

SCOTTISH LAW COMMISSION

WHISTLEBLOWING POLICY

1. Introduction and Scope

The Scottish Law 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.

Everyone in the Scottish Law Commission should have the confidence to speak up and know that those raising a genuine concern will not suffer any detriment. This policy document sets out how the Scottish Law Commission staff can report any concerns about wrongdoing at an early stage and in the right way.

This policy applies to staff of the Scottish Law Commission, including those seconded from the Scottish Government, temporary staff, and those carrying out functions on behalf of the Scottish Law Commission.

In this document, “the Act” means the [Public Interest Disclosure Act 1998](#).

Related Documents

- [The Civil Service Code](#)
- [GOV.UK Whistleblowing Guide](#)
- [GOV.UK Whistleblowing: list of prescribed people and bodies](#)

2. Policy Overview

The [Act](#) enables staff who make certain disclosures about any of the instances of wrongdoing set out in the Act and do so in accordance with 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.

Alongside the provisions of the Public Interest Disclosure Act 1998, civil servants have the protections set out in the [Civil Service Code](#).

3. What is whistleblowing?

Making a qualifying disclosure under the Act is often called “whistleblowing”. This is the process by which an employee raises a concern at work including concerns about things that are not right, are illegal or if anyone at work is neglecting their duties.

To qualify for protection under the Public Interest Disclosure Act 1998, various criteria must be satisfied regarding:

- (a) the type of information being disclosed;
- (b) the manner in which the disclosure is made; and
- (c) to whom the disclosure is made to.

The Act does not introduce a general protection for whistleblowers in all circumstances.

4. What disclosures are protected under the Act?

A disclosure will qualify for protection under the Act 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) a criminal offence;
- (b) a failure to comply with a legal obligation;
- (c) a miscarriage of justice;
- (d) the endangering of an individual's health and safety;
- (e) damage to the environment; or
- (f) deliberate concealment of information tending to show any of the above.

These are referred to as “qualifying disclosures” and a complete description is set out in the Act.

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.

5. Other concerns

Concerns of an HR or personal nature, for example, complaints relating to a decision by managers, are not usually qualifying disclosures under the Act (see definition in section 43B of Employment Rights Act 1996 inserted by section 1 of the Act). However, you are

encouraged to raise concerns about such issues by speaking to your line manager in the first instance and following the process set out in section 9.

6. 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:

- (a) in good faith to the Scottish Law Commission;
- (b) 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;
- (c) to a legal adviser in the course of obtaining legal advice; or
- (d) to a person or body prescribed by the Secretary of State (e.g. Public Interest Disclosure (Prescribed Persons) Order 2014 [S.I. 2014/2418](#)) ('a prescribed person'), such as the Health and Safety Executive.

In the case of point (d) 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.

Additional circumstances for disclosure

Qualifying disclosures will also be protected if you to make the disclosure in good faith, you reasonably believe that the information and any allegation contained in it are substantially true, and you are not acting for personal gain. One or more of the following conditions must also apply:

- (a) you reasonably believed that you would be victimised if you had made the disclosure to the employer or to a prescribed person;
- (b) there was no prescribed person and you reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence;
- (c) you had already disclosed substantially the same information to the employer or a prescribed person.

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

- (a) the identity of the person to whom the disclosure was made,
- (b) the seriousness of the concern,
- (c) whether the failure is continuing or likely to occur,
- (d) whether the disclosure breached a duty of confidentiality which the employer owed a third party,
- (e) 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,
- (f) whether the worker complied with any approved internal procedures if the disclosure was previously made to the employer.

Extremely serious failure

A disclosure about an "exceptionally serious" failure made other than described above, will be protected:

- (a) if the failure is of an exceptionally serious nature;
- (b) you make the disclosure in good faith;
- (c) you reasonably believe the information disclosed and any allegation contained in it are substantially true;
- (d) you are not acting for personal gain; and
- (e) provided that it is reasonable in the circumstances for you 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.

7. Employment Tribunal

You may complain to an employment tribunal if you feel that you are subject to detriment as a result of making a protected disclosure.

8. What should I do if I become aware of wrongdoing?

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

If this does not resolve the issue, or if there is a good reason for not raising a concern within the line management chain, the matter should be reported to the Chief Executive

of Scottish Law Commission (acting as the Commission's Nominated Officer for the purposes of this policy) who will investigate your concerns and let you know what action should be taken.

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

You may also raise your concern directly to the Chair of the Scottish Law Commission, without having first raised this with your line manager or the Scottish Law Commission's Nominated Officer, where you have a particularly serious and urgent concern, which cannot be raised via the management chain or the Nominated Officer.

If you believe that the response from the Chair of the Scottish Law Commission does not represent a reasonable response to your concerns, or if there is a good reason why your concern cannot be raised within the Scottish Law Commission, you may report the matter to the Civil Service Commission.

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

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 Act, to raise the matter internally if appropriate and practical. In order to safeguard the interests of both the Scottish Law Commission and its workforce, 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.

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

9. Confidentiality

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. Depending on the kind of wrongdoing disclosed, however, other bodies may need to be involved, potentially requiring your co-operation and/or being a witness in the event of subsequent proceedings.

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

- (a) believe the disclosure of information is in the public interest;
- (b) believe it to be substantially true;
- (c) not act maliciously or make false allegations; and
- (d) not seek any personal gain.

10. Will I be updated on progress?

To the extent appropriate, the Scottish Law Commission is committed to keeping you regularly updated on the progress of any case, ensuring that actions are understood and that next steps are clear in terms of progressing the case. All communication will be managed securely and sensitively.

11. Where can I get independent advice?

If you would like independent advice at any stage, you can speak to your Trade Union, if applicable, or contact the independent charity Public Concern at Work for confidential advice on 020 3117 2520. Alternatively, visit their website at www.protect-advice.org.uk.

12. Responsibilities

<i>Role</i>	<i>Responsibility</i>
Senior Information Risk Owner (Chief Executive)	Ensure that staff are aware of the process set out in this policy for reporting and responding to whistleblowing
Line Managers	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 Law Commission	Follow the principles set out in this policy and act as an impartial intermediary between any individual raising a concern and other parties.

13. Exceptions

There are no exceptions to this policy.

14. Communication

The Chief Executive of the Scottish Law Commission will ensure that Commissioners and staff are aware of this policy. Staff will also be asked about raising concerns through the annual People Survey.

15. Review

This document is subject to review at every three years or in response to relevant changes within the environment.

Date: 12 May 2025