

Speak Up – The ICO’s whistle-blowing policy and procedure.

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Key messages

The main objective of this policy is to prevent malpractice by the organisation, its employees, agents and partners by advising staff how to raise concerns with the organisation’s management or, if necessary, with its sponsoring department and advising them of the protection offered by the Public Interest Disclosure Act 1998 (‘PIDA’).

Does this policy relate to me?

This policy applies to all employees of the Information Commissioner's Office (ICO) and other workers, officers, consultants, contractors, casual workers, secondees or agency workers undertaking activity on behalf of the ICO.

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1. Introduction

- 1.1 All organisations face the risk of things going wrong or of unknowingly harbouring malpractice. We have a duty to identify and take measures to remedy all malpractice particularly with regard to issues of fraud and corruption. This procedure outlines the process that should be followed when reporting a perceived wrongdoing within the ICO.
- 1.2 By encouraging a culture of openness within our organisation together with a transparent process for staff to report concerns, we believe that we can prevent malpractice before it happens.
- 1.3 The reporting of a wrongdoing under this procedure may be covered by the law concerning protected disclosures of information. This policy is designed to provide information about the protections offered by the Public Interest Disclosure Act 1998 (PIDA), which offers protection to those who 'blow the whistle' in certain circumstances.
- 1.4 It is important that this procedure is followed when raising any concerns, to ensure that the matter is dealt with correctly. Where a concern is properly raised under this procedure, the individual will be protected from any unfair or negative treatment.
- 1.5 If an employee is asked to do something, or is aware of the actions of another, which they consider to be wrongdoing, they can raise it using this procedure. The employee must have a reasonable belief that raising the concern is in the public interest.
- 1.6 Employees should not raise malicious or vexatious concerns, nor should they raise knowingly untrue concerns. Those who raise concerns with a reasonable belief that raising the concern is in the public interest, will be given protection under this policy.
- 1.7 If an employee is found to have made allegations that they know (or ought reasonably to have known) to be false or malicious, the



ICO disciplinary process may be instigated which may result in dismissal from the ICO.

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2. Definitions

- 2.1 Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers at work. It can include fraud, corruption or malpractice, which are each defined below.
- 2.2 'Fraud': for the purpose of this policy refers to where an individual has undertaken, or intends to undertake, actions in order to obtain gain for them or another, or cause loss to another, or expose another to risk of loss.

The term 'fraud' encompasses:

- i) Fraud by false representation;
- ii) fraud by failing to disclose information; and
- iii) fraud by abuse of position.

Descriptions of the above can be found within the Fraud Act 2006.

- 2.3 'Corruption' for the purpose of this policy refers to an individual who has given or obtained advantage through means which are illegitimate, immoral, and/or inconsistent with their duty to the ICO, Public Office or the rights of others. Examples include accepting bribes or incentives during procurement processes, investigations or case handling, or seeking to influence others.
- 2.4 'Malpractice' for the purpose of this policy refers to actions which may be:
- i) illegal, improper, criminal, unethical, or discriminatory;
 - ii) in breach of a professional code;
 - iii) possible maladministration, fraud or misuse of public funds;
or
 - iv) acts which are otherwise inconsistent with the Staff Code of Conduct.
- 2.5 Whistleblowing can also include the deliberate concealment of any of the above matters.

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3. Protection of whistle-blowers

- 3.1 The management of the ICO is committed to this policy. We give our assurance that individuals will not suffer any form of retribution, victimisation or detriment as a result of seeking to raise legitimate concerns under this policy. In addition, the PIDA may provide legal protection in relation to disclosures if concerns raised are in accordance with that Act.
- 3.2 Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern.
Any individual who is found to have threatened or retaliated against a whistle-blower in any way will be subject to disciplinary action. If anyone believes that they have suffered any such treatment, they should inform People Services immediately. If the matter is not remedied, you should raise it formally using our Grievance Procedure.
- 3.3 Any disclosures made under this procedure will be treated in a sensitive manner. Concerns will be treated seriously, and actions taken in accordance with this policy. If asked to treat the matter in confidence we will do our utmost to respect the request as far as possible, restricting it to a 'need to know basis'.
- 3.4 If the situation arises where it is not possible to resolve the concern without revealing the employee's identity (for example in matters of criminal law), the employee will be advised before proceeding. The same considerations of confidentiality should be afforded to the employee(s) at the centre of the concern, as far as appropriate.
- 3.5 The best way to raise a concern is to do so openly, as it makes it easier for the concern to be investigated and feedback provided.
- 3.6 Employees may choose to raise a concern anonymously, i.e. without providing their name at all. If this is the case, the investigation itself may serve to reveal the source of information. Employees are therefore encouraged, where possible to put their names to concerns raised. However, raising a concern anonymously is preferred to silence about potential serious wrongdoing.
- 3.7 It is recognised that the prospect of whistleblowing can place considerable stress on an individual. - If employees are contemplating making a whistle-blowing complaint they may want



to seek advice from a third party such as a trade union, Citizens Advice, Protect (formerly Public Concern at Work) or the employee assistance helpline etc.

- 3.8 If an employee follows the correct procedures when raising a concern, they will not be penalised. If a concern is raised in the reasonable belief that it is in the public interest, the employee raising the concern will be protected. The PIDA protects workers who make a **protected disclosure** of information, concerning certain types of matters relating to their employment, from being dismissed or penalised by their employers as a result of the disclosure.
- 3.9 Not all disclosures of information are protected by PIDA. Protection only arises in relation to **protected disclosures**. **Protected disclosures** are:
- **qualifying disclosures** (defined below) made to an appropriate party (see section 5.10 below); and
 - made in accordance with the differing conditions for disclosure applying to each different type of recipient of the information.

A **qualifying disclosure** is:

“Any disclosure of information which, *in the reasonable belief of the worker making the disclosure*, tends to show one or more of the following.

(a) That a criminal offence has been committed, is being committed or is likely to be committed;

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(c) That a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) That the health or safety of any individual has been, is being or is likely to be endangered;

(e) That the environment has been, is being or is likely to be damaged; or

(f) That information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed.”



PIDA refers to those matters covered by (a) to (f) above as **relevant failures**.

A disclosure will not be a qualifying disclosure if the person making it commits an offence by making it (e.g. if the disclosure would breach official secrets legislation or if it would breach section 132 of the Data Protection Act 2018). Employees would therefore not receive protection under PIDA if they made a disclosure in these circumstances.

3.10 A protected disclosure can be made to one of the following recipients (subject to certain conditions), these are:

- the worker's employer;
- a legal adviser;
- a Minister of the Crown (in certain circumstances);
- a regulatory body (referred to as a prescribed person – including the Information Commissioner); and
- a person who is not covered by the list above provided certain conditions are met as set out in PIDA.

The circumstances in which disclosures may be made vary depending upon the intended recipient of the information.

The most likely recipient of information from ICO staff concerning misconduct will be the ICO **as the employer** of the worker in question. To be protected by PIDA, a worker wishing to make a disclosure must make sure that they reasonably believe that the disclosure tends to show a **relevant failure** and that the worker reasonably believes that the disclosure is in the public interest.

3.11 Employees are strongly recommended to take legal advice before following this course of action, as the PIDA only affords protection to whistle-blowers in certain circumstances. In particular, no protection is given if the disclosure is made for personal gain.

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4. Procedure

4.1 If employees are concerned about something in the workplace which they consider or perceive to be wrongdoing and the employee has reasonable belief that raising a concern is in the public interest it is important that that they raise their concern straight away.



- 4.2 The purpose of this policy is to give staff the opportunity and protection they need to raise concerns internally without reporting the concern to external bodies. It is, therefore, expected that raising concerns internally will be the most appropriate action to be taken in almost all cases and so employees must try to do so.

The concern should, in most instances be raised with the employee's line manager or sent to the line manager if employees prefer to put the concern in writing.

When raising a concern employees should provide the following information:

- the background and reason behind the concern;
 - whether they have a personal interest in the issue at the outset;
 - advise that they are raising their concern under the whistle-blowing policy; and
 - whether they have already raised a concern with anyone and the response.
- 4.3 If employees feel that they cannot tell their line manager, for whatever reason, they should raise the issue with People Services who will advise where best to escalate the concern.
- 4.4 After raising a concern, the line manager or People Services will decide how the concern should be taken forward. This may involve an internal inquiry or a formal investigation depending on the nature of the concern raised.

Where appropriate the concern raised may:

- be investigated by management, internal audit or through the disciplinary/grievance process;
- be referred to the police;
- be referred to our internal auditors;
- form the subject of an independent inquiry.

Concerns will normally be dealt with in the following stages:

4.5 Stage 1

The person with whom the concern was raised will arrange a meeting with the whistle-blower to discuss the concern and determine how the concern should be taken forward.



The whistle-blower may be accompanied by a trade union representative or a colleague who is not involved in the area of work to which the concern relates.

The person to whom the concern has been raised will provide written confirmation of how the concern will be dealt with to the employee, ideally within five working days, although this may be longer depending on the nature of the concern.

If appropriate an internal inquiry will be conducted and the whistle-blower will be updated on the progress of the concern within 28 days where possible.

The whistle-blower will be provided with confirmation when the matter is concluded and, if appropriate, be provided with the outcome of any inquiry, maintaining security and confidentiality for all parties as far as possible.

If the whistle-blower feels that the concern is particularly serious and urgent and they are worried about approaching their line manager or People Services, then the concern should be raised with a member of the Executive Team.

The Executive Team is entrusted with the duty of investigating staff concerns about illegal, improper or unethical behaviour.

Employees should also approach one of the Executive Team to draw attention to cases where there is evidence of irregular or improper behaviour elsewhere in the organisation, but where employees have not been personally involved, or if they are required to act in a way which, for them, raises a fundamental issue of conscience.

If employees have reported a matter as described above and believe that the response does not represent a reasonable response to the issues raised, they should revert back to the person considering their concerns in the first instance. If employees feel that their concern is still not adequately addressed, they may report the matter directly to the Commissioner.

4.6 Stage 2

If following an internal inquiry, it is determined that a formal investigation is required, or if there is a good reason for not raising a concern under stage one of this process, an investigating officer will be appointed. This will be an independent person and might include a member of the ICO Senior Leadership Team, a member of the internal audit team or an external advisor.



It may be appropriate for the investigating officer to refer the concern to law enforcement agencies if they believe;

- a criminal offence has been committed, is being committed or is likely to be committed;
- the health and safety of any individual has been, is being or is likely to be endangered;
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject.

The ICO will, as far as possible, keep employees informed of the decisions taken and the outcome of any enquiries and investigations carried out within 28 days. However, it may not be possible or appropriate to inform staff in the event of a formal investigation that involves the police/security or of any matters which would infringe our duty of confidentiality to others.

- 4.7 It is important to note that as long as employees have raised a legitimate concern, they will not be subject to disciplinary action even if the investigation finds their allegations to be unproven.
- 4.8 Steps should be taken throughout stages one and two to ensure the fair treatment of any person accused of wrongdoing by a whistleblower.
- 4.9 If employees feel that the people within the office with whom they would normally raise the issue are parties to, or supportive of, the behaviour causing concern, or their concern relates to a member of the Executive Team, they may report the matter to:
- The chair of the ICO's Audit Committee, Ailsa Beaton, who is a non-executive member of the ICO's management board and the nominated officer for overseeing the integrity, independence and effectiveness of the whistle-blowing policy. She can be contacted at Ailsa.Beaton@ico.org.uk
 - Senior Audit Manager at the Government Internal Audit Agency, Lyn Bryant-Nichols, who can be contacted at Lyn.Bryant-Nichols@giaa.gov.uk
 - The partnership team at the ICO Sponsor department, Department for Science, Innovation and Technology (DSIT) who can be contacted on Partnerships@dsit.gov.uk
- 4.10 It is important that concerns are raised internally at the earliest time possible. This will allow the ICO the opportunity to address and resolve any concerns quickly and by the most appropriate



means. The ICO is confident that there are sufficient internal avenues available to deal with any concerns raised.

- 4.11 If employees feel they cannot raise their concerns internally the PIDA may afford protection in relation to disclosures providing employees honestly and reasonably believe that the allegations are true. In such circumstances employees may consider raising the matter with the police or the appropriate regulator e.g. Health and Safety Executive, Environmental Health Department etc. If employees do take this route to whistle-blow an issue they may be required to demonstrate why they thought the normal internal procedure was not appropriate.
- 4.12 If employees have not followed internal procedures, whistle-blowing disclosures to the media or by other public disclosure will generally be considered to be an unreasonable course of action. Reporting concerns for public circulation, even if done based on a genuine belief, before raising them in accordance with these procedures may result in disciplinary proceedings, which could lead to dismissal.

Employees should try to exhaust all internal mechanisms for whistleblowing or refer to our sponsoring department or the relevant regulatory body. Employees should be aware that going directly to the press may limit their protection under the Public Interest Disclosure Act (PIDA) and they may be liable for dismissal. It is advised that employees seek advice from their trade union, if they are a member, or contact Protect (whose details are in section 7.9) before taking this course of action.

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5. Advice

- 5.1 It is recommended that employees obtain advice about whistleblowing and PIDA at an early stage if they intend to report malpractice. This is important so that they know the extent of the protection which will be provided to them under PIDA.

If employees are a member of a trade union, they may wish to seek advice about raising an issue from a trade union representative.

Employees may also wish to seek advice from Protect (formerly Public Concern at Work) which is an independent charity set up to provide advice and guidance about whistle-blowing issues.



For more information on whistle-blowing and related legislation visit: <https://protect-advice.org.uk>

If employees need independent advice about a whistle-blowing issue they can telephone the Protect Advice Line on 020 3117 2520.

Further information about PIDA is contained in the PIDA Overview which can be found in the People Services section on ICON.

If staff have any queries regarding this policy, you can contact the HR team at HRTeam@ico.org.uk

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6. Governance

- 6.1 People Services will maintain appropriate records of all reportable concerns raised by whistle-blowers, how the concerns were dealt with and the outcome.
- 6.2 The ICO Management board will be updated on a quarterly basis regarding reports of fraud or whistleblowing. Any patterns or common themes will be highlighted as part of that report.
- 6.3 The Nominated Officer is responsible for ensuring and overseeing the integrity, independence and effectiveness of this policy and procedure.
- 6.4 All reports will maintain the confidentiality of individual whistle-blowers.

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Version history

Version	Changes made	Date	Made by
2.1	Updated by HR	July 2018	Human Resources

2.2	Updated by HR	September 2019	Human Resources
2.3	Reviewed by SLT working group	July 2020	
2.4	Reviewed by DAC Beachcroft	July 2020	
2.5	Reviewed by EDI networks	October 2020	
2.6	Restructure of policy included FAQs into body of policy, included guidance on investigation and governance. Introduced role of Nominated Officer	November 2021	
2.7	Introduction of a two-stage approach to dealing with a concern and providing guidance on when a concern should be referred to law enforcement agencies	January 2022	People Services
2.8	Transferred onto new policy format	August 2022	People Services
2.9	Updated contacts at GIAA and DSIT	February 2024	People Services

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