



**Scottish Housing  
Regulator**

**Internal Procedure  
Management of whistleblowing cases**

**December 2019**

# Contents

	Page
<b>1. Purpose</b>	<b>3</b>
<b>2. Definitions</b>	<b>3</b>
<b>3. The Law</b>	<b>3</b>
<b>4. Scope</b>	<b>4</b>
<b>5. Regulatory requirements</b>	<b>4</b>
<b>6. RSL sector good practice</b>	<b>4</b>
<b>7. Our handling of whistleblowing cases</b>	<b>5</b>
<b>8. What might be reported to us?</b>	<b>6</b>
<b>9. What are the steps for dealing with a whistleblowing case?</b>	<b>7</b>
9.1. Receive disclosure	7
9.2. Contact with a whistleblower	8
9.3. SHR – consider information and agree initial approach	11
9.4. Meeting with the whistleblower	12
9.5. SHR – consider and agree what action to take	12
9.6. Feedback to the whistleblower	14
<b>10. Protecting the whistleblower’s identity</b>	<b>15</b>
<b>11. Working with other regulators and organisations</b>	<b>16</b>
<b>12. Records Management</b>	<b>17</b>
<b>13. Review</b>	<b>19</b>
<b>ANNEX 1 - Management of whistleblowing cases</b>	<b>20</b>
<b>ANNEX 2 – Recording and Reporting on Whistleblowing cases</b>	<b>22</b>
<b>ANNEX 3 – Whistleblowing record of disclosure</b>	<b>28</b>

## 1. Purpose

This note sets out our internal procedures for how we will manage whistleblowing about regulated bodies.

## 2. Definitions

2.1. Whistleblowing is the term commonly used when someone who works for an organisation raises a concern about malpractice, risk, wrongdoing or possible illegality which harms, or creates a risk of harm, to people who use the service, or the organisation's own reputation. This is also called 'making a disclosure'.

2.2. Regulated body means 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' landlord, homelessness and factoring services.

## 3. The Law

3.1. The [Public Interest Disclosure Act 1998](#) (PIDA) provides protection for workers who make qualifying disclosures. Qualifying disclosures are allegations of:

- Criminal activity;
- Failure to comply with a legal obligation;
- Dangers to health and safety or the environment;
- Financial malpractice or impropriety or fraud;
- Attempts to conceal any of the above

3.2. PIDA expects the worker to raise the matter internally, if appropriate and practical. However, if the management has not dealt with those concerns, or the person raising the concerns does not feel confident that the organisation will deal with the concerns properly, they may contact us. More detailed information about PIDA is contained in [Annex 1](#).

## **4. Scope**

### **4.1. Employees/Workers**

This procedure applies to disclosures by employees, former employees, temporary staff, and contractors employed by a regulated body as all can claim protection under PIDA. The most up to date PIDA legislation deals with all of these individual descriptors by using the term 'worker'.

Only the disclosures covered by the bullet points in [Annex 1](#) are protected and whistleblowers should be advised to seek legal advice on whether they are likely to be protected.

### **4.2. Governing body members**

Existing, or former, governing body members cannot claim protection under PIDA. However, we will consider the circumstances and nature of concerns raised with us by an existing, or former, governing body member, to decide on how much of our approach to staff whistleblowing we should apply to them.

## **5. Regulatory requirements**

5.1. [Standard 5 of our regulatory framework](#) requires an RSL to conduct its affairs with honesty and integrity. Guidance note 5.8 says that where a severance payment is accompanied by a settlement agreement the RSL does not use this to limit public accountability or whistleblowing.

5.2. Our framework says that all landlords must have effective arrangements and a policy for whistleblowing by staff and governing body/ elected members which it makes easily available and which it promotes.

## **6. RSL sector good practice**

6.1. Employers In Voluntary Housing (EVH) has produced a model policy for its members to adopt. An RSL's whistleblowing policy should address the situation where the whistleblower's concerns are about the Senior Officer or Chairperson or where the whistleblower fears the governing body as a whole is unlikely to deal with the concerns appropriately.

6.2. We expect RSLs to have effective governance systems in place that set out clear procedures for dealing with serious complaints or grievances about the Senior Officer or Chairperson and the role of the governing body in responding. Further information about this can be found in our [Notifiable Events Guidance - Appendix 2](#).

6.3. We also expect RSLs that are not EVH members to have a policy which complies with PIDA and our regulatory framework, and which offers the opportunity to staff to raise whistleblowing concerns safely within the organisation.

6.4. Our factsheets on “[Complaints about a regulated body](#)”, “[Whistleblowing about a regulated body: Information for potential whistleblowers](#)” and “[Whistleblowing about a regulated body: Information for regulated bodies...](#)” include guidance for staff of regulated bodies on raising concerns about improper conduct and set out our approach to dealing with whistleblowing. Although we expect a staff member who believes there has been improper conduct to be able to report the concerns to someone in the organisation who is in a position to deal with them, we also say that it is possible to raise concerns directly with us. As the Regulator is now a prescribed person under the Public Interest Disclosure Act 1998 (PIDA) this enhances the protection available to whistleblowers who report concerns to us, whether or not they raised the concerns with their employer. PIDA provides protection to whistleblowers who make a qualifying disclosure to a prescribed person in good faith. Disclosures that are malicious or knowingly untrue are not protected under PIDA. We go on to say that during any subsequent action we may take we will respect the confidentiality of any whistleblower as far as we can.

## **7. Our handling of whistleblowing cases**

7.1. Our [factsheet](#) for potential whistleblowers sets out how we will deal with allegations of improper conduct and we should refer to this when dealing with whistleblowers.

7.2. This internal procedure contains more detailed information for SHR staff. It takes account of our experience in dealing with whistleblowing cases. Experience has shown that every case is different and it is not possible to cover every eventuality within this document. Instead, this procedure provides a practical

approach for SHR staff by setting out a range of factors which we need to consider in every case and possible outcomes.

## **8. What might be reported to us?**

8.1. What might be reported to us are issues that could be interpreted as mismanagement, misconduct or a potential offence, rather than simply inadequate or poor management. Illegal or improper conduct may also be reported to us, for example, the awarding of contracts through fraud or favouritism or the deliberate breaching of regulatory requirements. We would consider whether what is alleged has the potential to damage the regulated body's reputation and tenants' interests and whether it places tenants at risk of harm?

8.2. It is important to note that a whistleblower may disclose information which does not meet the definition of a 'qualifying disclosure' but which is still of regulatory concern to us. We will take those concerns seriously and decide how much of our whistleblowing procedures we apply in how we handle the case. We need to ensure we are clear on whether the information we received can be defined as a qualified disclosure, because we have a duty to report on whistleblowing disclosures annually in our capacity as a prescribed person. When concerns are reported to SHR we need to ensure we record these cases as set out in [Annex 2](#) and note whether they are qualifying disclosures or not. A qualifying disclosure is one where the information being disclosed falls under any of the headings below:

- 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.

8.3. More detailed information on our duties as a prescribed person can also be found at [Annex 2](#).

Here are some examples of concerns reported to us by whistleblowers which resulted in us engaging with a landlord and could be regarded as ‘**qualifying**’ disclosures

- Fraudulent expenses and misuse of credit card; and
- Concerns about non-compliance with annual gas safety checks.

Here are some examples of concerns reported to us by whistleblowers which resulted in us engaging with a landlord but are **not** ‘qualifying disclosures:

- Deliberately falsifying information in the governing body minutes provided to us as part of our regulatory engagement with a landlord;
- RSL exposing itself to risk by entering into agreements before it secured private finance resulting in financial viability issues;
- Failure of a governing body to follow its procedures for dealing with a complaint about a senior officer;

## **9. What are the steps for dealing with a whistleblowing case?**

- Receive disclosure;
- Contact with whistleblower;
- SHR – consider information and agree initial approach;
- Meet with the whistleblower;
- SHR – consider and agree what action to take
- Feedback to the whistleblower – if requested

### **9.1. Receive disclosure**

9.1.1. Whistleblowers are most likely to contact us in writing, by email or by telephone. Some are prepared to give their name whilst others wish to remain anonymous.

9.1.2. Disclosures could be made to any member of SHR staff. Where it is clear the call is about whistleblowing, staff in our Administration Team should immediately transfer the call to the Regulation Manager or Regulation Analyst in the in the Regulation Group who has the regulated body within their portfolio. However, if it is clear that the whistleblowing is of a financial nature then the call should be passed to the Finance lead.

9.1.3. A whistleblower may only be prepared to make one phone call so it is important that we all know how to respond and gather as much information as we can during the conversation. The [Whistleblowing – Record of Disclosure form \(Annex 3\)](#) contains a list of the information that we need to know. You should try to gather as much of this as possible, particularly if the person wishes to remain anonymous and is not willing to provide contact details.

9.1.4. Making a disclosure to us is likely to be stressful for the whistleblower but it might also be difficult for our staff. The following do's and don'ts should help us to deal with the situation regardless of whether the person wants to remain anonymous.

## 9.2. Contact with a whistleblower

9.2.1. If we are contacted by telephone or in person:

### Do

- Remain neutral and impartial at all times;
- Take the concerns seriously;
- Get as much information about their concerns as possible so that we are clear on what the issues are (i.e. who, what, where, when and how). If it becomes clear the issues are of a personal or employment nature, we must be very clear with the individual that we cannot deal with these issues. Avoid getting into a discussion about this and tell the individual to raise the issues with the regulated body using the organisation's grievance procedure;
- Establish whether the concerns are first hand or whether the information is hearsay;

- Ask if they can provide any evidence to substantiate their concern – explain this is very helpful for us. If so, agree how this can be delivered to us. If they cannot provide evidence ask them to tell us what evidence we might find and where;
- Ask when the concerns first arose and what is prompting the decision to contact us now;
- Ask whether the concern had been raised with the regulated body, who with, and what was the reaction. If not, ask whether they intend to do so now and if they don't, ask them why.
- Ask who else knows about the concern, whether they have reported it to any other regulator or authority. If so, what was the outcome;
- Try to encourage the whistleblower to provide their contact details in case we need to ask them for more information or wish to speak to them again;
- Establish whether the whistleblower wants their identity to remain confidential. If so, assure them we will do everything we can to protect their identity but we cannot guarantee confidentiality;
- Establish whether the whistleblower is anxious about reprisals;
- Establish whether the whistleblower is willing to meet at a mutually agreed location. If so, reaffirm confidentiality and let the whistleblower know two SHR staff will attend the meeting;
- Explain what we will do with the information given to us, and ask whether they wish feedback from us;
- Try to establish the whistleblower's expectations. Be honest and clear with them about our role to help prevent them from forming unrealistic expectations of us.

## **Don't** ☒

- Agree or disagree with what they have to say, or pre-judge what the outcome of our actions might be;
- Apportion any blame;
- Share any information on what we already know about the regulated body. This includes whether we have received other complaints or we have other

concerns about the organisation beyond what might be published in an Engagement Plan;

- Say too much about what action we may take at this stage as we need time to consider all of the information;
- Agree to provide copies of reports or correspondence that may come from independent investigations or our own inquiry as a result of the whistleblowing;
- Say we would never disclose the identity of the whistleblower. While we will always seek to maintain confidentiality, this is subject to a requirement to report the matter to the police where it relates to a criminal matter and a requirement to comply with a court order where an order has been served on us as part of court proceedings.

Staff should always make a record of the phone call or meeting as soon as possible after the event, using the [Whistleblowing – Record of Disclosure form \(Annex 3\)](#).

#### **9.2.2. If we are contacted by email or in writing:**

If the whistleblower provides contact details then we should follow the same principles as above.

9.2.3. We expect the whistleblower to provide as much evidence as possible to support their allegations so that we can fully evaluate their concerns and consider our response. We will ask them if they can provide evidence (reports, papers, minutes, letters, etc.) which can substantiate their concerns and if they know of any other staff or governing body members who would be willing to come forward and corroborate their allegations and who might be able to provide evidence. If the whistleblower is unable to provide evidence it makes our job more difficult but it does not mean that we cannot take the concerns seriously or act on the issues brought to us. In this case, we will ask them to tell us what sources of evidence exist that would support their concerns.

### **9.3. SHR – consider information and agree initial approach**

9.3.1. We will do several things before deciding what to do next. Firstly, the Regulation Manager, Regulation Analyst or Finance lead will review the information provided by the whistleblower alongside what we already know about the regulated body and any other information we hold relating to the concerns. This might include:

- Governing body minutes and reports;
- Notifiable events;
- Complaints and any previous whistleblowing cases;
- Significant Performance Failures;
- ARC returns;
- Policies and procedures;
- Websites and other media sources;
- Any past, current or planned regulatory engagement and the Engagement Plan;
- Information shared, or held, by other regulators, including LAN leads and or Audit Scotland.

9.3.2. We also need to ensure that we record what detail we have in our whistleblowing tracker as we have a statutory requirement to report annually on qualifying disclosures. Access to this will be restricted to Assistant Directors and more information on this can be found at [Annex 2](#).

9.3.3. The next steps will depend on the nature of the issues raised by the whistleblower and how much information they are able to provide. Whilst it is imperative to protect the identity of the whistleblower, as an organisation we need to ensure that we use our collaborative knowledge and understanding of organisations before taking a decision on next steps. This may involve calling an internal case conference to discuss our initial assessment and agree the next steps. We will continue to ensure that our contact with the organisation is co-ordinated through the lead regulation manager. We might also need to discuss the case with other regulators or Audit Scotland. At all times we will be mindful not to disclose the identity of the whistleblower ([see section 10](#)).

9.3.4. The next stage in the process could also be to meet with the whistleblower to try to get a better understanding of the issues.

#### **9.4. Meeting with the whistleblower**

9.4.1. It is beneficial to meet with a whistleblower if possible (or make whatever arrangements they would feel are safe e.g. e-mailing or phoning), to get more details about their concerns.

9.4.2. If we do meet the whistleblower then it is important that the whistleblower feels comfortable with the venue. It could be in our office, another SG office, or somewhere neutral. It is ok for the whistleblower to bring someone with them although it is helpful for us to know who this will be in advance and in what capacity they are attending e.g. trade union representative, legal advisor or supporter. At least **two** members of SHR staff will meet with the whistleblower.

9.4.3. Staff should agree a strategy prior to the meeting and identify the questions and areas we want to ask about, how we will record a note of the meeting, and any information we need to tell the whistleblower.

9.4.4. We may need to meet, or have contact with, a whistleblower more than once to get the information that we need. Agree with the whistleblower how and when they want to be contacted. If the whistleblower wishes their identity to be protected then we must be careful in what we say and how we act if we have to deal with them on other business during any engagement with the regulated body.

#### **9.5. SHR – consider and agree what action to take**

9.5.1. A decision on what action we will take will be in consultation with the Regulation Manager, Regulation Analyst, (Finance lead if appropriate), Assistant Directors and the Director of Regulation. In the case of Local Authorities, we need to consider the LAN Lead's role and any potential input from Audit Scotland. The same applies where it is appropriate to involve other regulators.

9.5.2. In deciding what action to take, we will consider the following:

- What are the central concerns and what is the evidence (although we may still act where there is no evidence if the nature of the concerns is sufficiently serious);
- Whether the allegations concern a matter that we have a legal and regulatory basis to investigate and act on;
- How serious is the matter and what is the risk to the rights and interests of tenants and service users;
- Whether the allegations suggest that an offence has been committed (in which case we will refer to our [Practice Note on Criminal Offence Provisions](#));
- Whether there is an Engagement plan in place, its focus and what progress has been made;
- What regulatory actions are included in the Engagement Plan and what progress has been made;
- Whether the matter is better dealt with by another regulatory body or organisation. This will be agreed with an Assistant Director before we refer the matter to the appropriate body or organisation;

9.5.3. We should be mindful that someone could bring a concern to us, which is false and in bad faith, but we should not presume this is the case, even if the whistleblower is unable to provide substantiating evidence or is not willing to reveal their identity.

9.5.4. It is important for our own purposes to have an audit trail of our decisions, including the decision not to investigate or take action. This must be recorded and saved in the relevant regulated body's file on Insight as well as in the whistleblowing tracker (See [Annex 2](#)).

9.5.5. We will consider what action to take if we think there may be substance to the allegations and that they are of sufficient regulatory concern. This may include:

- Carrying out an inquiry;
- Requiring the regulated body to commission an investigation (likely to be an independent investigation);

- Speaking directly to staff or the governing body or the Local Authority;
- Speaking to other regulators or the police.

We will refer to our publication – [Dealing with potentially serious issues in RSL](#) in terms of how we take it forward with an RSL.

9.5.6. We may not take action if:

- The issues raised by the whistleblower are not within our regulatory remit or it is not a regulatory concern to us;
- We have been given no evidence, or we have insufficient evidence and no confidence that evidence to support allegations exists;
- The concerns raised fall within the remit of another regulator; or
- We are already aware of the concerns and we have engaged with the landlord/ or are already engaging with the landlord about them.

9.5.7. We will make a record of our decision and the reasons and save it in the file on Insight as well as in the whistleblowing tracker to ensure there is a clear audit trail.

9.5.8. Where the governing body decides to take forward an independent investigation into the concerns, we will look to the governing body to assure us that that investigation is conducted by a competent and independent person who is able to establish the facts and there is a clear and comprehensive remit for the investigation to ensure it will establish the facts around the issue. In the case of a Local Authority, the remit of, and roles during, any investigation will be discussed and agreed with Audit Scotland.

## **9.6. Feedback to the whistleblower**

We will write/e-mail/phone the whistleblower to provide feedback where it has been requested. Where we intend to engage with a landlord, we will carefully consider the timing of when we contact the whistleblower and how much we tell them about what we intend to do and what we expect of them. We may not be in a position to set out fully all our intended actions to investigate the concerns, but we should indicate as

much as we properly can. For example, we can confirm to the whistleblower that we have asked the RSL to carry out an independent investigation. We cannot provide the whistleblower with a copy of any independent investigation report but we may say the RSL is acting on recommendations contained in the report and we are engaging with the RSL about this. We should explain that investigations can often take a long time to complete.

## **10. Protecting the whistleblower's identity**

10.1. Where a regulated body's member of staff brings concerns to our attention our approach should be to ensure, as far as possible, confidentiality of their identity. We cannot offer employment protection so any whistleblower is potentially putting their job at risk. We have a duty to protect the identity of the whistleblower so far as we can (see 10.4) and not expose them to risk so we must manage our interaction with them carefully and confidentially.

10.2. Although an employee should be able to safely raise whistleblowing concerns with their employer and employers should respond positively to such concerns, some employers might feel threatened by a whistleblower and might interpret their actions as hostile to the organisation. An employer could dismiss a whistleblower; we cannot prevent that happening or ensure reinstatement. If unfairly sacked, an employee would have the right to go to an employment tribunal to seek reinstatement or compensation.

10.3. Therefore, to protect the identity of the whistleblower we have to ensure that there is complete confidentiality about the source of our concerns and actions. Where the person raising concern is a member of the governing body, we must also protect their identity. In both cases all we would say to the regulated body, or publicly, is that information has come to our attention and not reveal the source of the information. In some cases, it may be inevitable that the organisation is able to identify the individual and there is nothing we can do about this; however, it is important that we follow our own procedures to minimise the risk of this happening.

10.4. The only exceptions to our respecting the whistleblower's confidentiality are if the whistleblowing relates to a criminal matter that we need to refer to the police or we are served with a court order requiring us to disclose the identity of the whistleblower.

10.5. We need to keep to a minimum the number of people that know about or are involved in handling the whistleblowing. By sharing the information within SHR on a 'need to know' basis, we will protect not only the whistleblower but also our own staff from the consequences of unintentional disclosure.

10.6. In practice, this means:

- The primary lead on dealing with the whistleblower will be a Regulation Manager with the support of a Regulation Analyst;
- We will carefully manage and store any information gathered ([see section 12 on records management](#)). There will be no discussion about the case within the Group meetings, and no related discussion or phone calls in the open office;
- The Director of Regulation will tell the Chief Executive about the case if necessary.

10.7. Where the whistleblower has approached us through a general call and someone out with the Group has first dealt with it then we will ensure the staff member who received the call is made aware that it is confidential.

10.8. Throughout any period of an investigation and regulatory engagement we will continue to maintain the confidentiality of the original whistleblowing source.

## **11. Working with other regulators and organisations**

11.1. We must always consider whether it is necessary to involve another regulator or organisation. The circumstances in which we will notify other regulators and our respective roles and responsibilities are explained in the Memorandum of Understanding we have with the [Care Inspectorate](#), [Scottish Public Sector](#)

[Ombudsman](#) (SPSO), the [Office of the Scottish Charity Regulator \(OSCR\)](#) and [Audit Scotland](#).

11.2. A decision on if, and when, we notify other regulators will be made following discussion with the relevant Assistant Director(s) and the Director of Regulation. We will continue to protect the whistleblowing source unless by doing so we would compromise the effectiveness of our regulatory action or the regulatory action of other regulators. The Director of Regulation will need to agree this.

11.3. Where the concern is about a local authority, we will work with Audit Scotland in accordance with the Local Government Scrutiny – Joint Code of Practice and Memorandum of Understanding.

11.4. Where the information suggests that a criminal offence may have occurred we must liaise with the appropriate bodies at the earliest opportunity in accordance with our Practice Note on Criminal Offence Provisions and our IPN on Reporting to Police Scotland.

## **12. Records Management**

12.1. Our [Records Management Policy](#) and [Insight Document and Records Management guidance](#) applies to all information we hold about regulated bodies, including any information gathered during a whistleblowing case.

### **12.2. Storage**

12.2.1. All information about a whistleblowing case will be stored in a restricted folder for the relevant regulated body on Insight. To create this we need to ask the BI team, to create a restricted file, provide details of the regulated body involved and who should have permissions to access the file. This should be restricted as far as possible but it likely to include the Regulation Analyst, Regulation Manager and Assistant Director.

12.2.2. The Regulation Analyst or Regulation Manager will scan and save any paper documents we receive into the restricted file and the originals will be securely

stored. These documents could ultimately be used as evidence in criminal proceedings and so we must protect their integrity at all times.

12.2.3. Under no circumstances will information be saved in the G Drive, personal folders or on erdm.

12.2.4. As we have a statutory requirement to report annually on qualifying disclosures, some basic information about the case (not including the identity of the whistleblower) will be recorded in our whistleblowing tracker but access to this will be restricted to Assistant Directors (see [Annex 2, Section 2](#) for more information about this.)

### **12.3. Classification**

We will clearly mark information gathered as OFFICIAL – SENSITIVE. This marking is used where a limited need to know is enforced and assured. “OFFICIAL – SENSITIVE” will be marked:

- On the front page of any document
- As the first paragraph of any letter or minute
- As the first paragraph of any email
- Highlighted in the operations instructions for any data set

### **12.4. Handling Instructions**

12.4.1. We will consider whether it is necessary to use local handling instructions to convey that the document or email should be handled in a particular way so that we do not unintentionally place the whistleblower at risk. We will add meaningful and helpful information or advice in cases where special handling is required. These should identify why special handling is required; how the information is allowed (or not allowed) to be circulated or forwarded and how that information is to be stored.

12.4.2. The basic formula for handling instructions should be therefore:

**<reason this is classified as it is> <what you are allowed to do with this information> <what you need to do to ensure it is kept secure>**

### **12.5. Retention**

At the end of the process, the Regulation Manager and Assistant Director will agree what records will be retained in line with our Record Management Policy.

### **13. Review**

We will review this internal procedure:

- Following any changes in relevant legislation or guidance;
- Following our handling of any cases which necessitates a change to our procedures;
- In all other circumstances, every three years.

## Management of whistleblowing cases

### Legislation

1. [The Public Interest Disclosure Act 1998](#) gives legal protection to workers who disclose information or whistleblow on wrongdoing or failures by their employers.
2. The legislation does not introduce a general protection for whistleblowers in all circumstances. A disclosure will qualify for protection if the whistleblower reasonably believes 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.
3. A whistleblower qualifies for protection under the Act if the disclosure is a **qualifying** disclosure (i.e. under one of the headings listed above).
4. The Public Interest Disclosure Act expects the concerned worker to raise the matter internally, if appropriate and practical.
5. Qualifying disclosures will also be protected if the individual makes the disclosure in good faith, reasonably believes 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 individual reasonably believed that he or she would be victimised if he or she had made the disclosure to the employer;

- there was no prescribed person and the individual reasonably believed that disclosure to the employer would result in the destruction or concealment of evidence;
- The individual had already disclosed substantially the same information to the employer or a prescribed person.

6. It must also be reasonable for the individual to make the disclosure. In deciding the reasonableness of the disclosure, regard will be had, in particular, to:

- 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,
- whether the worker complied with any approved internal procedures if the disclosure was previously made to the employer.

## Recording and reporting on whistleblowing cases

### 1. Background

1.1 [The Prescribed Persons Order 2014](#) sets out a list of organisations and individuals that a worker may approach outside their workplace to report suspected or known wrongdoing. The organisations and individuals on the list have usually been designated as prescribed persons because they have an authoritative or oversight relationship with the sector, often as a regulatory body. SHR is now listed as a prescribed person.

1.2 As a prescribed person, SHR has a duty to report in writing annually on whistleblowing disclosures made to it. The aim of this duty is to increase transparency in the way that whistleblowing disclosures are dealt with and to raise confidence that disclosures are taken seriously.

1.3 The report must include the following:

- An explanation of the prescribed person's functions, objectives and statutory powers (if it has any).
- A summary of how the information disclosed has impacted on the prescribed person's ability to perform its functions and meet its objectives.
- The number of [qualified disclosures](#) made in a twelve month period.
- Out of the total number of qualified disclosures made, the number of those disclosures where it was decided in that period that further action should be taken (whether or not that action was actually undertaken within that period).
- A summary of the type of action taken by the prescribed person in respect of qualified disclosures of information.
- For SHR's own purposes, a summary of what action was taken in respect of information that does not meet the definition of a 'qualifying disclosure' but which is still of regulatory concern to us.

1.4 The wording for the first two bullet points will be drafted and agreed by the Digital and Business Support Group.

1.5 The rest of the information required will be maintained throughout the year using the whistleblowing tracker.

1.6 The information from the tracker will also be used to complete quarterly information required for the Board.

## **2. Whistleblowing Tracker**

2.1 A tracker has been created to input the information required to produce quarterly and annual reports on whistleblowing. Access to the tracker will be restricted to Assistant Directors but an example has been included here for reference:



Example of Whistleblowing tracker

2.2 There are three tabs to the tracker:

1. Report Narrative
2. Headline statistics by reporting year
3. Quarterly stats

## **3. Report Narrative**

3.1 When an Assistant Director is made aware of a whistleblowing case, they should, as soon as reasonably practicable, fill in as much information as they can on this worksheet. The worksheet asks for the following information:

- Date contacted
- RSL (for internal use only)
- Status of whistleblower
- Nature of concern(s)
- Qualified Disclosure (Yes or No)
- Action taken?(Yes or No)

- Date decision was made to take action
- Detail of action taken or reason no action was taken
- Additional comments

Fig 1. shows an example of a case where the details have been completed.

Report on whistleblowing - narrative								
Date contacted	RSL (for internal use only)	Status of whistleblower	Nature of concern(s)	Protected Disclosure (Yes or No)	Action taken? (Yes or No)	Date decision was made to take action	Detail of action taken or reason no action was taken	Additional comments
Formatted	Dropdown	Drop down	Drop down	Drop down	Drop down	Formatted	Free text	Free text
04/04/2017	An RSL	Current Employee	Criminal offence	Yes	Yes	14/04/2017	Example in here	Example in here

Fig 1.

3.2 A lot of the information can be selected using drop down lists on the spreadsheet (see Fig 2.)

Report on whistleblowing - narrative			
Date contacted	RSL (for internal use only)	Status of whistleblower	Nature of concern(s)
Formatted	Dropdown	Drop down	Drop down
04/2017	An RSL	Current Employee	Criminal offence
		Current Employee Former Employee Current Gov Body Member Former Gov Body Member	

Fig 2.

3.3 All of the information may not be available straight away but the tracker should be filled in with what information we have to capture as much of the data required as soon as possible.

3.4 Once the data has been input into the 'Report Narrative Worksheet', this information is automatically pulled through to the 'Quarterly statistics' and 'Headline statistics by reporting year' worksheets. These worksheets should not be edited manually.

#### 4. Quarterly Stats

4.1 All of the information in this worksheet is pre-populated using the information entered into the 'Report Narrative' worksheet. The headings for this worksheet are:

- Relevant Dates
- Reporting Period
- Number of disclosures made in the reporting period
- Number of qualified disclosures made in the reporting period
- Number of disclosures where further action was taken in the reporting period

Fig 3. shows an example of the information pre-populated using the data from the 'Report Narrative' worksheet.

<b>Report on whistleblowing - Quarterly Statistics</b>				
2017/18				
Relevant Dates	Reporting Period	Number of disclosures made in the reporting period	Number of <u>qualified</u> disclosures made in the reporting period	Number of disclosures where further action was taken in the reporting period
01-Apr-17	Q1	1	1	0
30-Jun-17				
01-Jul-17	Q2	0	0	1
30-Sep-17				
01-Oct-17	Q3	0	0	0
31-Dec-17				
01-Jan-18	Q4	0	0	0
30-Mar-18				

Fig 3.

#### 5. Headline Statistics by Reporting Year

5.1 Like the 'Quarterly Stats' spreadsheet all of the information in this worksheet is pre-populated using the information entered into the 'Report Narrative' worksheet and the headings are the same to ensure that we capture all of the information required for the annual report on whistleblowing

Fig 4. shows an example of the information pre-populated using the data from the 'Report Narrative' worksheet.

<b>Report on whistleblowing - Annual Statistics</b>				
<b>Relevant Dates</b>	<b>Reporting Period</b>	<b>Number of disclosures made in the reporting period</b>	<b>Number of <u>qualified</u> disclosures made in the reporting period</b>	<b>Number of disclosures where further action was taken in the reporting period</b>
01-Apr-17 30-Mar-18	01 Apr 17 to 30 Mar 18	1	1	1
01-Apr-18 30-Mar-19	01 Apr 18 to 30 Mar 19	0	0	0
01-Apr-19 30-Mar-20	01 Apr 19 to 30 Mar 20	0	0	0
01-Apr-20 30-Mar-21	01 Apr 20 to 30 Mar 21	0	0	0

**Fig 4.**

## **6. Process**

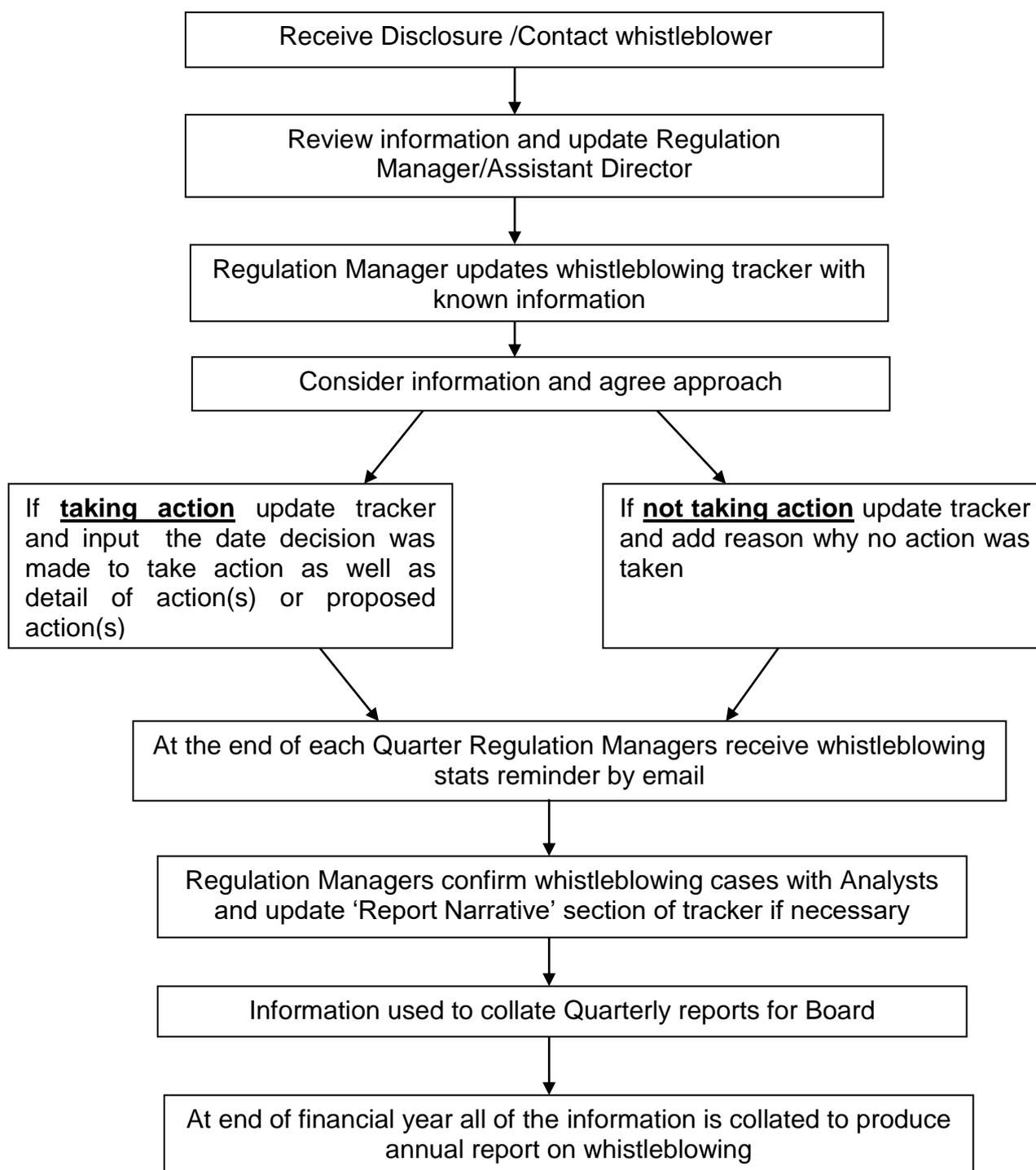
6.1 As stated previously, when an Assistant Director is made aware of a whistleblowing case, they should, as soon as reasonably practicable, fill in as much information as they can on the whistleblowing tracker.

6.2 As a follow up measure, an email will be issued at the end of every quarter to all Assistant Directors and Regulation Managers asking them to review, and if necessary, complete the tracker via their Assistant Director.

6.3 The different worksheets can then be used to create the quarterly reports required for the Board and also the annual whistleblowing report.

6.4 A quick guide to the process is attached below.

## Whistleblowing Recording Procedure – Quick Guide



## Whistleblowing – Record of Disclosure

### 1. DETAILS OF THE REGULATED BODY

Name of RSL or local authority: [Click here to enter text.](#)

### 2. DETAILS OF CONCERNS

**What are the person's concerns about the regulated body?** (Ask the person to tell you in their own words). You may wish to ask some of the following questions:

- What are the matters of concern that they consider need investigation and why?
- Do they have direct experience of the matter of concern or are they reporting concerns on behalf of another person?
- When did the concerning situation happen (dates)? Is it on going? Is it an isolated incident or part of a pattern?
- Names of individuals involved and positions held in the regulated body and/ or associated business

[Click here to enter text.](#)

### 3. EVIDENCE

Does the person have any evidence to support their concerns? **YES**  **NO**

**If YES**, note the evidence available and how they will deliver this to us.

[Click here to enter text.](#)

**If NO**, ask them to tell us about the sources of evidence which exist (for example emails, minutes of meetings, financial records, correspondence, specific names of files on IT systems and where they are located).

[Click here to enter text.](#)

Is there anyone else who shares the concerns? **YES**  **NO**

**If YES**, record contact details, including their position in the RSL, whether they still work for the regulated body and whether they are willing to come forward.

[Click here to enter text.](#)

### 4. HAS THE PERSON REPORTED THEIR CONCERNS TO THE REGULATED BODY?

Has the person reported their concerns to the regulated body? **YES**  **NO**

**If NO**, why not?

[Click here to enter text.](#)

**If YES**, when was it reported, to whom in the regulated body and what happened as a result?

[Click here to enter text.](#)

**IN EITHER CASE**, why is the person now reporting to SHR?

[Click here to enter text.](#)

## 5. OTHER REGULATORS/ ORGANISATIONS

Has the person reported concerns to another regulator or body (e.g. trade union)?

**YES**  **NO**

If **YES**, who did the person tell and when? What happened as a result?

[Click here to enter text.](#)

Has the person reported concerns to the police (where there is a possible criminal offence)?

**YES**  **NO**

If **NO**, why not?

[Click here to enter text.](#)

If **YES**, name and contact details of investigating officer

[Click here to enter text.](#)

## 6. THE PERSON'S DETAILS

Does the person wish to remain anonymous? **YES**  **NO**

If **NO**:

Name:	<a href="#">Click here to enter text.</a>
Tel no:	<a href="#">Click here to enter text.</a>
Address:	<a href="#">Click here to enter text.</a>
Email:	<a href="#">Click here to enter text.</a>
Position held in regulated body:	<a href="#">Click here to enter text.</a>
Dates of employment with regulated body:	<a href="#">Click here to enter text.</a>
Is the person still employed by the regulated body:	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>
Is the person willing to be contacted by us again?	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/> IF YES, what is their preference as to how we contact them (e.g. time, by phone or email etc.)? <a href="#">Click here to enter text.</a>
Does the person wish their identity to remain confidential?	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>
Is the person willing to meet with us to discuss their concerns?	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>

Date and time of communication	<a href="#">Click here to enter text.</a>
Communication method	Telephone <input type="checkbox"/> Meeting <input type="checkbox"/>
Name of SHR Officer(s)	<a href="#">Click here to enter text.</a>