, the whistleblower cannot benefit from HEFCW's undertaking set out in this policy. The Nominated Officer will therefore always ask a whistleblower to give their name. The confidentiality provisions set out will then apply.

41. It is easy to make malicious or unfounded allegations anonymously. The Nominated Officer will bear this constantly in mind. The initial inquiries into anonymous allegations will therefore be handled with particular sensitivity.
42. In disciplinary proceedings against a member of staff accused of making a malicious or unfounded allegation against a colleague under this policy, the fact that the allegation was made anonymously will be considered to have been an aggravating factor.

#### **If individuals are not satisfied with the way their concern has been dealt with**

43. If a member of staff has raised a Qualifying Disclosure under this policy and is dissatisfied with the way in which the Head of Team / Director is handling or has handled it, he or she can report his or her dissatisfaction to the Chief Executive, who will be required to respond to it as a fresh concern raised under this policy. If the individual is still dissatisfied with the handling of their Qualifying Disclosure, it must be referred to the Chair of the HR Committee. If the member of staff wishes, after consultation with the Nominated Officer, that individual may also take over responsibility for responding to the original complaint.
44. By exception, the Chief Executive may agree to look into a matter which is referred directly, without the internal procedures set out in this policy having been used first.

#### **Disclosures to Regulators and other external disclosures**

45. The aim of the policy is to introduce procedures to ensure that members of staff will not feel forced to raise a concern with an external body. However, the Public Interest Disclosure Act 1998 (PIDA) recognises that, in certain circumstances, a member of staff may be justified in such action. More details about this are given below.

#### **Regulators**

46. There are certain legal protections if you go to a body prescribed under PIDA. The list can be obtained from HR or via the Intranet. It includes bodies such as the Welsh Assembly Government and the Auditor General for Wales. Members of staff would only be protected if the Qualifying Disclosure fell into one of the PIDA protected categories:
  - the individual makes the disclosure in good faith; and
  - believes that the information, and any allegation it contains, are substantially true; and;
  - believes that the matter falls within the description of matters for which the individual or body has been prescribed. (For example, breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority, or environmental dangers can be notified to the Environment Agency)

## **Other external disclosures**

47. Raising a Qualifying Disclosure outside HEFCW instead of using the procedures set out in this policy, and in certain circumstances even after doing so, is a serious disciplinary offence which could result in dismissal, unless the member of staff's action is protected by PIDA. That protection will only be available in exceptional cases as identified in this policy.
48. In addition, HEFCW's terms and conditions of employment require that employees do not disclose confidential information without proper authority. In considering taking a Qualifying Disclosure to an unapproved organisation, employees should be aware of their duty of confidentiality and ensure that no confidential information is divulged unless there are overriding public interest considerations such as to attract the protection of PIDA.
49. A member of staff who is considering making an external disclosure may wish first to seek advice from his/her trade union or legal adviser. If members of staff do seek such advice, the adviser will need to know at least some details about the information, or the kind of information that the member of staff is considering disclosing. If a member of staff makes a disclosure in the course of obtaining legal advice, he or she will be protected by PIDA. Members of staff should be careful to reveal the information only to their legal adviser personally – not, for instance, through a helpline operator or in an answerphone message.

## **What to do, as a line manager, if a Qualifying Disclosure is raised**

### **Reports from staff**

50. If a Qualifying Disclosure is raised with a member of staff internally, for example a line manager, he or she must report it immediately to one of the Nominated Officers. The line manager in conjunction with the Nominated Officer must then consider how to handle the matter. The Nominated Officer will advise where required. The Nominated Officer may also advise whether an alternative procedure/policy may be more appropriate to the member of staff's particular complaint. The line manager in conjunction with the Nominated Officer will agree what action is to be taken. The Nominated Officer will provide an update to the whistleblower within 10 working days of the matter being raised.
51. The line manager must pay the strictest attention to the confidentiality provisions set out. He or she will be responsible for ensuring that all the undertakings given to the whistleblowers are kept. The whistleblower's identity should not be revealed to anyone but the Nominated Officer and those who absolutely need to know for the purposes of the investigation and consequent action. Written records must preserve this confidentiality. When communicating with others about the Qualifying Disclosure, the manager should use the most secure method, i.e, shared mail boxes could be in use.
52. If a Qualifying Disclosure implicates a Nominated Officer, in that case, the individual to whom the Qualifying Disclosure is reported should report it to an alternative Nominated Officer.

53. In deciding how to handle the matter, the line manager must comply with the procedures set and the Chief Executive's undertakings to staff. As well as consulting the Nominated Officer, the line manager must endeavour (with consent of the whistleblower) to consult one or more of the other individuals listed in this policy. However, the number of individuals informed should be strictly limited to those who need to know at each stage of the process.

### **Reports from outside HEFCW**

54. A member of the public or an outside body may contact HEFCW to raise a concern against a member of staff. In these circumstances, HEFCW's Complaints Procedure will be followed.

### **Monitoring the Policy**

55. The Nominated Officer will maintain an anonymous and confidential record of all matters raised through the Whistleblowing policy so that an assessment may be made of the effectiveness of the policy and any emerging patterns. Nominated Officers will also be required to report confidentially on a regular basis to HEFCW on all whistleblowing activities via the Network Supervisor. A confidential and anonymous report will be provided annually to the Management Board. The policy will be reviewed annually (or earlier if necessary to comply with new legislation).

## Whistleblowing Policy for HEFCW Staff

### Main provisions of the Public Interest Disclosure Act 1998

1. The Act does not introduce a general protection for whistleblowers in all circumstances. In particular, the whistleblower will not be protected if, in disclosing the information, he or she commits a criminal offence.
2. In order to benefit from the protection of the Act and of this policy, a disclosure must satisfy certain conditions. The first condition relates to the subject-matter of the disclosure. There is then a further set of conditions depending on who the disclosure is made to.

### Subject-matter of the disclosure: 'Qualifying Disclosure'

3. The Act protects only disclosures of information which, in the whistleblower's reasonable belief, tends to show that one of the following acts has occurred, is occurring or is likely to occur. The specified acts are:
  - a criminal offence
  - a failure to comply with a legal obligation
  - a miscarriage of justice
  - the endangering of an individual's health or safety
  - damage to the environment
  - deliberate concealment of information relating to any of the above.

If the staff's belief turns out to be mistaken, he or she will still be protected provided that it was reasonable to think as he or she did.

### Who the disclosure is made to

4. Disclosure to the employer (i.e. an internal disclosure to HEFCW) will be protected provided that:
  - the information falls within paragraph 3; and
  - the disclosure is made in good faith.
5. Disclosure to a regulator will be protected if:
  - the information falls within paragraph 3; and
  - the disclosure is made in good faith; and
  - the whistleblower reasonably believes that the information and any allegation in it are substantially true.
6. Disclosure to other external bodies will only be protected if:
  - the information falls within paragraph 3; and the disclosure is made in good faith; and the whistleblower reasonably believes that the information and any allegation in it are substantially true; and
  - the whistleblower is not motivated by personal gain; and

- one of the additional conditions for external disclosure (see paragraph 7) is met; and
- overall, it is reasonable for him or her to make the disclosure to that external body.

7. The additional preconditions for an external disclosure to be protected are:

- the whistleblower must reasonably believe that they may be victimised if they raise the matter internally or with a prescribed regulator; or
- there is no relevant prescribed regulator and the whistleblower reasonably believes that evidence related to the disclosure they wish to make is likely to be concealed or destroyed if they raise the matter internally; or
- the concern has already been raised with the employer or a prescribed regulator; or
- the concern is of an exceptionally serious nature.

8. As stated in paragraph 6, it must be "reasonable" to make the disclosure in the way chosen. If the reason for turning to an external individual or organisation was that the concern was exceptionally serious, an important factor for assessing the reasonableness of this disclosure decision will be the choice of individual/organisation. Disclosure to the media is unlikely to be reasonable except in very unusual circumstances, for instance where the maximum number of individuals need to be warned of an imminent danger. PIDA will not protect HEFCW staff who contact the media in the hope of gain.

9. If the reason for making the disclosure externally is one of the others listed in paragraph 7, reasonableness will be assessed in the light of, in particular: the identity of the individual to whom the disclosure was made, the seriousness of the concern, whether the risk or danger still exists, and whether the disclosure breached a duty of confidence which the employer owed to a third party.