



PUBLIC INTEREST DISCLOSURE REPORTING POLICY

Equality

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1.0 Introduction

- 1.1 The Scottish Criminal Cases Review Commission (“the Commission”) is committed to the highest possible standards of openness, probity and accountability.
- 1.2 Employees with serious concerns about illegality, malpractice, wrongdoing or serious failures in standards of work are encouraged to come forward and voice their concerns.
- 1.3 This policy is intended to encourage and enable employees to raise serious concerns within the Commission rather than overlooking a problem or reporting their concerns outwith the Commission and to make clear that they can do so without fear of reprisal.

2.0 Public Interest Disclosure Act 1998

- 2.1 The Public Interest Disclosure Act 1998 makes provision for the protection of individuals who disclose information. Such a disclosure must fall within the category of a ‘protected disclosure’.
- 2.2 A ‘**protected disclosure**’ is a ‘qualifying disclosure’ which is made by a worker in certain specified circumstances.
- 2.3 A ‘**qualifying disclosure**’ means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

- That a criminal offence has been committed, is being committed, or is likely to be committed;
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject;
- That a miscarriage of justice has occurred, is occurring or is likely to occur;
- That the health or safety of any individual has been, is being or is likely to be endangered;
- That the environment has been, is being or is likely to be damaged, or;
- That information tending to show any matter falling within any one of the preceding paragraphs, has been is being or is likely to be deliberately concealed.

2.4 A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it. Commission employees should have regard to the terms of section 194J of the Criminal Procedure (Scotland) Act 1995 when considering whether to make a disclosure in terms of the PIDA.

2.5 In order to be a '**protected disclosure**', the qualifying disclosure must be made in good faith and to:

- The worker's employer, either directly to the employer or in accordance with procedures authorised by the employer for that purpose, or
- another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure.

A qualifying disclosure is also 'protected' if it is made:

- In the course of obtaining legal advice.
- To a Minister of the Crown if the disclosure is made in good faith and if the worker's employer is an individual or a body any of whose members are appointed under any enactment by a Minister of the Crown.
- To a person prescribed by an order made by the Secretary of State, if the disclosure is made in good faith and the worker reasonably believes that the relevant failure falls within any description of matters in respect of which that person is prescribed and that the information disclosed and any allegation contained in it are substantially true.
- To another person if it is made in good faith, if the worker reasonably believes that the information and any allegation contained in it are substantially true, if it is not made for personal gain, if either the worker reasonably believes that he would be subjected to a detriment by his employer if he disclosed to the employer or a prescribed person or, in the absence of a prescribed person, if the worker reasonably believes that disclosure would result in the destruction or concealment of information or if the worker had previously disclosed substantially the same information to the employer or a prescribed person and if, in all the circumstances, it is reasonable to make the disclosure (which takes into account the identity of the person to whom the disclosure was made, the seriousness of the allegation, whether the failure is continuing or is likely to occur again, whether the

disclosure breaches the employee's duty of confidentiality to others, and what action might previously have been expected to be taken and whether the worker complied with internal procedures, if the disclosure was made previously.)

- To another person if the relevant failure is exceptionally serious, provided the worker makes the disclosure in good faith, reasonably believes that the information and any allegation contained in it are substantially true, does not act for personal gain and that it is reasonable in all the circumstances to make the disclosure having regard in particular to the identity of the person to whom the disclosure is made.

A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

3.0 General

- 3.1 The Chief Executive has overall responsibility for the maintenance and operation of this policy.
- 3.2 The Chief Executive will maintain a confidential record of concerns raised and the outcomes and will report as necessary to the Board of the Commission.
- 3.3 The Commission has agreed a Fraud Policy. The Chief Executive must be notified of any suspected frauds which fall into any of the 'protected disclosure' categories as set out above.
- 3.4 If an employee's disclosure concerns any aspect of his or her employment with the Commission, s/he must make use of the Commission's Grievance Procedure.
- 3.5 Employees are entitled to fair and reasonable treatment from their colleagues, managers and members of the Board of the Commission. If they feel that they have been unfairly treated or have been discriminated against, they are entitled to make use of the appropriate Commission procedures such as the Grievance Procedure. This reporting policy is intended to cover concerns which fall outside the scope of such procedures.

4.0 Raising a concern within the Commission

- 4.1 Concerns should be raised in writing and addressed to the Chief Executive. The background and history of the concern, giving names, dates and places, where possible, should be set out together with the reason why the individual is concerned about the situation. Those do not feel able to put their concern in writing can telephone or meet the Chief Executive to discuss the matter.
- 4.2 Employees are encouraged to report their concerns as soon as possible. Delay may make the reported incident more difficult to investigate.
- 4.3 Although most employees are not expected to prove the truth of an allegation, they will need to demonstrate to the Chief Executive that there are sufficient grounds for concern.
- 4.4 Advice and guidance on disclosing matters of concern can be obtained from:

- Chief Executive
- Director of Corporate Services
- Chairman of the Commission
- Any Member of the Board of the Commission

5.0 Anonymous Allegations

5.1 Employees will be expected normally to put their names to allegations. Concerns expressed anonymously will be investigated at the discretion of the Chief Executive. In exercising this discretion, the factors taken into account will include:

- The seriousness of the issue raised;
- The credibility of the information provided;
- The credibility of the concern;
- The likelihood of confirming the allegation.

6.0 Untrue Allegations

6.1 If an employee makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against him/her. If, however, an employee makes malicious or vexatious allegations, disciplinary action may be considered and implemented.

7.0 Existing Disciplinary Procedures

7.1 It should be noted that if an employee is already the subject of the Commission's disciplinary or redundancy procedures, these procedures will not automatically be halted as a result of the 'protected disclosure' procedure.

8.0 Dealing with the Complaint

8.1 The action taken by the Commission will depend on the nature of the complaint. Where appropriate, the matters raised may:

- Be investigated internally; and/or
- Be referred to the police.

9.0 Internal Investigation

9.1 An employee who has a concern, the disclosure of which s/he believes to be within the category of a qualifying disclosure may raise the matter with the Chief Executive.

9.2 The Chief Executive may delegate the investigation of the concern to an appropriate employee.

9.3 In order to protect individuals and the Commission, initial enquiries will be made to decide whether the investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other existing procedures will be referred for consideration under those procedures.

- 9.4 Some concerns may be resolved by agreed action without the need for investigation.
- 9.5 The Chief Executive will write to the employee who has raised the concern within three working days, acknowledging receipt of the information regarding the employee's concern and advising how the matter will be dealt with. Within a further 10 working days the Chief Executive or an appropriate employee authorised by her to deal with the investigation of the matter shall write to the employee who raised the concern:
- Advising whether, on the basis of initial investigations, further enquiries are necessary.
 - Indicating how long enquiries might take.
 - Where appropriate, seeking further information or clarification.
- 9.6 The Commission will provide whatever reasonable resources are required to investigate the matter. The amount of contact between the person considering the issues and the employee who raised the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. In necessary, further information will be sought from the individual.
- 9.7 If the investigation has been delegated for investigation to an appropriate employee, that employee will submit to the Chief Executive a written report on the investigation when enquiries have been concluded.
- 9.8 At the conclusion of the investigation into the matter or upon receipt of written report on an investigation carried out by an appropriate employee, the Chief Executive will decide what action is to be taken, including whether the issue can be dealt with through the Commission's other procedures.
- 9.9 Subject to legal constraints, the employee who raised the concern will be notified about the outcome of any investigations.
- 9.10 At the conclusion of the investigation, a report, detailing the investigations carried out and the outcome of the enquiry, will be prepared by the Chief Executive and will be submitted to the Board of the Commission.
- 9.11 In the event that an employee is dissatisfied with the response given by the Chief Executive s/he may refer the matter directly to the Board of the Commission who may authorise one of the Members of the Board to carry out a further investigation into the matter and submit a written report thereon to the Board.
- 9.12 If the matter is urgent and the Chief Executive is for any reason unavailable to deal with the disclosure, the employee may report the concern to the Director of Corporate Services, who will deal with the matter in the absence of the Chief Executive, following the procedure set out above.
- 9.13 In the event that an employee feels that s/he cannot discuss the matter with the Chief Executive, the concern should be brought to the attention of the Chairman of the Commission who will carry out an investigation in accordance with the procedures set out above.

10. Referral to the Police

- 10.1 The decision to refer a matter to the police for investigation may be taken at any time after the concern has been raised by the employee and whether or not an internal investigation has been initiated or is ongoing.
- 10.2 The decision to refer the matter to the police will be taken by the Chief Executive who will notify the Members of the Board of the Commission of her decision immediately.

11.0 Raising Concerns Outwith the Commission

- 11.1 Employees are encouraged to exhaust the internal procedure outlined above and raise concerns within the Commission.
- 11.2 In certain circumstances an employee may believe it to be appropriate to divulge information to an external source. In such circumstances, the employee should have regard to the terms of the Public Interest Disclosure Act 1998, in particular, with regard to whether or not their disclosure would be 'protected'.
- 11.3 Employees may wish to seek legal advice on this matter.

12.0 Harassment or Victimisation

- 12.1 The Commission will not tolerate harassment or victimisation of an employee who has raised concerns through this process set out in this policy. It is the duty of all employees to ensure that colleagues do not suffer any type of unacceptable behaviour.
- 12.2 Any allegation of an employee suffering detriment as a result of raising a concern will be investigated immediately and by the most appropriate method, which may include the use of the Commission's grievance and disciplinary procedures.

13.0 Confidentiality

- 13.1 The Commission will maintain the confidentiality, wherever possible, of the identity of the employee who has raised the concern. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual may be required as part of the evidence.

14.0 Training and Information

- 14.1 Induction training is provided for all new employees and shall include the subject of employees being able to express concerns with particular reference to this policy.
- 14.2 The Commission will ensure that this policy is provided to all employees.

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