



mental welfare
commission for scotland

Policy Title: Public Interest Disclosure – Whistleblowing Policy	Policy Number: 016
Issue Number: 006	Date of first issue: April 2002
Date of last review: April 2024	Date of next review: May 2025
Lead person (title): Head of Culture & Corporate Services	Approved by: Board
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General Note

The Mental Welfare Commission acknowledges and agrees with the importance of regular and timely review of policy statement and aims to review policies within the timescales set out.

New policies will be subject to a review date of no more than one year from the date of first issue.

Reviewed policies will have a review date set that is relevant to the content (advised by the author) but will be no longer than three years.

If a policy is past its review date then the content will remain extant until such time as the policy review is complete and the new version published.

1.	Policy Statement
	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	
	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.	Roles & responsibilities	
	3.1	Chief Executive:
		• To act in accordance with the operational process set out in this policy where in receipt of a disclosure. • To liaise with the Head of Culture & Corporate Services in relation all disclosures involving financial malpractice, in capacity as Accountable Officer. • To notify the Chair of the Board where indicated under this policy.
	3.2	Head of Culture & Corporate Services:
		• To act in accordance with the operational process set out in this policy where in receipt of a disclosure. • To notify the Chief Executive where indicated under this policy and in particular where there is alleged financial malpractice.
	3.3	Executive Leadership Team (ELT):
		• To make sure there are sufficient mechanisms for staff to raise concerns where they believe there is serious malpractice or wrongdoing, independently of line management. • Provide resources for putting the policy into practice.
	3.3	Senior and line managers:
		• Make sure that all staff are aware of the policy.

4.	Operational system	
	4.1	Principles The Commission has designed its procedure for raising concern to ensure they are: • Open. Handle concerns openly and transparently throughout the process. At the same time, recognise and respect that everyone involved has the right to confidentiality. • 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. • 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. • Accessible. The processes must be easy to understand and well-published within the organisation. • Supportive to people who raise concerns. Offer support and protection at all stages, treat people raising concerns with dignity and respect. • 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. • 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.
	4.2	Safeguards <u>Protection</u> 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. 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. <u>Confidentiality</u> 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.

		<u>Anonymous Allegations</u> 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. <u>Untrue Allegations</u> 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.
	4.3	Procedures for Making a Disclosure i. <u>Initial Step</u> 1. With exceptions indicated below the individual should make the disclosure to the Head of Culture & 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 Culture & Corporate Services or Chief Executive, then he or she may raise it with the Chair of the Audit, Performance and Risk Committee (AP&R) [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 Culture & 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 Investigations Policy (FIN-POL-02) also needs to be considered. See diagram attached as Appendix 1. ii. <u>Process</u>
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		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 AP&R 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 Culture & 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. <u>Investigation</u> Normally the Internal Auditor or member of the executive team will undertake this investigation and will report their findings to the Head of Culture & 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. <u>Feedback</u> The Head of Culture & 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. <u>Internal review</u>
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	4.4	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. The first point of contact should be the Commission's internal auditors who can be contacted at: • TIAA - enquires@tiaa.co.uk or 0845 300 3333 If the employee, for whatever reason, doesn't want to make a disclosure to the internal auditor then they can contact the Commission's external auditors: • Grant Thornton UK LLP – Angela Pieri - angela.l.pieri@uk.gt.com 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.

5.	Risk Management
	Changes to legislation will be monitored and this policy updated as required.
6.	References
	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.spso.org.uk/whistleblowing-principles
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Appendix 1

