

FALKLAND ISLANDS GOVERNMENT

CONFIDENTIAL REPORTING “WHISTLE-BLOWING” PROCEDURE



**The Law and Regulation Directorate
Stanley**

Procedure Dates

Procedure supported by ExCo: 60/16 22nd March 2016

Procedure extant from: 1st July 2016

Procedure review date: March 2018 for July 2018 publication

Responsible officer for review: Attorney General

Confidential Reporting ('Whistle Blowing') Procedure

Foreword

The Falkland Islands Government encourages any officer or member of the public who has a concern about Government to bring it to our attention.

FIG have a range of policies and procedures for dealing with matters of concern for example - with the quality of the service provided (Complaints procedure) or for FIG staff members their treatment in the workplace (Grievance procedure) or fraud and corruption prevention (Anti-fraud and Anti-corruption procedures).

Some matters may be so serious that a person is concerned about raising it for fear of repercussions or reprisals. The Government recognises that providing an environment where people can come forward and raise serious and sensitive matters is in the public interest and can save lives, protect assets and prevent crime.

With this in mind, Executive Council has made a number of commitments about how the Government will respond if matters are raised under this policy The Government's Policy commitments to whistle-blowers are:

Policy 1

The Government encourages 'disclosures' of information from the public or its employees which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following serious matters:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged; or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed.

Policy 2

All Government employees are expected to raise concerns which fall into the categories identified in Policy. If an Officer is aware of something which would fall Policy 1 and does not raise it, when the

matter is subsequently discovered, the presumption may be that they are complicit in any wrongdoing discovered.

Policy 3

The Government will ensure that any person who makes a disclosure in accordance Policy 1 will be protected from suffering any disadvantage or detriment from the Government as a consequence of making that disclosure.

In the furtherance of Policy 3:

- (a) a government employee who receives this information must take steps to protect the identity of the person who has disclosed the information. Failure to do so on their part could amount to a disciplinary offence; and
- (b) any Government employee who takes (or fails to take an action) with the intention of disadvantaging or discriminating against a person who has made a disclosure opens the Government up to being sued. Such action, (or inaction) will be considered as falling into the disciplinary category of 'gross misconduct' and may lead to the employee's dismissal

The Government's Confidential Reporting (Whistleblowing) Policy puts in place protections for anyone who raises serious or sensitive issues in good faith.

The policy is not to be used to address disputes about individual circumstances relating to an officer's terms and conditions of service or to make a general complaint about customer service or Government policy.

Falkland Islands Government

Confidential Reporting ('Whistle Blowing') Procedure

1. Introduction

The Falkland Islands Government (the 'Government') is committed to the highest possible standards of openness, probity and accountability.

Encouraging genuine and necessary 'disclosures'

As a Government we seek always to work in the best interests of the public.

We recognise that individuals – whether they are members of the public or Government officers - may from time to time have genuine, serious and important concerns about how the Government is carrying out its functions or how government officers are behaving. It is in the public interest that people are prepared to come forward and let the Government know about their concerns so action can be taken.

To support anyone who does this we must create an environment where individuals with such genuine concerns can come forward without fear of potential reprisals or repercussions.

The Government recognises that individuals may feel that raising concerns is disloyal to colleagues, their team or their departments, and the Government's ambition is to ensure the highest standards in our delivery of public service. It is expected that every member of the Civil Service must demonstrate high standards of personal conduct in public. If we fall below these standards, matters must be investigated and action taken as necessary.

This policy is for the most serious matters. It is not for trivial matters or those which can be appropriately dealt with through other government procedures. Before using the policy please give careful consideration to whether the matter you are raising falls within the categories outlined in Policy 1 below.

Your protection

The Chief Executive and Executive Council are committed to this procedure and the policies that underpin it. Those who raise genuine concerns in good faith under this procedure will be protected from suffering any form of disadvantage on the part of the Government. Provided you are acting in good faith, even if it turns out that you have been mistaken about the matter/s you raise. This

assurance is not extended to someone who maliciously raises a matter they know is untrue or without grounds.

Your confidentiality

We will not tolerate the harassment or victimisation of anyone raising a genuine concern in good faith. However, we recognise that you may nonetheless want to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your name in confidence, we will not disclose it without your consent, (unless there is a legal obligation to do so – for example if the court orders us to do so). If the situation arises where we are not able to resolve the concern without revealing your identity, for instance because your evidence is needed in court, we will discuss with you whether and how we can proceed. In order not to jeopardise any investigation into the concern you have raised you are expected to keep the fact that you have raised a concern, the nature of the concern/s and identity of those involved, confidential.

Anonymity

We will consider anonymous reports. However, if you do not tell us who you are, it will be much more difficult for us to look into the matter or to protect your position or to give you feedback.

2. Policy Commitments

Policy 1

The Government encourages ‘disclosures’ for information from the public or its employees which in the reasonable belief of the person making the disclosure, tends to show one or more of the following:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged; or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed.

Policy 2

All Government employees are expected to raise concerns which fall into the categories identified in Policy . If an Officer is aware of something which would fall Polcy1 and does not raise it, the presumption will be that they are complicit in any wrongdoing discovered.

Policy 3

The Government will ensure that any person who makes a disclosure in accordance Policy 1 will be protected from suffering any disadvantage or detriment from the Government as a consequence of making that disclosure.

In the furtherance of Policy 3:

- (a) a government employee who receives this information must take steps to protect the identity of the person who has disclosed the information. Failure to do so on their part could amount to a disciplinary offence; and
- (b) any Government employee who takes (or fails to take an action) with the intention of disadvantaging or discriminating against a person who has made a disclosure opens the Government up to being sued. Such action, (or inaction) will be considered as falling into the disciplinary category of 'gross misconduct' and may lead to the employee's dismissal

3. Aims And Scope

This policy aims:

- to give people the confidence to raise serious concerns;
- to provide an avenue to raise those concerns and to ensure a response is given;
- to reassure people that they can voice their concerns without fear of victimisation, discrimination or disadvantage in their employment, if they have done so in good faith.

This policy does not:

- cover any matters that should properly be handled under the Government's Corporate Complaints policy;
- override the Disciplinary or Grievance Procedure; or
- protect anyone acting in bad faith.

4. Who Can Raise a Concern?

Anyone. The most important aspect of this policy is that anyone who has information can come forward - members of the public, suppliers, contractors and employees.

5. The Responsible Officer

The Government's monitoring officer, the Attorney General, has overall responsibility for the maintenance and operation of this policy. The Attorney General will ensure that any investigation progresses efficiently and effectively. The Attorney General also is responsible for maintaining a log of disclosures and investigations made under this policy and the outcomes. The Attorney General is further responsible for reporting, as necessary, to Executive Council and for providing the basic information for inclusion in the Annual Governance Statement. The recording and reporting procedure will be in a form that ensures the confidentiality of the discloser.

6. Confidentiality

All concerns will be treated in confidence and every effort will be made to protect the identity of the person raising the concern (the '**discloser**'). The presumption will be that the discloser's identity should be protected and it will not be disclosed without the discloser's permission unless a court order directs the government to disclose this information.

However, the discloser will usually need to provide a statement and will be expected to co-operate fully with the investigation and disclose all relevant information.

The discloser also has a responsibility to keep confidential the fact that a concern has been raised, and not to discuss the matter with anyone other than the Attorney General and the person to whom the disclosure was provided (if different).

7. Anonymous Allegations

This policy aims to encourage disclosers to put their name to their concerns and to take advantage of the protections afforded to them, as anonymous allegations may be more difficult to investigate.

However, if concerns are received anonymously, they will be investigated in accordance with this policy unless the Attorney General in consultation with the relevant Peer Director agrees there is insufficient evidence to proceed to an investigation.

8. Untrue Allegations

If a concern is raised in good faith but the complaint is found to be mistaken (not supported by the facts) or is based on a perception rather than a fact and this is subsequently confirmed by investigation, no action will be pursued against the discloser.

If, however, an allegation is made in bad faith e.g., maliciously, or for personal gain, or where the person knows the complaint is untrue, disciplinary or legal action may be taken against the discloser. Bad faith allegations will be taken into account under the consideration of vexatious complaints as discussed in Appendix 4 of the Government's Corporate Complaint policy.

9. How To Raise a Concern

Members of the public and Government employees may raise a concern with:

- their line manager or:
- the Attorney General
- the Financial Secretary
- the Chief Internal Auditor

If you share your concern with your MLA, they will refer the matter to one of the officers listed above to investigate. All concerns raised under this procedure are logged.

10. What Will Happen Next?

The person who received the disclosure will normally within 3 working days:

- take steps to record the nature of the disclosure and available evidence from the person who has made the disclosure.
- inform the Attorney General so that the matter may be logged.(unless the matter relates to the Attorney General in which case a separate log will be kept)
- consider if the complaint is correctly one to be considered under this policy and, if deemed not, to direct the person to the relevant government procedure
- write to the person who has made the disclosure acknowledging its receipt.

The person who received the information can seek support and assistance from any of the Government officers listed in section 10 and from the Human Resources Department, if necessary.

Government Officers may wish to obtain assistance in making a complaint from a Trade Union. If disclosures are made in person, the person making the disclosure may be represented or accompanied by a Trade Union representative or fellow officer.

Advice is also available from the Falkland Islands Citizens Advice Bureau and independent UK charity public concern at work <http://www.pcaw.org.uk/>.

11. How The Government Will Respond

The action taken by the Government will depend on the nature of the concern.

Where appropriate, the matters raised may:

- be investigated by the government officers or other appropriate person
- be referred to the external auditor
- be referred to the police
- form the subject of an independent inquiry.

To ensure decisions are based on fact a preliminary investigation will be carried out to decide whether a full investigation is appropriate and, if so, what form it should take.

Concerns or allegations which (having been considered with the Attorney General) are not considered to be suitable for this procedure and which fall within the scope of specific procedures (for example, Grievances or Anti -fraud and Anti-corruption), will normally be referred for consideration under those procedures.

It should be noted that some concerns may be resolved by agreed action without the need for a full investigation. Equally some issues may be investigated without the need for initial action. If urgent action were required, this would be taken before any investigation is conducted.

12. Preliminary Investigation

The person who received the complaint will meet with the Attorney General and the Financial Secretary to review the matter and make arrangements for a preliminary investigation.

The Chief Executive will be informed about the intention to commence a preliminary investigation.

Usually two officers will be appointed to carry out the preliminary investigation who will either be Corporate directors or appointed from amongst the staff of the Attorney General's or Financial Secretary's Directorates or from the Human Resources Department.

No one who is implicated in the matter to be investigated will be involved in the management of the investigation.

Care will be taken when carrying out preliminary investigations to:

- protect the identity of the discloser and the disclosure.
- to protect evidence and keep it secure and confidential.
- to record the information.

13. Full Investigation or Official Enquiry

If a full investigation or official enquiry is merited the Chief Executive will direct the form and nature of that enquiry, in consultation with the investigators, the Attorney General and the Financial Secretary. The advice of the Human Resources Department may also be obtained.

No one who is implicated in the matter to be investigated will be involved in managing such an enquiry.

The formal investigation will be conducted to ensure a full record of the evidence is maintained and that the findings of the investigators are recorded.

14. Possible Outcomes of Investigation

Dependent on the nature of the complaint and evidence, possible outcomes include:

- (a) no case to answer therefore case closed;
- (b) informal disciplinary action, if the offence is of a minor nature e.g. counselling, advice and/or training;
- (c) formal disciplinary action, which may include suspension and, ultimately,
- (d) referral to the police or other investigating authorities.
- (e) A change in working practices may be introduced or additional training and development may be given to improve the delivery of a service

15. What is The Discloser Told?

The mechanisms of this policy and procedure is that all disclosures once made will be taken forward by the Government as appropriate. The person who made the disclosure will be kept informed

about progress as appropriate A discloser will be advised in writing when any investigation is concluded with detail of the outcomes in general terms.

16. Appeal

Given the nature of matters covered by this policy the person who makes a disclosure has no right of appeal about the outcome.

If however, they are unhappy about the way they have been treated during the process or the way the investigation has been handled they may seek redress through the Government's Grievance procedure (if an employee) or the appeal procedures in the Government's Corporate Complaints Policy.

17. Assurance Mechanism

Members of the public can be assured that the systems are working properly as a result of the following mechanisms.

- (a) a range of senior officers are involved at key stages in the process so they are all aware of progress. Key officers can be excluded from the process if there is a conflict of interest.
- (b) the operation of the procedure (but not the identity of the disclosers) are subject to internal audit and the number of time the procedure is evoked is reported in the Government's annual Governance statement. The Governance statement is reviewed by the Standing Finance Committee during public session.
- (c) senior officers have direct access to Executive Council, the police and other investigatory authorities and the Governor personally if matters have to be escalated.