

Policy Title: Public Interest Disclosure	Policy Number: 016
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1. Introduction

The Commission is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of the funding bodies and the standards in public life set out in the Code of Conduct for devolved public bodies.

An important aspect of accountability and transparency is a mechanism to enable staff, Commission Visitors and Board members to voice concerns in a responsible and effective manner. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. Nevertheless, where an individual discovers information which they believe shows serious malpractice or wrongdoing within the organisation then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in relatively minor instances the line manager would be the appropriate person to be told).

The Public Interest Disclosure Act, gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. The Commission has endorsed the provisions set out below so as to ensure that no members of staff should feel at a disadvantage in raising legitimate concerns.

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety and have not been able to address this through normal procedures. It is not designed to question financial or business decisions taken by the Commission nor should it be used to reconsider any matters which have already been addressed under complaints or disciplinary procedures. Once procedures are in place, it is reasonable to expect staff to use them rather than air their complaints outside the Commission. However, the legislation allows for wider disclosure in some situations. This is covered in section 5 of this policy.

2. Scope of Policy

This policy is designed to enable all employees (any reference to employee throughout this document also includes all categories of "worker"), visitors and Board members to raise internally and at a high level concerns and to disclose information which the individual believes shows malpractice. A number of policies and

procedures are already in place including grievance and disciplinary procedures, staff code of conduct and IT code of conduct. This policy is intended to cover concerns which are in the public interest and may at least initially be investigated separately but might then lead to the invocation of such procedures. These concerns could include:

- Financial malpractice or impropriety or fraud
- Failure to comply with a legal obligation or the Commission's Standing Orders
- Dangers to health and safety or the environment
- Criminal activity
- Professional malpractice
- Improper conduct or unethical behaviour
- Attempts to conceal any of these

3. Safeguards

i. Protection

This policy is designed to offer protection to those employees, visitors or Board members who disclose such concerns provided the disclosure is made:

- in good faith
- in the reasonable belief of the individual making the disclosure that it tends to show malpractice

and if they make the disclosure to an appropriate person (see section 4 below). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure. In an extreme case malicious or wild allegations could give rise to legal action on the part of the persons complained about.

ii. Confidentiality

The Commission will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

iii. Anonymous Allegations

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the Commission.

In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised;
- The credibility of the concern;

- The likelihood of confirming the allegation from attributable sources

iv. Untrue Allegations

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

4. Procedures for Making a Disclosure

i. Initial Step

With exceptions indicated below the individual should make the disclosure to the Head of Corporate Services who should immediately inform the Chief Executive and if the matter is judged sufficiently serious the Chair, unless

- requested not to do so by the discloser
- or the Chair of Commission is likely to be involved at any subsequent appeal

If the disclosure is about the Head of Corporate Services then the disclosure should be made to the Chief Executive. If the disclosure is about the Chief Executive the disclosure should be made to the Chair.

If the individual does not wish to raise the matter with either the Head of Corporate Services or Chief Executive, then he or she may raise it with the Chair of the Audit Committee if the issue falls within the purview of that Committee, or with the Chair.

Whoever the disclosure is raised with will note the contents of the disclosure in writing and give a copy to the person making the disclosure.

In cases involving financial malpractice, the Head of Corporate Services should act throughout in close consultation with the Chief Executive, as the Accountable Officer.

ii. Process

The person to whom the disclosure is made will consider the information made available and decide on the form of investigation to be undertaken.

If the disclosure is made to the Chief Executive, Chair of Audit Committee or Chair that person may delegate further action to a senior member of the Commission (the designated person). The form of investigation may be

- to investigate the matter internally
- to refer the matter to the police
- to call for an independent inquiry

If the decision is that investigations should be conducted by more than one of these means the Head of Corporate Services or the designated person as appropriate should be satisfied that such a course of action is warranted.

Where the matter is to be the subject of an internal inquiry, the Head of Corporate Services or the designated person as appropriate will then consider how to conclude whether there is a prima facie case to answer. This consideration will include determining

- who should undertake the investigation
- the procedure to be followed
- the scope of the concluding report

iii. Investigation

Normally the Internal Auditor or member of the executive team will undertake this investigation and will report their findings to the Head of Corporate Services or the designated person as appropriate. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigation will be conducted as sensitively and speedily as possible.

Where a disclosure is made the person or persons against whom the disclosure is made will be told of it, the evidence supporting it and will be allowed to comment before any investigation, or further action, is concluded.

As a result of this investigation other internal procedures may be invoked, such as

- Disciplinary
- Grievance

or it might form the basis of a special investigation.

In some instances it might be necessary to refer the matter to an external authority for further investigation.

iv. Feedback

The Head of Corporate Services or the designated person as appropriate will inform the individual making the disclosure of what action, if any, is to be taken (subject to limits placed by confidentiality in relation to employment and disciplinary matters).

If no action is to be taken then the individual concerned should be informed of the reason for this and allowed the opportunity to remake the disclosure to another appropriate person. For example, if the initial disclosure was made to the Head of Corporate Services or Chief Executive then the subsequent disclosure might be made to the Chair of the Audit Committee or Chair. This other person will consider all the information presented, the procedures that were followed and the reasons for not taking any further action.

The outcome of this will be either to confirm that no further action is required or that further investigation is required and will follow the procedures referred to above.

The conclusion of the investigation will be communicated to the person or persons against whom the disclosure is made and to the person making the disclosure.

v. Reporting of Outcomes

A report of all disclosures and any subsequent actions taken will be made by the Head of Corporate Services or the designated person as appropriate who will retain such reports for a minimum of three years and for so long as there is a business need to retain them. In all cases a report of the outcomes of any investigation will be made to the Audit Committee in detail where the issue falls within its purview, and in summary in other cases as a means of allowing the Committee to monitor the effectiveness of the procedure.

5. Disclosure to person outside the Commission

In most cases, the Commission would expect and encourage employees to raise concerns internally. An employee of the Commission can, in certain circumstances, disclose information to a person or organisation outside the Commission. There is a list of prescribed people and circumstances where this can be done. This list can be found at:

<http://www.opsi.gov.uk/si/si2003/20031993.htm>

If an employee makes a wider disclosure or a disclosure of exceptionally serious failure, he/she should consult relevant legislation and take professional advice before doing so.