



WHISTLEBLOWING POLICY & PROCEDURE

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Review Dates	September 2022
Regulatory Standards of Governance and Financial Management	The RSL conducts its affairs with honesty and integrity.
National Care Standards	Standard 3: Management and Staffing arrangements

1. Whistleblowing Policy

Viewpoint uses the definition set out in the Scottish Housing Regulator's 'Whistleblowing about a regulated body': "Whistleblowing is where a member of staff raises concern about improper conduct, wrongdoing, risk or malpractice with someone in authority either internally or externally e.g. a regulator. Officially this is known as making a 'protected disclosure'"

The Association is committed to the highest standards of openness, probity and accountability and has procedures for resolving complaints from tenants and the public, and grievances from staff. However, these procedures will sometimes appear inadequate to deal with suspected or known improper behaviours. In these cases it may seem appropriate to raise the concern, in confidence, directly with a senior person within the Association, or perhaps external to the Association. The Public Interest Disclosure Act 1998 gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns, known as "whistleblowing" but anyone who whistle blows is protected from detriment by this policy.

This policy and the associated procedures apply to all employees, irrespective of the nature of their contract. They also apply to other individuals who perform work for Viewpoint, such as contractors, or who undertake placements within Viewpoint and to Board members.

This policy is intended to assist staff and other stakeholders who believe they have discovered malpractice or impropriety. It is not designed to question business or financial decisions taken by the Association nor is intended to be used to reconsider any matters which have already addressed under harassment, complaints, disciplinary or other procedures.

Whistleblowing is a standing agenda item on the Audit Committee Agenda and all cases of whistleblowing will be reported to the Audit Committee and the outcomes will also be reported to the Board.

2. Legal and Regulatory Framework

The Public Interest Disclosure Act 1998 provides protection for employees who raise genuine concerns about wrongdoing within the organisation they work for. This includes raising concerns through their employer or through a 'prescribed' person or organisation. Examples of prescribed organisations are: the Scottish Housing Regulator (SHR), Care Inspectorate, Police or H&S Executive

The Scottish Housing Regulator also sets Regulatory Standards of Governance and Financial Management and a Codes of Governance for Staff and Governing Body Members which set expectations on governance, ethical standards and openness and confidentiality.

3. Aims and Objectives

The Association will respect the confidentiality of staff raising the concerns in confidence provided the disclosure is made:

- in good faith
- and the concerns are raised with the appropriate person or organisation

All concerns raised will be treated in confidence and every effort will be made not to reveal the individual's identity. However, the individual may require to be interviewed as a witness at some stage in the process

The aims of the Policy are:

- To encourage and enable staff and other stakeholders to disclose genuine and legitimate concerns without being subject to any detriment in the course of their involvement in the organisation such as victimisation.
- To provide an opportunity for concerns raised to be investigated and allow appropriate action to be taken to ensure the matter is resolved effectively within Viewpoint as far as is possible.
- To deal consistently with such issues in a fair, objective, and discreet manner.
- To deter serious malpractice and promote accountability.

4. Principles

This policy is designed to enable employees to raise concerns at a high level and to disclose information that the individual believes shows malpractice or

impropriety. This policy is intended to cover concerns that might be in the public interest and might include:

- Any criminal activity e.g. fraud
- Professional malpractice
- A breach of the law or regulatory requirements,
- Dangers to health and safety or the environment, including risks to the public as well as other employees
- Abuse or neglect of vulnerable people
- Financial malpractice, impropriety or fraud
- Breaches of confidentiality, including non-compliance with the Data Protection Act 2018
- A miscarriage of justice
- Professional malpractice
- Abuse of power or status
- Falsifying records
- Improper conduct or unethical behavior
- Discrimination e.g. racial
- Risk or damage to the environment
- Harassment, bullying and violence of any kind in the workplace – if it relates to public interest. (Personal grievances – bullying, harassment, discrimination aren't covered by whistleblowing law the matter relates to the public interest. These grievances may be covered by other legislation such as the Equalities Act, etc.)
- Attempts to conceal any of the events or practices described above

5. Related Documents

- Whistleblowing Policy
- Codes of Conduct – Governing Body & Staff
- Disciplinary Procedure
- Grievance Procedure
- Complaints Policy
- Scottish Housing Regulator’s Notifiable Events Guidance

6. Review Cycle

This policy will be reviewed on a three year cycle or earlier in line with any legislative changes or requirements.

The Association will translate any of its documents into alternative formats and will translate documents into other languages on request.

7. Awareness of the Policy

All staff will be made aware of the policy, and there will be training for managers and the Board on how to respond positively to whistleblowing. The internal and external auditors will be given a copy of Viewpoint’s Whistleblowing Policy. Staff will also be made aware of where to seek external advice and support.

8. Exceptions to the Policy

The policy does not apply where disclosures are made for personal gain, or are malicious. Any claim of whistleblowing has to be dealt with as per the Policy & Procedure and relevant timescales. Initially it can be impossible to determine where the complaint is real or malicious.

If a disclosure is found to have been made for personal gain or maliciously, then this may result in further investigation and/or action, for example disciplinary action.

WHISTLEBLOWING PROCEDURE

1. An individual may want to have an informal discussion with their line manager or another appropriate person to clarify the issue is whistleblowing. This conversation would not be deemed part of the formal process.
2. Once line management or other appropriate person has been approached about a concern (potential whistleblowing matter), they must inform the senior officer immediately of the concern, maintaining confidentiality – provided the concern does not relate to the senior officer. If the concern relates to the senior officer, the Chair should be informed.
3. Where a concern from a Board Member has been reported directly to the senior officer, the senior officer will inform the Chair. If the concern relates to the Chair, the senior officer must advise the other office bearers.
4. From the start, all information relating to the concern must be recorded within a timeline report – to ensure a robust record of the management of the concern has been fully documented. Access to this timeline report should be appropriately restricted and it must be held securely.
5. Once a concern has been raised it must be formally acknowledged in writing within **three working days** direct to the whistleblower, by the senior officer, Chair or Vice Chair.
6. Within **10 working days** the senior officer or Chair will confirm in writing:
 - how it is proposed to deal with the matter;
 - whether further investigations will take place, or if not deemed appropriate, why this decision has been made;
 - an estimate of how long it might take to provide a final response;
 - what support can be offered to the whistleblower raising the concern.
7. A decision will be made by the senior officer and/or Chair (or office bearer) on whether the concern warrants further investigation internally under the Whistleblowing policy – or the Grievance, Disciplinary or another policy, as appropriate. It may also be decided that the matter should:
 - be referred to the Police, and/or the Scottish Housing Regulator, Care Inspectorate;
 - be referred to the external auditor;
 - be the subject of an independent external inquiry; or have no further action taken.

It making a decision on the next step, it may be necessary (and advisable) to seek legal advice.

8. In line with the Scottish Housing Regulator's Notifiable Events – the Regulator must be advised that a whistleblowing concern has been raised. Legal advice should be sought on what should – and should not – be divulged to the Regulator and at what stage of the investigation should the Regulator be appraised.
9. Some concerns may be resolved by agreed action without the need for formal investigation. If urgent action is required, this may be taken before any investigation is conducted.
10. The senior officer and the Chair may decide that no further action will be taken under the Whistleblowing policy in the following (not exhaustive) set of circumstances:
 - if, after investigation, there is no evidence that malpractice has occurred, is occurring or is likely to occur; and/or
 - if the matter concerned is already the subject of legal proceedings, or has already been referred to the police or other public authority (e.g. Scottish Housing Regulator and/or Care Inspector; OSCR)
11. The aim will be to update the whistleblower on the progress of the concern within **28 working days** of it being raised, where possible. However, in the event of a formal investigation or the involvement of police/ external scrutineers, the whistleblower will receive sufficient information about the outcome of any investigation to enable them to be informed that the concern is being dealt with.
12. Once the investigation has concluded, the whistleblower will receive an explanation about how the matter has been addressed. If there are legal constraints, e.g. in a criminal investigation, the whistleblower will receive sufficient information about the outcome of any investigation to enable them to be informed that the concern has been dealt with
13. If no further action is proposed the senior officer and Chair (or office bearer) will inform the reasons for this in writing to the whistleblower who has raised the concern.

14. If the investigation is not completed within three months or in the time originally estimated for the investigation, the senior officer and Chair (or office bearer) will provide regular updates as agreed with the whistleblower.
15. Throughout any investigation, the whistleblower will still be expected to continue their duties/role as normal unless deemed inappropriate. If however continuing with their duties/role may have a detrimental effect upon either the whistleblower, other staff, or the investigation – legal advice should be sought on the best course of action which complies with employment legislation, including whether the whistleblower can be given ‘special leave’, instructed to work from home, etc.
16. Given that a whistleblowing matter can be stressful for all involved – the whistleblower / relevant staff / governing body members should be offered support such as access to a counselling service.

Holding a meeting with the Whistleblower

Step One: Before the initial meeting

- you may wish to consider whether the whistleblower feels uncomfortable meeting face-to-face. In such cases you could arrange a convenient time to speak over the telephone.
- You may want to consider whether there are any reasonable adjustments that should be made to facilitate the meeting.
- You may also wish to consider arranging for a note taker to be present during the meeting. This should be agreed with the whistleblower raising the concern.

Step Two: During the meeting

- you may wish to use a formal template to guide you through the areas to cover during the meeting.
- Thank the whistleblower for raising the matter, even if their concern proves to be unfounded.
- Recognise that this may be a troubling time for them and establish a supportive relationship and reassure them that they are being listened to and taken seriously.
- Use open body language and an appropriate tone of voice.
- Respect any concerns about their own position/career.
- Avoid giving any unrealistic promises or raising expectations.
- Any records taken from the meeting should be marked with the appropriate

protective marking and stored in accordance with the organisation's Data Protection/Storage policy.

- You are not required to commit to anything during the meeting. Listen carefully and ask the whistleblower questions that will assist you in reaching a decision. If you are unsure whether the concern is covered by the Whistleblowing Policy, you may wish to seek advice from the Scottish Housing Regulator and/or legal advisors.
- As noted previously, offer the whistleblower access to a counselling service to support them through the process. The whistleblower may not deem this to be necessary, but the offer should still be made.

Step Three: After the Meeting

- If it turns out the concern does not fall under the Whistleblowing Policy, you should explain to the whistleblower, either by telephone or face to face, the reason why this is so. This discussion should be fully documented by the senior officer or Chair (or other office bearer) and followed up in writing with the whistleblower.
- If the concern does fall under the Whistleblowing Policy, the whistleblower should be advised that office bearers will be notified of the matter.

Step Four: Next steps

- Office bearers should be advised of the concern (if the concern does not involve them directly). An internal investigation team of the senior officer and all the office bearers should be set up if the initial assessment [by the senior officer and the chair or other appropriate officer bearer] deems that the concern is valid.
- Once all evidence has been gathered and the concern assessed by the internal investigation team, a decision can be reached as to whether or not it
 - may be appropriate to have the concern investigated by an external firm/individual.
 - If an external investigator is to be appointed, they should be engaged in compliance with your procurement policy/procedures.
 - You must take legal advice promptly if required.
 - You must keep the Regulator(s) apprised as required.
 - As noted previously, it is extremely important that a timeline report is maintained that fully records the sequence of the whistleblowing events as they unfold – from the initial contact by the whistleblower, to the final conclusion.

Other Points for Consideration

- A whistleblower may raise a concern then ‘back off’ / change their mind /withdraw their allegation. In this instance, all evidence must be gathered and secured, and the investigation must continue – to assess whether or not there is validity regarding the concern raised. After a concern has been raised,
- Some whistleblowers decide that the investigation process maybe too demanding, or emotional etc. This however does not mean that the concern can be ignored – it will still have to be investigated, albeit without the assistance / input of the whistleblower.
- A whistleblower may not use the term ‘*whistleblowing*’, however the individual who has been notified of the concern has a responsibility to define whether it is a whistleblowing matter (i.e. in the public interest) and if so, needs to be clear to the whistleblower that this is the case.
- It may be appropriate to secure evidence off-site. Legal advice should be sought regarding the removal of evidence, taking GDPR and other legislation into consideration.
- When assessing the evidence presented, thought should be given as to whether or not the evidence has been tampered with.
- As noted above, office bearers should be advised of the concern/allegation (if the concern does not involve them directly). In an internal investigation the senior officer and all the office bearers should be set up as soon as practically possible. Once all evidence has been gathered and the concern assessed, it may be deemed appropriate to have the concern investigated by an external firm/individual.
- Who should be involved / told about the concern? An ‘investigation communication protocol’ must to be agreed by the senior officer/office bearer and investigation team.
- A concern relating to fraud (with the appropriate level of evidence) turns the matter into a criminal matter.
- All meetings and discussions must be fully documented. All records of meetings must be signed by all attendees, to confirm that the document is a true record of the meeting.
- Keep a detailed record of all time spent on the whistleblowing concern – this level of detail maybe required if an insurance claim is to be made.
- Ensure that the Whistleblowing Policy includes details of Prescribed Persons under the Public Interest Disclosure Act – those persons to whom a whistleblowing concern can be reported. Prescribed Persons include: Scottish Housing Regulator; Audit Scotland; OSCR; External Auditor, etc.

– Risk Register – does the risk register need to be updated with the whistleblowing concern? Are there ‘lessons to be learnt’? If so, how will these lessons be managed?

Confidentiality

- The best way to raise a concern is to do so openly as this makes it easier to investigate and provide feedback. However, it is recognised that many people may not express their concerns due to fear of reprisal, worry of not being taken seriously or of being perceived as disloyal.
- Any disclosures made/concerns raised will be treated in a sensitive manner. It is recognised that a whistleblower may want to raise a concern in confidence, i.e. they may want to raise a concern on the basis that their name is not revealed beyond the disclosure route without their consent.

The investigation approach must ensure that confidentiality is maintained as far as possible and all endeavours made to protect the identity of the whistleblower that raised the concern. This should be possible in the majority of cases. Thus, any document, report or recommendation prepared in relation to the matter will not identify the whistleblower raising the concern unless:

- the whistleblower has consented to their identity being exposed in writing, or
- there is evidence to show that the whistleblower who raised the concern has acted maliciously, or
- there is a legal obligation to do so, or
- the information is already in the public domain, or
- it is necessary for the matter to be dealt with properly or fairly, or
- it is on a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.
- all parties will be under an obligation to use all reasonable endeavours to ensure that they keep the matter and all information relating to the disclosure/concern strictly confidential except, as permitted under this procedure, as required by law or until such time as it comes into the public domain.
- securing information / evidence must include restricting access to it – including: ensuring all documents are password protected; consideration be given to holding electronic records ‘off line’ (on a desk top or laptop),

restricting remote access, etc.

- a whistleblower may choose to raise concerns anonymously, i.e. without providing their name at all. It is preferable that allegations are not made anonymously as it enables the matter to be investigated more fully. However, this is a matter of choice and depending on the concern raised, there may be the rare occasion where the whistleblower may feel uncomfortable revealing their identity when making an allegation. However, raising a concern anonymously is preferred to silence about potential serious wrongdoing.

If a concern is raised anonymously it must be treated as credible, unless it is

obviously a hoax, and investigated so far as possible. The allegation will be considered at the discretion of the senior officer and chair. In exercising this discretion factors to take into account would include:

- the seriousness of the concern raised;
- the credibility of the concern; and
- the likelihood of confirming the allegations from an attributable source – that is someone other than the anonymous source.

Reports to the Governing Body

The governing body as a whole must be advised that there is a whistleblowing concern that is being investigated – but no detail, only a summary. The level of information regarding the concern given to the governing body and the timing of such information must be confirmed by your legal advisor.

How to Raise a Concern Externally

- If the investigation finds the concern unsubstantiated and all internal procedures have been exhausted but the employee is not satisfied with the outcome the Association recognises their right to make disclosures to the appropriate prescribed organisation or body (e.g. the SHR, Care Inspectorate, Police or H&S Executive.).
- However the employee can take their concern directly to the appropriate prescribed organisation or body:

The Scottish Housing Regulator.

Scottish Housing Regulator

Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

shr@scottishhousingregulator.gsi.gov.uk

Tel: 0141 242 5642

Care Inspectorate

Compass House
11 Riverside Drive
Dundee
DD1 4NY Tel: 0345 600 9527

Protection and Support of Staff / Governing Body

Any member of staff or Board who raise concerns through whistleblowing will be protected from suffering any detriment. Detriment refers to any disadvantage suffered by a whistleblower as a result of whistleblowing, such as disciplinary action, or victimisation by managers or colleagues. This applies whether they have raised issues internally within Viewpoint or with auditors or regulators. Confidentiality will be maintained wherever possible; where identifying the whistleblower is required by law or a regulator, staff reporting concerns will be advised of this.

It will be regarded as a serious disciplinary offence (and in some cases it may extend to gross misconduct) for staff to be discouraged from reporting concerns or to victimise staff following any whistleblowing.

Any accused party will also be provided with appropriate support while the investigation is ongoing. This can be in the form of either internal or external support/mentoring. Viewpoint's Employee Assistance Programme provider can also provide support to staff raising concern through whistleblowing. Any contact through this route is treated confidentially and is not shared with the organisation.

Staff, employees or other stakeholders **should not contact the press**, this is not a prescribed organisation or body or person. If an employee does contact the press they could be subject to disciplinary action.