

Environmental Standards Scotland

# **External Whistleblowing Policy**

December 2022

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## 1. The aim of this policy

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This policy sets out how Environmental Standards Scotland (ESS) deals with reports from employees of Scottish public authorities and others who have concerns about how their organisation handles its environmental responsibilities. This policy aims to:

- encourage individuals to feel confident in raising concerns at the earliest opportunity;
- provide an avenue for individuals to raise concerns and receive feedback on any action taken;
- set out how ESS will deal with individuals who raise concerns and provide reassurance of how they will be protected from possible reprisals or victimisation if they have made the disclosure in good faith.

## 2. ESS' remit and our role in whistleblowing

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We are an independent body, accountable to the Scottish Parliament and responsible for scrutinising, investigating and securing improvements in public authorities' compliance with environmental law, the effectiveness of environmental law, and the way it is being implemented and applied in Scotland.

We can receive 'representations' from anyone who has concerns about the environment and we will work with those who make representations to understand the nature of the issue and what further action we should take. We can begin an independent investigation through a representation or through our own initiative.

If we find that a public authority is not complying with environmental law, or that the law itself is not effective or being implemented or applied properly, we can take enforcement action to put things right.

The Public Interest Disclosure Act 1998 names ESS as a **prescribed person**. This means that anyone who has concerns that their employer is not properly handling its environmental responsibilities can report the matter directly to us. If the information they provide meets certain criteria, they may be protected by whistleblowing law.

### 3. What is whistleblowing?

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Whistleblowing is the process whereby an employee is offered legal protection where they raise a concern about the organisation they work for. The concern they raise must be in the public interest and could be about malpractice, wrongdoing, risk or illegal proceedings, which harms, or creates a risk of harm, to individuals, the wider community or the environment. Whether a report is in the public interest will depend on:

- the number of people affected;
- the nature and impact of the wrongdoing;
- who the wrongdoer is.

Generally, this means that the concern must have an impact that is wider than one employee's personal circumstances.

Although an employee may feel able to report their concern to their employer in the first instance, we recognise that someone may choose not to do this and report the matter directly to us instead. For example, they may:

- wish to remain anonymous;
- believe that the organisation will try to cover up or ignore the wrongdoing; or
- be worried about being treated unfairly for making their concerns known, or they may know that the issue was raised by others before but wasn't dealt with.

Additionally, a person may choose to approach our office after they've reported their concern internally if they feel it wasn't dealt with in an appropriate and timely manner.

Under the Public Interest Disclosure Act 1998, individuals are offered protection against any negative treatment they may suffer as a result of making a disclosure which is in accordance with the whistleblowing legislation.

## 4. Concerns that do not count as whistleblowing

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Whistleblowing is not the same as making a complaint or raising a grievance. It concerns instead situations where an employee has witnessed some form of malpractice in their workplace and feels that they need to raise a concern.

This means that unless your particular case is in the public interest, personal grievances are not covered by whistleblowing law and these types of reports should be made under your employer's grievance policy. The Advisory, Conciliation and Arbitration Service (Acas) offers assistance and advice on resolving workplace disputes.

## 5. Who can raise a concern?

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The protections offered by the whistleblowing legislation apply to workers, or former workers, as well as other individuals such as agency workers and contractors.

## 6. When should you raise a concern with ESS?

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Your place of work may have its own whistleblowing policy that you can use to make a disclosure.

However, if you don't feel comfortable reporting directly to your employer, or if you have already reported directly to your employer but the wrongdoing has continued or the issue has not been investigated appropriately, you can disclose this directly to our office.

## 7. How to raise a concern with ESS

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You can reach our whistleblowing team by email at:

[Whistleblowing@environmentalstandards.scot](mailto:Whistleblowing@environmentalstandards.scot)

Your report will be acknowledged within three working days.

## 8. What can you disclose to ESS?

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If you have a concern about how a public authority is handling its environmental responsibilities you can report this to us. This could include, for example, telling us about a failure to comply with, or properly implement, legal obligations in respect of the environment, or any gaps in the law which have caused, or have the potential to cause, environmental harm.

If your information does not relate to the environment, we may not be the correct person to make a report to. Please consult this list if you are not sure who is the correct prescribed person:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

## 9. What information do you need to provide?

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When raising a concern, you should provide:

- your connection to the employer - are you a current or former employee?;
- the type of wrongdoing;
- the location of the wrongdoing;
- how you became aware of the wrongdoing;
- any key dates that might be helpful;
- who else knows about the wrongdoing;
- any supporting documents or evidence;
- whether the incident has been reported internally, and if so, what the response has been.

We **do not** require you to gather evidence to prove your claim, although we will accept any evidence that you already have.

You do not have to give us your name or contact details, however, if you do give us your contact details, we will make every effort to protect your identity. Giving us your contact details may also mean that we are able to speak with you to gather further information, although you can ask that we do not do this.

## **10. Confidentiality, data protection and anonymity**

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The information you provide to us and your identity will be treated as confidential. Without your consent, we will never explicitly reveal your identity to your employer. If you wish, you can request that the report is recorded anonymously.

Please be aware that, despite our commitment to confidentiality, your employer may still be able to identify that the information has come directly from you - for example, if you have previously raised the same issue with them directly. For this reason, we recommend that disclosures are not made anonymously as this may make it more difficult to prove that any detriment to you as an individual subsequently arose from the disclosure.

## **11. What action will ESS take?**

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This will depend on the nature of your disclosure. Following your initial report, we will review the information provided and determine what our next steps should be.

Our next steps may include:

- contacting you with specific questions in relation to the information you have provided;
- investigating whether we hold any other relevant information about the employer or area you have made a disclosure about;
- confirming to you whether the disclosure is being treated as whistleblowing.
- Confirming to you whether the disclosure is for us to investigate, or, signposting you to an alternative prescribed person by providing you with the list of prescribed persons if not;

- contacting the public authority to discuss the matter with them;
- beginning an investigation;
- engaging in compliance activities.

## **12. How will ESS hold and use the information you provide?**

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We will:

- record all the information in our secure internal systems;
- create a secure folder which only select members of staff have access to;
- contact you to acknowledge receipt of your report (if you have provided contact details);
- pass the details of the report (but not your personal details) to the relevant ESS team to identify next steps;
- contact you to provide feedback, if appropriate, or to ask additional questions.

## **13. Will I find out what happened as a result of my report?**

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We will aim to provide you with feedback where this is permissible by law. The feedback you receive will depend on the information you have provided and the action that we have taken, or propose to take.

We are unable to commit to providing ongoing or interim feedback.

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If you have any questions about this information, or about our role as a prescribed person, please contact us at [Whistleblowing@environmentalstandards.scot](mailto:Whistleblowing@environmentalstandards.scot)