

## **‘WHISTLEBLOWING’ AND THE CIVIL SERVICE CODE**

### **What is ‘whistleblowing’?**

‘Whistleblowing’ is a generic term relating to the disclosure of information to expose something that is going wrong in an organisation. The implication of ‘whistleblowing’ is that the normal management channels have failed; or the individual has no confidence that if raised through those channels any action, other than a cover-up will take place.

‘Whistleblowing’ can cover the disclosure of information to someone within the organisation (e.g. internal audit, or a member of the board). In its more dramatic form it will mean revealing the information outside the organisation, for example to a regulator, or to the media.

### **What is the legal position?**

The Public Interest Disclosure Act 1988 (PIDA) is commonly referred to as whistleblowing legislation. PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it would be a disciplinary offence. If someone leaked their employer’s confidential information to the press they might expect to be sacked for that.

PIDA enables workers who blow the whistle about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. Please see Annex A for a description of the protection provided by PIDA.

### **Whistleblowing and internal procedures**

The provisions of PIDA have the effect of encouraging organisations to actively put in place ways for their workers to raise concerns within the organisation, and robust systems for investigating concerns and protecting individuals from detriment as a result of raising those concerns.

If a worker is aware of, and has access to, effective internal procedures for raising concerns then PIDA is unlikely to provide protection if they chose to ignore those procedures and reveal information outside the organisation without permission.

### **The Civil Service Code and whistleblowing**

The Civil Service Code is the ethical code for civil servants. It spells out the core values of the service: Integrity; Honesty; Objectivity; and Impartiality.

The Code is intended to be accessible and comprehensible rather than legalistic. Effectively any information that could be protected by PIDA could be the subject of a

Civil Service Code complaint. The Code goes wider than PIDA: there are many things that could be raised under the Code that would not be protected by PIDA

Any information properly revealed as part of a concern raised under the Civil Service Code should meet the first condition that gives protection to a disclosure of information: that 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'.

Raising a concern under the Civil Service Code will be 'through internal procedures authorised by the employer'. The Civil Service Code is a particularly strong internal procedure as it allows appeal to be made to an independent body: the Civil Service Commission.

## **Good practice for raising concerns**

The Civil Service Commission recommends that all organisations that employ civil servants have a clear route for raising ethical concerns that is separate from its grievance procedure (for raising concerns about employment issues).

The Commission agrees with the advice of the lobbying organisation Public Concern at Work that 'Raising Concerns' is a better way to flag this route than 'whistleblowing'. Whistleblowing implies that the worker is forced to take desperate measures to get the organisation to consider their concern. Organisations should make it clear that they encourage and support their staff in raising concerns.

Organisations may like to include in their guidance to staff a statement along these lines:

### ***Raising Concerns***

*We encourage everyone who works here to raise any concerns they have. We encourage 'whistleblowing' within the organisation to help us put things right if they are going wrong. If you think something is wrong please tell us and give us a chance to properly investigate and consider your concerns. We encourage you to raise concerns and will ensure that you do not suffer a detriment for doing so.*

*As a civil servant you are covered by the provisions of the Civil Service Code [\[link\]](#). The Civil Service Code outlines the core values of the Civil Service and gives illustrations of the standards of behaviour expected from civil servants. It also explains the duties of departments and agencies to make civil servants aware of the Code and its values. Departments and agencies must consider concerns raised by civil servants under the Code, and must ensure that civil servants are not penalised for raising concerns.*

*You should usually raise a concern by talking to your line manager or someone else in the line management chain. If for any reason this would be difficult, you can raise the matter with one of our Nominated Officers. Nominated Officers are appointed to advise staff on the Code. Their details are here [\[link\]](#).*

*If you have raised a concern within the department, but do not receive what you consider to be a reasonable response, you may take a complaint to the Civil Service Commission <http://civilservicecommission.independent.gov.uk> . The Commission can also consider complaints from civil servants direct.*

*The Public Interest Disclosure Act 1988 (PIDA) is commonly referred to as whistleblowing legislation. PIDA is part of employment law. PIDA enables workers who blow the whistle about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. PIDA is unlikely to provide you with protection if you had access to a procedure for raising ethical concerns, such as the Civil Service Code provides, and did not use it. Further guidance on PIDA is available [here](#) [link].*

## **Civil Service Commission**

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## Annex A

This is a non-technical summary of the protection provided by the Public Interest Disclosure Act 1988 (PIDA). The Civil Service Commission recommends anyone with any concerns about the application of the provisions of the Act to seek specialist legal advice. Please also see the Cabinet Office guidance [\[link\]](#).

### When is ‘whistleblowing’ protected by the law?

The first condition in PIDA relates to the nature of the information that is disclosed. A disclosure will qualify for protection if, in the reasonable belief of the worker, 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
- deliberate concealment of information tending to show any of the above.

The second condition relates to the person or organisation that the information is given to. A qualifying disclosure will be protected under the Act 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
- to a person or body prescribed by the Secretary of State in Statutory Instrument 1999 No 1549 (a prescribed person), e.g. the Health and Safety Executive.

It should be noted that there is nothing in any of the above so far that would protect a worker if he or she gave information to the media.

However there are circumstances where the worker could give the information to someone who was not on the list above, including the media, if other conditions were met. The worker must make the disclosure in good faith, he must reasonably believe 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 worker reasonably believed that he or she would be victimised if they had made the disclosure to the employer or to a prescribed person.
- there was no prescribed person and the worker reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence.
- the worker had already disclosed substantially the same information to the employer or a prescribed person.

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