



# Public Interest Disclosure (Whistleblowing) Procedure

April 2018

PROCEDURE

## HERIOT-WATT UNIVERSITY PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) PROCEDURE CONTENT

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## **1. INTRODUCTION**

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- 1.1** The aim of this procedure is to provide those members of staff who are involved in the whistleblowing investigation process with additional guidance to ensure that any action taken is fair and consistent with the University's principles.
- 1.2** This guidance note should be read in conjunction with the University's Public Interest Disclosure (Whistleblowing) Policy, June 2018.

## **2. INVESTIGATION**

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- 2.1** Once a disclosure has been made, the designated officer should consider the information on face value and decide if, on the face of the information available, the issues raised fall within the University's Public Interest Disclosure (Whistleblowing) Policy. Provided that the issues are not frivolous, malicious or simply too vague to investigate the designated officer should arrange for an investigation to be conducted as follows:
- 2.1.1** The designated officer should identify an independent officer within the University to carry out an investigation into the disclosure made. An independent officer should be someone with the appropriate expertise of investigations and/or knowledge of the subject matter.
- 2.1.2** Where possible, and provided such disclosure does not jeopardise the investigation, the designated officer should inform the individual who made the disclosure of the name of the officer chosen to conduct the investigation.
- 2.1.3** The investigation should be conducted as sensitively and speedily as possible, having regard to the nature and complexity of the issue.
- 2.1.4** In circumstances which warrant it, the designated officer may call upon the services of the University's Internal (or External) Auditors to assist in the investigation - for example, where disclosures relate to complex financial matters, the Secretary of the University, the Principal and/or the Chair of Court. The rationale for this decision shall be recorded.
- 2.1.5** Where criminal activity is suspected, the designated officer should obtain advice from HR as to whether it is necessary to report the matter to the Police at this stage.
- 2.1.6** The officer conducting the investigation will not be permitted to make any subsequent decisions in relation to the particular disclosure they have investigated.
- 2.1.7** All staff invited to co-operate with an investigation may be accompanied by a colleague or trade union representative during the course of a preliminary investigation. For the avoidance of doubt, the right to be accompanied does not include legal representation.
- 2.1.8** Likewise, all students invited to co-operate with an investigation may be accompanied by a fellow student or Student Union representative during the course of an investigation. For the avoidance of doubt, the right to be accompanied does not include legal representation.

- 2.1.9** Where the designated officer has decided that the complaint should not move forward to an investigation in terms of para 2.1, the designated officer must report that fact in writing to the person who made the whistleblowing complaint (the “complainant”). If that person is not satisfied with the outcome, the appeal provisions at para 6 will apply.

### **3. THE ROLE OF THE INVESTIGATOR**

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- 3.1** The investigator will have the following responsibilities:
- 3.1.1** To arrange individual interviews with relevant witnesses or individuals.
  - 3.1.2** To inform individuals who are to be interviewed that they may be accompanied at the meeting by their trade union representative, work colleague, fellow student or Student Union representative as appropriate.
  - 3.1.3** To establish the facts/obtain statements/collect documentary evidence.
  - 3.1.4** To maintain detailed records of the investigation process.
  - 3.1.5** To make any recommendations for future investigations to the designated officer.
  - 3.1.6** The investigator must write up their investigation in a brief report, which they will pass to the designated officer. The investigator may choose to anonymise anyone involved by reference to initials or numbers. If there is a conflict in the evidence because witnesses disagree on what has happened, they should highlight the fact that there are issues of credibility and reliability, but the investigator should not make a finding on the area of dispute. They may recommend specific further investigation or action but only insofar as this may assist the designated officer, whose sole responsibility it is to take the decisions about further investigation or action. The investigator must not express their views about the final disposal of the complaint
- 3.2** The investigator will have the following responsibilities to the employee, student or member of the University Court who raised the disclosure (the complainant):
- 3.2.1** Where it is practicable to do so, to hold a formal meeting with the individual making the complaint to discuss the matter. If the individual is unable to attend due to ill health or other reasons, a decision may be taken to proceed without a meeting.
  - 3.2.2** To inform them that they may be accompanied at any interview, as noted above.
  - 3.2.3** To keep the individual generally up to date with progress on the matter
  - 3.2.4** To give details of any support mechanisms available to assist the complainant

- 3.3** The investigator will have the following responsibilities to the employee, student or member of the University Court against whom the disclosure is raised (the respondent):
- 3.3.1** Unless serious criminal activity is alleged (see below), to inform the individual/individuals in writing that a disclosure has been made; to inform them of the nature of the disclosures; to provide where appropriate relevant evidence (taking into account any issues regarding confidentiality); and to advise that the complaint will be investigated in terms of the current University Whistleblowing Procedure. The investigator should send the respondent a copy of that Procedure. . \*\*
  - 3.3.2** To advise in writing of the procedure to be followed and the expected timescales relating to the specific circumstances.
  - 3.3.3** To ask for any relevant written evidence, consider it, then give the individual the opportunity to respond where practicable in person, and, if not, in writing, to the claims made.
  - 3.3.4** To inform them of their right to be accompanied at any interview; but to make clear that the right does not include a right to legal representation at that interview.
  - 3.3.5** To give details of any support mechanisms available.

**\*\* Please note that where criminal activity is suspected, advice should be obtained from HRD as to whether the matter should be reported to the Police and at what stage the matter should be disclosed to the individual who is the subject matter of the complaint, if at all. The investigator may also be required to act as a witness at any subsequent disciplinary hearing, or appeal hearing.**

#### **4. OUTCOME OF THE INVESTIGATION**

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- 4.1** The officer who carries out the investigation will report their findings of fact to the designated officer.
- 4.2** Using the information obtained through the investigation, and depending upon the nature of the matter raised, the designated officer will decide on the course of action to be taken, after obtaining advice from HR where appropriate. This may be one or more of the following:
  - 4.2.1** Not to proceed any further with the matter;
  - 4.2.2** To refer the matter for further internal or external investigation;
  - 4.2.3** To refer the matter to be dealt with under another University policy/procedure;
  - 4.2.4** To refer the matter to the Police;
  - 4.2.5** To notify the Scottish Funding Council (SFC) and/or other external agencies as appropriate; and/or
  - 4.2.6** To refer the matter to an independent external review,

**4.2.7** To uphold or partially uphold the complaint.

**4.2.8** The designated officer must record their decision in writing, and include reasons for that decision.

## **5. FEEDBACK FOLLOWING THE INVESTIGATION**

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**5.1** Where possible, the designated officer will inform the parties listed below of the subject of the disclosure, of the outcome of the investigation and further action, if any, which is to be taken by the University:

- a.** The person who has made the disclosure
- b.** The respondent or respondents against whom the disclosure was made
- c.** The Principal (unless the designated officer is the Principal)
- d.** The Secretary of the University (unless the designated officer is the Secretary of the University)
- e.** The Chair of Court (unless the designated officer is the Chair of Court)

**5.2** At their absolute discretion, the designated officer may choose not to inform one or more of the said parties of the outcome. In that event, they must record in writing the reason for failing to inform the relevant person.

**5.3** At all times, the University should uphold the legal obligations of confidentiality it owes to its employees, including the complainant and the respondents, where appropriate.

**5.4** The University must keep a record of the investigator's report, and the designated officer's written decisions, for a minimum of five years.

## **6. APPEAL**

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**6.1** If the complainant or the respondent does not agree with the outcome, or is not satisfied that the matter has been handled fairly, he or she may appeal to the Principal. (Where the recipient of the original disclosure was the Principal, he may appeal to the Chair of Court.) An appeal must be in writing, and must be submitted to the Principal's office (or the Chair of Court's secretary) no later than four weeks after the date of issue of the letter advising them of the outcome. Reasons for making the appeal must be stated.

**6.2** The deadline for receipt of an appeal may be extended by the Principal (or the Chair of Court) in exceptional circumstances, at their absolute discretion

**6.3** The appeal will be determined by the Principal (or Chair of Court) as they deem fit, and at their absolute discretion they may seek further information, hold a hearing, decide the appeal without a hearing, or proceed in any way compatible with ensuring a fair outcome. They must provide a written decision, with reasons, to the parties involved in the appeal. A copy must be retained by the University for five years.

**6.4** The said appeal decision will be final, and not subject to review or appeal within the University.

## **7. REPORTING OF OUTCOMES**

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An annual report of all disclosures and of any subsequent actions will be made by the Secretary of the University to the University Audit & Risk Committee. The Secretary of the University will retain such reports for the year in which the case is resolved and for a further six years in accordance with the University Records' Retention Policy.

## Appendix 1

**Timescales for managing a disclosure**

**Please note that the timescales for investigation a whistleblowing complaint will vary depending upon the nature of the concern. The timescales below are, therefore, for guidance only. However, in all cases, matters should be investigated promptly and parties should be kept up to date with the progress so far as possible.**

Action	Timescale	By Whom
Written acknowledgement of disclosure made in writing or if received verbally, including an outline of process to be followed.	Within seven working days	Officer who receives the disclosure (designated officer).
Where appropriate, confirm in writing to the person complained of that a disclosure has been received and that it is being considered. Outline the process to be followed and likely timescales.	Within ten working days.	Officer who receives the disclosure (designated officer).
Confirmation of whether the matter is to be investigated, and if so, how it will be investigated.  Letters sent to individual who raised concern and person complained of.	Within four weeks of receipt of disclosure.	Officer appointed to investigate.
Written confirmation of the outcome of the investigation and recommended action to be taken. Report sent to the relevant designated officer. Thereafter, the designated officer considers the recommendations and determines what action to take.	Within three months of receipt of disclosure.	Officer appointed to investigate.
Appeal against outcome of investigation.	Within four weeks from the date of issue of the letter advising the outcome.	Individual who makes the disclosure and/or the individual against whom the disclosure was made
Appeal carried out.	Within three months	The Principal or Chair of University Court