



**Scottish Housing
Regulator**

Advisory Guidance

Whistleblowing about a regulated body

Information for regulated bodies
about how the Scottish Housing
Regulator deals with whistleblowing

Introduction

This factsheet is for regulated bodies. It explains how we will deal with whistleblowing concerns reported to us by staff or governing body members.

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.

We have published a separate [factsheet](#) for potential whistleblowers from the staff and governing body members of a regulated body.

What is whistleblowing?

Whistleblowing is the term commonly used to describe the situation 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. A whistleblowing claim is also known as a protected disclosure.

Whistleblowing is distinct from grievances and complaints.

- » **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.

We will not get involved in staff grievances against a regulated body; however, we may have a role where the circumstances leading to a grievance are of 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 regulated body.

Why 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.

Empowering staff and governing body members to report concerns at an early stage can help to ensure that:

- » problems 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;
- » tenants and other service users, staff, lenders, other stakeholders, and the public, continue to have confidence in the organisation.

An open and positive approach to whistleblowing will help to give staff, tenants, other service users, and the public, confidence that your organisation is well managed and accountable. The fact that your organisation welcomes and takes whistleblowing seriously may also help to deter any wrongdoing.

Protection for whistleblowers

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. Whistleblowers making a protected disclosure have a right not to suffer any detriment. This means they should not be treated less favourably for making the disclosure and a claim may be brought to the Employment Tribunal if they are treated less favourably and 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 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 raised 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 an RSL to take any concerns raised seriously and look properly into the matter.

Whistleblowing to the Scottish Housing Regulator

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

Many people who have blown the whistle have done so because they have a strong sense that something they have seen or heard in their workplace is not right, ethical, or compliant with workplace regulations and rules. Staff and governing body members should feel confident about reporting concerns internally. However, there may be occasions where they feel they cannot do this. This could happen, for example, if they have no confidence in the organisation's

willingness, or ability, to deal with the concerns, or they are worried about repercussions. In some cases they may have raised a concern internally but the organisation failed to deal with the concerns appropriately. In these situations staff and governing body members may contact us.

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. Regulated bodies should therefore ensure that their whistleblowing policy also makes it clear that staff can appropriately report concerns to us and that they should not suffer any detriment for doing so.

What will the Scottish Housing Regulator do?

Our information note [How we Work](#) explains in more detail how we will work with RSLs when we need to deal with potentially serious issues. Where the concern is about a local authority we will agree an appropriate response with Audit Scotland.

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

We will ask a whistleblower whether they have reported their concerns internally. Where possible we will ask them to provide evidence to substantiate their concerns and we will examine any evidence brought to us. We might 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 regulated body has dealt with the matter appropriately, or we may consider the matter to be vexatious or frivolous.

Where we consider that there needs to be an investigation 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 regulated body the best approach to establishing the facts. We will set out in writing the issues to be investigated and the agreed approach.

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

- 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.

Where we consider regulatory engagement with an RSL is necessary then we will publish an engagement plan which will explain the reasons for, and nature of, our engagement.

Where we need to engage with a regulated body about allegations we will do so in confidence. We will tell the regulated body as much as we can about the allegations but will not 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. So we will not provide any more detail about the whistleblowing concerns after the case is concluded than we did initially to the regulated body.

More advice and support

Protect

Protect is an independent charity which gives advice about whistleblowing.



Tel: 020 3117 2520



(Open Monday to Friday)



website: www.protect-advice.org.uk

Audit Scotland

Audit Scotland, the Accounts Commission and the Auditor General are prescribed persons under PIDA.



0131 625 1854



Website: www.audit-scotland.gov.uk

Employers in Voluntary Housing (EVH)

EVH provides support to the governing bodies of not for profit and voluntary organisations in all aspects of their role as an employer.



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Website: www.evh.org.uk

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