

1. This procedure has been formulated with reference to both the Public Interest Disclosure Act 1998 (PIDA) and the Enterprise and Regulatory Reform Act 2013 (ERRA). The purpose of this procedure is to provide clear channels through which concerns about perceived irregularities within HEFCW can be raised and dealt with properly, without fear of reprisal or victimisation.
2. The PIDA does not introduce a general protection for whistleblowers in all circumstances. In particular, the whistleblower will not be protected if, in disclosing the information, they commit a criminal offence. The ERRA provides further clarification by only providing protection for employees when whistleblowing is made 'in the public interest'.
3. 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 potentially serious malpractice, known as the "Qualifying Disclosure".
4. It should be noted that there are further conditions depending on who the disclosure is made to.
5. Concerns about a Qualifying Disclosure should be raised internally in accordance with this procedure.
6. All issues relating to personal grievances, relationships with colleagues or an individual's employment contract will be dealt with under HEFCW's Grievance and Disciplinary Policy and fall outside the scope and purpose of this procedure.
7. A Process 'End-to-end' flowchart of the procedures is attached at **Annex A**.

Definitions

8. "Whistleblowing" means an individual reporting a concern in the public interest, either at the workplace or externally, about a danger, risk, malpractice or wrongdoing, or an attempt to cover up wrongdoing by another HEFCW employee, a Council member, or another party acting on behalf of HEFCW (such as a contractor). It will also apply to the Welsh Government or to the National Assembly for Wales. This does not include the acts or omissions of Assembly Members acting as individuals or their acts in the capacity of Assembly Members. By contrast, any complaint concerning an employee's own employment position has no public interest dimension and should be dealt with under the Grievance Policy and its supporting procedures and not by the Whistleblowing Policy and procedures.
9. A "Whistleblower" means the person reporting the suspected incident.
10. A "Qualifying Disclosure" is a type of potentially serious malpractice under the PIDA. The Act protects only disclosures of information which, in the whistleblower's reasonable belief, tends to show that one of the following incidents has occurred, is occurring or is likely to occur. These are:
 - Financial malpractice, bribery, fraud or other impropriety (in the case of fraud or bribery, please refer to the 'HEFCW Fraud and Bribery Policy' and the 'HEFCW Fraud and Bribery Procedures' on the intranet for guidance).
 - a criminal offence, eg false expense claims

- a failure to comply with legal obligations or statutes, eg failure to keep personal or sensitive information securely
- the unauthorised use of public funds
- a breach of the employee code of conduct
- maladministration, eg not adhering to procedures, negligence
- abuse of power
- poor value for money
- a miscarriage of justice
- the endangering of an individual's health or safety, eg failure to maintain safety equipment
- damage to the environment
- improper conduct or unethical behaviour
- deliberate concealment of information or attempts to cover up wrongdoing relating to any of the above
- any criminal activity within HEFCW or its supply chains in respect of unethical employment practices, as set out in the Welsh Government's *Code of Practice: Ethical Employment in Supply Chains*. This code covers the following employment issues: Modern slavery and human rights' abuses; blacklisting; false self-employment; unfair use of umbrella schemes and zero hours' contracts; and paying the living wage.

Reporting a suspected wrongdoing

11. This procedure is designed to enable staff to raise concerns internally, at a senior level and to disclose information which the member of staff believes to show malpractice or impropriety.
12. Each allegation will be investigated in its own right, and may result in other policies being utilised, such as the Grievance and Disciplinary policy.
13. If a member of staff has reason to believe that they wish to make a Qualifying Disclosure, they should formally report the issue as soon as possible, following the procedures below.
14. It must be noted that unless the member of staff's action are protected by PIDA, raising a Qualifying Disclosure to an external body instead of reporting it internally to HEFCW is a serious disciplinary offence which could result in dismissal.
15. The protections provided by PIDA are:
 - the individual makes the disclosure in the public interest; and
 - believes that the information, and any allegation it contains, are substantially true;
 - believes that the incident falls within the description of activities for which the external body is responsible (for example, breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive, and environmental dangers can be notified to Natural Resources Wales); and
 - any issue about wrongdoing can be raised with any Member of Parliament (in Westminster).
16. Members of staff should first verbally report a Qualifying Disclosure formally to their own member of Management Board. However, if they feel unable to go to their

Management Board representative, for whatever reason, they can raise it with another Management Board member.

17. If the member of staff feels that the Qualifying Disclosure is so serious that it has to be reported directly to the highest levels, or are unable to go to a Director/ Head of Team, they can formally contact any of the following:
 - Chair of Human Resources Committee
 - Chief Executive
 - Council Secretary
18. Where the Chief Executive is implicated the Qualifying Disclosure must be reported to the Chair of the HEFCW Council, who will subsequently manage the procedures as defined in this policy.
19. Under PIDA, the Auditor General for Wales is recognised in law as a 'prescribed person' who can receive disclosures from individuals employed by the Wales Audit Office's audited bodies. The disclosure must be about 'the proper conduct of public business, value for money, fraud and corruption in relation to the provision of public service' (see contact details in 'Independent advice' section below).
20. The member of staff can seek procedural advice from HR or they can contact a Works Council representative for support.
21. The member of staff will not be disciplined nor subjected to any detriment on the grounds that they did not choose the most appropriate individual from the above list. The important thing is that the member of staff raises their concern.
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.

Dealing with the reporting of a Qualifying Disclosure

23. After the member of staff has reported a suspected Qualifying Disclosure, it is the responsibility of the relevant member of Management Board to decide whether or not this is a Qualifying Disclosure. Informal initial enquiries may be required to establish this.
24. If the relevant member of Management Board agrees the reported incident is a Qualifying Disclosure they must contact the Chief Executive (unless already directly reported to the Chief Executive). The Management Board member must inform the whistleblower that they are doing so.
25. For the purposes of this procedure, Designated Officers will be appointed by the Chief Executive (or if the Chief Executive is implicated, by the Chair of Council). The Designated Officers will already be trained to undertake the role. The Designated Officers will:
 - keep a record of all matters raised under the procedure and of the actions taken; and
 - inform whistleblowers of the actions taken in response to their Qualifying Disclosure.

26. If it is necessary to take urgent interim measures, for instance, to protect public funds or safety, this will be done immediately by the Chief Executive, before any enquiries or investigations.
27. The Qualifying Disclosure will be rigorously investigated by Designated Officers who are not implicated and who are independent of those implicated. A Designated Officer may be:
 - a member of Management Board (including the Chief Executive);
 - internal audit;
 - individuals with specialist knowledge of the area in question;
 - those Designated Officers identified within the disciplinary procedure;
 - or a combination of the above as considered appropriate.
28. 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. All notes of meetings and records must be retained securely by the Designated Officer and kept confidential.
31. Within 10 working days of the Qualifying Disclosure being drawn to the attention of the Chief Executive, the Designated Officer and the line manager will formally communicate the following to the whistleblower:
 - acknowledge the report or referral of the Qualifying Disclosure;
 - give an indication of how HEFCW proposes to deal with the matter;
 - inform the whistleblower of any interim measures taken; and
 - indicate the likely time-scale for providing a final response.
32. If a decision is made not to investigate the Qualifying Disclosure i.e. if it falls under another policy, e.g. the Grievance Procedure, this will be formally notified to the whistleblower within 10 working days.
33. If it is impossible to give the indications within 10 working days, the formal communication will say so, giving reasons, and timescales will be given as soon as possible thereafter.
34. 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.
35. This 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 maliciously or in bad faith, or if an employee or worker deliberately misuses this policy by making vexatious allegations knowing them to be untrue, 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

36. The identity of the whistleblower will be kept 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 (or the Chair of Council) 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 Designated Officer will inform the whistleblower that their 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. Any such victimisation of a bona fide whistleblower will be a disciplinary matter and could lead to dismissal. It must be noted that although HEFCW will do everything possible to maintain the confidentiality of the whistleblower, it cannot be guaranteed that others will not try to deduce (correctly or otherwise) their identity.
37. However should the whistleblower be charged with a criminal offence, for instance, where they have made a false allegation to distract attention from their own criminal conduct, it will not be possible to maintain confidentiality of their identity.
38. Any member of staff who reveals the whistleblower's identity in breach of this policy will face disciplinary action, which could result in dismissal.
39. Keeping the whistleblower's identity confidential may cause difficulty in carrying out a full investigation or in taking action against a wrongdoer. If the Chief Executive (or the Chair of Council) considers that the concern cannot be resolved without revealing the whistleblower's identity (other than to the police, as stated above) discussions with the whistleblower will be held on how to proceed.
40. Any Qualifying Disclosures expressed anonymously will be considered and will be investigated further if the Designated Officer considers it appropriate. Concerns raised anonymously are often more difficult or even impossible to investigate as the individual cannot be contacted for further information. This is a factor that the Designated Officer will take into account. It should be noted that where a concern is raised anonymously, the whistleblower cannot benefit from HEFCW's protection as set out in the policy and procedure. The Designated Officers will therefore always be expected to strongly encourage 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 Designated Officers will bear this constantly in mind. The initial enquiries 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 as an aggravating factor.

43. By exception, the Chief Executive may agree to solely look into a matter which is referred directly to them.

Complaints against the handling of an investigation.

44. If a member of staff has raised a Qualifying Disclosure under this policy and is dissatisfied with the way in which the investigation has been handled, this can be reported to the Chair of the HR Committee, who will be required to respond to it as a fresh concern under this policy. The decision of the Chair of the HR Committee will be final.

Disclosures to regulators and other external disclosures

45. The aim of the procedure is to introduce processes to ensure that members of staff will feel reassured and can raise concerns internally but HEFCW accepts that they can also safely or properly contact an appropriate external body. 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.

46. There are certain legal protections if a whistleblower goes to a body prescribed under PIDA. It includes bodies such as the Welsh Government and the Auditor General for Wales. A full list of these bodies and the matters that can be reported to them can be found at www.gov.uk/whistleblowing/how-to-blow-the-whistle.

47. Legal protections will be made available where a whistleblower discloses an incident to a regulator if:

- the information falls within paragraph 10 above; and
- the disclosure is made in good faith; and
- the whistleblower reasonably believes that the information and any allegation in it are substantially true.

48. Legal protections will be made available where a whistleblower discloses an incident to any other external body if:

- the information falls within paragraph 10 above; 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 45) is met; and
- overall, it is reasonable for them to make the disclosure to that external body.

49. 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.

50. 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 the 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.

51. If the reason for making the disclosure externally is one of the others listed in paragraph 10, 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.

Independent advice

52. If a whistleblower is unsure how to raise a concern or want free confidential advice at any stage, they may contact any of the following:

- Trade Union;
- The charity, *Public Concern at Work*, on 020 7404 6609, or at whistle@pcaw.org.uk;
- The PIDA Officer at the Wales Audit Office on 029 2032 0522, or at whistleblowing@audit.wales;
- HEFCW's employee assistance programme – see HEFCW intranet for details under Human Resources/Staff Support/EAP.

Other external disclosures

53. 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.

54. A member of staff who is considering making an external disclosure may wish first to seek advice from their 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, they 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.

Reports from outside HEFCW

55. 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

56. Designated Officers 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 procedures and any emerging patterns.

57. Designated Officers will also be required to report confidentially on a regular basis to HEFCW on all whistleblowing activities via the Head of Corporate Services. A confidential and anonymous report will be provided annually to the Management Board by the Head of Corporate Services.

58. The policy will be reviewed every three years (or earlier if necessary to comply with new legislation).

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
3.3	May 13	Amendments approved by HRC to reflect OD changes in Oct 12
0.1	Oct 13	Updated by Head of Corporate Services as part of HEFCW policies and procedures' review – title changed to Whistleblowing Procedure
0.2	Feb 14	Reviewed by Head of Corporate Services to take account of the ERRA 2013, BSi's PAS 1998:2008 Whistleblowing Arrangements Code of Practice and the Whistleblowing Commission's November 2013 Report on the Effectiveness of Existing Arrangements for Workplace Whistleblowing in the UK.
0.3	Apr 14	Updated following review by Management Board on 24 Mar 14.
0.4	May 14	Updated following review by Internal Audit Manager
0.5	Oct 14	Updated under general review of all policies and procedures by HEFCW
0.6	Oct 17	Reviewed by Head of Corporate Services to take account of latest best practice in public sector
0.7	Nov 17	Updated following review by Management Board on 6 Nov 17.
0.8	Dec 17	Presented to HR Committee and endorsed by ARAC

Whistleblowing Procedures

Unclassified

