



Regulatory Document

REGULATORY POLICIES AND PROCEDURES

Interim Regulatory Whistleblowing Policy

September 2017

Version control

This version (interim) of Qualifications Wales' Whistleblowing Policy was approved on 20 July 2017. We will keep policy statements under review and, if we consider it appropriate in consequence of a review, prepare revised statements. We will hold a public consultation on the content of this policy and seek to publish Version 1 of the policy within the next 12 months.

Feedback on this policy is welcomed at any time. Please send any comments to policy@qualificationswales.org.

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General principles of the Interim Regulatory Whistleblowing policy

'Whistleblowing' is the practice of a worker reporting some form of wrongdoing that they have become aware of through their work¹.

Qualifications Wales is committed to ensuring the highest possible standards of openness, probity and accountability. Qualifications Wales' Whistleblowing Policy establishes clear and transparent protocols for anyone classed as a whistleblower to disclose concerns to Qualifications Wales. The policy only covers areas in which we have a legitimate role as outlined within Qualifications Wales Act 2015 or as a prescribed body under the Public Interest Disclosure Act 1998.

The aim of the policy is:

- to provide clarity on who can be classed as a whistleblower;
- to provide clarity on the type of disclosures we can, and cannot, consider;
- to outline the process we will follow when handling whistleblower disclosures.

¹ Further information on Whistleblowing may also be found at <https://www.gov.uk/whistleblowing/what-is-a-whistleblower>

This policy does not cover a whistleblower's disclosure about us, someone who works for us or our contractors.

WHO CAN BE A WHISTLEBLOWER?

1. Qualifications Wales will consider as a whistleblower any worker working on behalf of:

- an awarding body regulated by Qualifications Wales (an 'awarding body');
- a centre in Wales offering qualifications that are regulated by Qualifications Wales (a 'centre'²); or
- a worker of any organisation involved with the development or awarding of a qualification in Wales whose practices have the potential to impact upon learners in Wales, such as a Sector Skills Council;

and who wishes to make a disclosure directly against their employer, based on evidence that has been discovered as a part of their work.

2. If you have a concern or a complaint about an awarding body, a centre or a qualification offered in Wales but are not a worker of the awarding body or centre, you will not be classed as a whistleblower. Please refer to our Complaints About Awarding Bodies policy³ for a description of how to make such a complaint, and the actions we will take to investigate and resolve the issue.

WHAT A WHISTLEBLOWER CAN DISCLOSE

3. Qualifications Wales will accept disclosures in relation to the functions that we exercise under the Qualifications Wales Act 2015. We will accept disclosures about any awarding body recognised by Qualifications Wales failing to follow our regulatory requirements in relation to recognition or to any qualification that they make available for learners in Wales.

4. Qualifications Wales will also accept disclosures about practices taking place outside of Wales but that may affect learners in Wales taking qualifications

² In this policy 'Centres' refers to locations where, and providers through which, learners study and assessments are held. This includes schools, colleges and work-based learning providers.

³ <http://qualificationswales.org/media/2315/complaints-about-awarding-bodies-eng.pdf>

regulated by Qualifications Wales. In those circumstances Qualifications Wales will consider whether or not the matter falls within its functions and may refer the matter to another body for consideration where appropriate.

5. Our regulatory requirements for recognised awarding bodies are set out in our regulatory documents. All awarding bodies are subject to compliance with our Standard Conditions of Recognition, and some awarding bodies may be subject to additional regulatory requirements depending on the qualifications that they make available⁴.

PROTECTED DISCLOSURES UNDER THE PUBLIC INTEREST DISCLOSURE ACT 1998

6. Under the Public Interest Disclosure Act 1998⁵, workers may have certain protection when making disclosures about malpractice, maladministration or wrongdoing which they become aware of from their working practice.
7. The Public Interest Disclosure Act 1998 outlines types of “protected disclosures” and the correlating legal protection afforded when making such a disclosure. A worker will make a “protected disclosure” and be afforded protection under the Public Interest Disclosure Act 1998 when making a disclosure to Qualifications Wales if that disclosure is a “qualifying disclosure” as defined in the Act and is made in a way specified by the Act.
8. A “qualifying disclosure” is any disclosure of information which the worker reasonably believes is made in the public interest and shows one or more of the following:
 - a) criminal offence;
 - b) breach of legal obligation;
 - c) miscarriage of justice;
 - d) danger to an individual’s health and safety;
 - e) environmental damage;
 - f) the deliberate concealment of any of the above.

⁴ A full list of our regulatory documents can be found at <http://qualificationswales.org/media/2301/qwr0005-v80-qualifications-wales-regulatory-documents-list-300117.pdf>

⁵ <http://www.legislation.gov.uk/ukpga/1998/23/section/1>

9. A “qualifying disclosure” will entitle a worker to protection if when it is made to Qualifications Wales the worker:
 - (a) makes the disclosure in good faith; and
 - (b) reasonably believes:
 - (i) that the relevant failure falls within the remit of the functions that we exercise under the Qualifications Wales Act 2015; and
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.

Qualifications Wales cannot provide legal advice on such rights. It is for the worker making the disclosure to seek information and / or legal advice should they wish to clarify their position in such circumstances. As a starting point, workers may wish to explore the Public Concern at Work⁶ website.

10. There are exemptions within the Public Interest Disclosure Act 1998 which identify disclosures that are not to be considered as “protected disclosures”, such as:
 - a) if the worker commits a criminal act in disclosing the information;
 - b) if the worker discloses information which has been received through legal advice (legally privileged information).

This list is not exhaustive and a worker considering making a disclosure is responsible for seeking their own legal advice.

CONFIDENTIALITY

11. Qualifications Wales will not reveal a whistleblower’s identity where we are not required to do so; however, we may need to reveal a whistleblower’s identity to the individual or organisation about whom they are disclosing information, particularly if we are unable to investigate the disclosure without revealing their identity or if the investigation involves other parties such as the police. We would therefore endeavour to ensure the anonymity of a whistleblower wherever possible, but **this cannot be guaranteed in all circumstances.**

⁶ Public Concern at Work - <http://www.pcaaw.co.uk/>

We will not normally allow any other body to see information relating to a disclosure if they are not involved. We will share information about disclosures, reviews and investigations with government departments or other organisations where we need to fulfil our duties under the law.

We will keep information about individual cases confidential unless we need to release information under relevant laws including the Data Protection Act 1998 or the Freedom of Information Act 2000.

We will accept and, where required, act on anonymous disclosures; however in such instances our investigations and actions may be limited by the anonymity of the source. We would also be unable to provide responses to those who raise concerns anonymously.

FIRST STEPS

12. If a worker has a concern about the practice of their employer in relation to a qualification regulated by us, the worker should in the first instance raise this concern formally with their employer. In some whistleblowing circumstances, however, this may not be appropriate, and in these circumstances we would therefore consider a whistleblower's disclosure without prior engagement with the awarding body or centre's whistleblowing policy.

We will deal with a whistleblower's disclosure:

- if it concerns an awarding body recognised by us or a qualification regulated by us;
- where that disclosure is in relation to qualifications that are taken by learners in Wales or is likely to affect learners in Wales⁷.

We will not normally deal with a whistleblower's disclosure:

- about an awarding body not recognised by us or about a qualification not regulated by us;
- where that disclosure is being, or has been, dealt with by formal legal proceedings or a police investigation, apart from providing any new

⁷ 'learners in Wales' are considered as being those learners who undertake the majority of the assessment for their qualification within Wales.

information to the relevant party. However, we may investigate, conclude or take further action on a disclosure once the relevant legal proceedings have been concluded.

13. If you wish to make a whistleblower's disclosure, please email incidents@qualificationswales.org and title your email "Whistleblower's Disclosure", or write to us at:

Qualifications Wales
Q2 Building
Pencarn Lane
Imperial Park
Coedkernew
Newport
NP10 8AR

You should include as much information as possible within your disclosure to enable us to act effectively. Information we would welcome includes:

- what you are disclosing;
- where it happened;
- when it happened;
- who was involved and / or affected;
- any supporting evidence.

Please also provide any known reference numbers that might be relevant, for example learner, qualification or centre numbers.

RESPONSE TIMES

14. Where we have been provided with contact details from a whistleblower, we will :

- send an acknowledgement to the whistleblower, normally within 5 working days of the disclosure being received by us to the address or email address provided;
- where we determine that the disclosure is not a type we will deal with, inform the whistleblower of the decision not to take the disclosure forward, normally within 5 working days of the acknowledgement letter/email and,

where appropriate, inform the whistleblower about other organisations that it may be useful to contact;

- aim to provide a more substantive response within 28 days of the acknowledgment letter/email, if the acknowledgement letter/email has not already included one. If we are unable to meet this deadline, we will, within that period, provide the whistleblower with an anticipated timescale within which we will aim to provide a fuller response.

We will provide a response in Welsh or English, in keeping with the language in which the disclosure was received.

DISCLOSURE HANDLING PROCESS

15. We will normally investigate the matters raised in a disclosure through three stages where necessary: assessment, initial review and formal investigation.
16. We will normally deal with a disclosure by conducting an assessment of the matters raised in the disclosure in the first instance. We will undertake an assessment of the nature of the disclosure, including where applicable the response of the awarding body to the disclosure. In order to determine whether the disclosure requires an initial review, we may consider the policies and procedures of the relevant awarding body, make enquiries of the relevant body and/or request further information from relevant persons (including the whistleblower, the relevant awarding body, and where appropriate other bodies).
17. If we determine that the disclosure is not one that we would normally deal with, in relation to the criteria identified in paragraph 6, we may recognise the disclosure as being relevant to the regulatory work of another body, such as Estyn, Her Majesty's Inspectorate for Education and Training in Wales or the Health and Safety Executive Wales. In these instances we will provide the whistleblower with contact details for this body.
18. Following the assessment of the matters raised in the disclosure, we may determine that an initial review is required. If we assess that an initial review is required, then we will take steps to gather evidence in order to substantiate the disclosure. This will be undertaken through making further enquiries of the

awarding body and any other relevant party, and potentially requesting further evidence. The outcome of the initial review, explaining whether or not the issue raised in the disclosure was substantiated, will be shared with the whistleblower and the awarding body; and where a disclosure has been substantiated, may require further regulatory action. Any evidence gathered by us in either the assessment or initial review stages will not be shared with the whistleblower. This may take the form of, but is not limited to, conducting a formal review or investigation into any issues flagged up, establishing an action plan to address any issues, to undertake regulatory action (the process and outcomes for which are covered in the Taking Action When Things Go Wrong policy⁸) or to involve the assistance of other agencies such as the police in investigating or resolving issues.

19. Where a whistleblower raises significant concerns about an awarding body or regulated qualifications we may carry out a formal investigation. A formal investigation into a disclosure involves us directly investigating the issues raised in the disclosure by gathering relevant evidence. The purpose of an investigation is to establish whether the awarding body has complied with such relevant regulations or legislation as are applicable to it in respect of the disclosure. In the most severe cases where disclosed issues are upheld, we may be required to take regulatory action – for further information on this, please consider the Taking Action When Things Go Wrong policy.

20. We may conclude or resolve any outstanding issues during the course of addressing or investigating the disclosure, or in the most severe cases where disclosed issues are upheld, we may take regulatory action if our investigation concludes that the awarding body has failed to comply with any relevant regulation. Where a disclosure leads us to consider regulatory action, and where we hold contact details for the whistleblower who has made the disclosure, we will make this whistleblower aware that this has been the outcome of their disclosure. Any regulatory action will be undertaken in line with our 'Taking Action When Things Go Wrong' policy. Where it has been concluded that an awarding body has failed to comply with legislation, we would refer the awarding body to the police and Crown Prosecution Services. Alternatively, we may conclude that our investigation has identified issues that are not within our remit but can be taken up by another body.

⁸ <http://qualificationswales.org/publications/july-2016-taking-action-when-things-go-wrong/?lang=en>

21. We will not make judgments about learner work, re-mark learner work or instruct awarding bodies to change awards, other than in exceptional circumstances.
22. We may pause or stop an investigation where there is a possibility of legal, criminal or civil proceedings or if any person makes any public statement during the investigation that could affect the outcome or any future criminal or civil proceedings. This includes if the whistleblower discusses the investigation with any relevant parties.

ACTION FOLLOWING REVIEW / INVESTIGATION

23. If, as a whistleblower, you are unhappy with the outcome of our investigation into your disclosure then you may request an internal review of our decision.
24. The internal review of our decision will be undertaken by internal reviewer(s) who are appointed by our Head of Corporate Governance. The internal review will normally be undertaken within 28 days and the internal reviewer(s) will provide a statement to the whistleblower following its conclusion. This statement will include a recommendation to either uphold or revise the decision.
25. If, as a whistleblower, you are unhappy with the internal review of our decision in relation to your disclosure you can contact the Public Services Ombudsman for Wales. For information about how to make a complaint, please use the following contact details:
 - Online at <http://www.ombudsman-wales.org.uk/en/Making%20a%20complaint.aspx>
 - By telephone on 0300 790 0203

The Ombudsman has legal powers to look into complaints about public services in Wales and is independent of all government bodies.