Estyn

Rhagoriaeth i bawb ~ Excellence for all

Arolygiaeth Ei Mawrhydi dros Addysg
a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

Whistleblowing Policy and Procedures

Public Interest Disclosures

Information sheet

Information box

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This and other Estyn publications are available on our website: www.estyn.gov.uk

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Equality Impact Assessment

In accordance with Estyn's Equality Impact Assessment guidance 2010, an initial screening impact assessment has been carried out and this policy is not deemed to adversely impact on the grounds of race, disability, gender, sexual orientation, belief, age, language, or human rights.

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Introduction

1 Estyn is committed to maintaining an open culture with the highest standards of honesty and accountability, where employees and workers can report any legitimate concerns in confidence.

Aims of the policy

2 Estyn encourages employees and workers to report any suspected wrongdoing. The aim of this policy is to ensure that our employees and workers are confident that they can raise any matters of genuine concern without fear of reprisal, in the knowledge that they will be taken seriously.

3 Under the terms of the Civil Service Code (see Appendix 1) employees are required to report evidence of criminal or unlawful activity. The Civil Service Code also says that you may report other breaches of the Code committed by colleagues. Employees, who report a genuine concern, even if it turns out to be mistaken, are doing their duty as Civil Servants.

4 Estyn recognises that the decision to report concerns can sometimes be a difficult one for people to make. This policy and associated procedures are designed to be fair and flexible, to address those difficulties and to reassure employees and workers that they can expose wrongdoing without any risk to themselves. Concerns may be raised with management at all levels, and in exceptional cases, you may raise your concerns with the Civil Service Commissioners (see Appendix 1).

5 This policy and procedures:

- set out the internal procedures for raising concerns and making disclosures;
- encourage individuals to report matters of proper concern and make disclosures appropriately at an early stage;
- explain what to do if you wish to make a disclosure;
- ensure that you receive a response to the concerns you have raised and feedback on any action taken, where appropriate;
- offer assurance that you will be protected from possible reprisals or detriment where a disclosure is made in good faith that you reasonably believe to be true; and
- protect employees, workers and Estyn from unfounded and malicious allegations.

Scope of policy

6 This policy and its procedures apply to all individuals working for Estyn including employees, secondees, agency staff, consultants, contractors, board members including non-executive directors and members of the audit committee. Any person who undertakes work for Estyn can make a disclosure under the procedures set out in Section 2.

7 This policy is primarily for concerns where the interests of others or of the organisation itself are at risk, and is distinct from Estyn's Grievance Policy. If you have any problems or wish to raise a dispute in relation to your employment position or personal circumstances in the workplace then it should be made by way of Estyn's Grievance Procedure. If you are unsure which policy is applicable you should speak with the Head of Resourcing Branch, Estyn's designated Whistleblowing Officer.

8 Any issues in relation to child protection should be dealt with under Estyn's Child Protection Policy and Procedures.

9 Disclosures relating to fraudulent activity, including those relating to bribery, should be made by way of Estyn's Anti Fraud Policy.

Section One: Policy

What is whistleblowing?

10 Whistleblowing refers to 'making a disclosure in the public interest'. Whistleblowing occurs when an employee or worker (or a group of employees or workers) raises a concern or discloses information which relates to wrongdoing, illegal practices or unethical conduct in the workplace, which has come to their attention through work and affects others, for example members of the public. The whistleblower is usually not directly or personally affected by the issue being reported.

11 The Public Interest Disclosure Act 1998 governs the making of disclosures concerning workplace activities and affords protection against victimisation or dismissal to employees and workers who make a protected disclosure (blow the whistle), provided that the disclosure is made appropriately and in good faith. The Act protects a whistleblower if they raise a concern about wrongdoing internally and in most cases, with an external regulator. However, the whistleblower will not be protected if, in disclosing the information, he or she commits a criminal offence e.g. a breach of the Official Secrets Act 1989.

Reporting concerns

12 All employees and workers have a responsibility to raise any concerns that they may have about malpractice, wrongdoing or unethical conduct within the workplace. You should be watchful for unlawful or unethical conduct and should report anything of that nature.

13 We would expect all employees and workers to report, or make disclosures of information which relates to Estyn, that tends to show that one of the following acts has occurred, is occurring or is likely to occur:

- a criminal offence;
- a failure to comply with a legal obligation;
- a miscarriage of justice;
- the endangering of an individual's health or safety;
- damage to the environment; or
- deliberate concealment of information relating to any of the above.

14 All employees have an additional responsibility to act in accordance with the Civil Service Code (see Appendix 1). This policy and associated procedures clarifies the rights and responsibilities of civil servants under the Civil Service Code and provides information to employees about making disclosures and reporting matters that they think conflict or might conflict with the Code.

15 Guidelines on what to do if you suspect or have any concerns about malpractice, wrongdoing or unethical conduct in the workplace are provided in Section 2 of this policy.

16 Matters raised appropriately under this policy and procedures will be investigated promptly, thoroughly and confidentially and appropriate action will be taken. The outcome of the investigation will be reported back to the person who raised the disclosure, where this is felt to be appropriate.

17 If you make a disclosure, you must have reasonable belief that the information you are disclosing is true and you must make the disclosure in good faith. If your belief turns out to be mistaken, you will still be protected provided that it was reasonable to think as you did.

Safeguard against reprisal, harassment and victimisation

18 Estyn will not tolerate reprisals against, or harassment or the victimisation of employees or workers who raise matters in accordance with the provisions of the Public Interest Disclosure Act. Any employee or worker who victimises or harasses another employee or worker as a result of their having raised a concern in accordance with this policy will be dealt with under Estyn's Discipline Policy and Procedures.

Misconduct or criminal activity

19 If misconduct is discovered as a result of an investigation, the matter will, where appropriate, be considered under Estyn's Discipline Policy and Procedures. External action, such as reporting the matter to the police where criminal behaviour is found, may also be appropriate. Where a matter needs to be reported to the police, an Assistant Director should make the call after discussing the matter with a Strategic Director or the Chief Inspector.

20 Failure to notify Estyn when reasonably aware or certain of an occurrence included in the list of categories of disclosures in paragraph 13 is regarded by Estyn as misconduct. Failure to notify internally before notifying externally without good cause is also regarded as misconduct.

Instruction to cover for wrongdoing

21 An instruction to cover for wrongdoing is a disciplinary offence. If you are told not to raise or pursue a disclosure, even by a person in authority, you should not remain silent. Depending on who gave the instruction to cover, you should report the matter to the most appropriate person from the following list:

- your line manager, or the person supervising your work;
- a Strategic Director;
- the Chief Inspector;
- Estyn's designated Whistleblowing Officer; or
- any non-executive member of Estyn's Strategy Board.

Estyn's undertaking to individuals raising disclosures in good faith

22 Provided that you raise a concern in good faith, based on reasonable belief, and follow the procedures set out in Section 2, Estyn makes the following undertakings:

- you will not be disciplined or subjected to any other detriment to your career as a result of raising a disclosure, even if the concern turns out to be mistaken or groundless;
- the disclosure will be treated seriously and, as the whistleblower, you will be treated fairly and justly by Estyn;
- your identity as the whistleblower will be kept confidential for as long as you require, where this is practicable and under Estyn's control[1], subject to the requirements of criminal investigations and any other legal proceedings, where applicable;
- you will be informed of any action being taken in response to your concern, and of the outcome (subject to any legal constraints and where appropriate); and
- Estyn will take all other reasonable steps to protect you from any victimisation, harassment, bullying or other personal detriment occasioned as a result of your disclosure.

23 Where you feel that you have been victimised, harassed or bullied as a result of making a disclosure and inform Estyn of this, the matter will be fully investigated and may result in disciplinary action being taken against the person responsible for the victimisation, harassment or bullying.

Disclosures containing unfounded, mistaken or malicious allegations

24 Where a disclosure contains an allegation that is not confirmed by further inquiry and is ultimately found to be mistaken or groundless, the matter will be closed and no further action will be taken, providing you (as the whistleblower) acted reasonably and without malice. Estyn will take all reasonable steps to protect any person implicated in unfounded or mistaken allegations from adverse consequences.

25 Estyn has a duty to protect all those who work for us and the organisation itself from unfounded, malicious or vexatious allegations. An allegation made in a disclosure will only be regarded as malicious if, following investigation, it can be shown that it was raised in a deliberate attempt to cause harm to an individual or the organisation. Where disclosures are made without reasonable belief, in bad faith or maliciously, the protection afforded by the Public Interest Disclosure Act will not apply. Such disclosures will be treated as a serious matter and could result in disciplinary action being taken against the individual concerned and may result in their dismissal.

26 Any allegations found to be made maliciously or in bad faith will be viewed with even greater seriousness if the allegation is made externally (for example by leaking information to the press), apart from where an employee makes an allegation to the Civil Service Commissioners in accordance with the Civil Service Code.

[1] The identity of the whistleblower might emerge in circumstances beyond Estyn's control, for instance, in court proceedings.

Role of the Whistleblowing Officer

27 Estyn's designated Whistleblowing Officer is the Head of Resourcing Branch.

28 The role of the Whistleblowing Officer is to keep a record of all matters raised under the policy and of the action taken so that an assessment may be made of the effectiveness of the policy and any emerging patterns.

Section Two: Procedures

How to make a disclosure

29 In the event that you have reason to believe that underhand or illegal practices have taken, are taking or are likely to take place, you are encouraged to report the issue immediately, orally or in writing, to either:

- your line manager or the person supervising your work;
- a Strategic Director;
- the Chief Inspector;
- the Whistleblowing Officer; or
- any non-executive member of Estyn's Strategy Board.

30 Different procedures apply for making disclosures relating to the Chief Inspector (see paragraphs 68 to 72); or to non-executive members of Estyn's Strategy Board or Audit Committee (see paragraph 73).

31 You must make it clear whether the disclosure is being made under the Whistleblowing Policy and/or under the provisions of the Civil Service Code.

32 When disclosing any concerns, you will not be expected to have absolute proof of the act concerned, but will need to be able to show the reasons for your concern.

33 Where a disclosure is raised orally, an agreed note of the discussion should be taken and retained by both parties in case evidence is required at a later stage. You may be required to formalise your disclosure in writing.

34 In matters relating to possible conflicts with the Civil Service Code, you can discuss the issue with Human Resources: People, Policy and Advice before making a disclosure under this policy (see Appendix 1).

35 It is particularly important in matters concerning the health, safety and welfare of those on our premises (whether employees, contractors or visitors) that anyone who becomes aware of a hazard (actual or potential) or dangerous occurrence is expressly required to immediately notify Dai Williams, Estyn's Health and Safety Lead Officer before making any other report (e.g. to an outside body) not least so that immediate action can be taken if necessary to deal with the hazard.

What Estyn will do in response to a concern raised under this policy

36 As soon as a concern is reported under this policy, the person receiving the disclosure will discuss the matter with the Whistleblowing Officer, who will determine how to proceed.

37 The Whistleblowing Officer will act as the point of contact with the whistleblower (if his or her identity is known) until Senior Management considers the matter is resolved.

38 The Whistleblowing Officer will write to the whistleblower (or other person reporting the matter on the whistleblowers behalf) within 10 working days of the concern being drawn to their attention:

- acknowledging the report or referral of the concern;
- giving an indication of how Estyn proposes to deal with the matter; and
- indicating the likely time-scale for providing a final response.

39 If it is impossible to give the indications within 10 working days, the letter will say so, giving reasons, and the indications will be given as soon as possible thereafter.

40 Where the issue is about the Whistleblowing Officer or the Chief Inspector, the person receiving the disclosure will discuss the matter with a non-executive member of Estyn's Strategy Board. The Strategy Board will determine how to proceed.

41 If a decision is made not to investigate the concern, the whistleblower will be notified, in writing, as soon as possible, and within 10 working days at the latest.

Interim measures

42 If it appears necessary to take urgent interim measures – for instance, to protect public funds or if there is a child or vulnerable adult protection issue – the Strategic Director or Chief Inspector will arrange for this to be done immediately, before any inquiries or investigation process.

Initial inquiries

43 If no interim measures are taken, the Whistleblowing Officer should arrange for informal initial inquiries to be made to determine the most appropriate form of investigation (if any) and the most appropriate process for the consideration of the concern. Concerns that fall more appropriately within the scope of other formal procedures, such as the complaints or grievance procedure, will be referred for consideration under those procedures.

Disclosures made from outside Estyn

44 If you are contacted by a member of the public, or anybody else who does not work for Estyn (as defined in this policy, see paragraph 6) to make a disclosure or raise a concern directly related to Estyn and its work, you should seek advice from:

- your line manager or the person supervising your work;
- a Strategic Director;
- the Chief Inspector;
- Estyn's designated Whistleblowing Officer; or
- any non-executive member of Estyn's Strategy Board

who will decide the most appropriate course of action. It is likely that such allegations will be more appropriately dealt with under Estyn's Complaints Procedure.

45 Where a disclosure is received from a member of the public relating to an external organisation e.g. a school, you should advise them to use either the external organisation's Whistleblowing procedures (if the person works for the organisation) or their Complaints procedures. Alternatively they should contact an appropriate senior person within that organisation, or the relevant local authority or regulator. This does not apply to concerns regarding the safeguarding of children, young people and vulnerable adults which should be handled in accordance with Estyn's Safeguarding Policy and Procedures.

Formal investigation

46 If it is determined that a formal investigation should take place under these procedures, the Whistleblowing Officer (or Strategic Director/Chief Inspector) will appoint a suitable person to act as an Investigating Officer, normally within ten working days of the disclosure being raised. Estyn's Strategy Board will determine how to proceed in relation to a disclosure relating to the Chief Inspector/ Whistleblowing Officer.

47 The Investigating Officer will be somebody not implicated in the alleged act or subsequent disclosure, who is impartial and who will be able to investigate the matter thoroughly and confidentially.

48 Where the disclosure relates to the actions of an individual, the Investigating Officer will normally be at HEO level or above and at least a management level more senior than anyone implicated in the disclosure. In other circumstances, a Strategic Director or Chief Inspector will determine the most appropriate person to undertake the investigation.

49 In order to give full consideration to a disclosure, the Investigating Officer will meet the person making the disclosure (where known) and any other individual mentioned in the disclosure to establish the facts. The Investigating Officer may be accompanied to the meeting by the Whistleblowing Officer who will take notes and advise on process.

50 At any meeting carried out under this procedure, individuals may be accompanied by a colleague or Trade Union representative, who may address the meeting, but not answer questions on behalf of the individual.

51 The Investigating Officer will normally give ten working days notice of a meeting. The person whom the Investigating Officer is meeting is responsible for ensuring that their companion is available to attend the meeting. If they are not available, the member of staff can propose an alternative reasonable time within 5 working days of the original meeting date.

52 The investigation may also involve individuals being asked to provide written statements to the Investigating Officer.

53 Once the Investigating Officer has established the facts, he/she will prepare a report for the relevant Strategic Director, or the Chief Inspector. The Strategic Director or Chief Inspector will consider the report and decide what action, if any, is appropriate.

54 If the alleged offence is substantiated, appropriate action will be taken. Where disciplinary action is considered necessary, the Strategic Director or Chief Inspector will initiate action under Estyn's Discipline Policy and Procedure after having sought advice from Human Resources: People, Policy and Advice.

55 Where appropriate, the Strategic Director or Chief Inspector will ensure that the findings of the investigation are communicated to:

- the person making the disclosure;
- the individual(s) under investigation; and/or
- Estyn's Executive Board, or other external authority e.g. the police, who may need to consider whether action should be taken on the basis of the findings (see paragraph 19).

However, there may be constraints on the amount of information that can be communicated because of Estyn's duties of confidentiality, or fairness, or other legal considerations.

56 While Estyn cannot always guarantee the outcome you are seeking, we will try to deal with your concern fairly and in an appropriate way. By using this policy you can help us to achieve this.

57 If you are not happy with the way in which your concern has been handled, you can raise it with one of the other key contacts in paragraph 29.

Confidentiality

58 If you raise a disclosure, only those people involved in considering the disclosure will know your identity. Your identity will not be revealed except:

- where Estyn is under a legal obligation to do so;
- where your name is already in the public domain; or
- to a lawyer or other adviser on a strictly confidential basis for the purposes of obtaining advice; or
- the circumstances described in paragraph 61 below.

59 The number of persons informed will be strictly limited to those who need to know at each stage of the process.

60 You will also be required to keep the fact that you have raised a disclosure, the nature of the disclosure and the identity of those involved, confidential.

61 Keeping your identity confidential may make it more difficult to carry out a full investigation into the matter or to take action against a wrongdoer. If the situation arises where we are not able to resolve the concern without revealing your identity (for instance because your evidence is needed in court or you are required to be a witness), we will discuss with you whether, and how to proceed. If the investigation leads to prosecution, you are likely to be called to give evidence in court.

62 Any employee or worker who reveals the whistleblower's identity in breach of this policy may face disciplinary action.

63 All communication in writing between the Investigating Officer, Whistleblowing Officer, line manager, Strategic Director, Chief Inspector, non-executive member of Estyn's Strategy Board and the individual will remain confidential (while this is under Estyn's control).

Anonymous disclosures

64 Individuals are strongly encouraged to raise disclosures openly and in accordance with these procedures. Whenever possible, you should put your name to allegations. However, anonymous disclosures will be given due consideration under this procedure.

65 In determining whether an anonymous disclosure will be investigated further, Estyn will take the following factors into account:

- the seriousness of the issue raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources, and obtaining information.

66 Estyn cannot guarantee to investigate all anonymous disclosures as a proper investigation may prove impossible if the Investigating Officer cannot obtain further information from the individual raising the disclosure, give feedback or ascertain whether the disclosure was raised in good faith. It is easy to make malicious or unfounded allegations anonymously. The investigating officer will bear this in mind. Initial inquiries into anonymous allegations will be handled with particular sensitivity.

67 If a concern is raised anonymously, the whistleblower cannot benefit from Estyn's undertakings set out in paragraph 22.

Disclosures relating to the Chief Inspector

68 Anyone wishing to make a disclosure relating to the Chief Inspector, including anything relating to the Chief Inspector that may conflict with the Civil Service Code, should do so by raising the matter with any of the non-executive members on Estyn's Strategy Board. The Board will determine the most appropriate process for considering the disclosure.

69 Should a Strategy Board member be approached about a matter relating to the Chief Inspector, the Board member should arrange to meet other Board members to discuss the way ahead.

70 The Strategy Board should arrange for informal initial inquiries to be made to determine the most appropriate process for considering the disclosure (i.e. complaints, grievance, whistleblowing procedure) and the most appropriate form of investigation (if any).

71 If it is determined that a formal investigation should take place under the Whistleblowing procedures, the Chair of the Audit Committee will appoint a suitable person to act as Investigating Officer - normally another member of the Board - within ten working days of the disclosure being raised. The Investigating Officer will be somebody not implicated in the disclosure, who is impartial and will be able to investigate the matter thoroughly and confidentially.

72 The procedure for investigating the disclosure will be that outlined in paragraphs 46 to 55. The report prepared by the Investigating Officer should be considered by the Strategy Board. Depending on the outcome of the investigation, the Welsh Assembly Government may have to be informed of the outcome.

Disclosures relating to non-executive members of Estyn's Strategy Board or Audit Committee

73 Disclosures relating to the work of non-executive members of Estyn's Strategy Board or Audit Committee should be made to the Chief Inspector.

Other sources of information and advice

74 If you are unsure whether to use this policy or you would like independent advice at any stage, you may contact:

- your trade union;
- ACAS; or
- the independent charity Public Concern at Work.

Advisory, Conciliation and Arbitration Service (ACAS)

75 ACAS operates a nationwide network of help lines which deal with queries about employment matters, including the rights and obligations arising out of employment law. The service is available to any individual or organisation free of charge. Any worker who contacts ACAS will wish to bear in mind the distinction between seeking information about the provisions of the Public Interest Disclosure Act 1998, and the requirements attached to making a protected disclosure, as explained in this policy.

Public Concern at Work

76 Public Concern at Work is an independent organisation which can provide guidance and training to employers on whistleblowing and can also offer free advice to employees unsure whether or how to raise a disclosure about workplace wrongdoing.

Appendix 1: The Civil Service Code

The Civil Service Code sets out the constitutional framework within which civil servants work; the values which they are expected to uphold; and the standards of behaviour expected of them. It also clarifies the rights and responsibilities employees have to ensure that actions are not being taken that conflict with the Code. A copy of the Code can be found on:

www.civilservice.gov.uk/about/values/cscode.

The Civil Service Code applies to all employees of Estyn. Employees in this instance are individuals who have entered into or work under a contract of employment with Estyn. This would usually exclude for example contractors, consultants etc.

Under the terms of the Civil Service Code, all Estyn employees, as civil servants, must act with integrity, honesty, objectivity and impartiality. If you are an employee and believe that you are:

- being required to act in a way which conflicts with the Civil Service Code; or
- become aware of actions by others which you believe conflict with the Civil Service Code

you should report the matter in accordance with the procedure set out in section 2.

Appeals to the Civil Service Commissioners

If you raise a matter relating to the Civil Service Code in accordance with the procedures in section 2 and you believe that Estyn's response does not represent a reasonable response to the grounds of your concern, you may report the matter to the Civil Service Commissioners. The Commissioners may also consider taking a complaint direct before the internal procedures have been exhausted.

Appeal requests should be sent in writing to:

Bill Brooke
Office of the Civil Service Commissioners
35 Great Smith Street
LONDON
SW1P 3BQ

Telephone: 020 7276 2613

e-mail: bill.brooke@csc.x.gsi.gov.uk

A guide to bringing an appeal for people considering an appeal to the Commissioners is available from the Civil service Commissioners website www.civilservicecommissioners.org or from Human Resources: People, Policy and Advice.

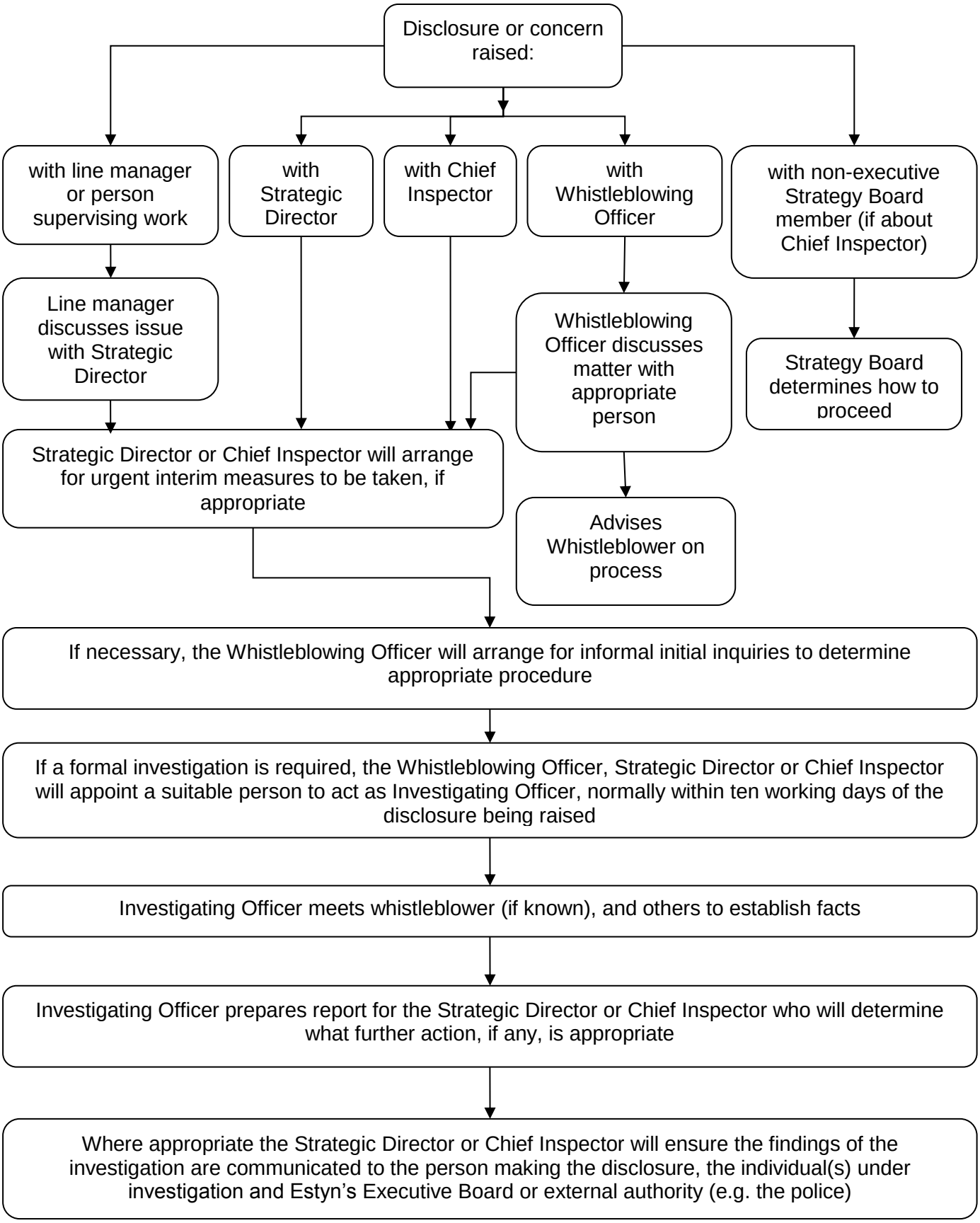
Although the Civil Service Code provides the framework within which civil servants should act, disclosures of actions or behaviour that conflict with the Code are not necessarily protected under the Employment Rights Act 1996 and the Public Interest Disclosure Act 1998. Employees should be aware that when reporting matters that conflict with the Code, for example relating to impartiality, they may not necessarily be covered by these Acts even if the procedures in section 2 are followed appropriately.

Employees are nevertheless required to report matters which conflict with the Code and Estyn will do all it can to ensure that employees are not disadvantaged or victimised should they report a matter they reasonably believe conflicts with the Code and the report is made in good faith.

Advice about issues relating to the Civil Service Code

If you wish to discuss any issue relating to the Civil Service Code, you can receive impartial advice from Human Resources: People, Policy and Advice who can:

- advise on the interpretation of the Civil Service Code;
- advise on steps that might be taken to resolve a disclosure relating to the Code;
- advise on how to take such a disclosure forward through Estyn's procedures, should you wish to do so; and
- if requested, pass the disclosure on to the appropriate point within Estyn if he/she is satisfied that the matter may fall within the Code.

Members of Human Resources: People, Policy and Advice cannot investigate disclosures.

Appendix 2: Procedures flowchart