

## **How the Regulator deals with Whistleblowing Concerns.**

### **What is whistleblowing?**

Whistleblowing is the term commonly used to describe the situation where a member of staff, member of the board or anyone else raises concern about improper conduct, wrongdoing, risk or malpractice with someone in authority, either internally or externally, including to the Regulator.

A whistleblowing claim may also be known as a protected disclosure under the Public Interest Disclosure Act 1988. (PIDA)

### **Protection for Whistleblowers - PIDA**

The Regulator is a prescribed person under PIDA. PIDA provides protection to employees, agents and contractors (and in some cases to former employees) and, if a whistleblower makes a qualifying disclosure to the Regulator in good faith and reasonably believes it to be true, they are afforded protection under PIDA.

Whistleblowers making a protected disclosure have a right not to suffer any detriment from their employers. If they are treated less favourably for making a disclosure, a claim may be brought to the Employment Tribunal if they 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. To qualify for protection, a disclosure must be made in the public interest and must relate to a possible:**

- Financial malpractice, impropriety or fraud.
- Failure to comply with a legal obligation or Statutes.
- Dangers to health and safety or the environment.
- Criminal activity.
- A miscarriage of justice.
- Professional malpractice
- Improper conduct or unethical behaviour.
- Significant relationship failures, including those between Board, staff and management team
- Attempts to conceal any of the above

### **Who gets protection?**

PIDA provides protection for staff who make a qualifying disclosure to a prescribed person whether or not they have raised the matter within their own organisation. Board members are not covered by PIDA. However, the Regulator will handle concerns raised by board members in the same way as qualifying disclosures from staff.

## **Do the same rules apply to grievances and complaints?**

**Whistleblowing** is about conduct that affects others: for example, fraud or a failure to comply with health and safety requirements. It is distinct from grievances and complaints.

A grievance is where a member of staff has a personal complaint about their own employment situation. We will not get involved in staff grievances against an RSL but we will carefully consider if we have a role where the circumstances leading to a grievance have a 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 RSL.

## **Whistleblowing is an important part of good governance**

Problems can arise in any organisation and the best people to identify them are often the people who work for the organisation. The fact that an RSL welcomes whistleblowing and takes it seriously may help to deter any wrongdoing.

## **Whistleblowing - Regulatory Requirement**

All RSLs must have a whistleblower policy in place which recognises the importance of whistleblowing to good governance. The policy must promote an open and positive approach to whistleblowing where staff, board members and others can feel confident about reporting matters internally without fear of reprisal. We expect all RSLs to take any concerns raised seriously and look into the matter properly and fully.

The policy must also make it clear that staff can appropriately report concerns to the regulator and that they should not suffer any detriment for doing so.

## **What will the Regulator do when a whistleblower concern is received?**

We will take all concerns seriously, even if they are reported to us anonymously. We will, however, make no assumptions about any concerns brought to our attention being either true or false.

We will ask a whistleblower whether they have reported their concerns direct to the housing association. Where possible we will ask them to provide evidence to substantiate their concerns and we will consider any evidence brought to us.

Anonymous allegations **will** be considered, although concerns raised anonymously are less powerful and are often more difficult to investigate.

In determining whether or not to take an anonymous allegation forward under the policy and this guidance and procedures, the Regulation Management Team will take into account the:

- Seriousness of the issue raised
- Credibility of the concern

- Likelihood of confirming the allegation from an attributable source and gaining information from them

In every case of whistleblowing, where we consider an investigation is needed to determine the facts, it does not mean we assume the whistleblowing concerns to be true. It simply means that the reported issues are serious and the facts need to be established.

We will discuss with the RSL the best approach to establishing the facts and we will set out the issues to be investigated and the agreed approach in writing.

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

- Require the board to investigate the matter (normally by engaging someone independent)
- Require the governing body to get independent advice or support to help them to deal with the situation
- Carry out/commission an investigation (planned or unannounced)
- Refer the matter to another regulator, for example, CSSIW, because the matter falls within their regulatory remit
- Report the matter to the police because we think that a criminal offence may have been committed
- Take no further action because, for example, there might not be enough evidence for us to proceed upon, or we may have been assured that the RSL has dealt with the matter appropriately, or we may consider the matter to be vexatious or frivolous.

When we contact an RSL about whistleblower allegations we will do so in confidence through the Chair of the Board. We will tell the RSL as much as we can about the allegations but will endeavour not to reveal any details which could potentially identify the whistleblower.

We will maintain the confidentiality of a whistleblower as far as possible, including after the whistleblowing case has been concluded and will not provide any more detail about the whistleblowing concerns after the case is concluded than we did initially.

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