

# Zesk Limited

## Disclosure of Information (whistle-blowing)

### LEGISLATION PURPOSE

The Public Interest Disclosure Act (1999) provides a responsible worker with the right not to suffer detriment, if speaking out about crime, fraud, dangers to health and safety or risks to the environment. Such workers are encouraged to sort things out first and foremost internally and so regulate the situation in which it is necessary to raise concerns externally.

A sensible security based procedure provides valuable protection for both the CLIENT and employees, boosting public confidence in the ORGANISATION and leads to a shared sense of responsibility among all staff for identifying impropriety.

### INTRODUCTION

This procedure enables any member of staff to inform management about any concerns they may have about serious malpractice, fraud or corruption. These concerns can be initially raised in a safe and confidential environment and the information taken seriously. This procedure also includes stages whereby the member of staff can receive advice about possible consequences before any formal Investigation commences. The procedure also balances the right of any individual to speak freely but also protect staff against false and malicious accusations.

This procedure is compatible with other security procedures and cannot be used for raising grievances about a personal employment situation.

### DEFINITION OF TERMS

Whistle-blowing has been defined as the disclosure of information by an employee of confidential information relating to some danger, fraud or other illegal or unethical conduct connected with the workplace. In this procedure, the employee making such a disclosure (termed the Discloser hereafter) must reasonably believe the information indicates one of the following has or is likely to occur:

- a criminal offence
- a failure to comply with a legal obligation
- a miscarriage of justice
- a breach of health and safety regulations
- damage to the environment
- the concealing of information falling within any of the preceding categories.

Furthermore the Discloser has statutory protection in law against being treated detrimentally in the workplace, provided the disclosure is compatible with the above definition, and the Discloser:

- is acting in good faith
- believes the allegation to be substantially true
- is not acting for personal gain

The disclosure should be made in the first instance to the organisation (see procedure) and not to any external person or organisation unless the Discloser can justify this is reasonable in the circumstances, e.g. disclosing information to a legal adviser to seek legal advice.

Raising unfounded malicious allegations or disclosing information externally, so bringing the organisation into disrepute, will be considered an abuse of this process and will be treated as a disciplinary offence.

# **THE PROCEDURE**

## **1 Informal Stage**

The Discloser should informally discuss their allegation with the ORGANISATION, (if the allegation is against the organisation, the discloser should discuss the allegation with the Managing Director, at this stage and at stages 2, 3 and 4). This is a confidential discussion and the only record of the meeting will be a contemporary note made by the organisation. The Discloser will be invited to read and initial this note. The Organisation will keep this note on file for twelve months. The organisation will advise on whether the allegation complies with the definition of Whistle-blowing and seek to ascertain the reason for the disclosure. Advice will be given on the procedure and implications should the Discloser wish to take the allegation further.

## **2 Formal Stage**

Should the Discloser wish to pursue the matter, they must provide the organisation with a signed statement of their allegation. The organisation will issue an acknowledgement. The organisation will, within ten working days, formally discuss the matter in confidence with the Principal, Chairman or other appropriate person. The discloser will be named at this confidential meeting. The result of this meeting will be:

- (a) No further action required or
- (b) Organisation Investigation will take place and the Investigating Officer decided.

The Discloser will be informed by the Clerk in writing of the result of this meeting.

## **3 Organisation Investigation**

If an Investigation is required the organisation will formally request the Investigating Officer to commence this procedure. Unless required as part of the Investigation, the Discloser will not be named. The Investigation Report will be given to the officer who will re-convene the meeting from stage 2 to discuss the Report. The result of the meeting will be:

- (a) No further action required or
- (b) Organisation Disciplinary Hearing to be convened and the chair of the Disciplinary Hearing decided.

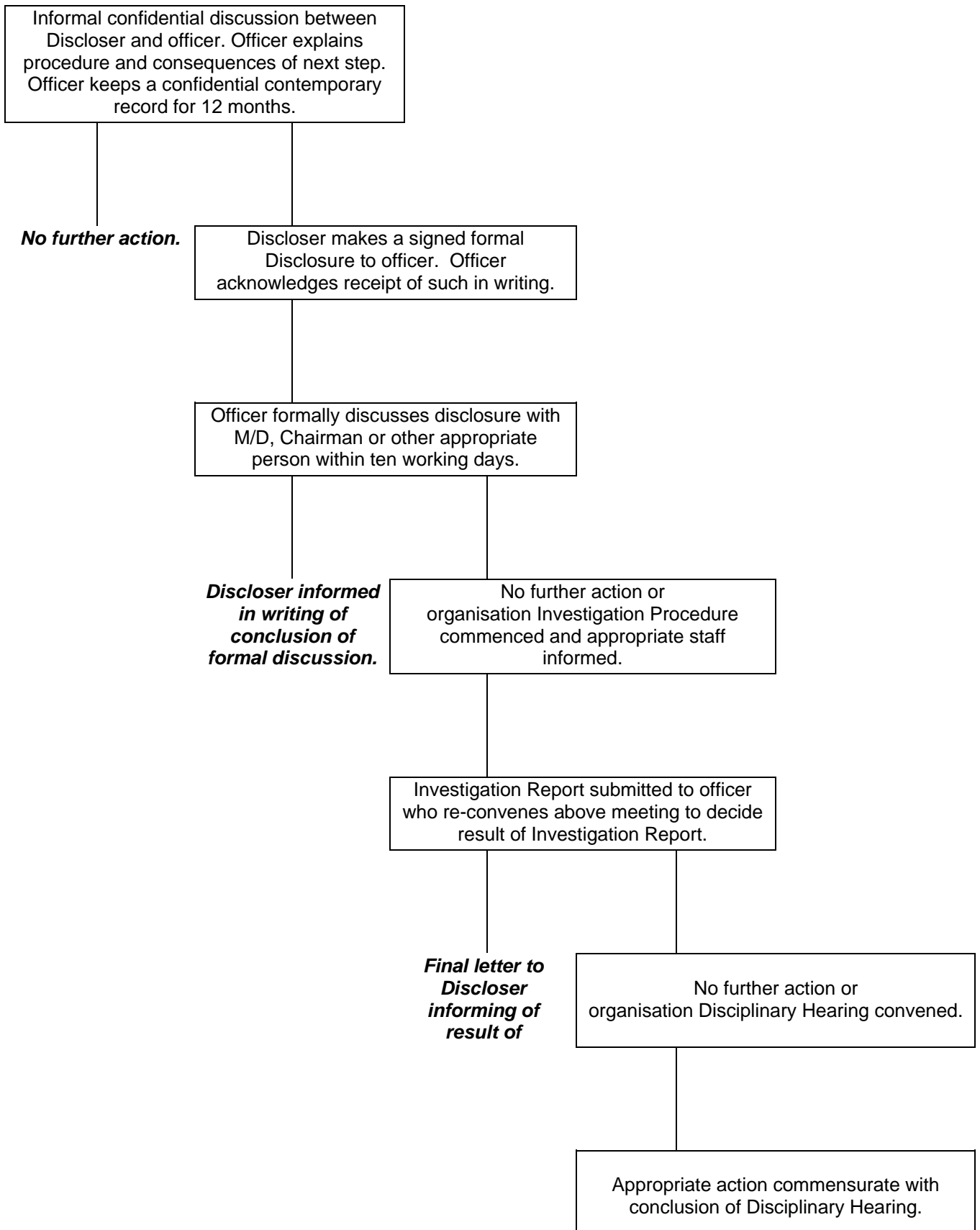
The Discloser will be informed by the organisation in writing the result of this meeting. There will be no further formal communication with the Discloser.

## **4 Disciplinary Hearing**

If a Disciplinary Hearing is required the officer will formally request HR to commence this procedure. Dependent on the result of this Hearing, appropriate action will be taken.

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# Procedure for Disclosure of Information



## **WHISTLEBLOWING DEFINITION**

Disclosure by employee (or professional) of confidential information relating to some danger, fraud, or other illegal or unethical conduct connected with the workplace, be it of the employer or fellow employees (Lord Borrie QC 1996)

## **GOVERNMENT**

Announced support - DTI Minister of State Ian McCartney believes schemes for disclosures lead to better, more widespread arrangements for raising and resolving issues of concern.

## **PUBLIC INTEREST DISCLOSURE BILL**

Failed to reach Statute in 95/96 due to lack of Parliamentary time. Revised version introduced in 97/98 by Richard Shepherd MP and sponsored by Public Concern at Work. PUBLIC INTEREST DISCLOSURE ACT (PIDA) received Royal Assent on 2 July 98 and is expected to come into force at the end of 1998. Designed to protect Whistle-blowers from detriment and unfair dismissal. Envisages new rights for workers to seek redress at Industrial Tribunals and expect substantial awards. Any resulting dismissal will be automatically unfair, there is no period of qualifying service and victimised whistleblower will be able to claim substantial compensation (which may be unlimited).

## **PURPOSE OF LEGISLATION**

Encourage employees (and quasi employees) to raise concerns internally initially and to regulate strictly the situation in which they may raise their concerns externally. Provide statutory protection for disclosure by a worker of information categorised as Qualifying Disclosure provided it is a Protected Disclosure made in accordance with statutory requirements. Confidentiality clauses attempting to prevent a disclosure in accordance with PIDA will be void.

## **WORKER**

Employee or quasi-employee (home-worker, agency worker, CROWNservant, self employed, work experience or contract worker).

## **QUALIFYING DISCLOSURE**

- Disclosure of information believed to indicate:
- Criminal offence
- Miscarriage of justice
- Damage to environment
- Breach of Health & Safety regulations
- Failure to comply with legal obligations
- Concealing information falling within proceeding categories.

## **PROTECTED DISCLOSURE**

Qualifying Disclosure becomes protected if worker acting in good faith follows one of six specified routes of disclosure:

- to employer via the responsible person in accordance with the employers procedure
- to a legal adviser in the course of obtaining legal advice
- to a prescribed person named by the Secretary of State such as the Funding Council
- to a Minister of the CROWN (where employer is an individual appointed by the Minister)
- in other cases where worker makes disclosure in good faith, reasonably believes allegation is substantially true, not acting for personal gain and meets one of following conditions:
  - believes they will be treated detrimentally if disclosure made to employer
  - there is no prescribed person and has reasonable belief evidence will be destroyed
  - where same disclosure has already been made to employer or prescribed person
  - exceptionally serious breaches to justify bypassing other procedures but worker must show:
    - they are acting in good faith
    - believes allegation is substantially true
    - not acting for personal gain
    - disclosure is of very serious nature
    - it is reasonable in the circumstances to make the disclosure

## **WHISTLEBLOWING PROCEDURE**

Allow staff appropriate internal and external avenues in which to raise concerns about malpractice.

Sensible procedures should boost public confidence in organisation and have positive effects in promoting a culture of openness and a shared sense of responsibility among managers and staff for identifying impropriety. They should:

- provide valuable protection
- make less vulnerable to complaints of victimisation by Whistle-blower
- able to take action against workers making external disclosures without reasonable grounds
- boost public confidence
- promote culture of openness
- generate shared responsibility for identifying malpractice

Workers encouraged to sort things out first and foremost with employer but will be protected from dismissal or detriment if in the last resort they take legitimate concerns to an outside body.

**CONCERNS MUST NOT BE**

Malicious, speculative, politically driven, personal battles, further own interest.

**CONCERNS MUST BE**

About public interest, law breaking, miscarriage of justice, breach of H&S, environmental protection, attempts to conceal misconduct.

**FURTHER QUESTIONS:**

Should Unethical Conduct be included ? In which case a Code of Ethics is required.

Consultation with Trade Unions

Staff Development

Is confidentiality sufficiently protected ?

Designated person - officer ?

Should Discloser have right of access to Governing Body if not satisfied ?

It is appropriate for Discloser to raise concern with external body if organisation finds concerns unsubstantiated  
- should this be stated and examples given of external bodies - Auditors, FEFC, MP, Councillor ?