



TRAFALGAR HOUSING ASSOCIATION

Whistleblowing Policy

Approved by Committee: 24th February 2021

<i>Purpose:</i>	To establish THA's policy to set out our position on whistleblowing and how we encourage and protect those who legitimately raise concerns under the policy.
<i>Date:</i>	27 th January 2021
<i>Review Date:</i>	
<i>Guidance:</i>	SHR Information Sheet - Whistleblowing about a regulated body – April 2015
<i>Regulatory Standards:</i>	Standard 2 - The RSL is open and accountable for what it does. It understands and takes account of the need and priorities of its tenants, service users and stakeholders and its primary focus is the sustainable achievement of these priorities. Standard 3 - The RSL manages its resources to ensure its financial well-being and economic effectiveness. Standard 5 - The RSL conducts its affairs with honesty and integrity.
<i>Approved by Management Committee:</i>	

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1. INTRODUCTION

Trafalgar Housing Association (THA) is committed to the highest standards of ethical conduct and integrity in its business activities and will ensure any reported fraud, corruption, malpractice or any other wrongdoing is properly dealt with.

We encourage all individuals to raise any concerns that they may have about the conduct of others in the organisation or the way in which the organisation is run.

This policy sets out the way in which individuals may raise any concerns that they have and how those concerns will be dealt with.

THA will not tolerate any form of fraud, corruption, malpractice or any other wrongdoing by its governing Management Committee membership, employees or any person acting on its behalf.

The Management Committee and management team are committed to implementing effective measures to prevent and eliminate the possibility of fraud, corruption, malpractice or any other wrongdoing and to deal with any concerns raised in a prompt, transparent and thorough manner.

2. SCOPE OF THIS POLICY

This policy applies to:

- all employees;
- all former employees;
- all 'associated persons' acting for or on behalf of THA including Management Committee Members;
- any other 'associated persons' including temporary staff, 'bank' or agency workers, consultants, and any other person engaged under any form of contract to act for, or on behalf of THA.

Every employee and associated person is responsible for maintaining the highest standards of personal, ethical and business conduct. Any breach of this policy is likely to constitute a serious disciplinary, contractual and criminal matter for the individual concerned and may cause serious damage to the reputation and standing of THA.

THA may also face criminal liability for unlawful actions taken by its employees or associated persons under the Public Interest Disclosure Act (PIDA) 1998. All employees and associated persons are therefore required to familiarise themselves and comply with this policy.

3. BACKGROUND AND LEGAL CONTEXT OF 'WHISTLEBLOWING'

'Whistleblowing' is the common term used to describe a disclosure made to someone in authority alleging corruption, malpractice or wrongdoing on the part of another person or organisation.

In employment terms, whistleblowing refers to an individual making a disclosure about a colleague's conduct during employment, or about the employer's practices.

The whistleblowing legislation (the Public Interest Disclosure Act 1998) was introduced to protect individuals from dismissal or victimisation if they disclose some sort of wrongdoing to the employer or another appropriate body.

Other relevant law relating to whistleblowing and the provisions of this policy includes the:

- Employment Rights Act 1996;
- Public Interest Disclosure Act (Prescribed Persons) Order 1999 (as amended)
- Employment Tribunals (Amendment) Regulations 2013.

The legislation protecting individuals who make a protected disclosure applies not only to employees of but also to any person, including Management Committee Members, who undertakes to do or perform personally any work or service for THA regardless of the nature of any contractual relationship.

This policy extends protection beyond those in an employment relationship with THA to cover all 'associated persons' (defined above).

4. PRINCIPLES OF THE POLICY

THA is fully committed to, and shall adopt, the following principles and standards about whistleblowing:

- commitment to preventing and/or eliminating all forms of malpractice and wrongdoing within the organisation;
- any individual who makes a disclosure of wrongdoing or malpractice in good faith will be treated with respect and will be afforded support and protection;
- No employee or associated person will be victimised for raising a matter under the Whistleblowing Policy. Victimisation of an employee or associated person for raising a qualified disclosure will be a disciplinary offence and anyone who victimises a Whistleblower will be subject to THA's disciplinary procedure;
- any matters raised under the policy will be treated very seriously and will be promptly and thoroughly investigated by a person at an appropriately senior level within THA reflecting

the seriousness of the disclosure (or in some cases by an independent external investigator appointed by THA);

- the Whistleblower's identity will be kept confidential and not divulged while dealing with the concern or disclosure under this policy and related procedures without the consent of the individual;
- any employee who knowingly makes false allegations against a colleague or THA will be subject to THA's disciplinary procedure;
- any employee who, in good faith, makes allegations that turn out to be unfounded will not be penalised for being genuinely mistaken;
- any matter raised under this policy will be investigated thoroughly and promptly, and feedback given to the person who raised the concern.

5. RAISING CONCERNS AND LEGALLY PROTECTED DISCLOSURES

THA encourages employees and associated persons to raise any qualifying disclosures or concerns they may have under this policy.

The Public Interest Disclosure Act provides protection to those who raise legitimate concerns about specified matters or "**protected disclosures**".

A qualifying disclosure is one made in the public interest and in good faith by an employee or associated person who has a reasonable belief that the following is occurring, has occurred in the past or is likely to occur in the future:

- a criminal offence;
- failure to comply with, or breach of a legal obligation;
- a miscarriage of justice;
- an act creating risk to health and safety; or
- an act causing damage to the environment;

A disclosure is also protected if the information disclosed is of a nature that shows that any of the above is likely to be deliberately concealed.

THA recognises that it is not necessary for the 'Whistleblower' to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The employee or associated person has no responsibility for investigating the matter - it is THA's responsibility to ensure that an investigation takes place.

6. TYPES OF MISCONDUCT THAT MIGHT JUSTIFY WHISTLEBLOWING

There are various types of acts, conduct or omissions that might justify an employee or associated person raising a 'whistleblowing' concern.

Examples include, but are not limited to:

- harm, abuse or mistreatment of vulnerable adults and other service users;
- malpractice that affects the health, welfare and wellbeing of tenants or service users;
- theft;
- the use of unsafe equipment or unsafe working practices;
- failure to pay employees rates of pay equivalent to at least the national minimum wage;
- employment of illegal workers;
- concealment of hazardous waste material that might damage the environment;
- false returns to HM Revenue & Customs;
- financial malpractice, including criminal acts, fraud, theft and the falsification of financial records;
- issues regarding staff conduct or behaviour including concerns related to equality, diversity and inclusion;
- bribery, corruption, fraud (separate policy).

7. DIFFERENCE BETWEEN AN EMPLOYEE GRIEVANCE AND A PROTECTED DISCLOSURE

It is important to distinguish between an employee grievance and a protected disclosure.

A grievance will tend to concern a personal complaint about an individual's own employment situation, for example the individual may have a complaint about:

- working hours;
- the amount of work that he or she is expected to do;
- working environment; or
- being bullied by other employees.

A protected disclosure, on the other hand, will concern a risk, malpractice or wrongdoing that affects others. It could be something which adversely affects tenants and service users, the public, other staff or THA itself in circumstances where the complainant genuinely believes that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment.

Examples of the difference between a grievance and a protected disclosure	
Grievance	Protected disclosure
An employee's complaint about the type of work that he or she is being asked to do, for example if it is not covered by his or her contract	A disclosure that an individual has been instructed to carry out actions that he or she genuinely believes to be illegal, e.g. to falsify HMRC returns
An employee's complaint that he or she has received insufficient safety training	A disclosure that safety rules within the workplace are routinely being flouted, thus endangering safety

Examples of the difference between a grievance and a protected disclosure	
Grievance	Protected disclosure
An employee's complaint about the hours that he or she is expected to work	A disclosure that the requirements imposed by THA on a group of staff represent a breach of the working time legislation

8. ROUTES OF DISCLOSURE THAT ARE PROTECTED IN LAW

To encourage concerns being raised through appropriate channels, the law lays down clear principles about how a potential Whistleblower must make a disclosure if the disclosure is to be protected.

There are five routes that may attract protection, these being a disclosure in good faith:

- To the employer directly;
- To a legal adviser, if made during obtaining legal advice;
- To a 'prescribed person' (see Disclosure to a Prescribed Person below)
- Elsewhere in defined circumstances (see Disclosures Elsewhere below)
- Elsewhere in exceptionally serious cases (see Disclosures in Exceptionally Serious Cases below).

9. DISCLOSURE PROCEDURE (INTERNAL DISCLOSURE WITHIN THA)

With the reassurance of the checks and legal protections provided by this policy in place, THA would encourage individuals to raise concerns internally in the first instance.

However, it is recognised that there may be circumstances where one of the other 'routes' of disclosure is properly used to report a concern to an outside body.

Appendix 1 to this policy details the procedure through which an internal disclosure can be made.

10. DISCLOSURES TO A 'PRESCRIBED PERSON'

Employees may disclose alleged wrongdoing or malpractice to certain specified bodies in circumstances where the alleged wrongdoing or malpractice falls within that body's remit.

Several bodies have been prescribed for this purpose, including:

- The Care Inspectorate Scotland
- Scottish Social Services Council (SSSC);
- Office of Scottish Charity Regulator (OSCR);
- HM Revenue & Customs;

- Financial Services Authority;
- Auditor General for Scotland;
- Accounts Commission for Scotland;
- Serious Fraud Office;
- Health and Safety Executive;
- Scottish Environment Protection Agency;
- Scottish Information Commissioner;
- Food Standards Agency.

A full and current list of 'prescribed regulators' is available from the Government Department for Business Innovations & Skills (BIS) at www.direct.gov.uk or the independent whistleblowing charity Public Concern at Work at www.pcaw.co.uk.

11. DISCLOSURES ELSEWHERE

A disclosure made elsewhere - for example, to a non-prescribed regulator including the Scottish Housing Regulator or Police Scotland, an elected member - may qualify as a protected disclosure if:

- the individual reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body;
- the individual had previously disclosed his or her concerns to the employer or a prescribed body and remains dissatisfied at the outcome; or
- in circumstances where there is no prescribed body, the individual reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice.
- in the public interest.

12. DISCLOSURES IN EXCEPTIONALLY SERIOUS CASES

If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. **'Exceptionally serious'** is likely to be restricted to matters where disclosure would serve the public interest.

The employee making the disclosure in these circumstances must:

- Make it in good faith
- Reasonably believe that the information being disclosed is substantially true
- Not be disclosing the information for financial gain
- In the public interest.

13. PROTECTION FROM DETRIMENT

No employee or associated person who raises a protected disclosure will be dismissed or subjected to any detrimental treatment or victimisation because he/she has made a disclosure.

Victimisation or detrimental treatment can cover a wide range of potential actions or behaviours, including, but not limited to:

- verbal or physical abuse within or out with the workplace at work by any employee or associated person;
- any form of bullying or harassment;
- isolation or deliberate exclusion;
- reprisal through denial of a promotion opportunity, loss of employment, denial of overtime, additional hours working, denial of training and development.

Protection from victimisation and detrimental treatment linked to raising a protected disclosure shall apply both at the time of raising the concern and at any future time after a concern has been raised.

Victimisation of an employee or associated person for raising a qualified disclosure will be a disciplinary offence and anyone who victimises a Whistleblower will be subject to THA's disciplinary procedure.

Any complaints of victimisation or detrimental treatment can be made directly to the Director or Line Manager and will be thoroughly investigated. Alternatively, an individual has the right to raise the matter with the Chair of the Management Committee or Vice Chairperson.

14. INDIVIDUAL'S RIGHTS TO CONFIDENTIALITY WHEN RAISING A CONCERN

With the assurances and guarantees contained in this policy in place, staff are encouraged to raise concerns or disclosures openly.

Open disclosure makes it easier for THA to assess and investigate the issue and gather relevant information.

However, THA recognises that there may be circumstances when a Whistleblower would prefer to raise their concerns as a **confidential disclosure** at least at the initial stages. An individual raises a concern confidentially if he or she gives their name on the condition that it is not revealed without their prior consent.

We will treat all such disclosures in a confidential and sensitive manner. We shall keep the identity of the individual making the allegation confidential, as far as practicable, so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

The Whistleblower's preferences in this regard will be discussed and agreed at the outset. If the Whistleblower wishes his/ her identity not to be disclosed, THA will not do so without prior consent unless required to do so by law.

Individuals raising concerns confidentially must understand that there may be occasions when THA is unable to resolve a concern without revealing the identity of the Whistleblower (with prior consent). For example, the Whistleblower's personal evidence may be essential to reaching a resolution.

In such cases the person investigating the concern or disclosure will discuss with the Whistleblower whether and how the matter can best proceed and will always respect a desire for an individual not to be identified.

Individuals raising a concern either openly or confidentially will be offered full support and protection or will receive feedback following a full investigation.

In other circumstances it might be the case that an individual raises a concern as an **anonymous disclosure** if he or she does not give their name at all. It is recognised that if an individual's name is not provided, THA cannot support, reassure or offer the same level of protection than it could to an open or confidential disclosure. The individual must recognise that it may be more difficult to investigate the concerns and, indeed, it may not be possible to address or resolve the concern. We will keep a record of such disclosures as they may provide an early warning of misconduct or activities or omissions as detailed in Section 6.

We treat all disclosures, including anonymous disclosures, seriously and will always take action to consider them further, wherever this is appropriate. Factors that will be taken into account will include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegations from attributable sources

Any anonymous disclosure received by the Director of a serious nature (see Section 6 for examples) will be reported to the Management Committee. If we pursue an anonymous disclosure further, we will record the issue as an anonymous disclosure in a register held by the Director. This will help to ensure the completeness of the disclosure data we record and allow us to take corrective action where appropriate.

Generally, we will investigate anonymous disclosures if there is enough information in the disclosure to enable us to make further enquiries. If, however, an anonymous disclosure does not provide enough information to enable us to take further action, we may not pursue it. Any decision not to pursue an anonymous disclosure must be authorised by the Director (or Management Committee, if it is regarding the Director).

15. INDEPENDENT ADVICE AND SUPPORT

Individuals may wish to contact the specialist whistleblowing charity Public Concern at Work on 020 7404 6609 or by email at helpline@pcaw.co.uk for free, confidential and independent advice.

16. REVIEW OF POLICY AND COMMUNICATION

THA will communicate its Whistleblowing Policy to employees and associated persons through various measures.

THA reserves the right to amend and update this policy as required. For the avoidance of doubt, this policy does not form part of employees' contracts of employment.

APPENDIX 1

PROCEDURE FOR RAISING (DISCLOSING) A WHISTLEBLOWING CONCERN

PURPOSE OF THE PROCEDURE

This procedure, which is separate from THA's Grievance Procedure (see the difference between an employee grievance and a protected disclosure in section 7 of the Policy), sets out the steps to be taken if an individual employee or associated person has serious concerns about a colleague's conduct or THA's practices.

Issues of a personal or contractual nature or a complaint about an individual's own employment situation are raised through THA's Grievance Procedure.

The procedure also sets out the steps that THA and its management will take if an individual makes a disclosure of malpractice or wrongdoing.

The procedure is intended to be straightforward for individuals to raise their concerns.

For this reason, it allows the flexibility for concerns to be raised either verbally or in writing (including by email) in whichever format is preferred by the individual.

Similarly, it offers a range of options for an individual to decide who to raise a concern with and the options available in raising concerns openly or in confidence.

INTERNAL POINTS OF CONTACT WHEN RAISING A CONCERN

THA would encourage individuals to raise concerns internally in the first instance. However, it is recognised that there may be circumstances where disclosure is properly used to report a concern to an outside body (section 8 of the Policy provides details on disclosure to external bodies).

In raising a concern, an individual does not necessarily require individuals to report allegations of wrongdoing to their own Line Manager, although the procedure does allow individuals to do so if they prefer to take this route.

Alternative contact who can be contacted at any time is:

- Director

If the issue of concern is such that the individual does not feel it appropriate to raise the matter with any of the alternative contacts listed, the person has the option of raising the concern with the Chair of the Management Committee or Vice Chairperson.

RAISING A CONCERN INTERNALLY

Step 1:

In the first instance any concerns can be raised internally (verbally or in writing) with the individual's line manager, unless:

- the individual reasonably believes his/her Line Manager to be involved in the wrongdoing; or
- if for any reason the individual does not wish to approach his/her Line Manager.

It is perfectly legitimate and acceptable for an individual; to 'bypass' normal line management routes for any reason and instead raise their concern with one of the alternative contacts listed.

If the individual believes the Line Manager to be involved, or for any reason does not wish to approach the Line Manager, then the employee should raise the matter with one of the alternative contacts listed.

Step 2:

The person with whom the concern has been raised will report the whistleblowing concern to the Director and an investigation of the matter will be instigated.

The investigation of the concern will be undertaken at an appropriately senior level (appropriate to the nature of the concern) and by someone within THA who is not directly involved in the subject matter.

In appropriate circumstances, THA may engage the services of an independent investigator to carry out the investigation due to the nature of the concern or the lack of immediately available internal resources.

Any investigation will be carried out in accordance with the principles set out in the Whistleblowing Policy.

The investigation may involve the individual and other individuals involved giving a written statement. The individual's statement will be considered, and he/she will be asked to comment on any additional information or evidence obtained during the investigation.

The person carrying out the investigation will report to the Director or Line Manager (or where previously determined to the Chair of the Management Committee or Vice Chairperson), who will take any necessary internal and/ or external action, including reporting the matter to any appropriate regulatory body. Advice will be available to the 'reviewing person' from the Senior Corporate Services Officer/EVH.

If disciplinary action is merited, the person who carried out the investigation will report the matter to the appropriate person in accordance with the disciplinary procedures who will ensure the

management of, and support the process through, the normal application of the Disciplinary Procedure.

On conclusion of any investigation, the individual raising the concern will receive feedback.

If no action is to be taken as a conclusion of the investigation, the reason for this will be explained.

The outcome of any matter raised under the Whistleblowing Policy will be reported to the Management Committee.

Where deemed appropriate by the Director and/ or the Management Committee, the matter may be reported to an appropriate regulator including any outcome where malpractice or a serious safety risk was identified and addressed.

Step 3:

If on conclusion of the process the individual remains concerned and reasonably believes that the appropriate action has not been taken, he/she has the option of reporting the matter to an appropriate external authority.

The Whistleblowing Policy (Section 8) sets out several external bodies to which qualifying disclosures may be made.

ARRANGEMENTS FOR MANAGEMENT COMMITTEE MEMBERS

As far as practicably possible, the same principles and arrangements shall apply to Management Committee Members as they do to other employees and associated persons.

Step 1:

Management Committee Members who wish to raise a concern internally under the Whistleblowing Policy may do so at Step 1 to the Chair of the Management Committee or Vice Chairperson or the Director depending on the individual circumstances of the case.

Where appropriate to do so, given the circumstances of the concern, the Chair of the Management Committee or Vice Chairperson may seek support and advice from the Director.

Consideration will be given as to whether the concern is such that it requires formal notification to the Scottish Housing Regulator or any other regulatory body.

Step 2:

Chair of the Management Committee or Vice Chairperson shall appoint an appropriate investigating officer or team having taken advice from the Director.

This may comprise; an internal appointment of Management Committee Member(s) and/or Officer(s) (or a combination of both); a wholly external appointment or a combination of both internal and external investigating team members.

The management of the outcome and conclusion of an investigation into a Management Committee Member's concerns shall generally follow the same arrangements as concerns raised by others at Step 2 of the general procedure.

Step 3:

Similarly, if on conclusion of the process the individual Management Committee Member remains concerned and reasonably believes that the appropriate action has not been taken, he/she has the option of reporting the matter to an appropriate external authority (section 8 details appropriate external bodies).

- **To ensure fairness in the event of another process being initiated after a whistleblowing investigation, the Chairperson of THA is excluded from the Whistleblowing Procedure process.**