

Whistleblowing Policy

Competition Service

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1 Introduction

The Competition Service (the Service) is committed to ensuring that all the money that it receives as grant-in-aid is spent in accordance with the authorisation given by Parliament, on the approved policies and strategies of the Service, and on appropriate support and services.

This document sets out the Service's policy on the control of fraud and suspected fraud within the organisation and by companies or persons contracted to the Service. Its purpose is to ensure any fraud is identified and investigated; to provide a safe mechanism for anyone who works for the Service to come forward and raise any concerns they have about any aspect of the Service's work; and to be able to do so without fear of detriment or reprisal.

This document covers:

- The identification of fraud;
- The attitude of the Service to fraud;
- Roles and responsibilities within the Service for the detection, control and investigation of fraud and suspected fraud;
- Suspected detriment.

2 Scope

This Policy applies to all permanent and temporary employees of the Service. Other individuals performing functions in relation to the Service, such as members and contractors, are encouraged to use it. The legislation also covers any person who undertakes to do or perform personally (or otherwise) any work or service for the Service, regardless of the nature of the contractual relationship between them.

3 Legislative Framework

The following statutes and statutory instruments, such as they apply, will, so far as reasonable, be taken into consideration when implementing this Policy and Procedure.

- Employment Rights Act 1996
- Public Interest Disclosure Act 1998
- Public Interest Disclosure Act (Prescribed Persons) Order 2014 SI 2014/2418
- The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013
- Enterprise and Regulatory Reform Act 2013

The Public Interest Disclosure Act 1998 (the Act), was introduced to protect individuals who 'blow the whistle' by reporting bad practice at work. Under the Act a member of staff can complain to an employment tribunal if they suffer any detriment or are dismissed as a result of 'blowing the whistle' about wrongdoing within an organization. Areas of misconduct that are covered by the Act include:

- A criminal offence that has been or is likely to be committed;
- Failure to comply with a legal obligation;
- Health and safety risks relating to any individual, including members of the public;
- Damage to the environment;
- A miscarriage of justice;
- Possible fraud or corruption; and
- Deliberate concealment of information relating to the above offences.

4 Defining and Identifying Fraud

Fraud encompasses a wide range of irregularities and illegal acts, all of which are characterised by intentional deception. Normally fraud involves intentional distortion of financial statements, accounting or other records. This is done in order to conceal the misappropriation of assets or the appropriation of other material gain to which the person or organisation is not rightfully entitled.

The Service recognised the potential for:

- Internal Fraud - That perpetrated by a member of staff, by a Board member, by a person serving on a committee of the Service or within bodies delegated to act on behalf of the Service.
- External Fraud - That perpetrated by someone outside with reference to support from the Service, by someone providing goods or services to the Service, or by someone otherwise contracted to the Service.
- Collusive Fraud - That committed by a number of people from inside and outside of the Service.

Frauds can be attempted or carried out in a number of ways. These include:

- Theft - The dishonest appropriation of property (e.g. cash, cheques, equipment or other property).
- Deception - Usually by the falsification of claims or documentation (e.g. internally for overtime, flexitime working, travel or subsistence expenses, on financial returns or reports).
- Unauthorised use of property of services paid for by the Service (e.g. internally the user of telephones, computers or stationery for private purposes).
- Irregularities in tendering for, supplying or pricing of property, goods or services (e.g. advantage gained from land, property, building service or goods being bought, sold or leased, or consultancy or professional services being contracted, without adherence to agreed procurement procedures, proper declarations relating to conflicts of interest, or considerations of market value and/or value for money).
- Corruption (e.g. receipt or payment of cash, receiving/giving other material advantage as an inducement).

5 Attitude of the Competition Service

The Service wants its members of staff to feel confident that they can expose wrongdoing without any risk to themselves.

The Service takes the most serious view of any fraud or attempt at fraud by members of the Service, its Board and its staff.

Staff involved in impropriety of any kind will be subject to the agreed disciplinary procedures, and subsequent prosecution if that is appropriate.

Board members or advisory members involved in fraud can expect to forfeit their position and be subject to prosecution if that is appropriate.

The Board will assure itself that the management and staff of any body acting on behalf of the Service take a similarly serious view of fraud or attempted fraud and have in place appropriate policies and procedures. Suspected serious fraud within such a body will usually lead to the suspension of payments, and a review of its status.

In all cases of proven fraud the Service will consider the appropriate repayments to be demanded, and restitution of money or property if necessary will be pursued through the civil courts.

The Service will at all times seek to act in line with the guidance given by the Department for Business, Energy & Industrial Strategy (BEIS) and other advice from time to time issued by HM Treasury and the National Audit Office (NAO).

6 Roles and Responsibilities

A culture of honesty, propriety and vigilance, which is seen to include individuals at all levels, is fundamental to managing fraud. All Service personnel need to be alert to the risk of fraud and irregularity and to report their suspicions to their line management. All personnel also have a role in limiting the scope for fraud by adhering strictly to procedures for processing of applications, for all financial matters including the handling of payments and receipts, for procurement of all goods and services, and for dealing with travel and subsistence and other claims.

Line managers should ensure that adequate internal control and management checks are in place and are carried out effectively. Line managers' responsibilities include identifying activities in their area that pose risks of fraud, theft or corruption, and developing procedures, including surprise checks, which are adequate to counter these risks. A number of units and personnel have specific responsibilities for the management of systems of fraud control and investigations, including:

1. CS Non-Executive Director

- For advising on and conducting disciplinary actions and procedures in individual cases.
- For providing advice to the Registrar as Accounting Officer and to the Board on the action to be taken in specific cases of fraud and suspected fraud.
- For providing guidance on procedures.

2. Registrar

- For the over-riding responsibility for the Register of Interests for both Board and staff.
- For the maintenance of logging of such interests and conflicts.

3. Audit and Risk Committee

- For reviewing the Service's policies for preventing and detecting fraud.
- For the effectiveness of the Service's internal control system.

4. Director, Operations

- For ensuring that accounting and reporting procedures are kept up to date and adhered to, throughout the Service.
- For establishing, maintaining and updating policy on fraud and reviewing procedures in the light of reported frauds.
- For maintaining a central log of all reports and allegations of fraud.
- For the receiving and recording of gifts and hospitality etc.
- For ensuring the provision of a secure and managed IT operating environment.
- For the development of IT policy.
- For the training of staff in the correct use of IT systems.

7 Procedure to be followed when fraud is discovered or suspected

This procedure is for disclosures about matters other than a breach of an employee's own contract of employment. If an employee is concerned that his/her own contract has been, or is likely to be, broken, then they should use the Service's grievance procedure.

If a fraud or attempted fraud is discovered, it is important to identify whether that demonstrates a weakness in the Service's control systems, and appropriate action must be taken to ensure that similar frauds cannot be perpetuated. The investigation of the fraud and subsequent actions must be sufficient to secure any public funds which are at risk.

How to raise a whistleblowing concern

If you have a concern that you wish to raise, you have the right to make known your concerns either orally or in writing. The concern should set out:

- the nature and grounds of the concern;
- the name(s) of any individual(s) suspected of misconduct;
- the evidence, if any, or reasoning for your concern.

Although you will not be expected to prove an allegation beyond doubt, you should be able to demonstrate to the person you contact that there are reasonable grounds for your concern.

You may want to discuss the matter with a colleague first, and you may find it easier to raise a matter if there are two or more of you with the same concern(s). You may invite a friend or colleague to be present and to help you raise your concern in person, or at any interviews connected with the concerns you have raised.

Who to inform

Stage One

In the first instance, and unless the employee reasonably believes that their line manager is involved in the wrongdoing, or if for any other reason the worker does not wish to approach their line manager, any concerns should be raised with the worker's line manager.

Also if fraud or attempted fraud is discovered or suspected it must be reported immediately to the CS Non-Executive Director who will investigate the matter with the support of a member of the CS Board, a member of the CS Audit and Risk Committee, the Registrar or the Director, Operations as appropriate and depending on the circumstances.

The Budget Holders should take immediate personal charge of any documentation that is relevant to the discovered or suspected fraud. If there is any uncertainty as to which documents are to be secured, immediate advice should be sought from the CS Non-Executive Director.

Stage Two

The CS Non-Executive Director will arrange an investigation of the matter (either by investigating the matter or by immediately passing the issue to someone in a more senior position). The investigation may involve the worker and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. The worker's statement will be taken into account, and he/she will be asked to comment on any additional evidence obtained.

The CS Non-Executive Director (or the person who carried out the investigation) will then report to the Registrar, who will take the necessary action, including reporting the matter to any appropriate government department or regulatory agency. If disciplinary action is required, the CS Non-Executive Director (or the

person who carried out the investigation) will report the matter to the human resources department and start the disciplinary procedure.

On conclusion of any investigation, the employee will be told the outcome of the investigation and what the Service has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

Stage Three

If the worker is concerned that the CS Non-Executive Director or the person undertaking the investigation, is involved in the wrongdoing, or has failed to make a proper investigation or has failed to report the outcome of the investigations, they should inform the Registrar.

The Registrar will arrange for another manager to review the investigation carried out, make any necessary enquiries and make his own report. If for any other reason, the worker does not wish to approach his/her line manager, they should also in the first instance contact the Registrar. Any approach to the Registrar will be treated with the strictest confidence and the worker's identity will not be disclosed without his/her prior consent.

Stage Four

If on conclusion of stages, 1, 2 and 3, the worker reasonably believes that the appropriate action has not been taken, he/she should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- HM Revenue & Customs
- The Financial Conduct Authority
- The Competition and Markets Authority;
- The Health and Safety Executive;
- The Environment Agency.

7.1 Reporting fraud to the Department for Business, Energy & Industrial Strategy

The Registrar as Accounting Officer is required to report any attempted, suspected or proven fraud to the Department for Business, Energy & Industrial Strategy irrespective of the amount involved. These reports will be made by the CS Non-Executive Director on behalf of the Registrar.

7.2 Other Reporting

The National Audit Office as the external auditors of the Service requires immediate notification of all cases in internal fraud within the Service. These reports will be made by the CS Non-Executive Director acting on behalf of the Registrar.

Cases of fraud or suspected fraud which are novel or contentious, which raise important points of legal complexity, policy or political sensitivity, or provide information about the effectiveness of existing systems, or contain lessons of general interest will be brought to the attention of HM Treasury and the Controller and Auditor General by the CS Non-Executive Director who will also notify Business, Energy & Industrial Strategy that he has so advised them.

8 Suspected detriment

You may be worried about raising a concern under the whistleblowing policy and/or you may feel that raising the matter is disloyal to colleagues or managers. The Service is committed to its whistleblowing policy and procedure and has introduced it so that individuals can feel confident raising concerns about misconduct at an early stage, without any risk to themselves.

You are free to raise a concern in confidence. Your confidentiality will be respected and your identity will not be disclosed without your prior consent. However, it may be difficult to investigate a case thoroughly if your identity is not disclosed, particularly if evidence is needed in court. In the event that your concern cannot be addressed without revealing your identity, the CS Non-Executive Director or the person who carried out the investigation will discuss with you whether, and how, the case will proceed.

The Service will not tolerate harassment or victimization of any individual who raises a concern. This applies regardless of whether the individual who raised the concern was mistaken. The Service will also protect those against whom claims are made if, following investigation, those claims have not been substantiated.

Anyone acting in a malicious or vexatious manner (i.e. not having sufficient grounds for action and seeking only to annoy the defendant) may be subject to formal disciplinary action, which could include dismissal.

An employee, who considers that he/she has suffered a detriment (including disciplinary action, loss of working or pay, or victimisation) as a consequence of whistle blowing, is able to bring a claim in an Employment Tribunal.

The Employment Tribunal will assess whether the employee has suffered any detriment and will then pass the case to an appropriate regulator (for example a taxation matter will be referred to HM Revenue and Custom, matters relating to the sale of goods or the supply of services to the CMA, etc.) provided the employee consents.

The regulator will assess whether there is any substance to the alleged wrongdoing or dangerous workplace practice, on which the claim is based.

9 Independent advice

If you are unsure whether to use this procedure or you want independent advice at any stage, you may contact the Director, Operations.

10 When whistleblowing is not appropriate (other complaints procedures)

You should not ignore behaviour that falls below the standard expected by the Service. However, if you are concerned about your personal position or about other problems, the following procedures may be more appropriate:

- Direct line manager - the first step with any concern, including whistleblowing, would normally be to raise the matter with your line manager.
- Grievance procedure - used in instances where you wish to raise any matter of a personal nature or about a management decision that you feel dissatisfied with (except where another channel of review exists, for example appeal against non-promotion or a disciplinary warning).
- Any matter giving rise to a grievance should be discussed with your line manager in the first instance. Thereafter, the matter can be raised with the Director, Operations. However, it may prove appropriate to contact the Director, Operations in the first instance if the matter or complaint involves your line manager.

It is not intended that the whistleblowing policy should replace any of the above processes, but should complement them as a further means of raising concerns, if considered necessary.