

Whistleblowing Policy

Raising Concerns about a Regulated Qualification
or a Recognised Awarding Organisation



May 2014

Ofqual/14/5430

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About Ofqual

It's our job to maintain standards and confidence in qualifications. We look after GCSEs and A levels in England, and a wide range of vocational qualifications both in England and Northern Ireland. We also regulate the National Curriculum Assessments in England.

We are independent of Government ministers and we report directly to Parliament in Westminster and the Northern Ireland Assembly. While we are independent, we give advice to Government on qualifications and assessment based on our research into these areas.

We regulate by recognising and monitoring organisations that deliver qualifications and assessments as set out in the Apprenticeship, Skills, Children and Learning Act (2009) and Education Act (2011).

We are independent of Government ministers and we report directly to Parliament in Westminster and the Northern Ireland Assembly.

The Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011 give us five objectives.

1. The qualifications standards objective: to ensure that regulated qualifications give a reliable indication of achievement and indicate a consistent level of attainment (including over time) between comparable regulated qualifications, and between comparable qualifications (including those awarded outside the United Kingdom).
2. The assessment standards objective: to promote the development and implementation of regulated assessment arrangements which give a reliable indication of achievement, and indicate a consistent level of attainment (including over time) between comparable assessments.
3. The public confidence objective: to promote public confidence in regulated qualifications and regulated assessment arrangements.
4. The awareness objective: to promote awareness and understanding of the range of regulated qualifications available, the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and the benefits of being recognised to award regulated qualifications.
5. The efficiency objective: to secure that regulated qualifications are provided efficiently and in particular that any relevant sums payable to an organisation awarding a regulated qualification represent value for money.

We meet these objectives, in part, by recognising awarding organisations that wish to offer regulated qualifications. Once recognised, awarding organisations must meet our General Conditions of Recognition.¹

Further information about our work can be found on our website.²

Introduction

This policy sets out our approach to receiving information from employees, agency staff or contractors (workers) who work for an awarding organisation we regulate, or who work for a centre that uses an awarding organisation we regulate, who wish to make certain disclosures to us on matters relating to their employment, if those matters fall within the remit of our statutory functions.

Where you make a disclosure relating to certain types of potential malpractice or wrongdoing, the ‘whistleblowing’ provisions of employment-rights legislation may protect you against being dismissed or penalised by your employer.

We are unable to tell you whether any disclosure you make will offer you protection under the law. You must satisfy yourself that the protection will cover you. You may wish to get independent legal advice or you can contact Public Concern at Work³ for free and confidential advice about whether and how to raise a concern about potential wrongdoing.

We would encourage you to first raise a concern internally within your organisation. If you remain concerned by the response, or if you don’t feel able to raise a concern, you should follow the procedure outlined in this policy.

While the protections offered by whistleblowing legislation are aimed at workers, we will also look into concerns raised by members of the public about potential malpractice and/or wrongdoing by an awarding organisation or centre. In such cases, we will follow the processes outlined in this policy.

¹ www.ofqual.gov.uk/documents/general-conditions-of-recognition

² www.ofqual.gov.uk

³ www.pcaw.org.uk

What is whistleblowing?

Whistleblowing is a term used when an individual raises a genuine concern about suspected malpractice or wrongdoing and/or the covering up of malpractice or wrongdoing that they become aware of through their work. The malpractice or wrongdoing often affects others, for example customers or members of the public.

Whistleblowing is distinct from both complaints and employment disputes or grievances that an individual may have.

A complaint can be defined as an expression of personal dissatisfaction. Examples of complaints about an awarding organisation that we will normally investigate (and the way we handle these) can be found in our policy for conducting enquiries into complaints about awarding organisations and qualifications.⁴

If a worker is unhappy with his or her own employment position or contract, they should take this up with their employer or another responsible body. We cannot look into grievances of this nature.

The law relating to whistleblowing

The Public Interest Disclosure Act 1998 amended the Employments Rights Act 1996 and created a right to redress, enforceable by tribunal, in the event of a worker being subjected to a detriment or dismissed by an employer as a result of whistleblowing.

This policy outlines the protection available if a worker makes a whistleblowing disclosure. It gives only general information and does not aim to offer definitive legal advice or details of how the whistleblowing provisions work in practice.

Workers who ‘blow the whistle’ on wrongdoing at work have a right not to be dismissed or suffer any detriment at work as a result of making a “protected disclosure”. To be protected by law, a worker must be making a disclosure of information which they reasonably believe is made in the public interest and which they reasonably believe tends to show one or more of the following had occurred or is likely to occur:

⁴ www.ofqual.gov.uk/documents/complaints-about-awarding-organisations

- A criminal offence
- Breach of any legal obligation
- A miscarriage of justice
- Danger to the health and safety of an individual
- Damage to the environment
- The deliberate concealment of the above.

A worker will get protection most easily by disclosing such information to their employer. However, as Ofqual is a 'prescribed person' under the legislation, external persons can instead make a disclosure to us. However, if they want to make a disclosure to us, the worker must also have reason to believe that the allegations are substantially true and that the allegations fall within the remit of our statutory functions.

Our statutory functions include:

- matters relating to the development, delivery and award of regulated qualifications
- matters relating to National Curriculum assessment arrangements
- matters relating to Early Years Foundation Stage assessment arrangements
- matters affecting public confidence in regulated qualifications
- other matters likely to be of relevance or interest to us in our role as the regulator of qualifications, examinations and assessments in England and of vocational qualifications in Northern Ireland.

But a disclosure will not be a protected disclosure if the worker making it:

- does not do so in the interest of the public
- commits a criminal offence in making it
- has received the information in the course of providing legal advice (legally privileged information).

- does not make the disclosure in the reasonable belief that the content is substantially true.

More detailed information on the law relating to whistleblowing can be found on the Public Concern at Work website.⁵

What should you do if you have a concern about malpractice or wrongdoing in your workplace?

If you consider that the protections offered by the whistleblowing legislation apply to you (whether you work for an awarding organisation or approved centre), you are encouraged to first make a disclosure within your organisation. If you feel that a concern you have raised internally has not been appropriately addressed, or if you feel unable to raise your concerns internally, you may wish to contact us.

Although the protections offered by whistleblowing legislation are only relevant for workers, we will also look into concerns raised by members of the public about potential malpractice and/or wrongdoing by an awarding organisation or centre.

Examples of disclosure

Examples of whistleblowing disclosure made to us include:

- a worker for an awarding organisation making a disclosure about that organisation's malpractice or failure to comply with its conditions of recognition
- a worker for a centre making a disclosure about that centre's malpractice or wrongdoing
- a learner or parent/guardian making a disclosure about a centre's malpractice and has either exhausted the policies of the awarding organisation (that is responsible for the qualifications where the malpractice is suspected) or does not feel able to contact the awarding organisation.

⁵ www.pcaw.co.uk/law/uklegislation.htm

Getting advice on how best to proceed

If you are considering making a disclosure to us and you are unsure as to whether you will have the protections of the whistleblowing provisions, before you make any such disclosure you should consider:

- contacting Public Concern at Work on 020 7404 6609 or by email at whistle@pcaw.org.uk. Further information is available on the Public Concern at Work website at www.pcaw.org.uk
- approaching your union or professional body
- getting independent legal advice.

How to contact us

Our preferred method of receiving whistleblowing disclosures is through our website using the whistleblowing report form at www.ofqual.gov.uk/complaints-and-appeals/whistleblowing/.

Whistleblowing disclosures can also be made through our helpline (0300 303 3346) between 9am and 5pm, Monday to Friday, and by email to info@ofqual.gov.uk or by post to:

Casework Manager
Ofqual
Spring Place
Coventry Business Park
Herald Avenue
Coventry
CV5 6UB

While it is possible to raise a concern anonymously, the best way to raise a concern is to do so openly. Openness makes it easier to assess the matter, to understand the issues and get more information.

Confidentiality

We will treat any information sensitively and will, as far as we are able, treat the information confidentially.

We will always endeavour to keep a whistleblower's identity confidential where asked to do so, although we cannot guarantee this and we may need to disclose your identity if required to do so by law.

You should also recognise that you may be identifiable by others due to the nature or circumstances of the disclosure, although we will endeavour to limit the risk of this where possible.

What we will do

If you choose to make a disclosure to us, provided you have given your contact details, we will send you an initial acknowledgement within two working days. If we are able to look into your concerns, we will usually write to you within ten working days. We will normally ask you to provide as much supporting information or details as you can to support your disclosure. However, we would not ask you to proactively obtain any further information, as this action may infringe the law. A member of our staff may arrange to contact you to gather further facts or to clarify your concerns.

We will consider each disclosure of information sensitively and carefully, and decide upon an appropriate course of action. We will look into anonymous whistleblowing disclosures. However, it may not always be possible to investigate or substantiate such disclosures. We may share with third parties information received in the disclosure where we consider it necessary to do so.

We may not always treat an allegation as a whistleblowing disclosure as it may be more appropriate to treat the disclosure as a complaint. There may also be occasions where it is not appropriate for us to investigate under the circumstances, for example if the disclosure falls outside of our remit as a regulator. In this case we may recommend another course of action for the whistleblower to take.

If your disclosure relates to an awarding organisation, we will investigate the matter.

If your disclosure relates to a centre, we will ask the awarding organisation that has approved the centre to deliver its qualifications to investigate your concerns. We would expect awarding organisations to progress your concerns and write to you with their conclusions in general terms. At the end of their investigation, if you remain unhappy with the conclusion, you can write to us again, telling us why you are dissatisfied with the outcome and we may be able to look into your concerns further.

If you work at a centre and your concerns also relate to an awarding organisation, or suggest that the awarding organisation is complicit in the malpractice/wrongdoing, we will investigate the matter.

We appreciate that you will be concerned to find out about the outcome of an investigation, and we will endeavour to keep you informed, in general terms, of any progress as far as we are able to. However, we may only be able to provide limited feedback to you about the outcome of any investigation, for example we may only report back that we have looked into the matter and have taken appropriate action. This is due to reasons of confidentiality and legal restrictions. We do, however, publish on our website details of regulatory actions we have taken.⁶

Please note that awarding organisations may also be limited in what they can report back to a whistleblower for the same reasons set out above. We do, however, expect awarding organisations to report back to us on the action they have taken.

⁶ www.ofqual.gov.uk/how-we-regulate/regulatory-actions-and-interventions

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Published by the Office of Qualifications and Examinations Regulation in 2014

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This publication is also available on our website at www.ofqual.gov.uk.

Any enquiries regarding this publication should be sent to us at:

Office of Qualifications and Examinations Regulation

Spring Place
Coventry Business Park
Herald Avenue
Coventry CV5 6UB

2nd Floor
Glendinning House
6 Murray Street
Belfast BT1 6DN

Telephone 0300 303 3344

Textphone 0300 303 3345

Helpline 0300 303 3346