

# ‘Speak up’ – The ICO’s whistleblowing policy and procedure

**ico.**

Information Commissioner's Office

## 1. Scope

- 1.1 All employees of the Information Commissioner's Office (ICO) and other workers undertaking activity on behalf of the ICO.

## 2. Purpose

- 2.1 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 auditors or sponsoring department and advising them of the protection offered by the Public Interest Disclosure Act 1998 ('PIDA').
- 2.2 This policy is for ICO staff. It does not cover disclosures made to the ICO regarding third parties as a proscribed person under the PIDA. Information regarding the ICO's role that context is available on the ICO's website [here](#).

## 3. Introduction

- 3.1 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.
- 3.2 By encouraging a culture of openness within our organisation we believe that we can prevent malpractice before it happens.
- 3.3 We want to encourage you to raise issues which concern you at work. We recognise, however, that you may be worried that by reporting such issues you will be opening yourself up to victimisation, detriment or risking your job security.
- 3.4 Such fears are understandable, this policy is therefore designed provide you with information about the protections offered by PIDA as well as the process by which you may raise your concerns.
- 3.5 By knowing about malpractice at an early stage we stand a good chance of taking the necessary steps to safeguard the interests of all staff, protect our organisation and stop fraud and corruption before it happens.
- 3.6 In short, do not hesitate to 'speak up' or 'blow the whistle' on malpractice.

## 4. Definitions

- 4.1 '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 him/herself 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.

4.2 '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 or the rights of others. Examples include accepting bribes or incentives during procurement processes, seeking to influence others.

4.3 'Malpractice' for the purpose of this policy refers to actions which may be:

- i) illegal, improper, or unethical;
- 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.

## **5. Grievances**

5.1 It should be noted that this policy is not our normal grievance procedure. If you have a complaint about your own personal circumstances then you should use the grievance procedure. If you have concerns about malpractice within the organisation then you should use the procedure outlined in this policy.

## **6. Protection of whistleblowers**

6.1 The management of the ICO is committed to this policy. If the policy is used to raise a concern in good faith we give you our assurance that you will not suffer any form of retribution, victimisation or detriment as a result of your actions. In addition, the PIDA may provide you with legal protection in relation to your disclosures if you raise your concerns in accordance with that Act.

6.2 Concerns will be treated seriously and actions taken in accordance with this policy. If you ask us to treat the matter in confidence we will do our utmost to respect your request. However, it is not possible to guarantee confidentiality. If we are in a position where we cannot maintain confidentiality and so have to make disclosures we will discuss the matter with you first. We will give you feedback on any investigation and be sensitive to any concerns you may have as a result of any steps taken under this procedure.

6.3 In some circumstances the ICO may decide that we ought to reveal your identity in order to assist in the investigation into the matter. You will be advised beforehand if this is the case.

- 6.4 Remember, if you do not tell us who you are it will be much more difficult for us to investigate the matter fully, to ask follow-up questions, to protect your position or to give you feedback. Accordingly, while we will consider anonymous reports, this procedure may not be appropriate for concerns that are raised anonymously. It will also be more difficult for you to demonstrate your protections under PIDA where there is no evidence that it is you who has made the disclosure.
- 6.5 Whistleblowers receive protection under the PIDA in specific circumstances. Further information about the protection afforded under PIDA can be found using the resources listed at the end of this policy.

## 7. Procedure

### 7.1 **Tell your line manager**

If you are concerned about any form of malpractice you should normally first raise the issue with your line manager. There is no special procedure for doing this - simply tell them about the problem or put it in writing if you prefer.

At whatever level you raise the issue, you should declare whether you have a personal interest in the issue at the outset. If your concern falls more properly within the grievance procedure your manager will tell you.

### 7.2 **If you feel unable to tell your line manager**

If you feel you cannot tell your line manager, for whatever reason, you should raise the issue with the next tier of management or, if the issue is related to financial issues, the Head of Finance (or, in their absence, the Director of Resources). If you feel that the issue concerns issues of compliance with the legislation regulated by the ICO, you may speak with the Head of Risk and Governance (or, in their absence, the Director of Risk and Governance).

If you feel that you cannot disclose to the next tier of management, the Head of Finance or the Head of Risk and Governance because you believe that the individual may be implicated in the malpractice, you should raise the matter in confidence with one of the Senior Leadership Team or Executive Team.

The Senior Leadership Team and Executive Team are entrusted with the duty of investigating staff concerns about illegal, improper or unethical behaviour.

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

### 7.3 **If you still have concerns**

If you have reported a matter as described in the above paragraph and believe that the response does not represent a reasonable response to the issues you have raised, you may report the matter directly to the Commissioner.

### 7.4 **If you feel unable to raise the matter within the ICO**

If you feel that the people within the office with whom you would normally raise the issue are parties to, or supportive of, the behaviour causing concern, you 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. She can be contacted at REDACTED.
- Our Head of Internal Audit at Mazars, Peter Cudlip, who can be contacted on REDACTED.

### 7.5 **Responding to whistleblowing**

After you have raised your concern we will decide how to respond in a responsible and appropriate manner. Usually this will involve making internal enquiries first but it may be necessary to carry out an investigation at a later stage which may be formal or informal depending on the nature of the concern raised.

If you have raised a concern we will, as far as possible, keep you informed of the decisions taken and the outcome of any enquiries and investigations carried out. However, we will not be able to inform you of any matters which would infringe our duty of confidentiality to others.

### 7.6 **Raising your concern externally (exceptional cases)**

In all but the most exceptional of circumstances concerns about malpractice should be raised internally or with the representatives of our sponsoring department.

The purpose of this policy is to give you the opportunity and protection you need to raise your 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 you must try to do so.

If, however, you feel you cannot raise your concerns internally the PIDA may afford you protection in relation to your disclosure but only if you are acting in good faith and if you honestly and reasonably believe that your allegations are true. In such circumstances you may consider raising the matter with the police or the appropriate regulator e.g. Health and Safety Executive, Environmental Health Department etc. If you do take this route to whistleblow an issue you may be required to demonstrate why you thought the normal internal procedure was not appropriate.

You are strongly recommended to take advice (see section 7.9 below) before following this course of action though, as the PIDA only affords protection to whistle blowers in certain circumstances.

#### **7.7 Wider whistleblowing disclosures**

If you have good reason for not using the internal or regulatory disclosure procedures described above, you might consider making wider disclosure by reporting the matter to the media, or making a posting on the internet.

Please note, if you have not followed internal procedures, whistleblowing disclosures to the media or by other public disclosure will generally be considered to be an unreasonable course of action. Reporting your concerns for public circulation, even if done in good faith, before raising them in accordance with these procedures may result in disciplinary proceedings, which could lead to dismissal.

You are recommended to take legal advice before following this course of action though, 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.

#### **7.8 Limits to protection**

It is important to note that a disclosure will not be protected under PIDA where you are committing an offence by making that disclosure, for example by breaching the Official Secrets Act or Section 132 of the Data Protection Act 2018.

#### **7.9 Sources of advice**

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

If you are a member of a trade union you may wish to seek advice about raising an issue from a trade union representative. You may also wish to seek advice from Public Concern at Work which is an independent charity set up to provide advice and guidance about whistleblowing issues. Contact details for Public Concern at Work are given in Section 9.

#### **7.10 If you receive a disclosure**

On rare occasions, you may receive a whistleblowing disclosure despite not holding any of the positions referred to in paragraph 7.2. For example, a disclosure could be received through the post, or via casework. In this instance you should forward the disclosure to the Head of Risk and Governance as soon as possible.

## **8. Malicious whistleblowing**

- 8.1 If you are found to have made allegations maliciously and/or not in good faith, a disciplinary process may be instigated against you. This may result in your dismissal from the ICO.
- 8.2 It is important to note that as long as you have raised a concern in good faith, you will not be subject to disciplinary action even if the investigation finds your allegations to be unproven.

## 9. Frequently asked questions

- 9.1 **I told my line manager a number of weeks ago that I believe that a colleague is misusing ICO resources. Nothing seems to have happened since. What should I do?**  
Speak with your line manager to ask how the investigation is progressing. If you feel that no or insufficient progress has been made you must inform your manager's manager.
- 9.2 **I have serious concerns that malpractice is prevalent within my team and that my manager, the Senior Leadership Team, and Executive Team know about the situation but have chosen to ignore it. What should I do?**  
You must contact the Commissioner personally and inform him/her of your concerns. If you feel the Commissioner is involved in, or supportive of, the malpractice you should raise the matter with the representatives of our sponsor department as detailed in the procedure above.
- 9.3 **I believe that a colleague is stealing from the ICO. How do I deal with this?**  
This issue should be dealt with by using this whistleblowing procedure. You must, therefore, inform your line manager.
- 9.4 **I believe that malpractice is happening within the ICO and I am thinking of going to the press about it. What are the implications of this?**  
You should try to exhaust all internal mechanisms for whistleblowing or refer to our sponsoring department or the relevant regulatory body. You should be aware that going directly to the press may limit your protection under the Public Interest Disclosure Act (PIDA) and you may be liable for dismissal. It is advised that you seek advice from your trade union, if you are a member, or contact Public Concern at Work (whose details are in section 9) before taking this course of action.
- 9.5 **What does PIDA do?**  
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.
- 9.6 **Who may claim the protection of PIDA?**

Members of staff are **workers** within the definition contained in PIDA and may make a qualifying disclosure of information if they reasonably believe that the disclosure would tend to show that the ICO is involved in a **relevant failure** as outlined in section 9.7 below.

#### 9.7 **What disclosures are protected?**

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 9.8. 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). You would therefore not receive protection under PIDA if you made a disclosure in these circumstances.



## 9.8 To whom may a disclosure be made?

A protected disclosure may be made to one of five types of recipients, 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 third party (for example, the media).

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 s/he reasonably believes that the disclosure tends to show a **relevant failure** and s/he must make the disclosure in good faith.

You may need independent legal advice to direct you in understanding this legislation.

## 10. Resources

10.1 For more information on whistleblowing and related legislation visit: <http://www.pcaw.co.uk>

If you need independent advice about a whistleblowing issue you can telephone Public Concern at Work on 020 7404 6609.

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

## 11. Glossary

11.1 'Malpractice' – in the context of this policy this may refer to any of the following:

- Failure to comply with a legal obligation
- Unprofessional acts
- Misuse or inappropriate use of ICO funds or resources
- A criminal offence
- A miscarriage of justice
- The endangering of an individual's health and safety
- Damage to the environment
- Deliberate concealment of information relating to any of the above