

Whistleblowing Policy



Neath Port Talbot
Castell-nedd Port Talbot
County Borough Council Cyngor Bwrdeistref Sirol

Human Resources

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1. INTRODUCTION

The purpose of this policy is to encourage workers to disclose any malpractice or misconduct (whistleblowing) of which they become aware and importantly to provide protection for workers who report allegations of such malpractice or misconduct.

The whistleblowing policy is designed to ensure that all allegations of malpractice or misconduct are thoroughly investigated and suitable action taken where necessary.

The policy is intended to encourage and enable workers to raise serious concerns within the Council, rather than overlooking a problem or 'blowing the whistle' outside

2. DEFINITIONS

Whistleblowing is used to describe situations when an employee or a worker provides certain types of information, usually to the employer or a regulator, which has come to their attention through work. Whistleblowing is therefore 'making a disclosure in the public interest' and occurs when a worker raises a concern about danger or illegality that affects others, for example, members of the public.

Examples of the concerns which could be reported include:-

- Conduct which is an offence or a breach of law
- Disclosures related to miscarriages of justice
- Health and safety risks, including risks to the public as well as other employees
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud, bribery, corruption or malpractice
- Sexual or physical abuse of clients, or
- Criminal offences as defined by the Bribery Act 2010
- Other unethical conduct

The Public Interest Disclosure Act 1998 (PIDA) protects a worker who reports concerns about where they work, if that worker genuinely believes their concerns are true. See Appendix A.

- When someone blows the whistle, they are raising a concern about danger or illegality that affects others (e.g. customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it.

- This is very different from a **complaint**. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case.
- For these reasons, it is not in anyone's interests if the Council's whistleblowing policy is used to pursue a personal grievance. The Council has a **Grievance Procedure** and this will be more appropriate for making a complaint.
- People who use services, their relatives or representatives or others can make complaints about a service, using the **Corporate Comments, Compliment and Complaints Policy**. This is not whistleblowing.

3. GENERAL PRINCIPLES

3.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it is expected that workers that we deal with, who have serious concerns about any aspect of the Council's work will come forward and voice those concerns.

3.2 Any whistleblowing worker is protected against adverse employment actions (discharge, demotion, suspension, harassment, or other forms of discrimination) for raising allegations of business misconduct. **A worker is protected even if the allegations prove to be incorrect or unsubstantiated.** Workers who participate or assist in an investigation will also be protected.

3.3 The Council is committed to equality of opportunity in employment and is determined that unlawful discrimination or harassment, will not be accepted at the workplace. All employees should be aware that offences which constitute discriminatory behaviour will be regarded as potentially serious disciplinary matters.

3.4 All persons residing, visiting or working within the County Borough, whether service user, employee or worker, have the right to be treated with fairness and dignity.

3.5 If requested by the whistleblower, all reasonable steps will be taken to protect the anonymity of the whistleblower. However, under certain circumstances, to assist with the investigation, or subsequent actions to the investigation, the individual's identity may need to be revealed.

3.6 Any act of retaliation or victimisation against the whistleblower will result in disciplinary action, up to and including termination of employment.

3.7 The malicious use of the whistleblowing policy will result in disciplinary action against the whistleblowing complainant, up to and including termination of employment.

4. THOSE COVERED BY THIS POLICY

This Policy applies to all employees of the County Borough Council, including those employees employed by schools operating under fully delegated personnel powers.

This policy also applies to all contractors working for the Council on Council premises, for example, agency staff, builders and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example care homes.

5. ACCESSIBILITY

A copy of this Policy will be made available on the Intranet

6. LINKS WITH OTHER POLICIES

6.1 The Code of Conduct outlines the standards of behaviour expected of Council employees. Where employees are covered by their own professional codes of conduct, it is a requirement for them to adhere to these too.

6.2 This policy is separate from the Complaints Policy and other statutory reporting procedures adhered to in some directorates.

6.3 Where employees abuse the Whistleblowing Policy, they will be subject to appropriate action under the Disciplinary Policy. Equally, those employees who victimise whistleblowers, or commit an offence linked with the act(s) reported via whistleblowing, will be subject to disciplinary action.

6.4 Bullying and harassment – The Council will not tolerate any harassment or victimisation, and will take appropriate action to protect employees when they raise a concern under this policy. Should an employee feel that s/he is being bullied or harassed by an employee of the Council, then they should refer to the Bullying and Harassment Policy.

6.5 The Equality Duty requires the Council to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out duties. Employees are required to comply with policies relating to equality issues, and familiarise themselves and adhere to the Equality of Opportunity in Employment Policy and Equality of Opportunity in Service Delivery Policy.

6.6 Grievance – where a concern is not sufficiently serious nor of major concern, then the Grievance Policy should be used to address the matter, if informal channels have been explored.

7. TIMESCALES

Actions set out in this policy should be completed in as short a time scale as is reasonably possible. Timescales should be adhered to unless there are compelling reasons not to do so. If it is not possible to operate within these timescales, the parties involved must be informed and Responsible Officer, in conjunction with Human Resources, will decide whether an extension is appropriate.

8. RECORD KEEPING

A central record shall be maintained by Internal Audit of all whistle-blowing concerns raised.

Data processed through a scheme that promotes anonymous whistle-blowing should be deleted or archived within two months of conclusion of the investigation unless it has led to disciplinary or legal proceedings.

9. ROLES AND RESPONSIBILITIES

All managers and professional advisors involved in the whistle blowing process must be fully capable of discharging their duties, and should take responsibility for ensuring that they are appropriately trained in order to perform their role satisfactorily.

9.1 Employee

- Employees have a contractual obligation to conduct their work in an honest and loyal manner, and adhere to the disciplinary rules of the Council.
- Employees must familiarise themselves with and abide by the Code of Conduct. Failure to comply could result in disciplinary action.
- It is essential that employees bring any improper conduct to the attention of their line manager, if appropriate, who will then inform Internal Audit. Failure to do so could in itself be a disciplinary matter. For example failure to report a child or adult protection issue.

9.2 Line Manager

- Line managers are responsible for making employees aware of the Council's standards of behaviour, enforcing rules, and ensuring breaches are tackled promptly, reasonably and fairly.
- Managers must also ensure that they encourage employees to report any concerns directly to them and then forward the concerns to Internal Audit for investigation.

9.3 Human Resources

- HR should ensure the provision of robust employment advice and support where appropriate.

9.4 Head of Service

- Heads of Service should ensure that the Policy is adhered to and any resulting outcomes are consistent.
- They must ensure that investigations are completed in a timely and professional manner, that suspensions are sanctioned after appropriate risk assessments, and are for reasonable periods, and that any disciplinary hearings occur promptly following the conclusion of any investigation.
- They must nominate an appropriate Investigating Officer if the investigation is not to be undertaken by Internal Audit.
- They must ensure that when any witnesses are requested, that they are notified when they should attend any investigatory meeting or hearing, and that they are afforded the time to attend.
- They must review the outcome of the investigation, or nominate an appropriate deputy to do so, and confirm whether the recommendations of the report should be actioned, and if so, ensure that they are.

9.5 Trade Union/Workplace Representative

- Representatives must behave in a professional manner, and follow due process, raising any concerns regarding the management of the process with the relevant Head of Service.

9.6 Role of Investigating Officer (when not Internal Audit)

- To investigate the whistleblowing complaint, establish if there is a case to answer and make appropriate conclusions and recommendations.
- The Investigating Officer is appointed by the Head of Service. The Investigating Officer should receive and review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, and whether there should be a disciplinary hearing.

- Where someone outside of Internal Audit is charged with investigating, they must ensure that Internal Audit is updated regarding progress and that Internal Audit have a log of the initial whistleblowing incident.
- Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.

9.7 Internal Audit Service

- Internal Audit is charged with the responsibility for being the usual means of investigating suspected fraud, corruption malpractice and bribery. For further information please refer to the appropriate Code of Conduct. Employees of the Internal Audit Section have experience in investigating such matters, and the Audit Manager and staff will always be receptive to discussing concerns raised by employees or by the general public.
- If the concerns are of a very specialist malpractice nature, the investigation may have to be carried out by persons other than Internal Audit. Internal Audit will request an appropriate nomination from the relevant Head of Service.
- Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.
- Internal Audit will maintain a log of all reported Whistleblowing cases.
- The Audit Manager will lead any investigation raised via the Whistleblowing Policy, and recommend whether corrective action is required and, where there is a case to answer, whether there should be a disciplinary hearing.

10. PROCESS FOR REPORTING WHISTLEBLOWING CONCERNS

- 10.1 It is usually recommended that a worker raise concerns openly within the Council, but it is also recognised that sometimes this is not possible.
- 10.2 In the first instance an employee or worker should consider discussing the matter with their line manager, or another member of their management team. Managers should deal quickly and effectively with concerns about their service. However, where this proves unsuccessful the matter maybe dealt with more formally (see 10.3-10.5).
- 10.3 If the complainant is not directly employed by the service in question they might also want to discuss their concerns with their own line manager so that they can consider what action to take. For example, a Social Worker may have concerns about a school they visit and report these to their line manager in the Social Services. These disclosures are also protected.
- 10.4 Where a worker lacks confidence that management may deal with the matter appropriately or feels that management maybe involved or associated with the issue of concern, **Internal Audit can be contacted on 01639 763628**. It is always preferred that the whistleblower identifies themselves when they contact Internal Audit as this enables the investigation to proceed more effectively if however the whistlblower does not wish to disclose their identity an investigation will still be undertaken based on the information disclosed.

This telephone number is staffed by the Council's Internal Audit Service. Internal Audit will either investigate the concern directly or forward the concern to a more appropriate Service within the Council. This could include:-

- Health & Safety
 - Adult Protection Co-ordinator for vulnerable adults' cases.
 - PO Placement Review & Child Protection Co-Ordinator for child cases
- 10.4 An employee or worker can also contact a **Prescribed Body**, as outlined below. Should a worker wish to make a whistle-blowing disclosure outside the Council, care should be taken not to disclose confidential information. Advice on rights and responsibilities may possibly be gained from the party the complaint is taken to.
- 10.4.1A 'prescribed body' is one which is identified under PIDA as able to receive concerns about organisations. Most regulators are prescribed bodies.

10.4.2 An employee or worker can raise concerns with a prescribed body, or any other such body, if it is relevant to that body. Such disclosures are protected under PIDA law, where the whistleblower meets the criteria for disclosure. They must also reasonably believe that the matter is substantially true and relevant to the regulator. Examples of prescribed bodies are:

- The Public Services Ombudsman for Wales
- HMRC
- Financial Services Authority
- Health and Safety Executive
- The Information Commissioner
- Regulator of Social Housing
- Care Quality Commission
- Pensions Regulator
- Food Safety Agency
- Wales Audit Office

10.5 **Independent advice** may be sought before raising a concern, by contacting a trade union or professional regulatory body, or referring to guidance issued by them. Free, confidential advice can be obtained from independent whistleblowing charity Public Concern at Work:

Public Concern at Work
3rd Floor
Bank Chambers
6-10 Borough High Street
London
SE1 9QQ

✉: whistle@pcaw.org.uk

☎: 020 7404 6609 (helpline)

☎: 020 3117 2520 (other enquiries)

☎: 020 7403 8823

🌐: www.pcaw.co.uk

11. PROCESS FOR DEALING WITH WHISTLEBLOWING CONCERNS

11.1 All whistleblowing concerns must be forwarded to Internal Audit, if not directly by the whistleblower, then by the recipient.

11.2 Internal Audit will then either investigate the complaint directly, or when not fraud related, will ask a Head of Service to nominate a suitable professional to investigate and, where appropriate, may:

- Refer the matter to the police
- Refer the matter to the external auditor
- Engage in the subject of an independent inquiry

11.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

11.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

11.5 Within 14 calendar days of a concern being raised with them, Internal Audit will write to the whistleblower if the identity of the whistleblower is known:

- acknowledging that the concern has been received
- indicating how the Council proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- advising whether any initial enquiries have been made
- supplying information on staff support mechanisms, and
- advising whether further investigations will take place and if not, why not.

11.6 The amount of contact between the officers considering the issues and the whistleblower, will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from the whistleblower.

11.7 Where any meeting is arranged, the whistleblower can be accompanied by a trade union or professional association representative or a work colleague.

11.8 The Council will take steps to minimise any difficulties which a whistleblower may experience as a result of raising a concern. For instance, if s/he is required to give evidence in criminal or disciplinary proceedings the Council will arrange for him/her to receive advice about the procedure.

11.9 The Internal Audit Service, or nominated officer, will produce a report on the findings of the investigation. The format of the report will not always be the same as each case is unique, but will frequently set out:

- How the investigation arose
- Who the suspects are
- Their position within the Authority and their responsibilities
- How the investigation was undertaken
- The facts and evidence which were identified
- Summary of findings and recommendations, both regarding the fraud, malpractice, corruption or bribery and any additional work required on the system weaknesses during the investigation.

11.10 The Council accepts that whistleblowers need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, the Council will inform whistleblowers of the outcome of any investigation.

11.11 All reports must be presented to the Head of Service. They will (or nominate someone to do so) review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, whether there should be a disciplinary hearing. Where disciplinary action is required, please refer to the Disciplinary Policy. Please note that all employees involved in the whistleblowing process will be required to support the disciplinary process as necessary.

Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.

Please refer to flowchart in Appendix B for a summary of the process.

12. PROTECTION FOR WHISTLEBLOWING

Under PIDA, the law says that a worker is protected from the risk of losing their position or suffering any form of retribution as a result, provided that:

- The information is a protected disclosure
- It is made in the public interest
- The worker reasonably believes that information, and any allegations contained in it, are substantially true
- The worker is not acting for personal gain
- Making the disclosure does not involve the worker committing a criminal offence

For a worker's disclosure to be protected by PIDA, it must be a 'protected disclosure'. The worker must:

- Make sure the information is of a 'qualifying' nature (see Appendix A)
- Make a disclosure of information that, in the reasonable belief of the worker making the disclosure, is made in the public interest
- Reasonably believe that the information is substantially true
- Reasonably believe that they are making the disclosure to the right 'specified person'

Please see Appendix A for further information about making disclosures under PIDA.

Should a worker believe they have incurred any detriment (as per examples in 1.2), then if appropriate s/he should inform their line manager (or more senior manager if the detriment is caused by the line manager). Where the worker feels unable to report the detriment in their own management structure, then it should be reported to the Head of Human Resources or the Audit Manager.

13. UNTRUE ALLEGATIONS

Should an allegation be made frivolously, maliciously or for personal gain, disciplinary action may be taken against the individual concerned.

14. REVIEW AND EVALUATION

The effectiveness of this policy will be measured through an appropriate set of performance measures (to be agreed). Managers and HR, working with trade unions, will use these measures and other relevant data to identify any further changes needed to the policy and procedure to secure continuous improvement to individuals conduct and behaviour.

The Public Interest Disclosure Act 1998 (as amended 2013)

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a **'protected disclosure'**.

To qualify as a 'protected disclosure' the disclosure must satisfy a number of requirements under PIDA:

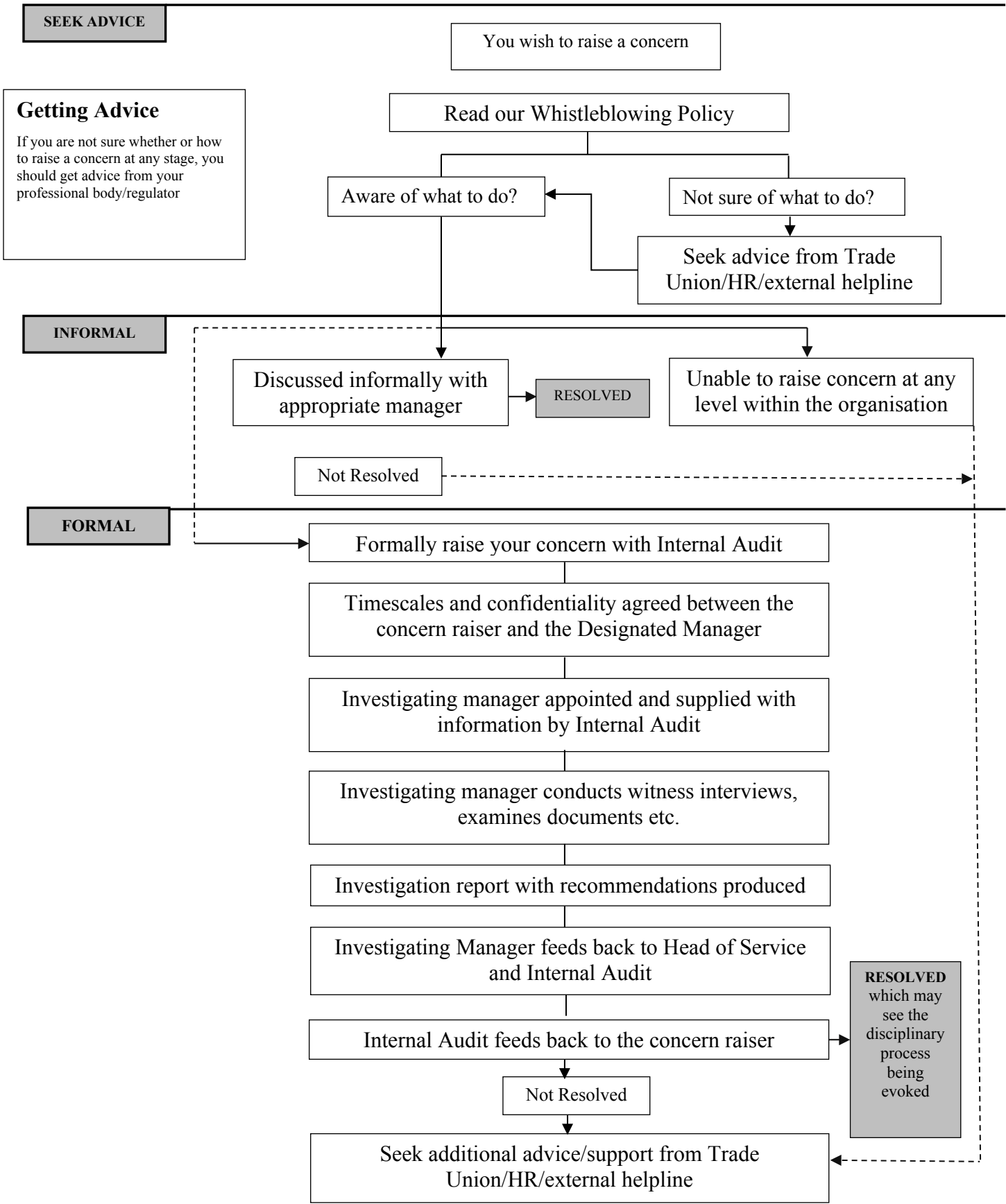
1. The worker must have made a **'qualifying disclosure'**. This is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more of the following:
 - (a) That a criminal offence has been committed, is being committed, or is likely to be committed
 - (b) That a 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 and 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
 - (f) That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed

A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.

2. The qualifying disclosure must be made in **the public interest**.
3. The worker must make the qualifying disclosure to one of a number of **'specified persons'** set out in PIDA, which include:
 - (a) The worker's **employer** or, if they reasonably believe that the failure relates solely or mainly to (i) the conduct of a person other than their employer or (ii) any other matter for which a person other than their employer has legal responsibility, **to that other person**
 - (b) A **'prescribed person'**, which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed person.

Where the above requirements are satisfied, a worker who has made a protected disclosure is protected under PIDA from dismissal or any other detriment arising from making that disclosure. Detriment can include detriment suffered from a previous employer where, for example, the employer refused to give a reference because the worker has made a protected disclosure. A worker who suffers dismissal or detriment may bring a claim for compensation (which is unlimited) in the Employment Tribunal. The term 'worker' includes employees, contractors or self-employed people.

The Whistleblowing Process



Getting Advice
 If you are not sure whether or how to raise a concern at any stage, you should get advice from your professional body/regulator