

**SHEFFIELD HALLAM UNIVERSITY**

**POLICY ON 'WHISTLE-BLOWING' / PUBLIC INTEREST DISCLOSURE**

**23 AUGUST 2013**

**Compliance with the Whistleblowing Policy is compulsory. The Whistleblowing Policy applies to:**

- members of the University Board of Governors and other Committees
- employees directly or deemed employed by the University and/or subsidiary or associated companies;
- employees directly or indirectly employed by overseas offices and branches;
- associate lecturers;
- agency staff working for the University;
- any other third parties who work on delivering University services and are paid through a contract for services
- students who are not employees but are provided with work experience pursuant to a training course or with training for employment at the University, in either case where this is not part of their University course.

**Employees must ensure that they understand the requirements and attend appropriate training and development sessions if requested by the Human Resources Directorate.**

**Further guidance and support is available from your named contacts within the Human Resources Directorate and Governance and Planning Services in the Secretary and Registrar's Directorate.**

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## **1. Policy statement**

- 1.1. The Public Interest Disclosure Act 1998 provides employees, workers and former employees (all referred to as "workers" in this Policy) with legal protection against being dismissed or suffering detriment due to the acts or omissions of their employers or colleagues as a result of "whistle-blowing".
- 1.2. The term "whistle-blowing" is generally used to describe incidents where a worker discloses alleged wrong-doing within an organisation which it is in the public interest to disclose.
- 1.3. Not all disclosures made will be "protected disclosures" for the purposes of the legislation, and workers should contact the Human Resources Directorate, their Trade Union or professional body or take independent legal advice before blowing the whistle to ensure they understand what legal protection they may receive.
- 1.4. Sheffield Hallam University is committed to promoting openness in the workplace, and encourages workers to raise concerns early. The University will take all reasonable steps to protect "whistle-blowers" from detrimental treatment by the University or other workers. Detrimental treatment can be in the form of victimisation, harassment, disciplinary action, dismissal or any other loss or harm suffered as a result of 'whistle-blowing'.
- 1.5. The procedure for raising concerns which are in the public interest is provided below and forms part of the Employment Handbook which can be found on the HR Intranet site.

## **2. Scope of the Policy**

- 2.1. This Policy is intended for use by workers who have evidence that the University has failed in a legal or regulatory duty and/or concealed such a failure, and who have a reasonable belief that disclosure of the failure is in the public interest. The Policy does not apply to personal grievances concerning a worker's terms and conditions of employment or other aspects of the working relationship, complaints of bullying or harassment, or disciplinary matters. Such complaints will be dealt with under existing procedures on grievance, bullying and harassment, discipline and misconduct in

research. Details of these procedures can be found in the Employment Handbook on the HR Intranet.

- 2.2.** The University also has in place other policies and procedures to address issues which may arise in the workplace, including those relating to concerns about bribery, fraud and corruption. In many instances where there is a suspicion of improper behaviour, it will be more appropriate to follow these specific policies and procedures, details of which are set out in the Anti-Bribery Policy which is on the Secretariat intranet site, and the Fraud and Corruption Policies and Plans which are on the Finance intranet site.

### **3. "Qualifying Disclosures"**

- 3.1.** For the Public Interest Disclosure Act 1998 to provide protection, there must first be a "qualifying disclosure" made, and other criteria must be met for it to be a "protected disclosure". A "qualifying disclosure" is one which:

- in the reasonable belief of the worker is made in the public interest; and
- tends to show that a "relevant failure" has been, is being, or is likely to be committed

- 3.2.** "Relevant failures" may include:

- criminal offences;
- failures to comply with legal obligations;
- miscarriages of justice;
- any risk to health and safety;
- environmental damage;
- attempts to suppress or conceal any information relating to any of the above

- 3.3.** The University's Policy also encompasses the following, (but these may not be "qualifying disclosures" unless they also fall with the definition of a "relevant failure"):

- financial or non-financial maladministration or malpractice or impropriety or fraud;
- corruption or the commission of bribery offences by those within the institution or by people associated with the institution;
- obstruction or frustration of the exercise of academic freedom;
- academic or professional malpractice, for example theft of intellectual property;
- improper conduct or unethical behaviour

- 3.4. Qualifying disclosures may concern the University's activities anywhere in the world. They may involve a breach of the law of any other country or territory as well as that of the United Kingdom.
- 3.5. A disclosure will not be a qualifying disclosure if you commit an offence by making it.
- 3.6. A disclosure will not be a qualifying disclosure if the information was learned in the course of providing legal advice for the University, meaning a claim of legal professional privilege could be maintained in legal proceedings, but the disclosure will qualify if made in the course of obtaining legal advice.

#### **4. Who can raise a concern?**

- 4.1. Sheffield Hallam University encourages all workers to disclose concerns to the University before taking matters further or to an external body. The procedure is set out in paragraph 11 below.
- 4.2. This Policy applies not only to those defined in 1.1, but also any other worker, including Governors and Committee members, employees directly or deemed employed by the University and/or subsidiary or associated companies, employees directly or indirectly employed by overseas offices and branches, associate lecturers, agency staff working for the University, any other third parties who work on delivering University services and are paid through a contract for services. It also applies to students who are not employees but are provided with work experience pursuant to a training course or with training for employment at the University, but in either case this must not be part of their University course.
- 4.3. Line managers will raise awareness of this Policy to workers at induction.

#### **5. When is a "Qualifying Disclosure" a "Protected" Disclosure"?**

- 5.1. Whether a "qualifying disclosure" becomes a "protected disclosure" depends on whether it is made to an appropriate person, and whether the corresponding conditions for disclosure to that type of person are met.
- 5.2. Disclosures should be made to the University in accordance with paragraph 11 below unless one of the conditions in paragraph 5.3. (iii), (iv) or (v) are met. This Policy is

intended to show that the University is committed to encouraging protected disclosures to be made to the University, and workers should not be concerned that they will suffer detriment for doing so, nor that evidence will be concealed or destroyed.

**5.3.** Other than the University, you may make a "qualifying disclosure" to a legal adviser, a regulatory body, or a third party (for example, a member of the police, the media or your MP), but **only** where the following conditions are met:

- (i) the worker reasonably believes that the information/allegation is substantially true; **and**
- (ii) the disclosure is not made for personal gain; **and**
- (iii) the worker reasonably believes they will be subjected to a detriment if the matter is raised internally; **or**
- (iv) the worker reasonably believes the evidence of the "relevant failure" will be concealed or destroyed if the matter is raised internally; **or**
- (v) the worker had already made substantially the same disclosure to the employer; **and**
- (vi) in all the circumstances it is reasonable to make the disclosure

**5.4.** The evidential burdens are higher where the disclosure is not made to your employer. For further guidance on determining the reasonableness of making a disclosure to an external person/body, please contact the Human Resources Directorate, your Trade Union or professional body, or take independent legal advice.

**5.5.** Where the disclosure is of an exceptionally serious failure, the worker need not meet conditions (iii), (iv) or (v) in order for the disclosure to be a "qualifying disclosure".

## **6. Protection of Workers**

**6.1.** The University prohibits workers from any act or omission which has the effect of causing a detriment to another worker who has made or intends to make a "protected disclosure".

**6.2.** As well as the University being vicariously liable, workers can be personally liable to other workers for detriment suffered if they do not abide by paragraph 6.1.

## **7. Confidentiality**

- 7.1. The University will treat all such disclosures in a confidential manner. The identity of the worker raising the concern will be kept confidential wherever possible so long as it does not hinder or frustrate any investigation.
- 7.2. Where a worker of the University is considering making a disclosure of confidential information they should seek advice from the Human Resources Department, their Trade Union or professional body, or take independent legal advice.
- 7.3. All workers have an implied duty of confidentiality to the University, whether or not there is a specific confidentiality clause within their contract of employment.
- 7.4. Disclosure of confidential information may be regarded as a serious breach of discipline unless this falls within the definition of a "protected disclosure".

## **8. Anonymous allegations**

- 8.1. Whilst anonymous disclosures are discouraged as they are more difficult to investigate, verify and follow up, concerns expressed anonymously will be considered at the discretion of the University. The factors to be taken into account will include:
  - the seriousness of the issues raised;
  - the credibility of the concern (including any information provided about the discloser's identity or relationship with the University); and
  - the likelihood of confirming the allegation from attributable sources
- 8.2. All allegations received will be logged by the University and if the University decides not to proceed with an investigation, the reasons behind this decision will be documented, but feedback will not be able to be given to the worker who raised the issue unless they contact the University again and agree to waive anonymity.

## **9. Unfounded allegations**

If a worker raises a concern with the University in good faith, whether or not it is confirmed by subsequent investigation, no action will be taken against the worker.

## **10. Malicious or vexatious allegations**

**10.1** Malicious or vexatious allegations are prohibited. If a worker makes a malicious or vexatious allegation, disciplinary action may be taken against the worker concerned. Furthermore, if the matter is heard by an employment tribunal, even if successful at trial the worker may receive up to 25% less compensation if the University can show that bad faith or malice was the predominant motivation for the disclosure.

## **11. Summary of Procedure**

**11.1** The person to whom the disclosure is made will normally consider the information and decide whether there is a prima facie case to answer. Depending on the nature of the matter raised, they will decide whether an investigation should be conducted and what form it should take. If there is a case to answer, the issue may be:

- investigated internally;
- referred to the University's external or internal auditors; or
- the subject of independent enquiry

**11.2** Once a disclosure is being dealt with under this policy, it is reasonable to expect workers to await the conclusion of any investigation or review instigated under its terms before seeking to air their complaints outside the institution. This summary of the procedure is expanded upon in the 4-Step Process set out below.

### **Step 1**

Normally, any disclosure about a protected matter should be made in the first instance to the University Secretary and Registrar as the designated person.

The concern can be raised either in a face to face meeting, on the telephone or by email. If the concern involves or implicates the Secretary and Registrar then it should be raised with the Vice-Chancellor by one of the same methods.

If the concern involves or implicates both of these individuals then it should be raised with the Chair of the Board of Governors.

### **Step 2**

The Secretary and Registrar (or Vice-Chancellor or Chair of the Board of Governors) will decide after appropriate consultation whether the matter is to be investigated further and by whom.



In cases of a financial nature the Chair of the Audit Committee should be consulted. Some cases may require immediate referral to an outside body for consideration and investigation, e.g. the police or Health and Safety Executive.

Usually a preliminary internal investigation will be necessary first. The person conducting the internal investigation will not be involved in making subsequent decisions based on the outcome of the investigation. Where a decision is taken not to investigate further or take any action, the worker will be informed of the reasons why (subject to confidentiality considerations and unless they made the disclosure anonymously). Workers do not have a right of appeal in these circumstances, but will be given feedback to explain the decision taken.

### **Step 3**

Where the matter has been investigated, the Secretary and Registrar will decide, after appropriate consultation, what action (if any) should be taken and report the outcome to the worker (subject to confidentiality considerations and unless they made the disclosure anonymously), the Vice-Chancellor and the Audit Committee. The internal and external auditors will also be notified.

Further investigation may be recommended and a report should be made to the Vice-Chancellor on the proposed course of action.

Regular reports will be made to the Board of Governors.

### **Step 4 - External Review**

If the worker remains dissatisfied at the outcome after all internal procedures and investigations have been exhausted, they may ask the Secretary and Registrar to refer the matter for independent review.

The purpose of the independent review will be:

- to decide whether the University's internal investigation has been adequately handled;
- where it is judged that this is the case, to decide whether the response was reasonable in all the circumstances

The person or persons conducting the independent review will have the authority to make recommendations as follows:

- order a further internal investigation;
- order the University to reconsider the findings of the investigation.

The independent reviewer may interview the worker or any other worker including those involved in handling the concern. New evidence or information will be considered at the discretion of the reviewer.

A report of the independent review will be submitted to the Vice-Chancellor, Board of Governors and the Audit Committee.

## **12. External disclosure**

**12.1** If having exhausted the University's internal procedure, the worker is not satisfied with the University's response and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and within the public interest, they may wish to report their concerns to an external body, such as an MP, local councillor, HEFCE etc.

**12.2** This should occur only if they remain dissatisfied after the above procedure has been exhausted, or where they believe the matter is exceptionally serious and there is an immediate or urgent threat to the health, safety or well-being of students/colleagues. In these circumstances the worker is strongly advised to contact their Trade Union representative where applicable and should advise their manager that this is their intention.

**12.3** A worker, who makes an external complaint in good faith to any prescribed body or person after exhausting the University's procedure, will be protected against victimisation or other adverse treatment if they meet the requirements of paragraph 5 above.

## **13. Representation**

**13.1** Workers are entitled to be accompanied by a representative of their Trade Union or a work colleague at any meeting to discuss their concerns.

#### **14. Written records**

- 14.1** The Secretary and Registrar will retain written records of the concern and investigation. These records will be kept for a minimum of three years.

#### **15. Timescales**

- 15.1** The University will ensure that matters are resolved as quickly as possible. A worker who raises a concern will normally receive an initial response within 5 working days.
- 15.2** Occasionally there will be valid reasons why this timescale cannot be met or where it might be helpful to allow additional time to investigate or resolve the matter.

#### **16. Review**

- 16.1** This policy will be reviewed within 12 months following its implementation or earlier by joint agreement.

**Amended 23 August 2013**

