

# Whistleblowing

## Civil Service Code & Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 enables staff who 'blow the whistle' about any of the instances of wrongdoing, set out in the Act, to complain to an employment tribunal, if they suffer any form of detriment for doing so or in the case of a dismissal. A summary of its provisions is set out at A Public Interest Disclosure Act: Summary of Provisions (below).

Staff should be aware that, alongside the provisions of the Public Interest Disclosure Act 1998, they have the protections set out in The Civil Service Code. Staff must consider the provisions of the Act alongside the Civil Service Code.

### What should I do if I become aware of wrongdoing?

If you believe you are being required to act in a way which conflicts with the Civil Service Code, you should normally report the matter, in the first instance, to your immediate line manager. If this does not resolve the issue, you should then approach the next person in your line management chain. If you think that these people might themselves be involved in wrongdoing, you should contact a more senior member of staff. If the situation remains unresolved, the matter should then be reported to 'The Scottish Government Nominated Officer, who will investigate your concerns and let you know what action should be taken.

If you believe that the response does not represent a reasonable response to your concerns, you may report the matter to the Civil Service Commissioners.

You should also use these procedures if you wish to make any other disclosure covered by the 1998 Act.

It is for you to decide what action to take, taking account of the provisions of the Act and of the Civil Service Code. It is preferable - and this is at the heart of the Public Interest Disclosure Act - to raise the matter internally if appropriate and practical. In order to safeguard the interests of both the organisation and its workforce, it is important to air these issues and concerns in this way.

### A Public Interest Disclosure Act: Summary of Provisions

#### 1. To qualify for protection under the Act, two criteria must be satisfied:-

- the type of information being disclosed must fall within the specified criteria; and;
- the manner in which the disclosure is made, and whom it is made to must fall within the specified criteria.

## **2. What Protection does the Act provide?**

The legislation does **not** introduce a general protection for whistleblowers in all circumstances. A disclosure will qualify for protection if you reasonably believe it tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- a criminal offence
- a failure to comply with a legal obligation
- a miscarriage of justice
- the endangering of an individual's health and safety
- damage to the environment
- deliberate concealment of information tending to show any of the above.

It is important to understand that if, by making a disclosure you would commit a criminal offence (e.g. under the Official Secrets Acts), that disclosure will not be a qualifying disclosure under the Act.

## **3. When are disclosures protected?**

You qualify for protection under the Act if your disclosure is a qualifying disclosure (i.e. under one of the headings listed above), and is made:

- in good faith to the Scottish Government
- in good faith, where you reasonably believe that the relevant failure relates solely or mainly to the conduct of a person other than your employer or where the matter is one which your employer does not have legal responsibility for, to that other person;
- to a legal adviser in the course of obtaining legal advice;
- in good faith to a Government Minister by a worker employed in a Government-appointed organisation such as a non-departmental public body;
- to a person or body prescribed by the Secretary of State (e.g. in Statutory Instrument 1999 No 1549) ('a prescribed person'), e.g. the Health and Safety Executive.

In the last case you must make the disclosure in good faith and reasonably believe that the information and any allegation in it are substantially true. In addition you must reasonably believe that the matter falls within the description of matters for which the person has been prescribed.

**4. Qualifying disclosures will also be protected if they are made other than described in paragraph 3 above, provided that the individual makes the disclosure in good faith, reasonably believes that the information and any allegation contained in it are substantially true, and does not act for personal gain. One or more of the following conditions must also apply:**

- the individual reasonably believed that he or she would be victimised if he or she had made the disclosure to the employer or to a prescribed person;

- there was no prescribed person and the individual reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence;
- the individual had already disclosed substantially the same information to the employer or a prescribed person.

It must also be reasonable for the individual to make the disclosure. In deciding the reasonableness of the disclosure, an employment tribunal will consider all the circumstances. This will include:

- the identity of the person to whom the disclosure was made,
- the seriousness of the concern,
- whether the failure is continuing or likely to occur,
- whether the disclosure breached a duty of confidentiality which the employer owed a third party,
- what action has been taken or might reasonably be expected to have been taken if the disclosure was previously made to the employer or a prescribed person,
- whether the worker complied with any approved internal procedures if the disclosure was previously made to the employer.

**5.** A disclosure about an "exceptionally serious" failure made other than described in paragraph 3, will be protected if the individual makes the disclosure in good faith, reasonably believes the information disclosed and any allegation contained in it are substantially true and does not act for personal gain - provided that it is reasonable for the individual to make the disclosure, having regard, in particular, to the identity of the person to whom the disclosure is made. It will be for the employment tribunals to consider whether any particular failure is "exceptionally serious"; this is a matter of fact, not just an individual's personal belief.