

Public Interest Disclosure ('whistleblowing') policy for members of The Higher Education Funding Council for Wales

Aims of the policy

1. The aims of this policy are to encourage members of the Council of the Higher Education Funding Council for Wales (HEFCW) to report matters of proper concern about serious malpractice while protecting Council members from unfounded and malicious allegations.
2. The best way to achieve these aims is to put in place fair and flexible procedures so that concerned Council members never feel forced to turn to an external body, and Council members or HEFCW staff named in mistaken allegations are not exposed to public criticism.

Background and scope

3. This policy applies to all members of the Council. There is a separate policy covering public interest disclosure ('whistleblowing') by HEFCW staff. There are also separate policies for external complaints against HEFCW and for allegations concerning Higher Education Institutions funded by HEFCW. Copies of all these policies are available on the HEFCW website.
4. It is recognised that from time to time, situations may arise where a Council member has genuine concerns about perceived irregularities in the running of HEFCW or the activities of fellow Council members and/or HEFCW staff. This policy 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. The main provisions of the PIDA are set out at **Annex 1** to this policy. 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.
5. The Council and the Welsh Assembly Government ("the Assembly"), encourages members to report any suspected wrongdoing by either Council members or HEFCW staff (often referred to as "whistleblowing"). Members who report a genuine concern, even if it turns out to be mistaken, are doing their duty as members of an Assembly Government Sponsored Body (AGSB) and will not be disciplined or subjected to any other detriment. On the contrary, if a member 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 member's appointment.

6. However, it can be difficult for Council members to report concerns about other members or HEFCW staff. This policy is designed to address those difficulties and to reassure members that they can expose wrongdoings without any risk to themselves. Depending on the particular circumstances, Council members may raise concerns with the Chair, the Chief Executive or Assembly officials.

What is meant by "whistleblowing" in this policy?

7. In this policy, "whistleblowing" means a Council member reporting suspected wrongdoing, or an attempt to cover up wrongdoing, on the part of another Council member, a HEFCW employee, or another party acting on behalf of the Assembly (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.

"Wrongdoing" is not a technical term. The Assembly, and the Council, encourages members to report any genuine concern they may have, without worrying about technical definitions.

What to do if you suspect wrongdoing

8. If the issue concerns a HEFCW employee (excluding the Chief Executive) you should report the matter, orally or in writing, to the Chief Executive. The Chief Executive will ensure that the matter is dealt with in accordance with the 'whistleblowing' policy for HEFCW staff.

9. If the issue concerns another Council member - including the Chief Executive - you should first report the issue, orally or in writing, to the Chair of the Council. However, if you feel unable to go to the Chair, for whatever reason, or if the issue of concern relates to the Chair, you can raise it with any of the following Directors at the Assembly:

Director of the Department for Children, Education, Lifelong Learning and Skills (DCELLS)

Director of Skills, Higher Education and Lifelong Learning Group (SHELL)

10. Alternatively, you can seek advice from one of the Assembly's Nominated Officers whose contact details can be obtained from the Directors named above.

11. Members will not be disciplined or subjected to any detriment on the grounds that they did not choose the most appropriate person from the above list. Nor should members be concerned that this is not the right policy to use to raise their concern. The important thing is to raise the concern.

12. Members will not be expected to prove that an allegation is true (but see paragraph 16).

What the Chair of Council will do in response to a concern raised under this Policy

13. The Chair will hold informal initial inquiries with the discloser in order to determine whether the matter raised appears to be a Qualifying Disclosure. The Chair may discuss the matter with, and seek advice from, the Chief Executive. Concerns that fall more appropriately within the scope of other formal procedures, such as the Council's complaints procedure, will be referred for consideration under those procedures.

14. If it is judged that the matter warrants further investigation, it will be raised with the Assembly.

The undertakings to you of the Council Chair and the Permanent Secretary to the Assembly

15. Provided that you raise a concern in good faith, and follow the procedures set out in this policy, the Chair and the Permanent Secretary make the following promises.

- You will not be disciplined or subjected to any other detriment, even if the concern turns out to be mistaken.
- Your identity as the whistleblower will be kept confidential for as long as you require, while this is under the Council and/or the Assembly's control¹, subject to the requirements of criminal investigations, where applicable. (More detailed provisions as to confidentiality and anonymity are set out in paragraphs 28 to 33).
- The Chair and Permanent Secretary will take all other reasonable steps to protect you from harassment or other personal detriment.
- You will be informed of the action being taken in response to your concern and of the outcome (subject to any legal constraints). More detail of this commitment is given in paragraphs 23 to 27).

16. The Assembly has a duty to protect Council members, and HEFCW as an organisation, from unfounded or malicious allegations. Malicious allegations, and allegations made without any grounds at all, will be treated as a serious disciplinary matter, which could result in the termination of a member's appointment. The PIDA will not protect members who make such allegations. The matter will be viewed with even greater seriousness if the allegation is made to an external body.

¹ The identity of the whistleblower might emerge in circumstances beyond the Permanent Secretary's control, for instance, in court proceedings.

17. Where an allegation is found to be mistaken or groundless, the Assembly will take all reasonable steps to protect any person implicated in it from adverse consequences.

What the Assembly will do in response to a concern raised under this Policy

18. The Directors or Nominated Officers referred to in paragraphs 9 and 10 must:

- 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 concern (paragraphs 23 to 27).

19. As soon as a concern is reported under this policy to any of the people listed in paragraphs 9 and 10, that person must refer the matter to one of the Nominated Officers and must inform the whistleblower that they are doing so. (See paragraph 42 for concerns implicating Nominated Officers).

20. If it appears necessary to take interim measures urgently – for instance, to protect public funds – this will be done immediately, before any inquiries or investigation process.

21. Otherwise, the first step will be to hold informal initial inquiries, to determine the most appropriate form of investigation (if any) and the most appropriate process for the consideration of the concern. Concerns that fall more appropriately within the scope of other formal procedures, such as the complaints procedure, will be referred for consideration under those procedures.

22. If it is decided that an investigation is necessary, the concern will be rigorously investigated by persons who are not implicated and who are independent of those implicated. This may be done by Assembly officials or through internal audit as considered appropriate. Matters may also be passed to the police for investigation.

23. Where a concern is referred to the Nominated Officers under paragraph 19, they will act as a point of contact with the whistleblower (or other person reporting the matter on the whistleblower's behalf) until the matter is resolved.

24. All communications in writing between the Nominated Officers and the whistleblower will be made under confidential cover.

25. Within 10 working days of the concern being drawn to the attention of the Nominated Officers, they will write to the whistleblower (or other person reporting the matter on the whistleblowers behalf):

- acknowledging the report or referral of the concern
- giving an indication of how the Assembly proposes to deal with the matter and
- indicating the likely time-scale for providing a final response.

If it is impossible to give the indications within 10 working days, the letter will say so, giving reasons and the indications will be given as soon as possible thereafter.

26. If a decision is made not to investigate the concern, this will be notified to the whistleblower, in writing, as soon as possible and within 10 working days at the latest.

27. The whistleblower will be given as much information as possible on the outcome of the investigation. However, there may be constraints because of the Assembly's duties of confidentiality or fairness or other legal considerations.

Confidentiality and anonymity

28. As stated in paragraph 15, the Chair and the Permanent Secretary undertake to keep the identity of the whistleblower confidential for as long as he or she wishes and as long as the matter remains under the Council and/or the Assembly's control. The only exception to this is that the Assembly 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 Officers will inform the whistleblower that his or her identity is to be revealed to the police, and will take all reasonable steps to protect him or her from harassment 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).

29. Any Council member who reveals the whistleblower's identity in breach of this policy will face disciplinary action, up to and including the termination of their appointment.

30. 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 Chair and/ or the Permanent Secretary considers that it is not able to resolve the concern without revealing the whistleblower's identity (other than to the police, where necessary, as stated above) discussions will be held with the whistleblower on whether, and how, to proceed.

31. All concerns expressed anonymously will be considered and will be investigated further if the Nominated Officers consider it appropriate and worthwhile to do so. Concerns raised anonymously are often difficult to investigate properly and this is a factor the Nominated Officers will take into account. Moreover, if a concern is raised anonymously, the whistleblower cannot benefit from the Chair and/or the Permanent Secretary's undertakings set out in paragraph 15. The Nominated Officers will therefore always ask a whistleblower to give their name. The confidentiality provisions set out in paragraphs 28 to 30 will then apply.

32. It is easy to make malicious or unfounded allegations anonymously. The Nominated Officers will constantly bear this in mind. The initial inquiries into anonymous allegations will therefore be handled with particular sensitivity.

33. In disciplinary proceedings against a member accused of making a malicious or unfounded allegation under this policy, the fact that the allegation was made anonymously will be an aggravating factor.

If you are not satisfied with the way your concern has been dealt with

34. If a member who has raised a concern under this policy is dissatisfied with the way in which either the Chair of the Council or Assembly officials are handling or have handled it, they may report their dissatisfaction to another of the persons listed in paragraph 9 or 10. That person will be required to respond to it as a fresh concern raised under this policy. If the member and the Nominated Officer both agree, that person may also take over responsibility for responding to your original complaint.

35. If you are still not satisfied with the response you have received you can refer the matter to an external body as described in the following paragraphs.

Disclosures to regulators and other external disclosures

36. The aim of the policy is to make the procedures so fair and flexible that members will never feel forced to raise a concern with an external body. However, PIDA recognises that, in certain circumstances, such action may be justified. More detail about this is given below and in Annex 1.

Regulators

37. There are certain legal protections if a member goes to a body prescribed under PIDA. The list can be obtained from HEFCW's HR Department or via the HEFCW intranet. It includes bodies such as the Auditor General for Wales. You would only be protected if:

- the disclosure fell into one of the PIDA protected categories
- you raised the concern in good faith and
- you reasonably believed it to be substantially true.

See Annex 1 for details.

Other external disclosures

38. Raising a concern outside the Council and the Assembly, 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 termination of a member's appointment, unless your action is protected by PIDA. That protection will only be available in exceptional cases. More details are set out in Annex 1 to this policy.

39. The Assembly's guidelines for members of the Council and the Council's Code of Practice for members (the Code) set out the responsibilities, terms and conditions and rules of conduct for members. Paragraphs 26 to 30 of the Code refer to the personal liability of Council members and the requirements for openness and responsiveness. In considering taking a concern to an unapproved organisation, members should be aware of their responsibilities and ensure that no confidential information is divulged unless there are overriding public interest considerations such as to attract the protection of PIDA.

40. A Council member who is considering making an external disclosure may wish first to seek advice from his/her legal adviser. If you do seek such advice, the adviser will need to know at least some details about the information, or the kind of information, you are considering disclosing. If you make a disclosure in the course of obtaining legal advice, you will be protected by PIDA, so be careful to reveal the information only to your legal adviser him or herself - not, for instance, to a helpline operator or in an answer phone message.

What to do if a concern is raised with you

Reports from other Council members or from HEFCW staff

41. If a concern is raised with a Council member by another member, or by a HEFCW employee, it must be reported as follows:

- where the issue concerns a HEFCW employee (other than the Chief Executive) it should be reported immediately to the Chief Executive and the procedures in paragraph 8 will then be followed.
- where the issue concerns a Council member (including the Chief Executive) it should be reported immediately to the Chair. However, if you feel unable to go to the Chair, for whatever reason, or if the issue of concern relates to the Chair, you can raise it with the alternative Assembly officials as described in paragraphs 9 and 10.

42. Where a concern implicates an Assembly official or Nominated Officer referred to in paragraphs 9 and 10, the person to whom the concern is reported should report it to an alternative Assembly official or Nominated Officer.

43. Members must pay the strictest attention to the confidentiality provisions set out in paragraphs 28 to 30. Members will be responsible for ensuring that all the undertakings given to whistleblowers are kept. The whistleblower's identity should not be revealed to anyone but the relevant person(s) informed by the member in accordance with paragraph 41, 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 concern, think carefully about what method will be the most secure.

Reports from outside HEFCW

44. A member of the public or an outside body may contact Council members directly to raise a concern about another member, an employee of HEFCW, the Assembly or another organisation. In such instances, you should seek advice from either the Chair or Chief Executive, who will decide the most appropriate course of action.

Monitoring the policy

45. The Assembly's Nominated Officers will maintain a record of all matters raised through this policy so that an assessment may be made of the effectiveness of the policy and any emerging patterns. The policy will be reviewed by HEFCW Council, in liaison with the Assembly every three years (or earlier if necessary to comply with new legislation or if other significant issues arise with respect to the operation of the policy).

WHISTLEBLOWING POLICY FOR HEFCW COUNCIL MEMBERS

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 your belief turns out to be mistaken, you will still be protected provided that it was reasonable to think as you did.

Who the disclosure is made to

4. **Disclosure to the employer** (i.e. an internal disclosure to HEFCW or the Assembly) 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 person 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 person/organisation. Disclosure to the media is unlikely to be reasonable except in very unusual circumstances, for instance where the maximum number of people need to be warned of an imminent danger. PIDA will not protect Council members or HEFCW employees 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 person 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.