

GOVERNANCE BULLETIN 2

DEPARTMENT FOR THE ECONOMY

**GUIDANCE FOR STAFF INVOLVED WITH HANDLING
WHISTLEBLOWING ALLEGATIONS**

JUNE 2016

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1.0 INTRODUCTION

- 1.1 This guidance is designed to assist managers and staff who receive disclosures, made in the public interest, of wrongdoing or suspected wrongdoing. Such public interest disclosures are popularly known as “whistleblowing”.
- 1.2 A whistleblowing disclosure must be in the public interest, i.e. it must affect others such as the general public. Personal grievances or dissatisfaction in respect of employment issues are not covered by whistleblowing, unless an employee’s particular case is in the public interest.
- 1.3 The Public Interest Disclosure (NI) Order 1998 gives employees the right of complaint to an industrial tribunal if they report wrongdoing and as a result suffer any form of detriment.
- 1.4 In some cases, explaining the context of an issue to a person contemplating making a public interest disclosure may be enough to alleviate their concerns. Minor issues might be dealt with straight away by line management.
- 1.5 Where this is not possible, the following paragraphs provide managers and staff with guidance on handling disclosures made by members of DfE staff, and by members of the public and external stakeholders, including staff in Arms Length Bodies sponsored by the department.

2.0 PUBLIC INTEREST DISCLOSURES

- 2.1 As part of its commitment to good corporate governance, the Department for the Economy is keen to maintain and support all stakeholders who find themselves in a situation where they feel a public interest disclosure is required.
- 2.2 To ensure that the Department deals with such matters in a responsive, proportionate and effective way, it is necessary for staff at all levels to know

and understand what action is required when they receive a public interest disclosure. The guidance is based on the principle that the Department will not tolerate harassment, victimisation or bullying under any circumstances and that staff and stakeholders are encouraged to raise genuine concerns in the knowledge that they will not be disadvantaged as a result.

2.3 Where possible, all matters raised should be treated confidentially. This includes applying the appropriate information management standards to ensure that neither the identity of the person who has made the disclosure, or information which may prejudice any investigation, is inappropriately released. For example, any information provided should not be copied to other parties unless relevant personal details have been removed. A document may have hidden electronic 'properties' containing the authors name or other pertinent details that should be removed before documents are released to other parties.

2.4 While confidentiality should be assured if requested, a manager or a member of staff in receipt of a public interest disclosure should point out potential risks to the person raising the concern:

- Colleagues may try to guess the person's identity if they become aware that a concern has been raised; and
- As the investigation progresses, there may be a legal requirement to disclose the identity of the person raising the concern, for example, under court disclosure rules.

2.5 In broad terms there are two main types of public interest disclosures:

- Disclosures made by employees or workers in the Department (internal cases); and
- Disclosures made by employees or workers in external organisations (or their representatives) for which the Department has some degree of association and/or responsibility, or individuals in receipt of services

directly from the Department, or organisations representing stakeholders (external cases).

3.0 INTERNAL CASES: PUBLIC INTEREST DISCLOSURES MADE BY EMPLOYEES OF THE DEPARTMENT FOR THE ECONOMY

NICS Guidance

- 3.1 Current NICS guidance relating to Ethics and Whistleblowing is included in the NICS HR Handbook at Section 6.01 (Standards of Conduct) of Chapter 6 (Employee Relations). This section contains details of the NICS Code of Ethics; reporting procedures for raising issues which fall within the NICS Code of Ethics; and Public Interest Disclosure (“Whistleblowing”).
- 3.2 Sub-section 4 of Section 6.01 (Standards of Conduct) sets out the provisions of the Public Interest Disclosure (NI) Order 1998. It provides guidance on making public interest disclosures and outlines the protection available to staff who do so.

Process for Dealing with Internal Disclosures

- 3.3 Public interest disclosures received from DfE staff will be referred to the Director of HR and Central Services (HRCS). The following process will be initiated on receipt of a disclosure:
- The HRCS Director will acknowledge receipt of the disclosure (unless it has been made anonymously) and inform and update Corporate Governance, Planning and Equality Branch (see paragraph 6.3).
 - The HRCS Director will consider what action the Department should take to deal with the matter raised. (This will also apply if the concern has been raised anonymously).
 - Relevant parties will be consulted as part of the process and as much information as possible gathered to aid decision making.

- Depending on the nature and seriousness of the allegations raised, the HRCS Director, will consult with the Grade 3 Operational Policy (Infrastructure and Regulation) and the Grade 3 Operational Policy (Investment), to consider whether it is appropriate to draw the matter to the attention of the Northern Ireland Audit Office (NIAO), the Department of Finance and Personnel (DFP), other relevant external stakeholders, and/or the Minister. Formal notification will be made by the Grade 3 Operational Policy (Investment).
- Following consultation with the Grade 3 Operational Policy (Investment), the HRCS Director will make a formal recommendation to the Grade 3 Operational Policy (Infrastructure and Regulation) in relation to further action required, including the extent of any further investigation and responsibility for its conduct, or alternatively whether the disclosure should be redirected to the appropriate HR process e.g. Dignity at Work, Grievance Procedure, etc.
- The Grade 3, Operational Policy (Infrastructure and Regulation), will then advise the Department's Accounting Officer.
- Where appropriate the person who has made the public interest disclosure will be advised as to how the issue will be managed.
- The HRCS Director will monitor the progress of the case and will provide regular updates to the Grade 3 Operational Policy (Infrastructure and Regulation), the Grade 3 Operational Policy (Investment), the Accounting Officer and the person who has made the disclosure.

4.0 EXTERNAL CASES: PUBLIC INTEREST DISCLOSURES MADE BY PERSONS WHO ARE NOT EMPLOYEES OF THE DEPARTMENT FOR THE ECONOMY

- 4.1 A public interest disclosure may also be made by a person who is not a member of the Department for the Economy's staff. This guidance is only

concerned with disclosures that have been made in the public interest, i.e. the issue must affect others such as the general public. Issues relating to the Department's processes, performance or standards of service should be dealt with under the Department's complaints procedures and the person raising an issue should be advised accordingly.

Public Interest Disclosures Originating from or Relating to Arm's Length Bodies

- 4.2 A large part of the business of the Department is conducted through Arm's Length Bodies (ALBs) which for the purposes of this guidance include Non Departmental Public Bodies, Higher Education Institutions, Further Education Colleges, training organisations etc.
- 4.3 Directors with responsibility for ALB sponsorship should satisfy themselves that each ALB has robust governance arrangements in place for dealing with public interest disclosures. It is the responsibility of each ALB to:
- Have public interest disclosure guidance and procedures in place for staff and external stakeholders;
 - Perform periodic reviews into awareness of the procedures and confidence in the effectiveness of their application; and
 - Notify the Department without undue delay of the nature and extent of **all** "whistleblowing" allegations made directly to them.

Formal assurance on these matters should be provided as part of the six monthly assurance statement process.

Process for Dealing with ALB disclosures

4.4 When a DfE business area receives a public interest disclosure from, or relating to, an ALB, the matter should immediately be referred to the Director of the business area responsible for sponsorship of that ALB (the ALB Director). That Director will be responsible for the following:

- Acknowledging receipt of the public interest disclosure (unless it has been made anonymously) and informing and updating Corporate Governance, Planning and Equality Branch (see paragraph 6.3).
- Considering what action the Department should take in order to deal with the matter raised. This will also be the case should the concern have been raised anonymously.
- Consulting relevant parties as part of the process and gathering as much information as possible to aid decision making. The HRCS Director should be consulted in all cases where a public interest disclosure relating to an ALB includes a reference to the conduct of DfE staff.
- Depending on the nature and seriousness of the allegations raised, the ALB Director, will consult with the Grade 3 Operational Policy (Investment) and the Grade 3 to whom they report (if different), to consider whether it is appropriate to draw the matter to the attention of NIAO, DFP, other external stakeholders and/or the Minister. Formal notification will be made by the Grade 3 Operational Policy (Investment).
- To ensure consistency of approach, the ALB Director will make a formal recommendation on further action required jointly to the Grade 3 Operational Policy (Investment) and the Grade 3 to whom they report (if different). The recommendation will cover the extent of any further investigation and responsibility for its conduct. If, however, the ALB Director considers that the issue falls under another process, such as

grievance procedure or complaints procedure, the recommendation should set out the rationale for the use of an alternative mechanism.

- Following consideration at Grade 3 level, the Grade 3 to whom the ALB Director reports will advise the Department's Accounting Officer.
- Where appropriate the person who has made the public interest disclosure will be advised as to how the issue will be managed.
- The ALB Director will monitor the progress of the case and provide updates as appropriate to the Grade 3 to whom they report, the Grade 3 Operational Policy (Investment), the Accounting Officer and the person who has made the disclosure.

Process for Dealing with Public Interest Disclosures Originating from Sources Outside the Department and its ALBs

4.5 When a DfE business area receives a public interest disclosure from an outside individual or an organisation representing stakeholders the matter should immediately be referred to the Director of the business area with responsibility for the area of work to which the disclosure relates. That Director will be responsible for the following:

- Acknowledging receipt of the public interest disclosure (unless it has been made anonymously) and informing and updating Corporate Governance, Planning and Equality Branch (see paragraph 6.3).
- Considering what action the Department should take in order to deal with the matter raised. This will also be the case should the concern have been raised anonymously.
- Consulting relevant parties as part of the process and gathering as much information as possible to aid decision making. The HRCS Director should be consulted in all cases where a public interest disclosure includes a reference to the conduct of DfE staff.

- Depending on the nature and seriousness of the allegations raised, the Director of the business area, will consult with the Grade 3 Operational Policy (Investment) and the Grade 3 to whom they report (if different), to consider whether it is appropriate to draw the matter to the attention of NIAO, DFP, other external stakeholders and/or the Minister. Formal notification will be made by the Grade 3 Operational Policy (Investment).
- To ensure consistency of approach, the Director of the business area will make a formal recommendation on further action required jointly to the Grade 3 Operational Policy (Investment) and the Grade 3 to whom they report (if different). The recommendation will cover the extent of any further investigation and responsibility for its conduct. If, however, the Director of the business area considers that the issue falls under another process, such as the complaints procedure, the recommendation should set out the rationale for the use of an alternative mechanism.
- Following consideration at Grade 3 level, the Grade 3 to whom the Director of the business area reports will advise the Department's Accounting Officer.
- Where appropriate the person who has made the public interest disclosure will be advised as to how the issue will be managed.
- The Director of the business area will monitor the progress of the case and provide updates as appropriate to the Grade 3 to whom they report, the Grade 3 Operational Policy (Investment), the Accounting Officer and the person who or organisation which has made the disclosure.

5.0 INVESTIGATIONS

- 5.1 DfE and its ALBs carry out a wide range of work and as the scope for potential public interest disclosures is consequently also wide ranging, it is not possible to set a strict protocol for handling every disclosure.

- 5.2 It is, however, essential that in each case the action taken by the Department is proportionate, effective and timely, with accurate records being kept of actions taken and with the rationale for each course of action being clearly documented.
- 5.3 In considering the type and scope of investigation required, it will be necessary to consider the Department's Anti Fraud guidance (which includes a reference to the provisions of the Bribery Act 2010).
- 5.4 It will be the responsibility of the relevant Director, in consultation with others as appropriate, to consider and determine the following matters:
- The nature of the issue that requires investigation;
 - Responsibility for undertaking the investigation; and
 - If and when an ALB or other external organisation should be informed that a public interest disclosure concerning its activities has been made and the outcome of any decision relating to investigation.
- 5.5 When considering who should undertake an investigation, the following options should be considered:
- DfE Internal Audit Service (IAS);
 - The ALB's internal auditors where IAS does not undertake the audit function;
 - DFP's Fraud Investigation Service;
 - Commercial Services Branch;

- Departmental staff independent of the business area to which the disclosure relates;
- The ALB's staff independent of the business area to which the disclosure relates;
- Independent external investigation;
- HR Connect;
- A combination of one or more of the above, as required.

5.6 In all cases it is important that the investigation is undertaken by people with the necessary expertise, experience and independence, and that all concerns are properly and promptly investigated whether they have been raised directly with the Department or with an ALB.

5.7 Where it is considered appropriate for the concern to be investigated by an ALB, appropriate protocols and timescales should be established. Responses should be reviewed at a senior level within the Department to ensure the investigation/review has been properly and thoroughly completed and recommendations arising are appropriate.

5.8 Where a whistleblowing disclosure relates to senior members of ALB staff or Board members, the Department should retain ownership of the investigation. Consideration should be given to the role that the ALB Board (and Audit Committee) might play in dealing with such cases.

5.9 Considerations for any investigative process should include:

- Ensuring that investigators have the necessary skills to undertake the investigation;
- Ensuring that there is no conflict of interest between the investigator and the issue being investigated (i.e. the investigator should have had no previous involvement with the issue being investigated);

- Ensuring that the investigation has clear and well defined terms of reference;
- Setting a clear scope for the investigation and drawing up a detailed investigation plan;
- Clarifying what evidence needs to be gathered and how it will be gathered (document search, interviews, securing computers, etc);
- Deciding how best to engage with the whistleblower and manage their expectations;
- Maintaining sufficiently frequent contact with the whistleblower throughout the course of the investigation; and
- Ensuring that all investigative work is clearly documented.

5.10 When assigning the investigation to the relevant investigation team, it will be necessary for the relevant Director to establish the scope of the investigation at the outset and to agree this with the relevant Grade 3.

Scoping the investigation will include:

- defining the key points to be investigated;
- identifying individuals who should be interviewed;
- stipulating that a report should be produced as a result of the investigation which sets out findings, conclusions and recommended actions;
- setting out an estimated timescale for completion and provision of updates; and
- agreeing costs, if appropriate.

- 5.11 When the investigation is complete the individual who raised the concern should be informed that the investigation has been concluded and, where appropriate, that recommendations have been made to address any issues identified. Under no circumstances whatsoever can details of disciplinary action taken or recommended against individuals be provided or discussed with the person who made the disclosure.
- 5.12 Where the disclosure relates to an ALB, and the ALB has been informed of the investigation, agreement should be reached between the Department and the ALB as to how contact with the whistleblower will be maintained throughout the course of the investigation. The views of the whistleblower should be taken into account when agreeing these arrangements.
- 5.13 In all cases employees who raise concerns should be protected and supported and should not suffer any detriment as a result of bringing forward their concerns. Appropriate and swift sanctions should be taken against employees who victimise individuals raising such concerns. It should be noted that, if an employee's confidentiality is not protected and they suffer detriment as a result, they may be able to seek redress through an Employment Tribunal.

6.0 MONITORING OF PUBLIC INTEREST DISCLOSURES BY CORPORATE GOVERNANCE, PLANNING AND EQUALITY BRANCH

- 6.1 In order to provide DfE senior management with a clear understanding of the level and impact of public interest disclosures made to the Department, a database will be created with the purpose of recording and monitoring how many disclosures are received and the action taken to address them.
- 6.2 This database will be maintained by Corporate Governance, Planning and Equality Branch and held securely. Only the Senior Management team and the relevant staff in Corporate Governance, Planning and Equality Branch will have access to the information held.

- 6.3 Upon receipt of a disclosure, each Director will be required to advise Corporate Governance, Planning and Equality Branch **immediately** by completing and submitting Section A of the Public Interest Disclosure Form attached as a template at **Annex A**. While it may not be possible to complete Section A of the form in its entirety at the outset, the Director should provide as much information regarding the allegation as possible and as a very minimum, confirm that the disclosure is within the remit of their Directorate and provide the information sought at points 1 to 6 of the form. The form must be updated when an investigator is appointed and information relating to points 7 and 8 must be provided.
- 6.4 At the conclusion of any investigation, the relevant Director should provide Corporate Governance, Planning and Equality Branch with a summary of the findings and any action taken by completing Part B of the form. The Director should also confirm in due course that the case has been closed and update the form accordingly. This information should be provided by email to Corporate.Governance@economy-ni.gov.uk.
- 6.5 Corporate Governance, Planning and Equality Branch will analyse the information captured to allow the identification of trends or business risks which may need to be addressed and to provide management with useful information on the operation of whistleblowing procedures, such as:
- the number and types of issues raised;
 - how issues raised were dealt with; and
 - the length of time taken to resolve concerns.
- 6.6 The Branch will also monitor disclosures on behalf of the Grade 3 Operational Policy (Investment) and provide annual updates to the Accounting Officer and Audit Committee.

6.7 If you require further advice, please contact the Branch:

- by email: Corporate.Governance@economy-ni.gov.uk; or
- by telephone: 028 9025 7611

Public Interest Disclosure Form

Section A: Disclosure to Completion of Investigation

1	Date disclosure received:	
2	Names of officers to whom disclosure was notified:	
3	Division / Branch to which disclosure relates or details of body (e.g. HE institution, FE college, NDPB, etc):	
4	Details of the location at which the issue subject to the disclosure occurred:	
5	Brief outline of the nature of the disclosure:	
6	Was confidentiality requested?	
7	Name of investigator assigned:	
8	Date investigator assigned:	
<p>Commence completion of Section B of this form immediately after the investigation has been concluded.</p>		

Section B: Post Investigation Action

10	Date Investigation report received:	
11	Outcome recorded:	
12	Was appropriate feedback given to the person who made the disclosure?	
13	If appropriate, provide details of the financial implications of the disclosure?	
14	Date final decision issued:	
15	Time taken to complete:	
16	Action taken to address issues arising from the disclosure:	
17	Contact details in case further information is required:	
18	Notes:	