



Home Office

# **Detention Services Order 03/2020**

## **Whistleblowing – The Public Interest Disclosure Act 1998 (c.23)**

July 2020



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# Contents

Document details	4
Instruction	5
Introduction	5
Reporting suspicions of wrongdoing	5
Definitions and examples of staff groups in the immigration detention estate	6
Purpose – why is whistleblowing important?	7
The law – what is whistleblowing?	8
The law – what protections exist for whistleblowers?	9
Staff capability	9
Anonymity	10
Processing reports of suspicions of wrongdoing	11
Learning lessons	11

# Document details

**Process:** To provide instructions and guidance for all staff<sup>1</sup> in the immigration detention estate or escorting services on whistleblowing procedures.

**Implementation Date:** July 2020

**Review Date:** July 2022

**Version:** 1.0

## Contains Mandatory Instructions

**For Action:** All staff (as defined) operating in immigration removal centres, short-term holding facilities, pre-departure accommodation, short term holding facilities at sea/airports and reporting centres, or providing escort services to or from those establishments. Although establishments run by HMPPS on behalf of the Home Office (Morton Hall IRC) are covered by separate prison service advice (Counter Corruption and Reporting Wrongdoing Policy Framework [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799523/counter-corruption-pf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799523/counter-corruption-pf.pdf)]), Home Office staff in those establishments should follow this guidance and, as a general rule, Home Office staff must follow Home Office guidance.

**For Information:** Home Office caseworkers and Prison Operations and Prosecutions (POP) teams in prisons. Border Force staff who manage non-residential STHFs at sea/airports should also follow this guidance.

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**Processes Affected:**

**Assumptions:** All staff will have the necessary knowledge to follow these procedures

**Notes:**

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<sup>1</sup> “staff” are defined as any individual employed or contracted to provide services within the immigration detention estate and/or during escorting to or from establishments within the estate.

# Instruction

## Introduction

1. This order provides guidance for all staff in Home Office immigration removal centres (IRC), pre-departure accommodation (PDA), residential short-term holding facilities (RSTHF), short term holding facilities at sea/airports and reporting centres and for staff providing escorting services from or to an immigration detention facility. Border Force staff who manage non-residential short-term holding facilities (STHF) follow Home Office whistleblowing procedures and should also familiarise themselves with this document. Staff working with immigration detainees accommodated in prison are subject to the separate HMPPS guidance mentioned above.
2. **Any wrongdoing – intentional or unintentional – or concerns must be reported and addressed at the earliest opportunity.** Reports should be made using the most appropriate channel and, if received through the wrong channel (eg. if an issue relating to an individual's employment terms and conditions is made through whistleblowing procedures) should be re-routed appropriately by the person receiving it. The person making the report should be notified that it has been re-routed.

## Reporting suspicions of wrongdoing

3. All staff and non-directly employed persons must report suspicions of wrongdoing at the earliest opportunity through the appropriate channels. All staff (including staff of contracted service providers and non-directly employed persons – see para 5 for definition) must have access to and be aware of the available reporting mechanisms so that suspicions of wrongdoing can be reported in a timely manner. This information should be displayed in staff rooms and offices in each IRC.
4. Although policies and processes will differ, it is essential that suspicions of wrongdoing are formally reported in the most appropriate way. Concerns about individual members of staff might, for example, legitimately be reported and dealt with through local management processes and complaints about individual staff members raised by detainees through the formal complaints process and usual disciplinary procedures. Any issue which meets the whistleblowing criteria must be formally reported in accordance with the relevant policies and guidance of the organisation involved.

## Definitions and examples of staff groups in the immigration detention estate

5. “Organisation” is used to describe an employer or an organisation which provides support to the individual for the purpose of providing services at the IRC. “Staff” are defined in this DSO as any individual employed or contracted to provide services within the immigration detention estate/during escorting to or from establishments within the estate. Mandatory actions for “all staff” are applicable to the following groups:
  - a. Staff directly employed by the Home Office:
    - Staff based in the IRCs (Detention and Escorting Services Compliance team (Compliance team) and Immigration Enforcement Detention Engagement team (DET) or working in the IRCs (eg Detained Asylum Casework staff carrying out interviews);
    - Staff in the residential STHFs (the Escorting Contract Monitoring Team (ECMT)) and the Gatwick PDA (the local Compliance Team).
  - b. Staff employed by contracted service providers;
  - c. People who are not directly employed by the Home Office or by one of the Home Office’s contracted service providers but who provide core or auxiliary services including (but not limited to):
    - general contractors (e.g. catering, healthcare staff and workers, education, employment, maintenance);
    - consultants;
    - agency staff, including those employed by contractors in the first bullet point;
    - sessional workers;
    - locum staff.hereafter referred to as non-directly employed persons”.
6. Bodies with statutory oversight functions in the IRCs (Her Majesty’s Inspectorate of Prisons and Independent Monitoring Boards) have different arrangements in place. As an independent body, HMIP follows its own procedures for safeguarding referrals and whistleblowing, and is also covered by Ministry of Justice policies. Independent Monitoring Boards are also covered by their own arrangements. In respect of safeguarding, arrangements are the same as for HMIP, with Boards also having a statutory power to escalate to the Minister. With respect to whistleblowing, Independent Monitoring Boards follow Secretariat processes and Ministry of Justice policies where appropriate.
7. Independent charities providing volunteer services (including, for example, befriending services) have different arrangements in place. As independent bodies, charities follow their own procedures for safeguarding referrals and whistleblowing, in line with the requirements of the Public Interest (Disclosure) Act.

8. If any mandatory actions are only applicable to Home Office staff, this is stated.

## Purpose – why is whistleblowing important?

9. It is vital that detention and removal are carried out with dignity and respect. The Home Office takes the welfare and safety of people in detention very seriously and will accept nothing but the highest standards from staff working in the detention estate and the escorting process. The Home Office also takes any behaviour that falls short of the professional standards of staff very seriously and is committed to addressing wrongdoing – intentional or unintentional - at the earliest possible opportunity. We will not hesitate to take action if we find that staff are not treating detainees with dignity and respect.
10. To help ensure these standards are upheld, good whistleblowing processes are vitally important to the Home Office for the following reasons:
  - a. **Safeguarding** people in detention by enabling prompt, impartial and effective investigation of alleged wrongdoing.
  - b. **An early warning system:** Whistleblowers can enable us to address problems before they escalate. A culture open to whistleblowing is likely to: deter wrongdoing; demonstrate the organisation's accountability; reduce the risk of anonymous and malicious leaks; and minimise costs and compensation from accidents, investigations, litigation and regulatory inspections.
  - c. **Ensuring transparency:** A robust whistleblowing process shows transparency and avoids the risk of wrongdoings being covered-up despite concerns being raised. Where arrangements are poor, the first we may learn of a potentially serious problem is when an employee has raised the matter with a regulator, a lawyer or the media; impacting on the organisation's reputation or funding, or resulting in a regulatory investigation.
  - d. **Distance from front-line staff:** The complexity of Home Office work can mean there is a distance between those who are accountable and those who are delivering services, making reporting processes even more important for effective oversight.
  - e. **Informs oversight bodies:** Whistleblowers can be a vital source of information as they can provide a perspective that is not readily available in other ways.

11. **Each organisation with staff working in the immigration detention estate, has its own whistleblowing policies and processes in place. This order does not supersede those individual policies and procedures but rather seeks to establish consistent overarching principles for reporting a concern about wrongdoing.**
12. All staff must know how to report a concern about a member of staff in their own organisation and must follow their organisation's policy and process for doing so. While they should also be aware of which other organisations in their establishment have whistleblowing policies in place, as a general rule, people should report concerns of wrongdoing through their own parent organisation and the parent organisation will liaise with other organisations as appropriate.
13. This DSO does not cover complaints by detainees about the behaviour or conduct of individual members of staff. Such concerns should be raised under the separate complaints process [Detention Services Order 03/2015 Handling Complaints]. If, however, a concern is raised under whistleblowing processes that should instead be investigated as such a complaint, the concern will be transferred into the complaints process by the person receiving it. A complaint which constitutes a public interest (whistleblowing) disclosure (see paras 16-18 below) will attract statutory protection even if the disclosure is characterised as a "complaint" and initially reported through the complaints process. In such cases, the concern should be treated as whistleblowing by the receiving organisation once transferred into that organisation's whistleblowing process.
14. Each organisation with staff employed at each location (see para 5, Home Office, supplier, NHS/healthcare) is required to identify a nominated officer(s) who can signpost and provide advice on the appropriate channel for raising a concern. Details of those people should be made available to all staff in the detention estate and those nominated officers should regularly meet staff in the establishment to ensure that they understand when and how to raise a concern.

## The law – what is whistleblowing?

15. 'Blowing the whistle' occurs when a person raises a concern about past, present or imminent wrongdoing, or an attempt to cover up wrongdoing, in an organisation or a body of people. **To attract the legal protection discussed below the information disclosed must be in the public interest, broadly meaning that the issue must affect people at large in some way.** In the immigration detention context, this might include, for example organisations (Home Office, suppliers, healthcare etc), colleagues, detainees or the general public. Personal grievances and individual complaints that only impact the individual making the complaint are not usually covered by whistleblowing law. DSO 03/2015, Handling Complaints sets out the separate procedures for making such a complaint.



## The law – what protections exist for whistleblowers?

16. The Public Interest Disclosure Act 1998 (PIDA) protects whistleblowers from detrimental treatment by their employer (amending the Employment Rights Act 1996) as a result of making a public interest disclosure. To be counted as a public interest disclosure / “whistleblowing” disclosure, information must be disclosed; it is not sufficient to gather information or threaten to make a disclosure. The individual reporting must reasonably believe that the information relates to one of six categories listed in PIDA:

- commission of a criminal offence;
- failure to comply with a legal obligation;
- a miscarriage of justice;
- danger to the health and safety of any individual;
- damage to the environment; or
- the deliberate concealment of information falling within any of these categories.

A public interest disclosure must be made in the public interest (see above). It will not be a public interest disclosure if the person making the disclosure commits an offence by making the disclosure. A public interest disclosure must be made to certain people (eg the employer) in order to attract statutory protection; this requirement should be covered in detail in the relevant policies of individual organisations.

17. Home Office staff should refer to the Home Office whistleblowing policy on Horizon (the Home Office intranet) for guidance, which will assist in understanding if a disclosure is protected by PIDA and covered by the whistleblowing policy (including legal protection) and how a disclosure should be made. As stated above, this DSO is not intended to supersede that policy, to which Home Office staff should refer.

18. Whistleblowers who **maliciously or deliberately** raise a matter that they know to be untrue are not covered by whistleblowing protection.

## Staff capability

### All staff

19. Provisions must be in place to ensure that all staff understand the behaviours and cultures expected from staff working in the immigration detention estate and that this is effectively monitored. Those provisions should include expectations and guiding principles for appropriate workplace behaviour and expected behaviours outside work (e.g. use of social media).

20. Staff must receive training on those provisions and policies (including whistleblowing policies) as part of induction training and every year thereafter. The provisions and policies must also be regularly promoted with staff through appropriate fora, including monthly staff engagement events.

21. All staff need to understand and be familiar with what constitutes wrongdoing, including their obligations to report suspicions or incidents and must understand how to follow the appropriate policies and procedures for doing so. Home Office staff must follow the whistleblowing procedures on Horizon, supplier and NHS staff must follow the procedures set out in their published whistleblowing policies.

## **Directly employed staff**

22. The points included here set out the minimum action required. Contracted supplier staff must additionally comply with any specific contractual obligations relating to staff culture. Staff induction, initial training courses and refresher training must include workplace behaviours and the process for raising concerns.

## **Home Office directly employed staff**

23. Home Office staff will receive induction training, which will include referencing the Home Office whistleblowing processes. The Home Office whistleblowing process must be easily accessible to staff and staff should be regularly reminded about the process for raising concerns.

## **Non-directly employed persons**

24. Non-directly employed persons must refer to their employer/the organisation which engages them for training but can also seek advice from the people named in para 10 above on how to detect and report suspicions of wrongdoing.

## **Safeguarding responsibilities**

25. In some circumstances, allegations of wrongdoing can raise safeguarding issues. All staff (Home Office, staff of contracted service providers and non-directly employed persons) must be clear about their safeguarding responsibilities including in relation to young people (under 18), to vulnerable adults and to other groups such as pregnant women and follow the appropriate reporting procedures.

## **Anonymity**

26. To support the fullest investigation of a report, staff are encouraged to disclose their identity when making a report. The Home Office recognises, however, that staff may wish to retain anonymity when reporting. Anonymous information will be just as important for organisations to act upon. In such instances relevant procedures in whistleblowing policies must be followed (and may, for example, include a dedicated helpline or anonymised email address for raising such concerns). An employee can report anonymously but it will be more difficult for follow up on a disclosure if the whistleblower cannot be contacted. An employee can give their name and request confidentiality, with the person or body they tell making every effort to protect the identity of the person making the report. Staff should note,

however, that reporting concerns to the media may mean that whistleblowing law rights are lost unless the method of the disclosure complies with stringent conditions set out in PIDA (see <https://www.gov.uk/whistleblowing/who-to-tell-what-to-expect>).

## Processing reports of suspicions of wrongdoing

### Processing data

27. All staff must ensure that information received is handled and processed in accordance with current data protection legislation.
28. Contracted centre suppliers are required to report monthly to their local Home Office delivery manager on professional standard issues, including on any issues that have been reported under whistle blowing procedures and which are being investigated or have resulted in disciplinary action. The Home Office should also be advised of the numbers and outcomes of whistleblowing concerns raised by other organisations where these relate to the running of the centre.

### Learning lessons

29. If a report of whistleblowing under Home Office processes progresses to an investigation being commissioned, the investigation report may contain recommendations for lessons to be learned, a change in policy or procedure or may recommend disciplinary action be considered against an individual or individuals. Any lessons learned and changes in policy will be disseminated appropriately by the department, taking issues of anonymity into account. Outcomes are also reported to the Cabinet Office.