

Whistleblowing and Raising a Concern

Introduction

These Whistleblowing and Raising a Concern Policy and Procedures set how and when you can report concerns at work, why it is important that you do, and that it is safe and accepted to do so. They also outline the protection to which you may be entitled within the provisions of the **Public Interest Disclosure Act (PIDA)**.

The terms Whistleblowing and Raising a Concern Policy are used interchangeably throughout this document as the procedures to follow are the same, other than that civil servants have the additional provision of raising a concern (under the Civil Service Code) to the Civil Service Commission.

In introducing this policy, the Department wants everyone to have the confidence to speak up, to be secure in the knowledge that it is safe and acceptable, and that if you raise a genuine concern under this policy you will not suffer any detriment – for instance, retaliation or victimisation. And provided you are acting in good faith, it does not matter if you are mistaken. These assurances, however, do not extend to someone who maliciously raises a matter they know to be untrue

You do not need to have proof of the wrongdoing and you should not put off raising a concern simply because you feel you do not have enough evidence. Raising a concern can provide the Department with an opportunity to address issues at an early stage.

A wrongdoing properly reported under these procedures may be covered by the law concerning protected disclosures of information. In certain circumstances, PIDA offers protection to those who blow the whistle. Further information on PIDA is available further in this document or **Public Concern at Work (PCaW) (www)**, the Whistleblowing charity.

Policy

This Policy should be read in conjunction with the related Process and both must be followed.

Policy Principles

The position of HM Armed Forces is very different to civilians/civil servants working in public office who wish to expose matters of public concern. As they operate within a very different legal and constitutional construct, the legal obligations/duties which apply to civilians cannot simply be replicated and the Public Interest Disclosure Act specifically excludes them from the legislation. However, the Service authorities have agreed to honour the spirit of the Act in that they will recognise and adhere to the criteria for protected disclosures and follow the prescribed procedures whether dealing with or making a qualifying disclosure. The Department's commitment to ensuring that no one who makes such a disclosure suffers detriment for doing so extends to both military and civilian - the only difference being that civilians can be afforded protection by law whilst the Armed Forces have no statutory protection regarding qualifying disclosures. For the purposes of whistleblowing, this document sets out a whole workforce policy based on shared principles of fairness that can be drawn from the various and varying codes of conduct, values and standards that apply to the two communities.

The following principles underpin the Whistleblowing and Raising a Concern Policy, namely that:

- All genuine concerns will be handled responsibly, professionally and in a positive manner;
- Those raising a concern will be afforded protection as detailed in these procedures;
- Help and support will be available to employees where concerns are raised under the relevant Whistleblowing and Raising a Concern Procedure.

This policy has been designed to:

- Ensure that your concerns are addressed and resolved at the right level and as quickly and effectively as possible;
- Offer you protection when raising a concern that is within the public interest;
- Advise you, as a manager, what you need to do if someone blows the whistle to you.

If you raise a genuine concern under this policy you will not be at risk of losing your job or suffering any form of retribution as a result. The MOD will not tolerate the harassment or victimisation of anyone raising a genuine concern. Providing you are acting honestly, it does not matter that you may be mistaken. However, anyone who maliciously raises a matter they know to be untrue may be at risk of misconduct action. Military line managers are able to administer misconduct action for civilian personnel but civilian line managers of military personnel will need to refer the issue to the appropriate military chain command for appropriate action.

This Whistleblowing policy is primarily for concerns where the interests of others, the public or of the Department itself are at risk and can be about past, present or imminent wrongdoing, or an attempt to cover up wrongdoing. It does not apply to matters of individual conscience where there is no suggestion of wrongdoing by the Department but an employee is, for example, required to act in a way which conflicts with a deeply held personal belief.

The Civil Service Code

Civil servants are afforded an additional route for raising concerns in that they can take their concern direct to the Civil Service Commission if they consider another civil servant is in breach of the Civil Service Code. Only a civil servant can bring a complaint under the Civil Service Code. The Code is part of the contractual relationship between a civil servant and their employer and, therefore, only applies to civil servants.

Specifically:

- A civil servant cannot use the Civil Service Code to raise a concern about a member of the Armed Forces.
A member of the Armed Forces cannot use the Civil Service Code to raise a concern about a civil servant.

Therefore, a civil servant who wishes to raise a concern about a member of HM Armed Forces – and vice versa – should specifically use the line management reporting chain. DBS Civilian Personnel, taking note of the fact that many civil servants work within military-led chains of command, will provide general policy and procedural advice in the following circumstances:

- A civilian raising a concern about another civilian.
- A civilian raising a concern about a member of the military.
- A member of the military raising a concern about a civilian.

DBS Civilian Personnel can be contacted on 93345 7772 (Mil), 0800 345 7772, or +44 1225 747772 (Overseas).

Qualifying Disclosures under the Public Interest Disclosure Act

The Public Interest Disclosure Act, commonly referred to as PIDA, applies to people at work raising genuine concerns about fraud, crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these. Under PIDA, it is unlawful for an employer to dismiss or victimise a worker for having made a 'qualifying disclosure' and the protection it provides is not subject to any qualifying period of employment. A summary of PIDA and the protections it can offer are outlined below and further information and advice can be found on the website of **Public Concern at Work (PCaW)**, the Whistleblowing charity.

As its name implies, PIDA is there to protect disclosures about activity which is against 'the public interest'. So, for example, if you suspect that someone is committing fraud (such as 'fiddling' claims for expenses) or corruption (such as 'rigging' a contractual process for personal gain), or that health and safety standards prescribed by law are not being observed, these would be 'qualifying disclosures' - because these activities are illegal and, therefore, against the public interest.

PIDA does not, however, apply to disclosures about something which affects you personally rather than the public interest. Therefore, if you believe that you are being unfairly treated at work (for instance, because of being bullied, or you disagree with a management decision), you should establish the relevant **procedures** to use. You can seek advice from DBS Civilian Personnel on which is the appropriate procedure for your circumstances.

In summary, PIDA applies to:

- certain categories of person;
- who disclose information of a certain kind;
- in a certain way.

Who PIDA covers in Law

In addition to employees, PIDA covers workers, contractors, trainees, agency staff, home workers, police officers and every professional in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply to this Act. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the Intelligence Services or HM Armed Forces.

The Information

PIDA applies to 'protected disclosures' and a disclosure that qualifies for protection is one where a worker reasonably believes that one of the following is happening, has happened, or is likely to happen in the future – and it is in the public interest:

- A criminal offence
- Breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- And the cover up of any of the above.

This applies whether the malpractice is occurring in the UK or overseas. However, the no protection is afforded for qualifying disclosures when the worker, in making the disclosure, commits an offence – for example, a breach of the Official Secrets Act or misconduct in public office.

How to make a Qualifying Disclosure

The procedures are shown in the flowchart under 'End to End' but, in the main, there are three main routes for making a disclosure which will vary depending on circumstances and which are:

- The normal route – that is, to the employer through the management reporting chain. This is the most appropriate and efficient means of making a disclosure.
- Alternative route – to one of the Department's Nominated Officers or the Permanent Secretary
- Authorised external route – for instance, to a prescribed person or regulatory body such as the Health and Safety Executive, or the Civil Service Commission (where the disclosure is made by a civil servant about another civil servant). A list of prescribed persons can be found in the document **Blowing the Whistle to a Prescribed Person** on the Government web pages.

Reporting Fraud or Irregularity

The Department will not endure fraud and expects all staff to play a role in contributing towards the counter-fraud effort. Managers at all levels are responsible for ensuring that an adequate system of internal control is in place that reduces the risk of fraud or abuse of the Department's assets. As well as to line managers, staff can report any concerns or suspicions they have about potential fraud, corruption or irregularity, in confidence, to the Fraud Incident and Irregularity Reporting Unit (FIIRU) on 0800 161 3665. The Fraud Defence site is also a useful source of contacts and information for raising concerns at TLB level with the **Fraud Focal Points**.

Protection

To be protected, most disclosures must be made in good faith. Essentially this means the disclosure is made honestly so that the concern can be addressed. The Department will act in accordance with PIDA. Civilians are entitled to protection (in the circumstances laid out within this policy) and that protection will come into effect when:

- You have made a qualifying disclosure.
- You have followed the correct disclosure procedure

And where:

- You have suffered a detriment as a result of making the disclosure.

If you want to understand more about PIDA, there are various people and places where you can seek advice – the whistleblowing charity Public Concern at Work, for instance. A list of contacts can be found under 'Related Items'.

Scope of Policy

The policy principles apply to all those who undertake work for the Ministry of Defence, although some will not be covered in law by the Public Interest Disclosures Act. The Department expects all its workers to have a moral obligation to speak up when faced with, or having a suspicion of, wrongdoing. Although the principles are shared, separate procedures apply for employees of Non-Departmental Public Bodies which are available on their individual websites.

Policy Summary

This policy is intended to create a positive whistleblowing culture which can have several advantages. For example, it can:

- Foster an open culture where employees feel reassured that concerns can be raised and dealt with quickly, and that they can, in certain circumstances, be protected in making a disclosure
- Deter and detect wrongdoing quickly
- Provide managers with the information they need to make decisions and control risk
- Save lives, property, jobs, money, the environment and both personal and organisational reputations
- Reduce the chance of anonymous or malicious leaks (including to the media)
- Reduce the chance of legal claims against the Department.

The key areas covered by this policy and its procedures include:

- Guidance on what is a relevant concern
- Guidance on how to raise such a concern
- Information on how it will be handled
- Information on confidentiality and anonymity
- Provision of protection and support to employees.

Impact Assessment Statement

In accordance with Departmental procedures this policy has been equality assessed and a MOD Equality Analysis Template has been completed. This policy is due for review in April 2015.

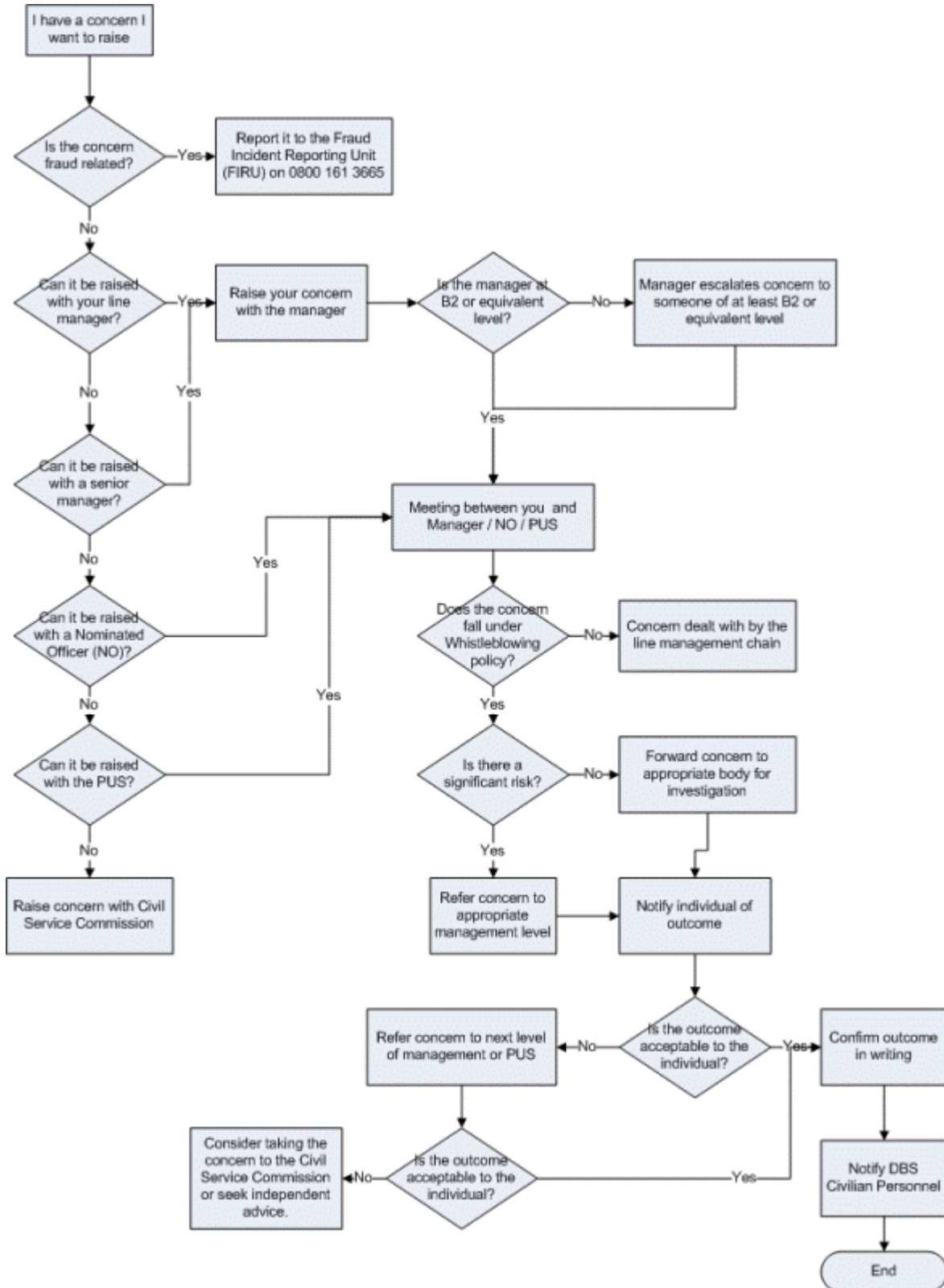
Version

Version: 1.0

Effective Date: 31 March 2014

End-to-End

This process should be read in conjunction with the related Policy and both must be followed.



Process

Stage 1 - Raising a Concern

This process should be read in conjunction with the related Policy and both must be followed

1. Introduction

Some of us at one time or another have a concern about what is happening at work and these concerns might easily have been resolved. However, when the concern feels serious because it is about a possible fraud, danger, malpractice or, for civil servants, something that goes against the values of the **Civil Service Code (www)** and it might affect others or the Ministry of Defence, it can be difficult to know what to do.

You may be worried about raising such a concern and may consider it is best to keep it to yourself, perhaps feeling that it is none of your business and it is only a suspicion for which you do not have any proof. You may also feel that raising the matter would be disloyal to colleagues, or managers, or the Department as your employer. Equally, the concern may be about your line manager – the most obvious person that you would normally raise a concern with.

This policy aims to provide you with the reassurance you need to raise your concern internally but there may be circumstances where you can only properly report a concern to an outside body. In fact, it is better you raise the matter with the appropriate regulator, such as the Civil Service Commissioners, than not at all. But you may wish to seek advice beforehand by speaking with your trade union, for instance, or the Whistleblowing charity, Public Concern at Work whose contact details can be found on **Public Concern at Work (PCaW) (www)**.

It is important that you know how and when to raise a concern and following these procedures will ensure the matter is dealt with properly. Where a concern is properly raised under these procedures, you will be protected from any unfair or negative treatment. In some instances, protection under the **Public Interest Disclosure Act (PIDA) 1998 (www)** may also apply.

A summary of the procedures can be found in the End to End Process.

2. What is a Relevant Concern?

If you are asked to do something, or are aware of the actions of another, which you consider to be wrongdoing, you can raise the matter using these procedures but you must have a reasonable belief that raising the concern is in the public interest.

You should not act in bad faith or raise malicious, vexatious or knowingly untrue concerns. Those who raise concerns with a reasonable belief that raising the concern is in the public interest, will be given protection under these procedures.

This process should not be used to raise concerns of a personal nature, for example, complaints relating to a management decision or terms and conditions of employment. These matters should be dealt with using the relevant process. Equally, this policy would not apply to matters of individual conscience where there is no suggestion of wrongdoing by the Department but an employee is, for example, required to act in a way which conflicts with a deeply held personal belief.

3. Raising a Concern

If you experience something in the workplace which you consider or suspect to be wrongdoing it is important that you raise the concern straight away and, ideally, it should be raised informally and resolved through your line management chain. Using the line management chain is the preferred way to raise an issue - the direct way is often the best way for dealing with matters quickly and it also strengthens the position of civilians with regards to legal protection.

Nominated Officers

For some reason you may not feel comfortable raising concerns in this way, or it is not appropriate to use your line management chain. For this reason the Department has appointed Nominated Officers who can be approached in confidence at any time. They are all senior members of the Department who are independent and impartial, and form no part of the Departmental procedures. They can offer advice and direction, and can

help ensure that you are treated properly. Details of the Department's Nominated Officers and their role can be found in **Guidance or Nominated Officers** .

The prescribed route for making a disclosure is:

- The normal route – that is, to the employer through the management reporting chain. This is the most appropriate and efficient means of making a disclosure.
- Alternative route – to one of the Department's Nominated Officers or the Permanent Secretary
- Authorised external route – for instance, to a regulatory body such as the Health and Safety Executive, or the Civil Service Commission (where the disclosure is made by a civil servant about another civil servant). A list of prescribed persons can be found in the document **Blowing the Whistle to a Prescribed Person** on the Government web pages.
- The aim is to give a response at each internal stage within 20 working days. If this does not happen in the first two stages (the line management chain) then you can contact a Nominated Officer to help expedite the process.

There may be certain rare occasions when it might not be appropriate to take the prescribed route - for example, the concern:

- May implicate the manager in some way – in which case you can raise it with another line manager, or somebody more senior in the line management chain.
- Is about a senior manager within the line management chain or somewhere else in the Department – in which case you can refer the issue to one of the Department's Nominated Officers for impartial advice
- Is particularly serious and needs to be dealt with as a matter of urgency – then you can raise the issue with the Permanent Secretary

It is important that the concern is raised with the person best placed to deal with the matter and with whom you feel most comfortable.

Proof is not required as this is the Department's responsibility. You must, however, have a reasonable belief that disclosing the information is in the public interest before taking a concern outside of the Department. If you wish to raise a concern that is potentially connected with criminal activity or unethical or illegal practices, specifically within the Ministry of Defence Police (MDP) or within the MOD Guard Service, then you can report the matter directly to the Ministry of Defence Police on 01371 854310 or write to: Ministry of Defence Police HQ Wethersfield, Braintree, Essex CM7 4AZ.

Civil Service Commission

Civil servants can raise a concern about another civil servant direct with the Civil Service Commission. However, the Commission believes it is generally better that concerns are raised first of all within the Department and so you will need to explain why you think it is not appropriate in your case. If you choose to contact the Commission first, they will inform you directly whether they are prepared to investigate the concern. Contact details for the Civil Service Commission can be found at **Civil Service Commission (www)**.

Disclosure to the Media

You should not raise concerns directly or indirectly through the media, those with links to the media (campaign groups, think tank representatives, etc) or other external communication channels, for example the press, television, speaking engagement or social media networks – but please note that the list is not exhaustive. The authorisation procedures that you must follow before communicating in public are outlined in **2011DIN03-025: Contact with the Media and Communicating in Public**. Nor should you seek to raise concerns outside of the prescribed routes with political parties, Members of Parliament (MPs), Members of the Devolved Legislatures (MDLs), Members of the European Parliament (MEPs) or Members of the House of Lords (Peers) – again, the list is not exhaustive. Full information is contained in **2012DIN05-012: Contact with Parliamentarians**. The DIN does not, however, constrain you from contacting your constituency MP, MDL or MEP on a purely personal matter. Raising a concern outside of the prescribed routes could, if it

amounts to an unauthorised disclosure, result in misconduct action. It may also breach the Official Secrets Act.

Defence Intelligence Personnel

Concerns relating to the work of Defence Intelligence personnel, which it has not been possible to allay through the ordinary processes of management or staff relations, may be raised with the Director Human Resources (HRD-D) who will act in a way similar to the Staff Counsellor to the Intelligence Agencies. Contact details for HRD-D, who is also a Nominated Officer, can be found in **MOD Nominated Officers**.

4. Anonymity and Confidentiality

Raising a Concern in Confidence

The Whistleblowing policy encourages everyone to raise any concern they have openly, i.e. with the line manager. The Department believes this is by far the most sensible way for matters to be raised and addressed, and managers are expected to handle such a concern sensitively and appropriately. However, there may be circumstances when you would prefer to speak to someone in confidence first. If you ask us not to disclose your identity, the Department will not do so unless required by law. You should be aware, however, that there may be times when a concern cannot be resolved without revealing your identity – for example, where your personal evidence is essential. In such cases, you will be able to discuss whether and how the matter can best proceed.

Raising a Concern Anonymously

A concern raised anonymously means that no one, including the person with whom the concern is raised, knows the identity of the person who raises it. However, raising a concern anonymously means that no one will be able to seek any further information and this could affect the ability to properly investigate the concern, or provide feedback on how the concern has been addressed. This also means the assurances offered to staff under the Whistleblowing Policy cannot be extended to someone whose identity is unknown.

5. How the Matter will be Handled

All investigations will be conducted sensitively and as quickly as possible. While there is no guarantee that the outcome would be as you may wish, the matter will be handled fairly and in accordance with the Whistleblowing Process.

Once a concern has been raised with your line manager or Nominated Officer, they may arrange a meeting with you to determine how the concern should be taken forward which may involve an internal inquiry or a formal investigation. If a meeting is arranged, you can be accompanied by a trade union representative, professional body representative (not in a legal capacity) or a work colleague who is not involved in the area of work to which the concern relates. The meeting can be conducted over the telephone or face to face, whichever you prefer and is the most appropriate.

You will be updated in general terms on the progress of the concern as far as possible. However, in the event of a formal investigation or the involvement of police/security, it may not be possible or appropriate to provide full details.

You will receive confirmation when the matter is concluded and, if appropriate, the outcome of the investigation whilst maintaining security and confidentiality for all parties as far as possible. If you feel the concern has not been adequately addressed, you can refer the concern to a Senior Manager if you first raised it with your line manager or with the Permanent Secretary if you raised the matter with a Nominated Officer.

Throughout any investigation, you will still be expected to continue your duties/role as normal unless deemed inappropriate.

6. Taking the concern forward – The Manager

Determining who should Deal with the Concern

Line managers have the discretion to deal with issues themselves but, ideally, such matters should be brought to the attention of someone in the reporting chain of B2 level. If you are unsure how to deal with the concern, please refer to the **DBS Contact Centre** for general policy and process advice or, to a Nominated

Officer. It is important that you do not hesitate before escalating it as any unnecessary delay in dealing with the issue could put the Department at risk.

7. Responding to a concern

As a Line Manager, matters of concern at work may be raised with you directly and informally by any member of your staff. You should aim to respond to the issue within 20 working days.

You must be prepared to assist your staff if they wish to raise a concern or blow the whistle and if it is within your power you should investigate the disclosure to resolve the concern that has been brought to your attention. If that is not possible, you should bring the matter either to the attention of someone further up the line management chain, or to someone who has a professional responsibility – for example, the **Defence Safety and Environment Authority (DSEA)** or the Chief Information Officer.

You should make yourself familiar with the Whistleblowing and Raising a Concern procedures and advise staff accordingly. If any of your staff do not feel comfortable raising concerns in this way, or it is not appropriate to do so through the laid out procedure, you can refer your staff to the Department's Nominated Officers who are independent and impartial, and form no part of the Departmental procedures. They can offer one-to-one advice and direction, and can help ensure that your staff will be treated properly. Contact details for the Nominated Officers can be found in the **MOD Nominated Officers**. Further advice on policy and process is available from the **DBS Contact Centre**.

Holding a Meeting with the Whistleblower

When someone raises a concern with you, you should offer a meeting with that person and this should be held within two working days of the concern being raised. However, different operational circumstances such as prolonged public holidays, shift-working and part-time working must be taken into account. You should also note that:

- The employee may wish to be accompanied by a trade union/staff association or professional representative (not in a legal capacity) or work colleague who is not involved in the same work to which the concern relates.
- It is important for the whistleblower to confirm with you to what extent, if any, they agree to their details being disclosed. If they have requested confidentiality, you will need to respect this as far as possible, restricting it on a 'need to know basis'.
- If it is not possible to resolve the concern without revealing their identity, the investigation should continue and you should inform the individual as soon as it becomes clear that it may not be possible to guarantee confidentiality and advise them of this beforehand.
- The same degree of confidentiality should be afforded to the employee(s) at the centre of the concern.

After Meeting with the Whistleblower

After the meeting, you should be able to decide whether there is an issue to be investigated and, if it is, who it should be referred to for investigation. If there is a significant risk to the Department (reputational, operational or financial), refer the concern to the appropriate management level.

There may be situations where it is difficult to tell how serious the concern is. If this is the case, it is best to pass it on to someone more senior so as not to inadvertently put the Department at risk. If you are unsure what action to take, you can seek advice from the **DBS Contact Centre**, or from a Nominated Officer. Extremely serious and urgent concerns can be raised directly with the Permanent Secretary.

Once it has been decided how the concern will be taken forward and, if applicable, who it has been referred to, you should inform the individual.

Once the concern has been referred for investigation, the unit/business area carrying out the investigation takes full responsibility for the issue and for contacting the appropriate authorities or the police if necessary.

If appropriate, you may keep the employee informed in general terms about progress of the concern they have raised but only if this does not prejudice the investigation. It may be appropriate to inform the employee of the outcome once it is concluded.

In some cases, you may be able to tell from the initial correspondence that the concern does not fall under the Whistleblowing Policy. If this is the case, there is no need to arrange a meeting. However, you should explain why the matter does not fall under the policy and advise on the appropriate route if applicable. If unsure, you should discuss it with your manager, or seek advice from the **DBS Contact Centre**.

You should keep a brief written record of any concern raised and the action you have taken regardless of whether the concern is accepted under the Whistleblowing Policy, ensuring any record is compliant with the Data Protection Act.

8. Dealing with external disclosures

You should be supportive and encouraging to those raising a concern with you and always direct them to internal routes, or to the Civil Service Commission. However, if an employee indicates that they are considering taking their concerns outside of the MOD, for example, the media or social networking sites, you must advise them that:

- You will not be able to support them if they do so
- External disclosures made to bodies other than to a 'prescribed person', for instance, a regulatory board or ombudsman, will not qualify for protection. Details of prescribed persons or bodies can be found in the document **Blowing the Whistle to a Prescribed Person** on the Government web pages.
- Their action may represent an unauthorised disclosure in which case they may face misconduct/disciplinary action. External disclosure may also breach the Official Secrets Act.

If an employee intends raising, or has raised, a concern externally, you should inform your line management immediately and it may also be appropriate to inform the Department's Press Office but you should seek policy and process advice from **DBS Contact Centre** or a Nominated Officer before instigating misconduct proceedings.

9. Vexatious / Malicious concerns

Protection under the Whistleblowing Policy does not extend to employees who act in bad faith or raise malicious, vexatious or knowingly untrue concerns. Employees who raise concerns of this nature in order to harm colleagues or the Department will face misconduct/disciplinary/action, which in some instances could result in dismissal for civilian personnel. Military personnel will be dealt with in accordance with the relevant Service regulations.

10. Matters of Security

In some circumstances, the whistleblower may need to refer to information relating to matters of security in order to explain the concern. It is important that any such information is only shared with the Defence Security team as the employee will not be able to discuss the details with you. Your role is to direct the individual to the Defence Security team, who will organise the investigation. You should refer the matter to your local/TLB security team in the first instance.

11. Suspected Criminal Offences

Any suspected criminal offence must be reported to the Ministry of Defence Police on 01371 854310. You can seek advice from them if you are not sure whether it is a criminal offence or not. You can also contact the **DBS Contact Centre** for policy and process advice, If the whistleblower has been requested to carry out an action which you think may constitute a criminal offence, you should also advise them not to carry out the activity.

12. Support

If you have been approached by a whistleblower and are unsure what to do, talk to your manager or contact the **DBS Contact Centre** for policy and process advice at any stage of the process. Or a Nominated Officer at any stage of the process for advice – the Nominated Officer can also help escalate it rapidly if need be.