

Policy Title: Public Interest Disclosure - whistleblowing policy	Policy Number: 016
Issue Number: 005	Date of First Issue: April 2002
Date of last review: May 2022	Date of next review: May 2025
Approved by: Board	Lead Person: Alison McRae

- 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 all staff (including those attached to the Commission as part of their professional training, secondees 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 1998 (PIDA) (amending the Employment Rights Act 1996) 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 staff 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.

- 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. Principles. The Commission has designed its procedure for raising concern to ensure they are:

1. Open. Handle concerns openly and transparently throughout the process. At the same time, recognise and respect that everyone involved has the right to confidentiality.

2. Focused on improvement. Use the outcomes of concerns to identify and demonstrate learning and improvement and share best practice, both in providing services and in the procedure itself.

3. Objective, impartial and fair. Procedures for raising concerns should be objective, based on evidence and driven by the facts and circumstances. Staff investigating concerns should be impartial, independent and accountable. Procedures should be fair to anyone involved in the investigation.

4. Accessible. The processes must be easy to understand and well-published within the organisation.

5. Supportive to people who raise concerns. Offer support and protection at all stages, treat people raising concerns with dignity and respect.

6. Simple and timely. Timescales should be clearly published and met wherever possible. If timescales cannot be met, the person raising the concerns needs to be informed about the revised timescale.

7. Thorough, proportionate and consistent. Procedures for raising concerns should provide good-quality outcomes through a thorough but proportionate investigation. The outcomes of investigations should be appropriate to the findings.

Safeguards

i. Protection

This policy is designed to offer protection to all staff 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, unless required by law to reveal it and to offer support throughout, with access to mentoring, advice and counselling

iii. Anonymous Allegations

Anonymous information will be just as important for the Commission to act upon, nonetheless raising anonymous concerns may also mean the concern could not be handled effectively. The ability of the Commission to ask follow up questions or provide feedback will be limited if the whistleblower cannot be contacted.

Anonymous whistleblowers should also be aware that making a disclosure anonymously means it can be more difficult for them to qualify for protections as a whistleblower. This is because there would be no documentary evidence linking the worker to the disclosure for the employment tribunal to consider.

iv. Untrue Allegations

Every concern should be considered fully and properly, whatever others may say about why it has been raised. However, if a full investigation reveals that a concern was knowingly based on inaccurate information in order to create difficulties for a colleague, the organisation should take appropriate disciplinary action against the person who raised the concern.

4. Procedures for Making a Disclosure

i. Initial Step

1. With exceptions indicated below the individual should make the disclosure to the Head of Corporate Services **[A]** 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
2. If the disclosure is about the Head of Corporate Services then the disclosure should be made to the Chief Executive **[B]**.
3. If the disclosure is about the Chief Executive the disclosure should be made to the Chair **[C]**

4. 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 **[D]** 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. Where disclosure is about potential fraud, theft or corruption the "Fraud prevention and investigation policy (Policy 03) also needs to be considered.

See diagram attached as **appendix 1**.

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

The designated person may determine that more than one form of investigation is necessary, depending on the nature of the disclosure.

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 and within 20 working days. The person leading the investigation will inform the whistleblower of any extension needed.

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). Feedback should include an indication of timings for any actions or next steps

v. Internal review

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.

vi. 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. Prescribed persons are mainly regulators and professional bodies but include other persons and bodies such as MSP/MPs. The relevant prescribed person depends on the subject matter of the disclosure. 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.

Other relevant links

[The Public Interest disclosure Act 1998](#)

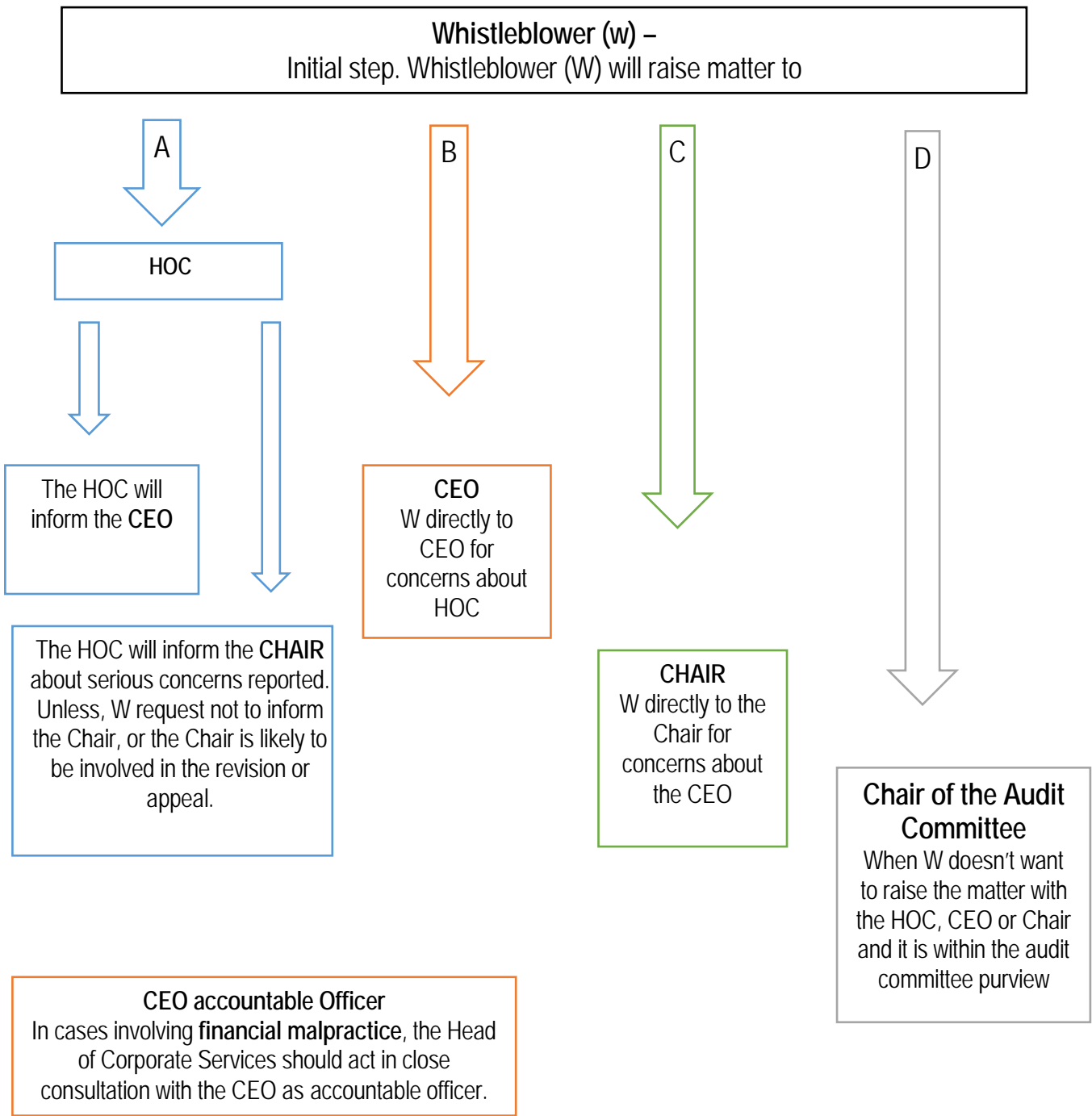
[The public interest disclosure order 2004 – Prescribed person](#)

[Employment Rights Act 1996](#)

[Whistleblowing guidance for employers and code of Practice GOV UK.](#)

[\[https://inwo.spsso.org.uk/whistleblowing-principles\]](https://inwo.spsso.org.uk/whistleblowing-principles)

Appendix 1. Diagram



HOC, CEO or CHAIR (or Chair of the audit committee) will decide on the form of the investigation

CEO and CHAIR (or Chair of the audit committee) can delegate further actions to a senior member of the Commission (the designated person)

Forms of investigation:

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

Investigations should not be carried out by the person reaching the decision

Integrated impact Assessment

Summary IAA report template

13/04/2022 Interim report

04/05/2022 Final report

1. Title of plan, policy or strategy being assessed.

Public Interest Disclosure-Whistleblowing Policy

What will change as a result of this proposal?

This integrated impact assessment is for the revision of the **Public Interest Disclosure Policy**. This policy, also known as whistleblowing policy, is designed to enable all employees, including those attached to the Commission as part of their professional training, secondees and Board members, to raise internally concerns that are in the public interest and to disclose information which the individual believes shows malpractice

The policy was first issued in 2002. There are no major changes compared with the last version issue in 2015. In this reviewed version we have adopted some of the Scottish Government recommendations for dealing with whistleblowing concerns.

2. Briefly describe any engagement around this proposal to date and planned

The Public Disclosure Policy was discussed at the ELT in February. The integrated impact assessment was discussed with Alison McRae and a member of the HR department (Sophie Revesz, HR Advisor) on 04/05/2022. The integrated impact assessment will be sent to the ELT 24/05/2022. The policy and the integrated impact assessment will then be sent to the Board for their approval in June 2022.

3. Date of IIA

04 May 2022

4. Who was present at the IIA? Identify facilitator, project lead, report writer

Name	Job title	Role
Paloma Alvarez	Information Governance Manager.	Policy lead, report writer
Alison McRae	Head of Corporate Services	Executive Lead
Sophie Revesz	HR Advisor	

5. Evidence available at the time of the IIA

Evidence	Available?	Comments: what does the evidence tell you?
Monitoring data	No	
Research/literature evidence	No	

Lived experience/ carer evidence	No	
Good practice guidelines	YES	Whistleblowing. Guidance for employers and code of practice March. Department for Business Innovation and Skills. Whistleblowing: Guidance for Employers and Code of Practice (publishing.service.gov.uk) 2015.
Other (specify)	No	
Additional evidence required	No	

6. In summary, what impacts were identified and which groups will they affect?

Equality & human rights	Affected populations
Positive	This policy encourages accountability and transparency and increase control over Mental Welfare Commission's decisions.
Negative	No
Geographical communities	
Positive	It would affect all individuals, regardless of where the individuals come from.
Negative	--
Staff	
Positive	It affects staff in the same way. This policy is the Commission's endorsement of the Public Interest Disclosure Act 1998 (PIDA) (amending the Employment Rights Act 1996) that provides legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. No members of staff should feel at a disadvantage in raising legitimate concerns.
Negative	--
Environment and sustainability	
Positive	--

Negative	--

7. Consider how you will communicate information about this policy. Who needs to be made aware? How will you communicate it to groups with specific communication needs? Please provide a summary of the communications plan.

Commission’s Public Interest Disclosure is available on the Commission’s intranet and it would be publicised via the Team Brief. We have renamed it adding the word “Whistleblowing” so the title provides more information about what this policy covers.

We are looking for online training available to Commission’s staff so it can be added to their induction packs.

The final version of the summary IIA report will be added to the policy as an appendix.

The Commission has an Accessible Information Policy to address the access to our publications by groups with specific communications needs.

8. Additional information and evidence required? If so, how will it be gathered? If appropriate, mark this report as interim and submit updated final report once further evidence has been gathered. N/A

9. Recommendations N/A

10. Action plan

Specific actions (as a result of the IIA which may include financial implications, mitigating actions and risks of cumulative impacts)	Who will take forward?	Deadline for progressing	Review date

11. How will you monitor how this policy, plan or strategy affects different groups, including people with protected characteristics? N/A

12. Sign off by Executive lead

Name
 Alison McRae
 Date 04. 05.2022