



Northern Ireland Museums Council

'Raising Concerns' Policy

Introduction

The Public Interest Disclosure (NI) Order 1998 came into operation on 31 October 1999. It enables staff members who report wrongdoing (often referred to as "whistleblowing") to complain to an Industrial Tribunal if they are dismissed or suffer any other form of detriment for doing so. Although only employees can complain of unfair dismissal, other workers who are not employees can complain that they had been subjected to a detriment – for example if their contracts are terminated because they had made a protected disclosure. The legislation covers workers in the public sector (with some exceptions, e.g. those who work in the security services) as well as the private sector. Insofar as staff members of the Northern Ireland Museums Council are concerned, this legislation needs to be considered in conjunction with the NICS Staff Handbook, the Northern Ireland Civil Service Code of Ethics; and any departmental guidance or procedures for raising concerns about possible wrongdoing, as they apply to NIMC.

When are disclosures protected?

The legislation does not introduce a general protection for people 'raising concerns' in all circumstances. A disclosure will qualify for protection if, in the reasonable belief of the staff member making it, 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; and
- deliberate concealment of information tending to show any of the above.

What protection does the Order give?

A qualifying disclosure will be protected under the Order if it is made:

- in good faith to the worker's employer (either directly or through internal procedures authorised by the employer), or to another person whom the worker reasonably believes is solely or mainly responsible for the failure in question;
- 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; or

- to a person or body prescribed in Statutory Rule 1999 No. 401 (“a prescribed person”), e.g. the Health and Safety Executive for Northern Ireland.

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

Qualifying disclosures will also be protected if they are made other than described above, provided that the staff member 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 staff member 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 staff member reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence; or
- the staff member had already disclosed substantially the same information to the employer or a prescribed person.

It must also be reasonable for the staff member to make the disclosure. In deciding the reasonableness of the disclosure, an industrial 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 to 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, and whether the staff member complied with any approved internal procedures if the disclosure was previously made to the employer.

A disclosure made about an “exceptionally serious” failure, other than described above, will be protected if the staff member makes the disclosure in good faith, reasonably believes that 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 staff member 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 industrial tribunals to consider and decide whether any particular failure is “exceptionally serious”: this will be a question of fact, not a staff member’s personal belief.

What should I do if I become aware of wrongdoing?

The Northern Ireland Museums Council’s Fraud Prevention Policy and Response Plan sets out procedures for ‘blowing the whistle’ regarding any perceived fraud. These procedures apply to the occurrences set out above.

Where there is the suspicion of a staff member being involved, the Director will inform the NIMC Chair and the Sponsor Department.

Where a member of staff has good reason to suspect that a fellow member of staff may be involved in a wrongdoing, he or she should notify the appropriate line manager and the Director. Should the suspect be senior to the person who thinks that wrongdoing has been, is being, or is intended to be done, he or she should immediately report the matter to the Director or the Chair of the NIMC Board. As indicated above, provided that the disclosure

is made in good faith the person making it will be protected by the terms of the Public Interest Disclosure (Northern Ireland) Order 1998.

The Chair, either alone or in conjunction with the Director, will decide on the appropriate course of action, including the full investigation arrangements. This will include drawing up terms of reference for the investigation and a checkpoint plan for the various stages of the investigation. In doing so NIMC will seek the assistance of the Sponsor Department and other appropriate Government Departments should it decide to undertake a full investigation, and will ascertain whether there is sufficient evidence for the police to be notified.

An investigation should ensure that:

- All aspects of the suspected staff member's work is investigated, not just the area where the fraud was discovered.
- The investigation covers the period the officer was responsible for the processes under investigation but also earlier periods of employment.
- Potential evidence, including computer files and record of amendments relevant to the case should be retained securely and not disposed of.
- Control and procedural weaknesses discovered during the investigation are strengthened immediately.
- The extent, if any, of supervisory failures are examined

Details of all meetings held during the course of an investigation will be recorded, including interviews held for evidentiary purposes.

Should a staff member be suspected of wrongdoing, the Chair and/or Director may institute a suitable course of action that may range from close monitoring and supervision of the staff member to precautionary suspension. It should be noted that suspension in such circumstances does in no way imply guilt.

If you feel unable to raise a concern internally, or have done so but feel that the matter has not been adequately addressed, you have the option of approaching an external organisation, known as a 'prescribed person'.

A full list of prescribed persons and organisations, and the issues they are prescribed to deal with, is available at www.delni.gov.uk

You can also contact PCaW at www.pcaw.org.uk for advice on raising concerns externally.

Further Information

The Northern Ireland Audit Office, in conjunction with its counterparts in Scotland, Wales and England, has issued a guidance document entitled *Whistleblowing in the Public Sector: A Good Practice Guide for Workers and Employers*. This document is available at http://www.niauditoffice.gov.uk/a-to-z.htm/whistleblowing_good_practice_guide and provides further guidance on making a disclosure, the responsibilities of employers and policy development.

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