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OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER

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Whistleblowing Policy

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OISC Whistleblowing Policy

1. Introduction

- 1.1 All of us at one time or another have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about unlawful conduct, malpractice or dangers to the public or the environment, it can be difficult to know what to do.
- 1.2 The Government introduced new legislation in the form of the Public Interest Disclosure Act 1998 to help improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker. A summary of the key provisions of the Act can be found in Annex 1 to this Policy.
- 1.3 You may be worried about raising such issues or may want to keep the concerns to yourself, perhaps feeling it's none of your business or that it's only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the organisation. You may decide to say something but then find that you have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next.
- 1.4 The OISC has introduced this procedure to enable you to raise your concerns about possible malpractice at an early stage and in the right way. We would rather that you raised the matter when it is just a concern rather than wait for proof.
- 1.5 If something is troubling you which you think we should know about or look into, please use this procedure. If, however, you are aggrieved about your personal position, please use the Grievance Procedure – which you can get from your Line Manager or Human Resources Manager. This whistleblowing procedure is primarily for concerns where the interests of others or of the organisation itself are at risk.

If in doubt – raise it!

2. Our Assurances to You

Your safety

- 2.1 The Commissioner and his Senior Management team are committed to this policy. If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of retribution as a result. Provided you are acting in good faith, it does not matter if you are mistaken. Of course we do not extend this assurance to someone who maliciously raises a matter they know is untrue.

Your confidence

- 2.2 We will not tolerate the harassment or victimisation of anyone raising a genuine concern. However, we recognise that you may nonetheless want to raise a concern in

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confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. 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.

2.3 Remember that 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. Accordingly, while we will consider anonymous reports, this policy is not appropriate for concerns raised anonymously.

3. How we will handle the matter

3.1 Once you have told us of your concern, we will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation. We will tell you who is handling the matter, how you can contact them and whether your further assistance may be needed. **If you request it, we will write to you summarising your concern and setting out how we propose to handle it.**

3.2 When you raise a concern you may be asked how you think the matter might best be resolved. If you do have any personal interest in the matter, we do ask that you tell us at the outset. If your concern falls more properly within the **Grievance Procedure**, we will tell you.

3.3 While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take where this would infringe a duty of confidence owed by us to someone else or prejudice possible proceedings.

4. How to raise a concern internally

Step one

4.1 If you have concern about malpractice, we hope that you will feel able to raise it first with your Line Manager. This may be done orally or in writing.

Step two

4.2 If you feel unable to raise the matter with your manager, for whatever reason, please raise the matter with:

Position Human Resources Manager

Contact details 020 7211 1535 *or*

Position Deputy Commissioner

Contact details 020 7211 1515

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Please say if you want to raise the matter in confidence so that they can make appropriate arrangements.

- 4.3 If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact:

Commissioner John Scampion

Contact details 020 7211 1600

5. Independent advice

- 5.1 If you are unsure whether to use this procedure or you want independent advice at any stage, you may contact:

- *if applicable, your union*
or
- the independent charity Public Concern at Work on 020 7404 6609. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.
- the National Audit Office Whistleblowing helpline on 020 7798 7999
- the Office of the Civil Service Commissioners on 020 7276 2613

6. If you are dissatisfied

- 6.1 If you are unhappy with our response, remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that we will respond to all matters in the way that you might wish, we will try to handle the matter fairly and properly. By using this policy, you will help us to achieve this.

The Public Interest Disclosure Act 1998

1. Summary of the Act

- 1.1 The Public Interest Disclosure Act 1998 was a Private Member's Bill introduced by Richard Shepherd MP. It received strong support from the Government and all major interests.
- 1.2 The Act applies to the public, private and voluntary sectors. It aims to improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker.
- 1.3 The Act, which takes effect by amending the Employment Rights Act 1996, sets out the circumstances in which a disclosure of information may be protected. In brief, to obtain that protection, workers must act reasonably and responsibly. An employee who makes a rash disclosure (to the media for example, of a matter which could and should have been raised internally) will not be protected. Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

2. Malpractice

- 2.1 The Act applies to people at work raising genuine concerns about crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover-up of any of these. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

3. Individuals covered

- 3.1 In addition to employees, it covers other workers, trainees, agency staff, and homeworkers. The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, the army or police officers.

4. Internal disclosures

- 4.1 A disclosure to the employer will be protected if the whistleblower has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the malpractice, this same test applies to disclosures made to it.

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5. Legal advice

- 5.1 To ensure that people concerned about malpractice can get independent and confidential advice about how the Act works, disclosures to lawyers are protected.

6. NHS and quangos

- 6.1 To promote accountability in public life, the same protection as for internal disclosures applies where someone in the NHS or a public body blows the whistle direct to the sponsoring department. There is no requirement that such concerns should be raised internally first.

7. Regulatory disclosures

- 7.1 Special provision is made for disclosures to bodies which are prescribed under the Act. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and, additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

8. Wider disclosures

- 8.1 Wider disclosures (e.g. to the police, the media, MP's, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and the following two provisions are met:

- 8.2 First, the concern must have been raised with the employer or a prescribed regulator, unless;

- (a) the worker reasonably believed s/he would be victimised if s/he did so;
- (b) there is no prescribed regulator and the worker reasonably believed there would be a cover-up; or
- (c) the matter was exceptionally serious

- 8.3 If one of the above preconditions is met and the tribunal is satisfied that the disclosure was reasonable, the whistleblower will be protected.

- 8.4 In deciding the reasonableness of the disclosure, the tribunal will consider the identity of the person it was made to, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or prescribed regulator, the tribunal will also consider the reasonableness of their response. Finally, if the concern had been raised with the employer, the tribunal will consider whether any whistleblowing policy in the organisation was or should have been used.

9. Full protection

- 9.1 Where a worker or employee is victimised for blowing the whistle in breach of the Act, he can bring a claim at an employment tribunal. The usual limits on awards in

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employment law will not apply under the Public Interest Disclosure Act. Workers and employees who lose their jobs in breach of the Act will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

- 9.2 Where an employee (but not other workers) is dismissed for blowing the whistle, s/he may apply within 7 days for an interim order. Where the tribunal considers that the employee is likely to win at the full hearing, it will order that s/he keeps his job or is paid his wages pending the full hearing. Apart from being ineligible for interim relief, workers who are not employees cannot seek re-employment where their contract has been terminated in breach of the Act. However, as such workers will be entitled to recover their full losses at an employment tribunal, re-employment may well be an option the employer may wish to consider in the event of a claim under the Act.

9.3 Criminal offences

Where the disclosure of that information was itself a criminal offence, such as under the Official Secrets Act, the whistleblower will not be protected under this Act if he has or would have been convicted of the offence.