



Cloch Housing Association

# Whistle-blowing Policy

<b>Policy Name</b>	Whistle-blowing
<b>Policy Category</b>	Corporate & Governance
<b>Policy Number</b>	066
<b>Date Adopted</b>	29/09/1998
<b>Last Review</b>	04/06/2019
<b>This Review</b>	26/07/2022
<b>Next Review</b>	July 2025
<b>Equalities Impact Assessment Required</b>	N/A
<b>Link to other policies</b>	Codes of Conduct, Disiplinary & Grievance (EVH T's&C's), Complaints, Notifiable Events Guidance
<b>Consultation</b>	
<b>Need for Procedure</b>	Yes

## INTRODUCTION

- 1.1 A Whistleblower can be defined as being a person who informs on someone or who puts a stop to something. In a workplace, it is the term is used to describe a person who has serious concerns about practices or conduct, and decides to report these to a person or persons who they believe will be in a position to deal with this.
- 1.2 The aim of this policy is to provide a framework which enables staff, Governing Body Members or any other person to raise any serious concerns relating to conduct or practices within the organisation; and to do so in confidence without fear of reprisal. This includes a summary of the process and principles that will guide internal investigations and response.
- 1.3 This Policy is designed to enable all our staff and Board members to raise concerns internally and at a senior level and to disclose information that they believe shows malpractice or impropriety.
- 1.4 The Public Interest Disclosure Act 1998 gives legal protection to members of staff against being dismissed or penalised by us as a result of publicly disclosing certain serious concerns. These concerns must be made in the “public interest” as per the Enterprise and Regulatory Act 2013. In addition, if a disclosure is not made in “good faith” this will still be considered by an employment tribunal but compensation can be reduced by up to 25% in such circumstances.
- 1.5 Those persons to whom a whistleblowing concern can be reported are Prescribed Persons and they include: Scottish Housing Regulator; Audit Scotland; OSCAR; External Auditor, etc.
- 1.6 Employers may also be held vicariously liable for staff who victimise colleagues for making a disclosure. We will take all reasonable steps to protect staff from being victimised.
- 1.7 We are committed to the highest standards of openness, probity and accountability. We (and others that we deal with) are often the first to realise that there may be something seriously wrong. We expect those who have serious concerns about any aspect of our work to come forward and speak up without fear of reprisal. We recognise that it is an important aspect of accountability and transparency to ensure that no one feels at a disadvantage in raising legitimate concerns.

## **2. SCOPE OF POLICY**

2.1 We have a Dignity at Work policy along with Disciplinary and Grievance procedures within our EVH Terms and Conditions. This policy is intended to cover concerns that might be in the public interest and may (at least initially) be investigated separately, but might then lead to the use of these procedures. These concerns might include:

- Financial malpractice, impropriety or fraud;
- Failure to comply with a legal obligation or statute;
- Dangers to health and safety or the environment;
- Criminal activity involving the Association, its staff, Board members or other key stakeholders;
- Professional malpractice;
- Improper conduct or unethical behaviour;
- Harassment, bullying and violence of any kind in the workplace – if it relates to public interest. (Personal grievances (bullying, harassment, discrimination etc) aren't covered by whistleblowing law, unless the matter relates to the public interest. These grievances may however be covered by other legislation such as the Equalities Act, etc.)
- Abuse of power and status;
- Deliberate attempts to conceal any of the above.

The above list is not exhaustive but is intended to indicate types of behaviour and action the Association would find unacceptable and within the scope of this policy.

2.2 This policy is not intended to replace any of our existing employment or governance related policies. For the avoidance of doubt, the Complaints Handling Procedure (CHP) applies in instances where members of the public express dissatisfaction about our action or lack of action or about standards of service. The CHP is not appropriate for members of staff or our Governing Body who have serious concerns about conduct or practices. Similarly Grievance Policies and Procedures are designed to assist staff in resolving problems which are pertinent only to the individual.

## **3. PRINCIPLES**

3.1 The Association will treat all concerns raised under this policy seriously, sensitively and in as confidential a manner as possible.

3.2 Any staff member in receipt of such information must respect the rights and wishes of the whistle-blower, including protecting their identity if requested, as far as practically possible.

3.3 The CEO of Cloch is the designated officer responsible for overseeing implementation of this policy.

- 3.4 Staff will normally raise concerns under this policy through line management arrangements, but may also do so via the CEO directly.
- 3.5 Governing Body members will normally direct their concerns to the Chairperson of the Association.

#### **4. HOW TO RAISE A CONCERN**

- 4.1 Any staff member should normally raise concerns with their line manager who will pass the information on as soon as is reasonably possible to the CEO.
- 4.2 Complaints of malpractice will be investigated by the CEO unless the complaint is against the CEO or is in any way related to the actions of the CEO. In such cases the complaint should be passed to the Chair of the Board.
- 4.3 The complainant has the right to bypass the line management structure and take their complaint directly to the Chairperson. Where the staff member feels they cannot raise their concern through the line management structure, or with the CEO or with the Chairperson then they may raise this with the internal and external auditors.
- 4.4 Any Board member who has a concern should raise this in the first instance with the Chair of the Board who will commence investigation, or if they feel unable to do this, they may raise their concerns with the Internal and External Auditors.
- 4.5 Staff members and Board members can also obtain advice regarding their concerns, in confidence, from the Scottish Housing Regulator –

Scottish Housing Regulator  
Buchanan House  
58 Port Dundas Road  
GLASGOW G4 0HF  
Telephone: 0141 271 3810, Fax: 0141 221 5030  
Email: [shr@scottishhousingregulator.gsi.gov.uk](mailto:shr@scottishhousingregulator.gsi.gov.uk).

- 4.6 The Association confirms that an individual has the right to raise a concern with the SHR without fear of victimisation. Individuals should be aware however, that the SHR will normally refer reported allegations to the Association's Governing Body for investigation. Where this is considered inappropriate, SHR may itself conduct an investigation; and decide what, if any, action is required.
- 4.7 It should also be noted that whistleblowing allegations fall within the definition of a Notifiable Event. As such, SHR will be informed of the issue, in accordance with the Associations policy on Notifiable Events, and may take regulatory

action in relation to the matter. In turn, this may necessitate Governing Body Members' involvement.

## 5. COMMUNICATING THE DISCLOSURE

- 5.1 Although the person making the allegation is not expected to prove beyond doubt the truth of an allegation, they will need to demonstrate to the person investigating that there are reasonable grounds for their concern.
- 5.2 Concerns may be raised verbally or in writing. Anyone making a written report should use the following format:
- The background and history of the concern (giving relevant dates)
  - The reason why there is concern about the situation

The earlier they express their concern, the easier it is to action.

- 5.3 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. An example of a timeline report is attached as an appendix to the procedure.

## 6. PROCESS & TIMESCALES

- 6.1 On receipt of a disclosure the CEO or Chair will consider the information made available to them and decide on the form of investigation to be undertaken. This may be to:
- Investigate the matter by management, internal audit, or through the disciplinary process;
  - Refer the matter externally to the external auditor or the police;
  - Call for an independent inquiry.
- 6.2 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 6.3 Once a concern has been raised it must be formally acknowledged in writing within **three working days** direct to the whistle-blower, by the senior officer or Chair.

The person with the decision making authority (CEO or Chairperson) will then write to the individual concerned within ten working days of a disclosure being made. They will:

- Indicate how the matter will be dealt with;
- Give an estimate of how long it will take to provide a final response;
- Supply the individual with information on staff support mechanisms;
- Tell the individual whether further investigations will take place and if not, why not.

6.4 The amount of contact between that person and the person who raised the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, they may need to seek further information from the person concerned.

6.5 Where any meetings are arranged, the person who raised the concern can be accompanied by a trade union representative or another nominated colleague and also have the meeting off-site if they so wish.

6.6 The CEO retains overall responsibility for determining whether the concern falls within the scope of this policy and is founded on reasonable grounds. They may request additional information in order to come to this initial view. Where a concern cannot be substantiated, or it is considered it should not be progressed as a whistleblowing matter, the individual will be advised of this as soon as possible. They will also be advised of their right to appeal this decision, the process for doing so, and whether any other policies or procedures may be applicable.

6.7 The CEO is responsible for ensuring any investigation is carried out properly and, as appropriate, that the whistleblower is kept informed at relevant stages during this process. This includes informing the whistleblower of the outcome of the investigation and any proposed action. The CEO may be directly involved in undertaking the investigation, or will act in an advisory role to others who are tasked with investigating.

6.8 The CEO is also responsible for reporting to and liaising with our own governing body in relation to whistleblowing allegations.

6.9 The Association recognises that individuals may not feel comfortable about raising concerns in accordance with existing line management arrangements or informing or involving members of staff. If they wish, they may raise a matter directly with the CEO or the Chair of our Board. In such cases, the CEO or Chair will initiate and retain responsibility for an investigation into the matter. Notwithstanding this, it should be noted that they are likely to require information from or the involvement of other senior staff or Office Bearers in order to fully and properly fulfil their role.

6.10 If they wish, staff or Governing Body members considering whistleblowing, may also obtain independent advice on the matter. A decision will be made by the

senior officer and 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; and/or
- be referred to the external auditor; and/or
- be the subject of an independent external inquiry; or
- have no further action taken.

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

## 7.0 METHODOLOGY

7.1 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 apprised.

7.2 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.

7.3 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 OSCR).

7.4 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.

- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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 HR legislation, including whether the whistleblower can be given ‘special leave’, instructed to work from home, etc.

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.

## **8. UNTRUE ALLEGATIONS**

- 8.1 Where an allegation is made by a member of staff and it is found to be mischievous in intent, this will be regarded as a serious offence and the member of staff may be liable to disciplinary action. Any such action will be progressed in accordance with our Disciplinary Policies and Procedures. In the event of a Governing Body Member raising such false or malicious allegations, they will be expected to issue an apology and tender their resignation, or alternatively this will be considered as a potential breach of the code of conduct by the Board.



8.2 In the event of any complaint being made anonymously, this would not stop an investigation being carried out but it could hinder implementation of our procedures.

## 9.0 CONFIDENTIALITY

9.1 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.

9.2 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.

9.3 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 whistle-blower 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.

9.3.1 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.

9.3.2 Secure 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.

9.3.3 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.

9.4 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.

## **10.0 Protection**

10.1 The senior officer and Chair (or office bearer) will protect a whistleblower who raises a concern [in the belief that it is in the public interest to do so], from victimisation or reprisals such as being subject to discipline, dismissal or any other detriment as a result of raising the concern. Where a whistleblower has been victimised for raising a concern, the senior officer and Chair (or office bearer) will take appropriate action against those responsible, in line with the disciplinary policy.

10.2 If an allegation is made in the belief that it is in the public interest to do so, but is not confirmed by the subsequent investigation, no action will be taken against the whistleblower.

## **11.0 APPEALS PROCESS**

- 11.1 There are two situations where individuals who raise a concern under this policy have a right of appeal. Any individual considering submitting an appeal may obtain independent advice on the matter.
- 11.2 Firstly, where a concern is rejected on the basis it is judged as not falling within the scope of the whistleblowing policy, an individual may appeal this decision. Secondly, a whistleblower may appeal if, following an investigation, they disagree with the decision and proposed course of action.
- 11.3 Appeals must be made in writing, with the reason for the appeal clearly stated, and submitted to the Chair of the Board within two weeks of the individual being notified of the decision.
- 11.4 In order to properly consider the appeal and review the decision, the Chairperson will invite the individual to attend a meeting. The individual may be accompanied by a work colleague or trade union representative, while the CEO or Chair may also arrange for a note taker to be present.

The Chairperson will question the individual to obtain any additional information or clarification they require in relation to the initial allegation or the circumstances giving rise to the appeal. The individual will be given the opportunity to present any substantiating evidence.

Following the meeting, the Chairperson will communicate their decision to the individual in writing within 5 working days. This will confirm the Association's final position on the matter.

For the avoidance of doubt, the appeals process is not appropriate in instances where an individual is dissatisfied with the way their concern has been handled. This includes for example, where they believe there has been a lack of action, that their concern has not been treated seriously and given due consideration, or that the correct process has not been followed.

In these instances, the matter may be pursued in alternative ways. Specifically, staff members can raise a grievance, in accordance with the Group's Grievance Policies and Procedures. Governing Body members can direct their concern to the Scottish Housing Regulator.

## **12.0 REPORTS TO THE GOVERNING BODY**

- 12.1 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.

12.2 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.

### 13.0 OTHER POINTS FOR CONSIDERATION

13.1 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.

13.2 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.

13.3 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.

13.4 When assessing the evidence presented, thought should be given as to whether or not the evidence has been tampered with.

13.5 Office bearers should be advised of the concern/allegation (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 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.

13.6 Who should be involved / told about the concern? An 'investigation communication protocol' must to be agreed by the senior officer/office bearer investigation team.

13.7 A concern relating to fraud (with the appropriate level of evidence) turns the matter into a criminal matter.

13.8 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. A detailed record of all time spent on the whistleblowing concern will be kept – this level of detail maybe required if an insurance claim is to be made.

#### **14.0 POLICY REVIEW**

14.1 This policy will be subject to review every three years, or sooner if it is affected by legislative or other significant changes.

#### **15.0 POLICY AVAILABILITY**

15.1 This document can also be provided in large print, braille, audio or other non-written format, and in a variety of languages.