

**The Postal Services Commission**

**Postcomm**  
**Whistleblower's Policy**  
January 2006

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**(v2)**

# PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING)

## Introduction

1. The Public Interest Disclosure Act 1998 (PIDA) is commonly referred to as the whistleblowing legislation. It came into being because of a series of well documented incidents. It was designed as a framework to enable workers<sup>1</sup> to make disclosures, which are in the public interest, by giving him or her protection from victimisation by their employer.<sup>2</sup>
2. The PIDA came into force on 2nd July 1999. It amends the Employment Rights Act 1996. The PDA creates a framework for whistleblowers across private and public sectors by protecting workers who meet the tests laid down in it for making disclosures of certain information which is in the public interest. It also allows such individuals to bring a legal claim for victimisation.
3. The PIDA encourages disclosures to the employer through a clearly defined process. Only the simplest test needs to be satisfied for the protection to apply when the disclosure is made to the employer. There are several benefits to an organisation in having whistleblowing procedures in place which are known to and understood by all of its employees:
  - They help deter malpractice;
  - They increase the likelihood of senior management being alerted to problems in time to prevent serious damage; and
  - They reduce the likelihood that the reasonableness test<sup>3</sup> will be satisfied should employees make a “wider disclosure”, for example to the media.

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<sup>1</sup> The definition of ‘worker’ in the PIDA includes, but is not limited to, an individual who has entered into a contract of employment.

<sup>2</sup> The definition of ‘employer’ in the PIDA includes the person who substantially determines or determined the terms on which an agency worker is or was engaged and, in the case of trainees on work experience or vocational schemes, the person providing the work experience or training.

<sup>3</sup> Note the PIDA does not lay down the reasonableness test for blowing the whistle to a prescribed body such as Postcomm.

4. To qualify for protection for disclosure the worker must:

- Be acting in good faith
- Have reasonable grounds for believing the information disclosed indicates the existence of one of the problems itemised above

The worker making the disclosure must do so in the belief that it shows one or more of the following:

- That a criminal offence has been committed, is being committed, or is likely to be committed;
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject;
- That a miscarriage of justice has occurred, is occurring, or is likely to occur;
- That the health and safety of any individual has been, is being, or is likely to be damaged. It must indicate a greater danger that is associated with the normal use of the process /product, or a danger that is not usually associated with it;
- That information tending to show any matter falling within any one of the preceding paragraphs has been, is being, or is likely to be deliberately concealed.

5. Postcomm will always be ready to receive information, whether from the Postal Industry or Consumers: this is integral to our role as a regulator. We are also ready to receive any information from staff on any activity they feel is an inappropriate malpractice by other employees.

## **Confidentiality**

6. Postcomm treats all disclosures made through the whistleblowing policy in a confidential and sensitive manner. The identity of the individual making an allegation is kept confidential on request as long as it does not hinder or frustrate the investigation.

## **Independent Legal Advice**

7. If you are unsure whether to use this procedure, or if you want advice at any stage, and feel that you can only get the answers by disclosing the information, you have three options. You may obtain legal advice:

- a) independently from a lawyer;
- b) from a lawyer at Public Concern at Work. This is an independent charity and is a leading authority on public interest whistleblowing. They can be contacted on 020 7404 6609. Their web address is [www.pcaw.demon.co.uk](http://www.pcaw.demon.co.uk) or [www.pcaw.co.uk](http://www.pcaw.co.uk) their email addresses for advice are [helpline@pscaw.demon.co.uk](mailto:helpline@pscaw.demon.co.uk) or [whistle@pcaw.demon.co.uk](mailto:whistle@pcaw.demon.co.uk) ; or
- c) from a lawyer who is referred to you by a trade union official from the nominated list which is available from the Trade Union Side office. A nominated trade union official will advise you on how to proceed in general terms but will not be able to give you legal advice.

## **Timescales**

- 8. Due to the varied nature of potential allegations under the Whistleblowing policy and Postcomm statutory and published policies it is not possible to lay down precise timescales for investigations. Postcomm's Chief Investigation Officer will ensure that the investigators will use all reasonable speed to complete any inquiries that need to be undertaken as expeditiously as possible without affecting the quality and depth of the investigation.

## **Further Concerns**

- 9. If the investigation finds that the allegations are unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome, staff may report the matter in writing to the Civil Service Commissioners, 35 Great Smith Street, London, SW1P 2BQ.
- 10. Postcomm also recognise the lawful rights of complainants to make disclosures to prescribed persons such as the Health & Safety Executive and the National Audit Office, or where justified, to other bodies.

## **Postcomm's Policy**

11. The Policy will have two clear separate processes to be followed, each dependant on the information that is being supplied.

### **Part 1**

will be for any information that is being supplied with regard to malpractice within Postcomm or by Postcomm staff.

### **Part 2**

will be for any information that is being supplied on Postal Industry activities and has a bearing on the Regulatory duty

12. The full Postal Services Commission Whistleblowers Policy will be published and available on our website [www.psc.co.uk](http://www.psc.co.uk)

Postcomm employees can also view the policy through Postcomm's own intranet.

## **PART 1**

### **Postal Services Commission – Internal Matters**

#### **Introduction**

13. The Civil Service Code sets out staff's rights and obligations as a civil servant to report breaches of the Code or unlawful activity by others. A member of staff may want to report a breach but fears either being branded a troublemaker or losing their job. A new law, the Public Interest Disclosure Act 1998 which came into force on 2 July 1999 protects individuals who 'blow the whistle' by reporting bad practice at work. This policy sets out Postcomm's internal procedures for whistleblowing in the context of the Civil Service Code and the Act. The policy is complementary to the Code and tells staff how to raise concerns about serious misconduct by others for Postcomm to investigate.

#### **General Principles**

14. Postcomm is committed to the highest standards of openness, probity and accountability. An important aspect of accountability and transparency is a mechanism to enable staff at Postcomm to voice concerns in a responsible and effective manner. In the normal course of events, staff are encouraged to raise their concerns through the grievance procedure. However, staff should use the procedure set out below to raise their concerns, if they discover information which they believe shows serious malpractice or wrongdoing, and where one of following applies:

- Where the position of a person or persons about whom concerns are to be raised may make it difficult to use the formal grievance procedure; or
- The individual feels that their own position at Postcomm might be jeopardised if they raise the concern through the normal grievance procedure; or
- The usual grievance procedure is, for some other reason, inappropriate.

15. It is important to note that this policy is intended to assist members of staff who believe they have discovered malpractice or impropriety. It is not designed to question financial or policy decisions taken by Postcomm, nor should it be used to reconsider any matter which has already been addressed through the grievance, disciplinary or other procedures.

## **Matters covered by the policy**

16. The whistleblowing policy provides a way for staff to raise concerns about malpractice or impropriety which are in the public interest. These concerns could include:

- Financial malpractice or impropriety or fraud;
- Failure to comply with a legal obligation or statute;
- Danger to Health & Safety or the environment;
- Criminal activity;
- Improper conduct or unethical behaviour;
- Attempts to conceal any of the above.

## **Protection for staff**

17. Staff should be aware that sometimes the investigatory process reveals the source of the disclosure and the individual making the disclosure may need to provide a statement as part of the evidence required. It is not possible to keep a disclosure confidential when there is an overriding reason to waive confidentiality, for example if police involvement is required.
18. Postcomm encourages individuals to put their name to any disclosures they make. Anonymous allegations are not automatically disregarded but, given the safeguards for those making allegations under this procedure, they are usually less powerful than those from named members of staff.
19. Provided the allegation is made in good faith, and staff reasonably believe that the information they have disclosed shows malpractice or impropriety, and they have made the disclosure to the appropriate person (in accordance with the procedure set out below) the employment position of the member of staff is not disadvantaged because they have made the allegation.
20. Individuals should exercise due care to ensure the accuracy of the information they disclose. If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation no action will be taken against the individual. However, if the investigation shows, or it subsequently becomes clear, that the allegation has been made maliciously or vexaciously, disciplinary action may be taken against the individual.

## Procedure

21. The individual should say if they want to raise the matter in confidence. Postcomm encourages staff to make contact confidentially rather than anonymously as it will be easier to investigate the matter.
22. **Step 1.** If a member of staff has a concern about malpractice Postcomm hopes they will feel able to raise it first by talking or writing to Postcomm's Whistleblowing Officer, the Director, Resources.
22. **Step 2.** If they feel unable to raise the matter with the Director, Resources they should consult the Chairman of Postcomm's Audit Committee, Commissioner Tony Cooper.
23. **Step 3.** If the above channels are not appropriate, or the matter is so serious they feel they cannot discuss it with any of the above, it is open to staff at any time to discuss the matter with their Trade Union representative if they are unsure whether to use this procedure or they want independent advice on whether an outside body such as regulators or the police should be contacted.

## Our assurances

24. If a member of staff raises a genuine concern, they will not be at risk of suffering any form of retaliation as a result. Postcomm will not tolerate the harassment or victimisation of anyone raising a genuine concern. We recognise that they may want to raise a concern in confidence under this policy. If they ask a whistleblowing officer to protect their identity by keeping their confidence, it will not be disclosed without the consent of the member of staff. If the concern cannot be resolved without revealing their identity, for example because evidence is needed in court, Postcomm will discuss with them whether and how we can proceed. Anonymous complaints are much more difficult to investigate and make it more difficult to protect the complainant's position and tell them what is happening.
25. Just as Postcomm will seek to protect those who raise concerns in

good faith, so it will seek to protect those against who claims are made which turn out to be unfounded. A concern which is made in good faith may turn out to have no basis in reality and both parties would be protected equally. However, if a claim is found to be vexatious or malicious, Postcomm will take disciplinary action against anyone making such a claim.

## **How the matter will be handled**

26. Once a member of staff has told Postcomm of their concern, the Whistleblowing Officer will look into it to assess initially what action should be taken. The person will be told:

- who is handling the matter
- how they can contact them
- whether their future assistance may be needed
- if it is more appropriate for them to use the grievance procedure
- if they request it, a written summary of their concern and how it will be handled will be provided.

27. Postcomm may ask the person what they think should be done to resolve the matter. If they have any personal interest, they should report it at the outset. They should note however, that the Whistleblowing Officer may not be able to tell them the precise action taken where this would infringe a duty of confidence owed to someone else. The process will be as open as possible subject to these constraints.

## **Investigation procedure**

28. Postcomm recognises that it is not always possible to follow exactly the same procedure as circumstances change in each case. However, the investigation generally follows the steps set out below:

- the investigator obtains full details of the allegation;
- an initial assessment of the allegation is made, and some initial background evidence may be obtained to substantiate the allegation;
- appropriate legal advice will be sought to ensure that the investigation procedure itself and informing the member of staff against whom the allegation is made will not result in a Proceeds of Crime Act (2002) 'tipping off' offence. The following steps are all subject to this legal advice;
- the investigator informs the member of staff against whom the

allegation is made as soon as is practically possible of the allegation, the what evidence is supporting it, and that member of staff is allowed to comment;

- the member of staff is informed of the process of the investigation and is informed that on completion of the inquiry it is their right to be accompanied by a trade union or other representative at an interview as part of the investigation;
- a full investigation is then undertaken with the assistance, where appropriate, of other individuals/bodies;
- before the investigation is concluded and a report made, the member of staff will be interviewed and all the evidence presented to them in order that they may give their account;
- the allegations and response given are fully investigated by the investigator;
- the investigator considers whether to involve Postcomm's auditors or the police;
- the investigator concludes the investigation by writing a report setting out findings in relation to the allegation and containing a conclusion as to the validity of the allegation and a recommendation for further action. The report is then passed to the Chief Executive or the Chair of the Audit Committee who decides what action, if any to take. If the allegation is shown to be justified, appropriate procedures are used to take the matter forward as expeditiously as possible;
- the decision in relation to the allegation is set out in writing by the Chief Executive or Chair of the Audit Committee and if appropriate a copy is passed to Postcomm's auditors to enable a review of relevant procedures;
- the complainant is kept informed of the progress of both the investigation and subsequently of the final decision and any action to be taken.

## **Unsatisfactory outcome**

29. If the complainant is not satisfied that their concern is being properly dealt with by the investigator they may raise it in confidence with the Chief Executive or the Chair of the Audit Committee.

## **Part 2**

### **Postal Services Commission – Regulatory Matters**

#### **Introduction**

30. Postcomm is an independent regulator and a non-ministerial government departmental body. It was created by the Postal Services Act 2000 to further the interests of users of postal services.
31. It took up the role in November 2000. Our main tasks are to:
- seek to ensure the provision of a universal postal service at a uniform tariff
  - further the interests of users of postal services
  - license Royal Mail Group
  - control Royal Mail Group prices and its quality of service
  - license other companies wishing to enter the market
  - advise Government on developments in the Post Office network

#### **General Principle**

32. In order that Postcomm can continue to complete its tasks successfully it seeks any information that adds value to its functions. This includes any information that any person may wish to provide as a whistleblower. Any person who meets the criteria stated and the information that they wish to impart fits the specified descriptions in the preamble of this policy will be afforded every facility and confidentiality.

#### **Matters covered by the Policy**

33. The whistleblowing policy provides a way for any person to raise concerns about malpractice or impropriety which are in the public interest. These concerns could include:
- Criminal offences
  - Breach of licence conditions
  - Failure to comply with a legal obligation or statute
  - Improper conduct or unethical behaviour

## Protection of a Whistleblower

34. Postcomm will give full protection to any person who approaches Postcomm with information as a whistleblower. Only with the whistleblowers direct authority or on directions of a Court, will Postcomm disclose the identity of a whistleblower.

## Procedure

35. **Step 1:** Any person communicating to Postcomm, through whatever medium should be referred to the Chief Investigation Officer. Any anonymous information received should also be referred to the Chief Investigation Officer. (CIO).
36. **Step 2:** If the above channel is not appropriate, or the matter is so serious they feel they cannot discuss it with Postcomm, or they want independent advice on whether an outside body such as regulators or the police should be contacted, they should contact the independent charity, Public Concern at Work, details of which are shown earlier in this policy.

## Investigation Procedure

37. Postcomm recognises that it is not always possible to follow exactly the same procedure as circumstances change in each case. However, the investigation generally follows the steps set out below:
- the CIO will obtain full details of the allegation, as soon as is practicable, by speaking directly with the whistleblower, normally by phone;
  - the CIO will make an initial assessment of the allegation made;
  - the CIO will identify who is to lead on the formal meeting with the whistleblower;
  - the appointed investigators ( there will always be two investigators) will, make arrangements to meet the whistleblower at a neutral location identified by the whistleblower; i.e. a solicitors office, hotel lounge area, BUT NOT the whistleblower's or other person's home location or work premises;
  - a full meeting will then take place;
  - the investigators will then make a judgement, consulting with appropriate person at Postcomm, on the way forward;
  - the investigators will probably require and therefore request more specific information of the whistleblower;
  - a full investigation is then undertaken with the assistance, where

- appropriate, of other individuals/bodies;
- before the investigation is concluded a report is made for consideration by Postcomm's Legal Directorate who advise on how to proceed;
  - the investigators concludes the investigation by writing a report setting out findings in relation to the allegation and containing a conclusion as to the validity of the allegation and a recommendation for further action.
  - The report is then passed to the Chief Executive and Executive Board who decide what action, if any to take.
  - If the allegation is shown to be justified then it may be presented to the Commission for their decision on how to proceed.
  - The complainant will be kept informed of the progress of the investigation and subsequently of the final decision and any action to be taken.
  - Should at any time it be assessed that the information being supplied is not appropriate to Postcomm then the person supplying the information will be informed directly.