

# UvA/HvA Whistleblower Scheme\*

*Laid down by order of the Board on 16 February 2007, no. 2007cb0024*

## **Preamble**

Whistleblowing can be described as the external disclosure by an employee (the whistleblower) of suspicions of illegal or immoral practices, for which the employer is accountable and which place a substantial interest of society and/or the institution at stake, to people who may be able to take action to resolve the situation.

Integrity must always form a key component of organisational quality objectives. The basic precept in this regard is that employees and management are expected to comply with internal and external legislation and regulations at all times. In addition, all staff are responsible for safeguarding the organisation's excellent reputation. This means that each employee has the right and the responsibility to report suspected malpractices that could harm the organisation's excellent reputation and integrity.

Whistleblowing can have major implications. The organisation involved can be brought into disrepute and suffer damage. Whistleblowing can also place the employee's relationship with the organisation under considerable pressure. Nevertheless, it is vital that management are informed of suspected or confirmed malpractices within the organisation in a timely manner to ensure that measures can be taken. Employees must be able to trust that reporting suspected or confirmed malpractices will not have consequences for their legal status. It is therefore in the interests of both the organisation and the employee that there are procedures in place for dealing with suspected or confirmed malpractices within the organisation. The present scheme describes the procedures that apply to the University of Amsterdam (UvA)/ and Hogeschool van Amsterdam, University of Applied Sciences (HvA).

Reporting of suspected or confirmed malpractices within the meaning of this scheme must be proportional. This means that not all reports of suspected or confirmed malpractice fall within the scope of this scheme. In principle, the scheme covers malpractices that place a substantial interest of society and/or the institution at stake. The specific circumstances of the case can also play a role. The nature and severity of the malpractice therefore affect how it can be reported. Employees are expected to report any suspected or confirmed malpractices internally first, where necessary to the confidential adviser; the organisation must first be given the opportunity to form an opinion about the reported malpractice and to take any necessary measures.

If an employee reports a malpractice externally, he or she must do so to the most appropriate authority. When doing this, the employee must take into account, on the one hand, how effectively the authority can intervene and whether it will be capable of resolving or helping to resolve the malpractice. On the other hand, the employee must consider the organisation's interests in terms of limiting the potential damage resulting from such intervention. It therefore goes without saying that, as a rule, external disclosure is first made to the competent authorities and not to the media. The more serious the malpractice and/or the greater the risk to specific population groups and/or the longer the malpractice continues despite repeated reports, the more justified it is to notify the media.

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\* Disclaimer: This translation is provided for information purposes only. In the event of a difference of interpretation, the original Dutch version of this text is binding.

Employees who report suspected or confirmed malpractices as potential whistleblowers with due observance of this scheme are protected. Potential whistleblowers who report suspected or confirmed malpractices in contravention of this scheme must be able to demonstrate that they had good reasons for deviating from the scheme.

Employees who deviate from the scheme by disclosing suspected or confirmed malpractices externally and who therefore harm the organisation and its employees can be held liable and/or be faced with measures pertaining to their legal status.

## **Article 1            Definitions**

In this scheme, the following terms shall have the following meanings:

- a. Board: the Board of the UvA/HvA as referred to in Article 1.1, under (j), of the Higher Education and Research Act (*Wet Hoger Onderwijs en Wetenschappelijk Onderzoek, WHW*).
- b. External third party: any organisation or representative of an organisation, not being the confidential adviser referred to in Article 5, to whom an employee reports suspected or confirmed malpractices, because he believes that the malpractice is of such major public interest that, in the specific circumstances of the case, this interest must be regarded as outweighing the interests of the UvA and/or Foundation and/or HvA as served by nondisclosure, and who in his reasonable opinion may be regarded as capable of taking direct or indirect action to resolve, or help resolve, the suspected or confirmed malpractice.
- c. HvA: the Hogeschool van Amsterdam, University of Applied Sciences, maintained by the Foundation, located in Amsterdam and Almere.
- d. Supervisor: the unit manager or, if the informant is a faculty staff member, the dean.
- e. Employee: a person attached to the UvA, Foundation and/or HvA by public appointment or under an employment, secondment, transfer or internship agreement.
- f. Informant: an employee who reports or wishes to report a malpractice.
- g. Malpractice: a situation that places the interests of society and/or the UvA, HvA or Foundation at stake, involving:
  - o a criminal offence or the risk of a criminal offence,
  - o an infringement of the rules or the risk of infringement,
  - o a danger to public health, safety or the environment, or the risk of this,
  - o the intentional provision of incorrect information to public bodies, or the risk of this,
  - o a waste of public funds, or the risk of this, the deliberate withholding, destruction or manipulation of information on these circumstances, or the risk of this.
- h. Foundation: the HvA Foundation, located in Amsterdam.
- i. UvA: the University of Amsterdam having legal personality, located in Amsterdam.

## **Article 2            Scope of the scheme**

1. This scheme applies to reports of suspected or confirmed malpractices within the UvA and/or the Foundation and/or the HvA and attached legal entities and/or organisations.
2. This scheme does not apply to anonymous reports of suspected or confirmed malpractices.
3. The scheme does not apply to:
  - a. employee complaints regarding work-related matters that concern them personally,
  - b. employee conscientious objections regarding the performance of normal work.

## **Article 3            Internal reports**

1. If a ground for exemption as referred to in Article 6 applies, the employee must report suspected or confirmed malpractices in writing or electronically to his supervisor, the Board or, if the matter relates to the Board or members of the Board, the Board of Overseers. Reports to the Board concerning the UvA must be submitted to the *Secretaris* of the University and marked as ‘confidential and personal’. Reports to the Board concerning the HvA must be submitted to the General Director of the HvA and marked as ‘confidential and personal’. Reports to the Board of Overseers must be submitted directly to the President of the Board of Overseers and marked as ‘confidential and personal’. If desired, the report can be accompanied by a request for confirmation of receipt.
2. The person who receives the report as referred to in paragraph 1 must register the report along with the date of receipt. If requested by the informant, he will be sent written confirmation of receipt.
3. If a supervisor receives a report as referred to in paragraph 1, he must report this immediately to the Board or, if the matter relates to the Board or members of the Board, to the Board of Overseers, marking it for the attention of the official secretary of that Board.
4. Following receipt of the report as referred to in the previous paragraphs, an investigation is immediately launched into the suspected or confirmed malpractice. This investigation is conducted under the direct responsibility of the Board or, if the matter relates to the Board or members of the Board, the Board of Overseers.
5. The Board or, if the matter relates to the Board or members of the Board, the Board of Overseers, may decide to arrange for an external and independent investigator to carry out the investigation as referred to in paragraph 4. This external investigator must maintain the confidentiality of the investigation and shall only, unless explicitly agreed otherwise, report to the person who instructed him or her to carry out the investigation.
6. If the investigation referred to in paragraph 4 is carried out by or on behalf of the Board of Overseers, the Board is obliged to facilitate the investigation.

#### **Article 4           Opinion on the report**

1. The Board or, if the matter relates to the Board or members of the Board, the Board of Overseers, shall give the informant a written and substantive opinion on the report within a period of eight weeks from the date of the internal report as referred to in Article 3. This document shall also state whether, and if so which, measures have been taken as a result of the report.
2. If the opinion referred to in paragraph 1 is not issued within the specified period, the informant shall be notified, stating the period within which an opinion will be given.
3. If the report as referred to in Article 3 relates to a member of the Board of Overseers, the Board of Overseers shall form an opinion on the report in the absence of the member in question.

#### **Article 5           Confidential adviser**

1. Before reporting suspected or confirmed malpractices, employees may consult the confidential adviser.
2. The Board-appointed UvA/HvA Ombudsman shall act as the confidential adviser as referred to in paragraph 1.

#### **Article 6           Reports to an external third party**

1. The employee may report the suspected or confirmed malpractice to an external third party, with due observance of the provisions of Article 7, if:
  - a. he disagrees with the opinion as referred to in Article 4,

- b. he has not received an opinion within the period specified in Article 4, paragraph 1, or has not received notice as referred to in Article 4, paragraph 2,
  - c. the period stated in Article 4, paragraph 2 is unreasonably long and the employee has submitted a written notice of objection of this to the Board or, if the matter relates to the Board or members of the Board, to the Board of Overseers,
  - d. a ground for exemption as referred to in the next paragraph applies.
2. A ground for exemption as referred to in the previous paragraph under (d) shall apply in the case of:
- a. acute danger, whereby it is in the substantial and urgent public interest to immediately report the matter externally,
  - b. a situation in which the employee can reasonably fear reprisals if he reports the matter internally,
  - c. a clear risk of misappropriation or destruction of evidence,
  - d. a previous internal report of essentially the same malpractice that was not dealt with within a reasonable period,
  - e. a statutory obligation or statutory right to immediately report the matter externally.

#### **Article 7      Balancing of interests**

1. Subject to due observance of the provisions of paragraph 2, an employee may report suspected or confirmed malpractices to an external third party in any of the cases referred to in Article 6.
2. The report must be made to the external third party that, in view of the circumstances of the case, the employee reasonably believes is the most appropriate, whereby the employee must take into account, on the one hand, how effectively the third party can intervene and, on the other hand, the interests of the UvA and/or Foundation and/or HvA in terms of limiting the potential damage resulting from such intervention, insofar as this damage is not an unavoidable consequence of combating the malpractice.
3. The greater the risk of damage to the UvA and/or Foundation and/or HvA as a result of reporting the matter to an external third party, the stronger the suspicions of the employee reporting a malpractice to an external third party or the more severe the malpractice must be.

#### **Article 8      Legal protection**

1. Any person who reports a suspected or confirmed malpractice in good faith with due observance of this scheme shall not be adversely affected in any way in terms of his status or career as a result of making a report and thus enjoys legal protection.
2. A confidential adviser as referred to in Article 5 employed by the Foundation shall not be adversely affected in any way as a result of his actions under this scheme.

#### **Article 9      Unforeseen circumstances**

In cases not provided for in this scheme, the Board or, if the matter relates to the Board or members of the Board, the Board of Overseers, shall reach a decision.

#### **Article 10      Official title and entry into force**

This scheme may be referred to as the UvA/HvA Whistleblower Scheme (*Klokkenluidersregeling Universiteit en Hogeschool van Amsterdam*) and shall enter into force on 1 March 2007.

Duly drawn up by the UvA/HvA Board on 4 May 2006.

Approved by the Board of Overseers on 21 February 2007.

## UvA/HvA WHISTLEBLOWER SCHEME

Endorsed by the UvA Central Works Council on 15 February 2007.

Endorsed by the personnel section of the HvA representative advisory body on 28 November 2006.