



## Concerns at Work Procedure (Whistle Blowing)

Title	Concerns at Work
Who should use this	All Staff
Author	SAC/Adapted by AVJB
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Reviewer	Office Manager
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### Review History

REVIEW NO.	DETAILS	RELEASE DATE
1	REVIEWED	JANUARY 2012
2	REVIEWED – MINOR AMENDMENT – CHANGE TO POLICY TITLES	MARCH 2015
3	REVIEWED – REMOVAL OF “FRIEND” REFERENCE	28 FEBRUARY 2018
4	Key changes are updated references to legislation, key documents that we can refer to in the Board and also key organisations that concerns can be raised with outwith the Board	4 MARCH 2019
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# 1. Introduction

- 1.1 The principles and guidance outlined in this policy and procedure have been developed to implement the Public Interest Disclosure Act 1998 (the so called “whistle-blowers” Act) which provides protection to “workers” making a disclosure in the public interest. Further protection is provided by the Enterprise and Regulatory Reform Act (ERRA) 2013.
- 1.2 In order for an employee to be provided with protection under the legislation, he/she must make a “protected disclosure” to the Board. Under ERRA a whistleblower must demonstrate a reasonable belief that the disclosure is in the public interest, this means the concern about the danger or illegality affects others, e.g. the general public.
- 1.3 An employee must exhaust the Board’s internal channels for whistleblowing before resorting to external whistleblowing.

# 2. Scope

- 2.1 This policy and procedure applies to employees, trainees, including certain work experience and vocational trainees, and agency workers.

# 3. Key Principles

- 3.1 The procedure is based on the following principles:
  - Fair and reasonable treatment at work;
  - The right to report concerns in the public interest;
  - Confidentiality;
  - Openness and accountability;
  - Honesty and Integrity.
- 3.2 The disclosure of information in the public interest involves the reporting of certain acts or omissions of serious concern, which may have been committed by one or more individuals in the Board or in external contractors working for the Board. The acts or omissions broadly fall into 2 categories:
  - Wrongdoing in terms of a breach of criminal or civil law e.g. financial impropriety such as fraud, endangering someone’s health and safety, risk or damage to the environment, or a belief that someone is concealing the wrongdoing

**or**

  - Maladministration which may amount to a breach of civil or criminal law e.g. non-compliance with an obligation set out in law such as a failure to have correct insurance.

# 4. Complaints that Count as Whistleblowing

- 4.1 It is the responsibility of all employees to highlight serious concerns and it is the duty of the Board to act on those concerns and protect and support employees when they do.

Complaints which do not count as whistleblowing include personal grievances such as bullying, harassment, discrimination. These should be reported under the Equalities at Work and Grievance Policy.

4.2 If an employee is concerned about an aspect of individual behaviour or Board practice that falls under one (or more) of the following categories, these may be considered as protected disclosures:

- A criminal offence
- A failure to comply with a legal obligation
- A miscarriage of justice (for example a manager instructs an employee to do something which s/he knows is illegal and as a result, the employee faces legal action)
- Danger to the health and safety of an individual
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud and corruption
- Sexual or physical abuse of clients,
- Failure to comply with Human Trafficking and Exploitation legislation, or
- Withholding information that would show any of the matters above are being deliberately concealed.

As a guide, the Board has a number Policies, Procedures, Regulations and Orders that define the way the Board is organised, managed and operates. In summary these are:

- Board's Financial Regulations and Standing Orders
- Standing Orders for Contracts
- Codes of Conduct
- Scheme of Delegation
- Policies and Procedures

4.3 An employee who believes that these established standards, or the standards the employee believes the Board should be achieving, are not being met may wish to report the matter on a confidential basis to his/her line manager or a more senior manager. The categories are by no means mutually exclusive, e.g., an employee may be aware of a health and safety failure that is also a criminal offence. The information disclosed may relate to an incident that has previously occurred, is current, or is likely to occur in the future.

An employee who is unsure as to whether the concern falls into one of the above categories should contact his/her line manager or a more senior manager provided that:

- the disclosure is made in good faith;
- the employee reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
- the disclosure is not being made for the purposes of personal gain.

4.4 Where the manager is in any doubt over specific issues, direction should be sought from the Assessor & ERO.

4.5 The Act does not protect employees who commit a criminal offence by making such disclosure.

## 5. Safeguards

### 5.1 Harassment or Victimisation

Any dismissal for making a protected disclosure is automatically unfair. In addition the Board recognises that the decision to report a concern may be a difficult one due to either a fear of victimisation or the worry that the matter will not be taken seriously or concern that their employment may be compromised. Therefore the Board will not tolerate harassment or victimisation and will take action to protect employees when they raise a concern in good faith.

### 5.2 Disciplinary Action

Where an employee raises concerns whilst disciplinary action is being taken against him/her, or in anticipation of disciplinary action being taken, the disciplinary action may be suspended in order to deal with the disclosure. Where the disciplinary action and disclosure are related it may be appropriate to deal with both issues concurrently.

### 5.3 Anonymous Allegations and Confidentiality

Anonymous allegations will be considered by the Board, taking account of

- The seriousness of the issues raised;
- The validity of the concern;
- The likelihood of verification from other sources.

Every effort will be made to protect an employee's identity when he/she raises a concern and requests anonymity. However this may not be possible where:

- the matter requires the involvement of agencies such as the Police or Health and Safety Executive;
- an investigation is required during which the employee is required to provide evidence; or
- the source is evident from the information provided

When anonymity is requested the employee(s) concerned will be advised whether or not this can be guaranteed.

### 5.4 Untrue Allegations

Where an employee makes an allegation in good faith, but it is not confirmed by the investigation, the employee will be informed of the discrepancy between their report and the facts at hand and no further action will be taken against the employee.

Where an employee deliberately submits a report that he/she knows to be false or unfounded he/she will be subject to the Board's disciplinary procedures.

## 6. Reporting Process

- 6.1 An employee wishing to report a matter that is covered by the categories stated in Section 4.2 above, should contact his/her line manager, or more appropriate senior manager. Exactly who an employee should contact will be determined by the nature of the allegation. An employee in any doubt should contact the Boards Personnel Representatives or their trade union representative.

- 6.2 Concerns may be raised verbally or in writing. Employees who wish to make a written report should use the standard form in Appendix 2.
- 6.3 Employees are not expected to prove beyond doubt the truth of an allegation. However they will need to demonstrate to the person contacted that there are reasonable grounds for concern and that any disclosure is in the public interest.
- Employees may wish to firstly discuss a concern with a colleague as it may be easier to raise the matter as a group i.e. two or more employees who share the same experience or concerns.
- 6.4 Employee's may wish to have a trade union representative or a work colleague present during meetings or interviews in connection with the concerns raised.
- 6.5 Complaints of Fraud should be reported and dealt with in accordance with the Board's Anti-fraud and Anti-bribery Strategy.

## 7. How the Board will Respond

- 7.1 Once a report has been submitted, the line manager or the Assessor & ERO , whoever is most appropriate, will have responsibility for ensuring concerns are investigated and will advise the employee in writing of the next steps within 14 days of a concern being raised. The overriding principle which the Board will have in mind is the public interest, therefore concerns or allegations which fall within the scope of other specific procedures will normally be referred for consideration under these procedures.
- 7.2 At this stage in the process, it is important that confidentiality is maintained by both parties to ensure that the matter can be dealt with in the appropriate way, by avoiding prejudice and protecting individual rights. The names of the people concerned will only be divulged to those closely involved in the investigation and who require this information.
- 7.3 The officer who requests the investigation will consider the investigation report and decide on the most appropriate course of action.
- 7.4 The employee will be informed of what action will be taken and the reason for this decision.
- 7.5 If further action is taken the employee will be notified of the outcome once the matter has been concluded.
- 7.6 Under the terms of this procedure, the employee who raised the concern may seek a progress update from the officer to whom the concern was referred, subject to the bounds of appropriate conduct and confidentiality.
- 7.7 The Board will provide appropriate support and minimise, as far as possible, any difficulties an employee may experience as a result of raising a concern e.g. providing evidence at an Inquiry or a disciplinary hearing or as part of criminal proceedings.

## 8. Contact with the Media

- 8.1 This procedure has been developed to enable employees to express what they reasonably believe to be concerns on the basis that it is in the public interest to make such matters known. However, reporting concerns does not mean that such matters should be made public through the media and employees must not do so. In addition,

employees must not criticise the Board through the media, social media in another public forum or written communication with the public.

Therefore, contact with the media is prohibited unless you are authorised to do so. Failure to comply may result in disciplinary action being taken.

## 9. How the Matter can be Taken Further

9.1 This procedure is intended to provide employees with an avenue to raise concerns and hopefully any action taken will be satisfactory. However, where the internal process has been exhausted and the employee still feels that the matter has not been resolved satisfactorily, he/she may contact the following professional bodies and regulatory authorities:

- Accounts Commission for Scotland
- The Commissioners for Her Majesty's Revenue and Customs (HMRC)
- The Pension Regulator
- Health and Safety Executive
- The Scottish Information Commissioner
- The Scottish Social Services Council
- Scottish Environment Protection Agency
- The Scottish Public Services Ombudsman
- Police Scotland

9.2 Please note that this list is not exhaustive and employees are free to contact any other relevant organisation which they feel will be able to deal appropriately with their concerns.

**HOW TO REPORT A CONCERN – FLOW CHART**

If you wish to report a matter that is covered by the categories stated in section 4.2 above, you should contact your Line Manager or the Assessor & ERO – in writing using the form attached in Appendix 2 or can be reported verbally.

When reporting a concern you will need to be able to demonstrate to the person contacted that there are reasonable grounds for your concern and it is in the public interest.

You may wish to have a Trade Union Representative or a work colleague present during any meetings or interviews in connection with the concerns you have made.

Once a report has been submitted, your Line Manager or the Assessor & ERO will have responsibility for ensuring concerns are investigated.

You will be advised within 14 days of your concern being raised of the next steps.

At this stage of the process confidentiality must be maintained by both parties to ensure that the matter can be dealt with in the appropriate way.

If your Line Manager, or the Assessor & ERO decides to act on the basis of your report, you will be notified where possible of this decision within 7 days.

Once the matter has been concluded, you will be notified of the outcome within 7 days.

Should your Line Manager or the Assessor & ERO decide not to take any action you will be notified and given the reason for the decision within 7 days of the decision being taken.

<b>CONFIDENTIAL</b>			
<b>REPORTING CONCERNS AT WORK</b> Incident Report Form			
<b>Note: If you require any assistance in completing this form, please contact the Boards Personnel Representatives</b>			
<i>Personal details:</i>			
<b>Name:</b>		<b>Section:</b>	
		<b>Team:</b>	
<b>Home Address:</b>		<b>Work Location:</b>	
		<b>Phone (Work)</b>	
		<b>Name of Supervisor/Manager</b>	
<b>Phone No (home):</b>			
<i>Trade Union Details:</i>			
<b>Name of Trade Union:</b>		<b>TU or other Representative:</b>	
<i>Incident details:</i>			
<i>Please provide the following information on the alleged incident:</i>			
<b>Incident date(s):</b>			
<b>Date:</b>		<b>Date:</b>	
<b>Date:</b>		<b>Date:</b>	
<b>Name of the person(s) the complaint concerns:</b>			
<b>Name</b>	<b>Designation</b>	<b>Work Location</b>	<b>Tel No</b>
<b>Comments:</b>			
<b>Name of any witnesses:</b>			
<b>Name</b>	<b>Designation</b>	<b>Work Location</b>	<b>Tel No</b>

<b>Nature of incident (Please tick appropriate box):</b>		
<b>CATEGORY</b>		<b>Comments</b>
Criminal offence		
Failure to comply with legal obligation		
A miscarriage of justice		
Health and safety issue		
Damage to the environment		
Unauthorised use of public funds		
Possible fraud or corruption		
Sexual or physical abuse of clients		
<b>Please give specific details of incident:</b>		
<p>I fully believe that the information I have provided above is correct and that the concerns has been reported in good faith and in the public interest.</p> <p><b>Signed:</b> _____ <b>Date:</b> _____</p>		

*To be completed by the line manager or nominated Senior Officer after investigation into alleged incident:*

<b>Action Taken:</b>		
<b>As a result of the investigation, please indicate what action will be taken. (Please tick the appropriate box).</b>		
<b>Action:</b>		<b>Comment:</b>
No Action taken		
Invoke Disciplinary Procedure		
Report given to professional Organisation/Police		
Other (Please specify):		
<b>Signed:</b>		<b>Date:</b>