



Scottish Housing
Regulator

Whistleblowing about a regulated body

Information for potential
whistleblowers

Introduction

This factsheet is for staff and governing body members of regulated bodies if they suspect wrongdoing in their organisation. It explains what whistleblowing is, how the law protects whistleblowers who blow the whistle to us and what we will do if concerns are reported to us.

In this factsheet, we use the term '**staff**' to include current and former employees, agents and contractors.

By '**regulated body**', we mean a social landlord that we regulate, including;

- » housing associations, co-operatives, housing partnerships and housing companies that are registered with us (registered social landlords or RSLs); and
- » local authorities that provide landlord, homeless and factoring services.

By '**governing body**' we mean the governing body or management committee of an RSL and the Housing Committee within a local authority.

What is whistleblowing?

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'.

What's the difference between a grievance and whistleblowing?

- » **Whistleblowing** is about conduct that affects others: for example, fraud or a failure to comply with health and safety requirements.
- » A **grievance** is where a member of staff has a personal complaint about their own employment situation.

If you have a grievance about your employer, you should follow your employer's Grievance Procedure. We will not intervene where the concerns are about a personal grievance against an employer. But if they are reported to us, we may have an interest if the matter leading to the grievance is of wider significance and we consider it may threaten the interests of tenants or other service users, or pose a risk to the viability of the regulated body.

Why is whistleblowing important?

Problems can arise in any organisation and the best people to identify them are often the people who work in the organisation.

If you have concerns about your organisation, then reporting them an early stage can help to ensure that:

- they do not become worse and so take more time, effort and resources to fix;
- the interests of tenants and other service users and staff are protected; and,
- tenants and other service users, staff, lenders, other stakeholders, and the public, continue to have confidence in the organisation.

Why would the Scottish Housing Regulator be interested in my concerns?

Our role is to safeguard and promote the interests of tenants and service users. We are interested in any conduct which puts this at risk and could threaten the viability or reputation of a regulated body, or the wider sector.

The Scottish Housing Regulator is the prescribed person you can make a disclosure to about social landlords' performance of housing activities; the registration of registered social landlords; and social landlords' financial well-being and standards of governance.

What protection is there for whistleblowers who report concerns to the Scottish Housing Regulator?

The Scottish Housing Regulator is a prescribed person under the Public Interest Disclosure Act 1998 (PIDA). PIDA provides protection to employees, agents and contractors (and in some cases to former employees) who make a qualifying disclosure to a prescribed person if they make the disclosure in good faith and that they reasonably believe the information is true. If you make a protected disclosure, you have a right not to suffer any detriment. This means you should not be treated less favourably for making the disclosure and a claim may be brought to the Employment Tribunal if you are treated less favourably and you suffer a loss as a consequence. It will be for the Employment Tribunal to determine if any whistleblowing claim is a protected disclosure.

Disclosures that are malicious or knowingly untrue are not protected under PIDA. An employer may take disciplinary action against a member of staff who knowingly provides information that they know is untrue.

You may wish to seek legal advice on whether you will be protected.

To qualify for protection a qualifying disclosure must be a disclosure made in the public interest about a possible:

- criminal offence
- failure to comply with a legal obligation
- miscarriage of justice
- threats to an individual's health and safety
- danger to the environment, or
- a deliberate attempt to conceal any of the above.

Governing body members are not covered by PIDA. However, we will handle concerns reported by governing body members in the same way as qualifying disclosures from staff.

Our Regulatory Framework

Our Regulatory Framework requires an RSL to conduct its affairs with honesty and integrity. We expect all RSLs to have a whistleblowing policy in place which tells both staff and governing body members how they can safely raise concerns and without fear of reprisal. We also expect RSLs to take any concerns raised seriously and look properly into the matter.

How do I report concerns about a regulated body?

You should be able to report your concerns to someone in the organisation who is in a position to deal with them. Your organisation's whistleblowing policy will tell you how to go about this. Reporting the matter internally gives the organisation a chance to put things right.

Sometimes staff or governing body members may be reluctant to report concerns internally because they are worried about repercussions or they have no confidence in the organisation's ability or willingness to deal with the matter. In some cases, they may have reported their concerns but feel that the organisation failed to deal with it appropriately. If you tell us about a qualifying disclosure, you may be protected whether or not you have raised your concerns internally. Local authority staff can also make a disclosure to Audit Scotland.

Do I need to give my name?

We will consider seriously all concerns reported to us, even where the person does not want to give us their name and contact details. However, this could sometimes make it more difficult for us to take forward the concerns, as we would not be able to ask for more information if we needed it and we would not be able to give feedback on any action we take.

If you do not wish to be identified, we will respect your confidentiality as far as we can during any subsequent action that we take. There is a chance that some of the information you provide might reveal your identity because of the nature of it.

If we have concerns that a criminal offence may have been committed then we will need to pass the information to the police.

What will the Scottish Housing Regulator do?

We will ask you some questions to help us understand the nature and extent of your concerns and whether you have reported them internally or to someone else. We will ask for any evidence you can provide to support your concerns. We will consider carefully what you tell us along with any information we already have about the organisation. Where the concern is about a local authority we will agree an appropriate response with Audit Scotland.

Every case is different but there are a number of things that could happen:

- we might take no further action. There could be a number of reasons for this. For example, there might not be enough evidence for us to proceed upon; or we may have been assured that the governing body has dealt with the matter appropriately;
- we might ask the governing body to investigate the matter (normally by the governing body engaging someone independent and so fully objective);
- we might ask the governing body to get independent advice or support to help them to deal with the situation; we might carry out an investigation (planned or unannounced);
- we might refer the matter to another regulator, for example, the Care Inspectorate or Audit Scotland, because the matter falls within their regulatory remit; or
- we might report the matter to the police because we think that a criminal offence may have been committed.

If we need to engage with a regulated body then we will do so in confidence. We will tell it about the concerns but will not reveal any details which could identify a whistleblower. We will continue to maintain the confidentiality of the whistleblower after the whistleblowing case has been concluded.

Will I be told about the outcome?

We may not be able to tell you everything about what we intend to do but, if you give us your name and contact details, we will tell you as much as we can.

Contact us



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More advice and support?

You can get advice on whistleblowing from a solicitor, trade union or the Citizens Advice Bureau. You can also contact:

Public concern at Work (PCaW)

Public concern at work is an independent charity which gives confidential advice to people who witness wrongdoing at work but are not sure whether or how to raise their concern.



0207 404 6609
(Open Monday to Friday)



helpline@pcaw.co.uk



website: www.pcaw.co.uk

Audit Scotland

Audit Scotland, the Accounts Commission and the Auditor General are prescribed persons under PIDA. Staff of local authority housing and homelessness services can report concerns to:



0131 625 1854



Website: www.auditscotland.gov.uk

