



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
Her Majesty's Inspectorate for Education and Training in Wales

Whistleblowing and raising a concern

Policy and procedures

Information sheet

Information box

For further advice contact: Human Resources

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Impact Assessment

- A business rationale assessment has been carried out and this policy contributes to Estyn's strategic objectives and delivery principles.
- An equality impact assessment has been carried out and this policy is not deemed to impact adversely on any people on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

This policy and procedure will be reviewed initially after 12 months and then every two years or whenever a relevant change in legislation occurs. In addition, the policy and procedure may be reviewed at other times, for example if Nominated Officers or other employees involved in using it recommend any changes as a result of their experiences.

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Message from His Majesty's Chief Inspector

Estyn is committed to ensuring high standards of conduct in all that it does. This means not only in terms of what we do, but also how we do it. We are expected to work with integrity, honesty and objectivity, and to be totally impartial and completely ethical. For all civil servants, these standards are reinforced by the [Civil Service Code](#) (the Code). However, wrongdoing can occur. It is important that employees know what to do if, in the course of their work, they come across something that they think is fundamentally wrong, illegal or endangers others within Estyn or the public. This [Policy](#), [Procedures](#) and [Guide](#) will guide employees through the process of raising a concern, which is sometimes referred to as 'blowing the whistle'.

In the great majority of cases you should, as a first step, raise any issue of concern with your line manager. However, if you suspect that these standards are not being met, you have a duty to raise your concerns through the appropriate channels outlined in this policy.

I will be informed of all whistleblowing cases and concerns raised under the Code as they arise and will be kept up to date with progress in investigating and resolving the concern.

If you raise a concern you have my assurance that:

- you will not be disciplined or subjected to any other detriment to your career
- we will take all reasonable steps to protect you from any personal detriment such as harassment or victimisation
- if you ask us to protect your identity, we will try to do so for as long as it is within our control, is appropriate and legal to do so; and we can properly investigate or resolve the concern without revealing your identity
- we will let you know how your concern will be dealt with, as far as we appropriately and lawfully can

Applying the same standards of fairness, if you find yourself to be the subject of a Whistleblowing or Civil Service Code investigation and the concern turns out to be mistaken or groundless, we will take all reasonable steps to protect you from any detriment.

Finally, remember that this is an open organisation. If you ever have concerns about anything, even if it is not within the scope of this policy, I want to make clear that you are not only safe to speak up and challenge, but that I urge you to do so. If you ever feel that it is not safe for you to do that, you can email either of Estyn's Strategic Directors, the Nominated Officers or get in touch with me at:

owen.evans@estyn.gov.wales

Owen Evans
His Majesty's Chief Inspector for Education and Training in Wales

Our policy

1. This policy applies to employees (including contractors and non-civil servants for example secondees working for Estyn) of Estyn and sets out how issues of Whistleblowing and Breaches of the Civil Service Code will be handled, investigated and the actions that may be expected as a result. The [Guide](#) provides answers to a number of questions related to the process.
2. The Panel referred to in the policy has another role in considering allegations Estyn receives in respect of concerns about bodies and organisations that are in receipt of or have received public funds. The management of such allegations is set out separately to this document.
3. Estyn encourages employees to report any suspected wrongdoing at the earliest opportunity and as soon as you have a reasonable suspicion. If you report a genuine concern, even if it turns out to be mistaken, you are doing your duty as a civil servant, and you will not be disciplined or subjected to any other detriment. On the contrary – if you fail in your duty to report suspected wrongdoing that failure could itself lead to disciplinary action.
4. Do not worry about whether your concern falls neatly into the whistleblowing categories or the Civil Service Code, the important thing is to report it in an appropriate way.
5. We consider each circumstance and a Panel identifies how to proceed on each allegation. It is our responsibility to investigate and determine whether the allegation is true or not.
6. We encourage you to raise the matter internally first which gives us an opportunity to discuss the matter with you (or the person who raises the issue on your behalf) so that we have as much first-hand information as quickly as possible to help us consider your concern. This also helps to ensure that we can support you throughout the process and let you know where you can get further advice and support.
7. We aim to take all reasonable steps to protect and support you when you raise a concern. Any employee who deters others from raising a concern or victimises or harasses another employee as a result of their having raised a concern under this policy will be dealt with under the [Discipline Policy](#). Any employee who victimises, harasses or causes detriment to another employee who has raised a whistleblowing concern may be personally liable for a compensation claim against them. Detrimental behaviour towards a whistleblowing employee will not be tolerated and is likely to lead to disciplinary procedures.
8. Estyn is committed to taking whatever action is found to be necessary to address any wrongdoing that is uncovered.
9. The Assistant Director - Inspection & Central Services has day-to-day operational responsibility for this policy, and must ensure that all employees who may deal with concerns or investigations under this policy receive regular and appropriate training. The Assistant Director - Inspection & Central Services, will also on behalf of the

Panel, report on the effectiveness of whistleblowing arrangements in Estyn's governance statements in its Annual Report and Accounts.

10. All employees are responsible for the success of this policy and should ensure that they use it to disclose any suspected danger or wrongdoing. Employees are invited to comment on this policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Human Resources team (email: humanresources@estyn.gov.wales).
11. In accordance with Estyn's Welsh Language Scheme, staff can pursue any concern in Welsh or English. Similarly, if a member of staff is subject to a concern they may respond in their language of choice.

The Procedure

Raising a concern

12. If you suspect wrongdoing, you should make a note of what you believe to be the basis for the concern, the background and history, what happened, including details of names, dates, times, locations, what was said or what you observed and the reason why you are concerned. You should also keep a copy of any documentary evidence that you may have.
13. You should speak or write to your line manager as soon as you can, in either Welsh or English, using your note to explain your concerns. You may if you wish bring a colleague with you when raising the concerns.
14. You may raise a Whistleblowing or Civil Service Code concern with any of the following;
 - Your line manager
 - Strategic Director
 - Assistant Director - Inspection & Central Services Whistleblowing / Civil Service Code Nominated Officers
15. The Whistleblowing / Civil Service Code Nominated Officers are:

Mererid Wyn Williams Assistant Director - Inspection & Central Services	029 20446502
Helen Lovitt Head of People	029 20446536
Clive Phillips Assistant Director	029 20446451
Robert Gairey Estyn's Complaints Manager (whistleblowing administrator)	029 20446309

16. If you feel unable to speak with any of those listed above, or feel that the issue is so serious that it has to be reported directly to the highest level, you can contact HMCI

verbally or in writing. Anyone wishing to make a disclosure relating to HMCI may do so by raising the matter with any of Estyn's non-executive directors.

17. If you suspect wrongdoing, you should not carry out any form of surveillance or monitoring of the actions of others; neither should line managers ask their staff to do so.
18. If your line manager is involved in the suspected wrongdoing or you are uncomfortable discussing your concern with them for any other reason, you should contact one of the other persons listed in paragraph 15.
19. We strongly encourage you to raise Whistleblowing and Code matters internally but if you decide to raise a Whistleblowing matter externally or make a wider public disclosure, you should read carefully the information contained in Annexes A, B and C. These detail the contacts and tell you about the legal protection you may be afforded in certain circumstances.
20. If you decide to raise a concern under the Code externally, this should be directly to the [Civil Service Commission](#). The Commission has powers under the Act to hear and decide on complaints raised by Civil Servants **under the Civil Service Code specifically**. It does not hear complaints on issues outside of the Civil Service Code, for example personnel management grievances.

Protecting your identity

21. If you are concerned about your identity being disclosed, you or the person you contact should let the Nominated Officer know when you tell them of your concern.
22. We will aim to respect your wishes if you ask us not to reveal your identity when you raise a concern. We will try to protect your identity for as long as it is within our control, it is appropriate and legal to do so, and we can properly investigate or resolve the concern without revealing your identity. If we think that it is necessary to reveal your identity, we will aim to take all reasonable steps to give you advance notice of this.
23. You should also be aware that, even where we try to protect your identity, investigation into the matter may in itself reveal you as the source of the information or make it possible for another person to identify who has made the allegation. A statement may also be required from you as part of the evidence which would be seen by all parties involved, especially if there is a criminal investigation involving the police. In these circumstances, for the proper investigation of a criminal offence we may have to reveal your identity to the police. You may also be called to give evidence in court.
24. If your identity needs to be revealed to the police, the Nominated Officer will take all reasonable steps to give you advance warning of this. We will take all reasonable steps to protect you from any detriment.
25. Paragraph 23 does not apply in the event of us reporting to the police alleged conduct by an employee, either as a whistleblower or raising a concern under the Code, which we think may amount to a criminal offence (e.g. where an employee has

used Whistleblowing or the Code to make a false accusation against someone else to distract attention from their criminal conduct).

The next steps

26. Whoever you disclose your concerns to (if you do not yourself contact the Nominated Officers in the first instance) they must contact one of Estyn's Nominated Officers to discuss how to proceed.
27. The Nominated Officer will inform the person who contacts them whether the concerns fall under this policy or whether they should be dealt with under another policy.
28. If it appears necessary to take urgent interim measures the Nominated Officer will contact the appropriate Panel member who will take immediate action. For example, if it is necessary to protect public funds, the Nominated Officer will usually contact the Assistant Director - Inspection & Central Services.
29. If your concern is to be treated as a whistleblowing or Code case, the Nominated Officer will contact you within 10 working days of your concern being notified to them to:
 - advise you of their role
 - acknowledge your concern and advise you, as far as they appropriately and lawfully can, how it will be taken forward
 - if appropriate, agree the best way of communicating with you to keep you updated on progress (and where possible an indicative timescale for the investigation), and any further information you may be asked to provide
 - highlight the support available to you through your GP, the Employee Assistance Programme and the Occupational Health Team, your trade union and Public Concern at Work, should you need any additional help in what might be a stressful situation for you
 - explain that, if you have asked for your identity to be concealed, Estyn will try to protect your identity for as long as it is within our control, it is appropriate and legal to do so, and we can properly investigate or resolve the concern without revealing your identity

Investigating and resolving the concern

30. The Nominated Officer will convene a Panel to oversee the case (see the [Guide](#) for details of the Panel's role and its membership).
31. If the Panel decides that the matter should be investigated, they will nominate the Investigating Officer who will be independent of those implicated in the matter and will be at HEO or above. In certain circumstances, it may mean passing the information to the Police for criminal investigation. For further information on fraud see Estyn's [Anti-fraud and anti-bribery policy](#).
32. If HMCI is implicated, the Chair of Estyn's Audit and Risk Assurance Committee (ARAC) will appoint the Investigating Officer, who may be someone outside of Estyn.

33. The Investigating Officer will conduct the investigation in line with what the Panel deems to be the most appropriate form of investigation, taking advice from the Panel, as appropriate. If the Panel is considering a form of surveillance or monitoring of the actions of others they must take advice from Estyn's legal services contractor and others as may be appropriate, before taking such steps.
34. The investigation report will be forwarded to the Panel as quickly as the investigation can be undertaken and within 10 working days of the investigation being requested, unless there are exceptional circumstances requiring further time.
35. The Panel will then decide what, if any, course of action will be taken to consider the matter and the appropriate process.
36. The Nominated Officer will tell the person who raised the concern whether the Panel have found there is a case to answer and whether steps have been taken with a view to resolving the concern. Whether any further details of the case and the actions taken will be disclosed to the person who raised the concern, or to any other person or body, will depend on the circumstances of the particular case, and whether it is considered appropriate, reasonable and lawful to make any disclosure.

Anonymous allegations

37. Anonymous allegations will be looked into, although concerns raised anonymously are less powerful and are often more difficult to investigate. We strongly encourage anyone reporting a concern not to remain anonymous but to come forward and discuss the matter with any of the persons set out in paragraph 13 to 15. Discussing your concern in this way will also mean that you will benefit from the protections set out in this policy and procedure. If you receive an anonymous allegation, you must report it to a Nominated Officer.
38. In determining whether or not to take an anonymous allegation forward under this policy, the Nominated Officer will consult with Panel members who will take into account the:
 - seriousness of the issue raised
 - credibility of the concern
 - likelihood of confirming the allegation from an attributable source and gaining information from them.

Malicious or vexatious allegations

39. If an investigation concludes that an employee has made a malicious or vexatious allegation, they may be subject to disciplinary action.
40. In this context an allegation is malicious or vexatious if the employee:
 - makes it with the deliberate intention of causing damage, harm, worry or annoyance to another
 - knows at the time they make the allegation that it is false.

If your concern implicates all the Nominated Officers or members of the Panel

41. If your concern implicates all of the Nominated Officers, you should still speak to your line manager in the first instance or if you are not comfortable doing so, inform another of the internal contacts listed in paragraph 13 to 15. Whoever you disclose your concern to must inform HMCI of your concern. He will then arrange for an alternative Nominated Officer to be appointed to your case.
42. If your concern implicates all the Nominated Officers and HMCI, you should contact the Chair of ARAC so that an alternative Nominated Officer can be arranged.
43. If your concern involves a member(s) of the Panel, the Nominated Officer dealing with your case will inform the Chair of ARAC, who will nominate an alternative Panel member(s).

Keeping records

44. Anyone recording, holding or using information relating to allegations made or dealt with under this policy should do so in accordance with the relevant legislation and Estyn's information governance policies and procedures. These policies and procedures can be found [here](#).
45. The General Data Protection Regulations are likely to be particularly relevant where allegations are made or dealt with under this policy because allegations of wrongdoing by a person will be that person's personal data. The handling of that personal data must comply with the requirements of the General Data Protection Regulations.
46. Once a case is concluded, all records relating to issues raised under this policy should be forwarded to Estyn's Complaints Manager who will store securely on Estyn's records management system in accordance with the General Data Protection Regulations. Where an investigation reveals no evidence of wrongdoing, the Nominated Officers will ensure any personal data gathered during an investigation is destroyed in accordance with the requirements of the General Data Protection Regulations.
47. Any records of disciplinary procedures held as a result of an issue raised under this policy should be held in accordance with the General Data Protection Regulations and [Estyn's Discipline Policy](#).

Publicity and communication

48. The policy will publicised regularly using corporate channels such as SharePoint and discussed during team meetings.

Annex A: Guidance on Blowing the Whistle to an outside body

External disclosures

- 1 Raising a concern externally, not in accordance with this Whistleblowing procedure will be treated as a serious disciplinary offence, which could result in dismissal unless your action is protected by the Employment Rights Act 1996 (Part IVA Protected Disclosures) (ERA).
- 2 The Civil Service Code says that employees must not disclose confidential information without proper authority. This duty continues to apply after you leave the Civil Service.
- 3 In considering taking a concern to an authority which is not approved within this policy and procedure or specified in ERA in respect of certain matters, you should be aware of your duty of confidentiality under the Civil Service Code and should ensure that no confidential information is divulged, unless the circumstances are such that they attract the protection of ERA.
- 4 If you are thinking of making an external disclosure, you may wish to seek advice from your trade union or an external 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 or advice from your trade union or professional association, you will be protected by ERA.

Legal protection

- 5 You are protected by law under the ERA provided your disclosure meets certain conditions. It is not mandatory for workers to speak to their employer first. There can be legitimate reasons why a worker might want to raise their concern outside an organisation, either before or after talking to their employer. ERA protects such disclosures providing the worker acts in the responsible ways set out in the Act. A summary of your protection under ERA can be found in Annex C.

Raising a concern under the Civil Service Code externally

- 6 For concerns raised under the Civil Service Code, the only external body that should be contacted is the Civil Service Commission, who will, exceptionally, agree to look into a matter which has been referred to them without exhausting internal procedures first. They can be contacted at:

The Civil Service Commission
G/08
1 Horse Guards Road
London
SW1A 2HQ
Email: info@csc.gov.uk

Annex B: Guidance on the Main Provisions of Part IVA of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013

- 1 The Act gives workers redress against reprisal (including dismissal) because they have raised a concern about wrongdoing. This Annex does not deal with all the provisions of the Act.
- 2 It 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.
- 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 disclosure. There is then a further set of conditions depending on who the disclosure is made to.

Subject-matter of the disclosure

- 4 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.
- 5 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

- 6 Disclosure to the employer (i.e. an internal disclosure) will be protected provided that the information falls within **paragraph 4**.
- 7 Disclosures to an external person or body which have been authorised under an employer's procedure have the same protection as if they had been made to the employer. Under this policy, Estyn has authorised disclosures to an employee's trade union or professional association, and to the charity Public Concern at Work.
- 8 Disclosure to specified regulators will be protected if:
 - the information falls within **paragraph 4**
 - the whistleblower reasonably believes that the information and any allegation in it are substantially true

- the regulator is one of those specified in an order made by the Secretary of State
 - the whistleblower reasonably believes that the allegation is about a matter which is set out in the Secretary of State's order next to that particular regulator's name.
- 9 Annex C lists some of the regulators and the matters about which disclosure can be made to them.
- 10 Disclosure to legal advisers will be protected if:
- the information falls within **paragraph 4**
 - the disclosure is made in the course of obtaining legal advice.
- 11 Wider Public Disclosure to other external bodies (e.g. the police, the media, any member of Parliament) will only be protected if:
- the information falls within **paragraph 4**
 - the whistleblower reasonably believes that the information and any allegation in it are substantially true
 - the circumstances of the case make it reasonable for the whistleblower to make the disclosure to the other external body (see below)
 - one of the conditions set out below are met.
- 12 The conditions 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.
- 13 The Act sets out some factors which must be considered in order to decide whether the circumstances of the case make it reasonable for the whistleblower to make the disclosure to the other external body. Broadly speaking, these factors are:
- the seriousness of the allegation
 - whether it is ongoing or likely to occur again
 - whether the disclosure breaches a duty of confidentiality owed by the employer to someone else
 - any action already taken by the employer or specified regulator if the employee has previously made the disclosure to them
 - whether a previous disclosure by the employee to his employer complied with any procedure that employer had in place
 - the identity of the external body to whom the disclosure is made.
- 14 The Act also protects disclosures made to external bodies where the first two bullet points in paragraph 11 only are met, if the allegation is of an exceptionally serious nature and, in all the circumstances of the case, it is reasonable for the employee to make the disclosure. The person or organisation to whom the employee has chosen to make the disclosure is likely to be an important factor in deciding whether a

particular disclosure was reasonable. 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. ERA will not protect employees who contact the media in the hope of gain.

15. Where the disclosure of the information is found to be in breach of the Official Secrets Act or any other secrecy offence, the whistleblower will lose the protection of the Act if he has been convicted of the offence or that an employment tribunal is satisfied, to a high standard of proof approaching the criminal one, that he committed the offence.

Annex C: Specified regulators under the Employment Rights Act

- 1 The ERA protects you in certain circumstances if you report your concern to a regulator specified in an order made by the Secretary of State.
- 2 If you decide to blow the whistle to a specified regulator rather than Estyn, you must make sure that you have chosen the correct body for your issue.
- 3 Listed below are some of these bodies and the matters which you can report to them. A full list can be found at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies>

The Commissioners for His Majesty's Revenue and Customs

- 4 About concerns relating to value added tax, insurance premium tax, excise duties and landfill tax, the import and export of prohibited or restricted goods, income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the national minimum wage.

Contact

<https://www.gov.uk/contact-hmrc>

Auditor General for Wales

- 5 About concerns relating to the proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services. You can e-mail whistleblowing@audit.wales or write to 'The PIDA Officer' at the address below or see our [Whistleblowing page](#).

Contact

Audit Wales, 1 Capital Quarter, Tyndall Street, Cardiff, CF10 4BZ

Tel: 029 2032 0500

Email: info@audit.wales

Financial Services Authority

- 6 About concerns relating to the operation of banks, building societies, investment or insurance businesses or any other activities regulated by the Financial Services Authority, for example, financial crime.

Contact

<https://www.fca.org.uk/firms/whistleblowing/where-make-report>

Tel: 0800 111 6768

Email: firm.queries@fca.org.uk

Health and Safety Executive

- 7 About matters relating to health or safety at work or the health and safety of the public in connection with workplace activities.

Contact

Tel: 0300 003 1647

<https://www.hse.gov.uk/contact/tell-us-about-a-health-and-safety-issue.htm>

The Information Commissioner

8. About matters relating to data protection and/or freedom of information rights and duties in England and Wales.

Contact

Telephone: 0303 123 1113

<https://ico.org.uk/make-a-complaint/>

Annex D: Examples of concerns at work and the policies you should use to resolve them

Grievance policy

- 1.1 Concerns which may be raised under this policy relate to personal and individual disputes or problems.
- 1.2 When an employee complains of a grievance, they are in effect saying that they have personally been poorly treated. Poor treatment could in the extreme involve an alleged breach of an individual's employment rights. The complainant is seeking redress for themselves and therefore has a personal interest in the outcome of the complaint. For this reason, they are expected to prove their case. These kinds of issues should be dealt with through the Grievance policy.
- 1.3 Specific examples include:

An employee wishes to work compressed hours and their manager has refused their request. The individual is unhappy with the manager's response and wishes to take it further.

An employee has been turned down for organisational support to study for a qualification and is not satisfied that he has not been given any objective reason for this, despite repeated requests to his manager.

- 1.4 Other concerns which may be raised under this policy are those where an employee feels harassed, bullied, victimised or discriminated against.
- 1.5 Specific examples include:

An employee being constantly and unfairly criticised by a colleague or manager.

An employee being subject to racist comments.

Discipline policy

- 2.1 This policy is about investigating and addressing instances where an employee's conduct or behaviour is alleged to have deviated from expected standards.
- 2.2 Specific examples include:

An employee is absent from work without authorisation.

An employee seriously breaches health and safety or security rules

Anti-fraud and anti-bribery policy

3.1 Concerns which may be raised under this policy relate to fraud, money laundering and bribery. Estyn's policy provides guidance on the responsibilities of employees regarding the prevention of fraud and what you should do if you suspect fraud.

3.2 Specific examples include:

Misuse of funds and /or official resources.

Benefiting financially from dishonest activities.

"Tipping off" by informing a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.