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# Whistleblowing Policy

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## Contents

Introduction and Scope.....	1
Policy Overview.....	1
What is whistleblowing?.....	1
What protection does the Public Interest Disclosure Act provide? .....	1
When are disclosures protected? .....	2
What should I do if I become aware of wrongdoing?.....	3
Confidentiality.....	3
Where can I get independent advice?.....	4
Responsibilities .....	4

## Version Control

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# Introduction and Scope

- 1 The Scottish Fiscal Commission is committed to achieving the highest possible standards of service and ethical practice in its activities. For civil servants, these standards are reinforced by the Civil Service Code<sup>1</sup>.
- 2 The purpose of this policy is to ensure that the Scottish Fiscal Commission has procedures in place to enable all those who work with or within the Commission to raise their concerns about wrongdoing at an early stage and in the right way, and how those concerns will be investigated. This includes permanent, temporary and agency staff, contractors, and third parties.
- 3 Further advice on whistleblowing is available in the:
  - Whistleblowing for employees guide published by gov.uk<sup>2</sup>
  - List of prescribed people and bodies to whom wrongdoing can be reported<sup>3</sup>
  - Scottish Fiscal Commission Counter Fraud Policy<sup>4</sup>

## Policy Overview

- 4 The Public Interest Disclosure Act 1998<sup>5</sup> 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.
- 5 Alongside the provisions of the Public Interest Disclosure Act 1998, employees have the protections set out in the Civil Service Code (see paragraph 1 and footnote 1).

## What is whistleblowing?

- 6 Whistleblowing is when an employee suspects wrongdoing at work. To qualify for protection under the Public Interest Disclosure Act 1998, two criteria must be satisfied:
  - the **type of information** being disclosed must fall within the specified criteria below (paragraph 7)
  - the **manner in which the disclosure is made**, and whom it is made to, must fall within the specified criteria below (paragraph 9).

## What protection does the Public Interest Disclosure Act 1998 give?

- 7 The legislation does **not** introduce a general protection for whistle-blowers in all circumstances. A disclosure will qualify for protection if you reasonably believe that it tends to show that one or more of the following specified criteria 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

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<sup>1</sup> Civil Service Code ([link](#))

<sup>2</sup> Whistleblowing for employees ([link](#))

<sup>3</sup> List of prescribed people and bodies ([link](#))

<sup>4</sup> Scottish Fiscal Commission Counter Fraud Policy ([link](#))

<sup>5</sup> Public Interest Disclosure Act 1998 ([link](#))

8 It is important to understand that if by making a disclosure you would commit a criminal offence (for example under the Official Secrets Acts), that disclosure will not be a qualifying disclosure under the Public Interest Disclosure Act.

## When are disclosures protected?

9 You qualify for protection under the Act if your disclosure is a qualifying disclosure ( under one of the headings listed above in paragraph ), and is made to one or more of the following:

- in good faith to the Scottish Fiscal Commission;
- 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 for which your employer does not have legal responsibility, to that other person
- to a legal adviser in the course of obtaining legal advice
- to a person or body prescribed by the Secretary of State (Statutory Instrument 1999 No 1549) ('a prescribed person'), such as the Health and Safety Executive

10 In the case of the final bullet point above 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.

11 Qualifying disclosures will also be protected if they are made other than described 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.

12 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, including:

- 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

13 A disclosure about an "exceptionally serious" failure made other than described in paragraph 9 ("When are disclosures protected"), will be protected:

- if the individual makes the disclosure in good faith and 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.

14 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.

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

15 If you have a concern about wrongdoing or a breach of the Civil Service Code, in the first instance you should normally report the matter to your immediate line manager. If you feel unable to raise the matter with your **line manager**, you should contact another line manager or a senior member in the management chain.

16 If this does not resolve the issue, or if there is a good reason for not raising a concern within the line management chain, you should report the matter to the **Chief Executive** (acting as the Scottish Fiscal Commission's Nominated Officer for the purposes of this Policy) who will investigate your concerns and let you know what action should be taken.

17 If you believe that the response from the Scottish Fiscal Commission's Nominated Officer does not represent a reasonable response to your concerns, you may report the matter to the **Chair** of the Scottish Fiscal Commission.

18 If you have a particularly serious and urgent concern, which cannot be raised via the management chain or Nominated Officer, you should report the matter to the **Chair** of the Scottish Fiscal Commission.

19 If you believe that the response from the Chair of the Scottish Fiscal Commission does not represent a reasonable response to your concerns, you may report the matter to the **Civil Service Commission**.

20 If there is a good reason why your concern cannot be raised within the Scottish Fiscal Commission, you may report the matter directly to the **Civil Service Commission**.

21 It is for you to decide what action to take, taking account of the provisions of the Public Interest Disclosure Act 1998 and of the Civil Service Code. It is preferable, and this is at the heart of the Act, to raise the matter internally if appropriate and practical. To safeguard the interests of both the Commission and its staff, it is important to air these issues and concerns in this way. If you are in any doubt, you should speak in confidence to the Nominated Officer.

22 You should also use these procedures if you wish to make any other disclosure not covered by the Public Interest Disclosure Act 1998.

## Confidentiality

23 All concerns will be treated in confidence as far as possible, and every effort will be made not to reveal your identity if you so wish. However, you may need to come forward as a witness.

24 You are encouraged to put your name to your concern whenever possible. Please note that employees must:

- believe that the disclosure of information is in the public interest;
- believe it to be substantially true;
- not act maliciously or make false allegations; and
- not seek any personal gain

## Where can I get independent advice?

25 If you would like independent advice at any stage, you can speak to your trade union, if applicable, or contact the independent charity Protect (formerly Public Concern at Work) for confidential advice on 020 3117 2520 (\* option 1) or by email at [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk). Alternatively, visit their website at <https://protect-advice.org.uk/>.

## Responsibilities

Role	Responsibility
Senior Information Risk Owner	Ensure that staff are aware of the process set out in this Policy for reporting and responding to whistleblowing.
Line Manager	Ensure that the Policy is known and understood by all staff and that action is taken in line with the policy if necessary.
Nominated Officer – Chief Executive	Follow the principles set out in this policy and act as an impartial intermediary between any individual raising a concern and other parties.
Chair of the Scottish Fiscal Commission	Follow the principles set out in this policy and act as an impartial intermediary between any individual raising a concern and other parties.

Scottish Fiscal Commission

Reviewed November 2020

