

Outline description of the approach that FCU takes to conducting any investigation under the Raising Concerns procedures.

Background

1. The Foreign and Commonwealth Office (FCO), in common with other government departments, must ensure that it manages public resources for which it is responsible in an effective manner and is accountable before Parliament for such use. One aspect of this responsibility relates to action that is taken if a concern is raised about the way in which public money has been used. The FCO has a zero tolerance on fraud and impropriety. Most cases of fraud and impropriety within the FCO are identified through “Whistle blowing”¹ known within the FCO as “Raising Concerns”.

The Raising Concerns process

2. It is FCO policy that all allegations received through the Raising Concerns procedures are investigated and that the Public Interest Disclosure Act is complied with in relation to those raising the concern.

What is an investigation?

3. In this context investigation means the action that FCU may take to assess the concern that has been raised, whether or not there is any information that supports or refutes the concern and also any information which the person(s) about whom an allegation is made might provide. Similarly it is FCO policy and practice that all relevant laws are complied with when investigating an allegation (as the FCO is a global organisation these will be the laws where the allegation is investigated) and any law that is applicable in the UK, if relevant. An example of how information might be gathered during an investigation is that official IT accounts are only accessed with the specific permission of the system owner and the permission of the individual concerned (they agree to this when they sign the Standard Operating Procedures (SOPs)). All (staff, contractors, consultants etc) using official IT systems are required to sign the SOPs before using the system and agree to the SOPs every time they log on to official IT systems. These have to be re-signed every six months
4. The FCU has no statutory investigatory powers and an FCU investigation does not decide conclusively that an allegation is proven. The investigation and resulting report are intended to set out the allegation, information which supports/ disproves it and any other relevant information that may have arisen

¹ The provision for Whistle blowing channels is in line with the requirements of the Public Interest Disclosure Act 1998.

during the investigation. The decisions which might be taken following consideration of the report are set out at paragraphs 8 – 10 below.

Types of allegation

5. If an allegation relates to a **fraud / impropriety** relating to expenditure for which the FCO's Parliamentary Under Secretary (PUS, the FCO's most senior official) is accountable the FCO's counter fraud team (the Financial Compliance Unit (FCU)) will investigate the facts of the matter.
6. If an allegation relates to something for which the FCO PUS does not have principal responsibility the matter will be passed to the appropriate person in the department responsible for that issue and in line with relevant procedures. The FCO operates on the basis that an individual is innocent of any allegation unless there is information which shows that this is not the case. Where an issue is being investigated the number of people who are advised of the allegation is kept to a minimum. In operational terms the investigation is confidential to the FCU. However, some members of senior management need to be made aware of the investigation i.e. the Chief Operating Officer, the Finance Director, HR Director, the Head of Internal Audit and the FCO's Audit and Risk Committee. Depending on the specific case a senior officer in the operational area may also need to be made aware of the allegation.

Conduct of an investigation

7. The investigative procedure consists of:
 - (a) A review of the facts i.e. documentary evidence (electronic and paper records) and if possible interview relevant people (this may be in person or by written statement) to determine whether there is evidence to support the allegation or not.
 - (b) Legal advice (technical issues and employment law) will be sought as required during the investigation.
 - (c) The need to speak to the subject of the investigation is considered on a case by case basis. If the person is employed within the FCO the person will most probably be spoken to as part of the investigation. But not always. For example if there is enough evidence to disprove the allegation without speaking to the individual. If the subject of the allegation is not employed by the FCO it may not be appropriate, possible or practical to speak to them. In some situations it may be inappropriate to inform the subject of an allegation on the progress of an investigation while this is taking place.
 - (d) A draft report of the investigation is produced. All of the evidence reviewed by the FCU is annexed to this report. The draft report is subject to quality assurance by the FCU's line management.

- (e) A discussion of the draft report will take place with relevant senior management to agree the recommendations and conclusions. This discussion will usually involve HR, Finance and Legal but may include operational units within the FCO depending on the allegation.
- (f) The most common conclusions of an investigation are: no case to answer, a recommendation that the matter should be reported to the police (it is FCO policy² to report all cases where there is *prima facie* evidence of fraud to the police).

Impact of report following an investigation

- 8. If the subject of an allegation is an FCO employee, there will be consideration of whether or not disciplinary action is appropriate. In this situation, a disciplinary board will decide whether there is information to show to the relevant standard in the operating jurisdiction that conduct is inconsistent with an employee's role. In the UK the standard applied is the civil law standard of the balance of probabilities. If the matter is heard before a disciplinary hearing the subject of the hearing is provided with a copy of the full FCU report.
- 9. If the subject of an allegation is an employee of another organisation ("the parent organisation"), there will be discussion of and a decision taken about whether or not to report the matter to the parent organisation, as the FCO cannot undertake disciplinary action against those it does not employ.
- 10. If an allegation is made about a contractor, there will be consideration of whether or not that contractor should be employed within the FCO again. There would also be consideration of whether the fraud / impropriety took place because of non application of prescribed controls by relevant FCO employees or an unforeseen gap in the control framework. If a failure to apply controls has occurred then disciplinary action may be taken by the FCO against the relevant employees or by another government partner against its own employees if they did not follow prescribed procedures.
- 11. At a strategic level, there may be consideration of whether changes are required to the FCO control regime.

Timescales for an investigation

² The rationale for this policy is that the Police and not the FCO is best placed to assess and, if appropriate, take action regarding the commission of criminal offences. The referral of information is done so that a decision about any potential criminal law consequences of an individual's actions are taken by the relevant authorities. The FCO's referral does not determine what the police assessment of the facts would be.

12. There are no set timescales for an FCU investigation as the time to undertake the investigation depends on the specific matter in question and a focus on understanding as much of the factual background as possible. However, consideration will be given to any disproportionate or unreasonable impact that the process might have on an individual and whether or not there are any steps can be taken to manage this.

Application of FCO policies to other personnel

13. As outlined above the key issue in relation to an FCU investigation is whether the allegation relates to expenditure for which the FCO is accountable for or not. If the allegation is against an FCO employee then the FCO disciplinary procedures apply if there is to consideration of FCO disciplinary action. As such the FCO take an objective approach in that FCU reviews actions taken / not taken in the context of FCO prescribed procedures and the FCO disciplinary procedures. If the subject is not an FCO employee it would be for their parent organisation to consider whether disciplinary action is appropriate. However, it is for the FCO to consider whether the matter should be reported to the police where there is evidence of fraud / impropriety against the FCO. The FCO cannot take disciplinary action against those not employed by the FCO.
14. As such when the subject of the investigation is not an FCO employee the primary issue at hand is whether there is prima facie evidence of criminal activity and therefore whether the matter should be reported to the police. But there would also need to be consideration as to whether the activities alleged (if proven) would have amounted to a breach of the FCOs procedures to an extent that had the person been employed within the FCO it would amount to misconduct / gross misconduct. This is because it would impact on their employability within the FCO, in case that person then sought employment in a position that involved responsibility for using resources for which the FCO is accountable.

FCU fairness

15. It is important to note that FCU do not make decisions on whether accusations are proven or not. As outlined above the FCU undertake investigations to identify the facts of the case. The investigation results in a draft report and information gathered during the investigation is annexed to this report. The report is then subject to quality assurance procedures by the team's line management and the report discussed in draft with relevant parts of the organisation. If the result of these discussions is that disciplinary action

is warranted it is the disciplinary board that decide whether the case is proven or not and not the FCU. The FCU report is simply part of the information that is presented to the disciplinary board. Similarly, if the matter is reported to the police and a police investigation ensues it is the criminal justice system that reaches a decision on whether the case is proven or not. The FCU report is a vehicle to make the police aware of the issue that has arisen and any information which relates to it. In essence therefore the “audit” of the FCU work is a multiple stage approach: formal quality assurance by line management; consideration of the draft report by senior management; and finally and most importantly a disciplinary hearing for an FCO employee or a police investigation if there is evidence of potentially criminal activity relating to fraud.