

September 2023

Driving better company performance through clear and effective whistleblowing practices

Ofwat

About this document

We are consulting on the key elements of policy and practice we would typically expect water companies to have in place in relation to whistleblowing. We consider these to be good practice with respect to whistleblowing.

[Section 1](#) provides some background to our expectations.

[Section 2](#) provides a summary of our draft good practice expectations.

[Section 3](#) sets out the details of our consultation.

Responding to this consultation

We would welcome any comments on this document and in particular responses to the consultation questions. **The closing date for this consultation is 13 October 2023.** Please email us at mailbox@ofwat.gov.uk with your response.

We may publish responses to this consultation on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (**FoIA**), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [privacy policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that under the FoIA there is a statutory [Code of Practice](#) which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

1. Introduction

We are consulting on the key elements of policy and practice we would typically expect water companies to have in place in their companies in relation to whistleblowing.

Whistleblowing is when a worker (which includes direct employees and indirect employees such as contractors) raises concerns about improper practices in their workplace – also known as making a disclosure in the public interest. Workers typically have the option of raising their concern either directly with their employer or with a relevant regulator or professional body which is prescribed by legislation to hear concerns about particular sectors or issues, otherwise known as a prescribed person. Ofwat is a prescribed person for disclosures in the water and wastewater services sector, alongside several other bodies that may be relevant, depending on the nature of the concern.

Why we are consulting on good practice with respect to whistleblowing

A National Audit Office (**NAO**) report from [2015](#) recommended that prescribed persons (such as Ofwat) should share expectations of what good whistleblowing policies and procedures look like with the bodies they oversee. [Our strategy for the sector](#) sets out our goal of transforming water companies' performance for customers. Whistleblowing can play an important role in enabling companies and regulators to identify and tackle areas of company performance that need improvement, and in building trust and confidence in how companies are delivering for their customers.

To inform the good practice expectations we set out in this document, we have researched what is considered to be good practice with respect to whistleblowing, in general and in other regulated sectors, alongside gathering information from water companies and new appointees on their current approach to whistleblowing. This process has demonstrated that there are a range of approaches to whistleblowing and there are some gaps and opportunities for more consistency within the water sector. Our aim is that sharing our good practice expectations will enable companies to reflect on the value of whistleblowing and whether their approach to it is driving the best outcomes for their company and customers.

Why whistleblowing is important for companies

Whistleblowing is an essential pillar of a well-functioning company. It is an important part of the internal systems and controls a company has to understand and effectively manage its activities and risks, including in relation to its compliance with its legal obligations.

Where it works effectively, whistleblowing can help companies to:

- gain valuable insights about their operations (including early warning of potential problems that need resolution);

- empower and build the trust of staff; and
- drive improved company performance for its customers.

With this in mind, it is reasonable to expect that a well-run company would have a flow of whistleblower complaints, because its leadership has created a culture in which its staff want to do the right thing and feel safe to speak up when they are concerned, and they have a robust means of investigating any concerns raised so they are resolved and staff have confidence in the process.

For water companies, we consider having an effective whistleblowing culture and procedures to be relevant to obligations within their licence – in particular, Licence Condition P¹ (Regulatory Ring-Fence). This licence condition requires a company to have in place adequate systems of planning and internal control to carry out its regulated activities. Having an environment and processes that enable staff to speak up through whistleblowing – and ensuring that the company meaningfully engages with these processes – are important internal controls relevant to this obligation.

Licence Condition P also requires companies to meet objectives on Board Leadership, Transparency and Governance. Of particular relevance is the objective that the Board's leadership and approach to transparency and governance engenders trust in the Appointee and ensures accountability for their actions.

Where there are failings in a company's culture and governance through, for example, not having a robust compliance culture where staff feel supported to do the right thing, we would have concerns. In a past [enforcement case](#) Ofwat has considered the adequacy of a company's whistleblower culture and processes when finding that company in breach of Licence Condition P.

In [June 2019](#), Ofwat wrote to water and wastewater companies setting out our expectations that they and their Boards consider, amongst other things:

- whether the governance and assurance arrangements they have in place give them the right information about their company's performance;
- how they encourage an appropriate culture in the organisation as a whole; and
- how they encourage their people to speak up if something is wrong.

¹ For some water companies this is Licence Condition I.

2. Proposed good practice expectations

We set out below our good practice expectations for water companies with respect to whistleblowing. They are relevant to all water companies and new appointees regardless of their size. Once finalised and published, we would have regard to these expectations if we needed to consider the adequacy of a company's whistleblowing arrangements as part of how it fulfils its wider regulated activities.

Good Practice Expectation	Details
<p>1. A clear understanding of whistleblowing law</p>	<p>We expect companies to be able to demonstrate a clear understanding of the law governing whistleblowing. This includes the Public Interest Disclosure Act (PIDA) which requires employers not to dismiss workers or subject them to any other detriment because they have made a protected disclosure.</p>
<p>2. An open and honest culture</p>	<p>We expect companies to have an open and honest culture that promotes integrity and includes:</p> <ul style="list-style-type: none"> • The right tone from the top of the organisation with Board and Executive teams making it clear that any concerns will be welcomed and providing assurance that they will take concerns seriously and not punish any workers if such concerns turn out not to be true. • Clear, consistent, and regular, communications to workers (including contractors) on the importance of whistleblowing. • Making it clear to workers that it is safe and acceptable for them to raise a concern about malpractice and that disciplinary action will be taken against anyone found to have victimised a whistleblower for raising concerns.
<p>3. Multiple and alternative channels for staff to speak up</p>	<p>Staff may not want to discuss concerns with their immediate management (such as with their line manager) so we expect alternatives to this to be available such as nominated officers or a whistleblowing hotline.</p> <p>This may include establishing a secure, and confidential, whistleblowing system to allow staff to whistleblow and submit a disclosure. This will increase the sense of security in an organisation.</p>

	<p>We also expect companies to communicate to staff the option of submitting a disclosure to external bodies such as prescribed persons such as Ofwat. It should also be made clear to staff that they are not required to submit a disclosure internally first before contacting an external organisation with their concerns.</p>
<p>4. A comprehensive, accessible, written policy</p>	<p>We expect companies to have in place a comprehensive, accessible, and written whistleblowing policy. This should clearly explain to staff how to blow the whistle and include details on:</p> <ul style="list-style-type: none"> • Who can make a disclosure. • What can be reported (including a clear difference between whistleblowing and grievance or HR processes). • Details on anonymity and confidentiality (including how confidentiality will be treated and outlining some of the drawbacks to anonymous disclosures). • Details on how and when action will be taken to consider a disclosure. • Details on what whistleblowers can expect in terms of feedback on the outcome of their disclosure. • Details on how to access independent advice.
<p>5. Regular reviews of whistleblowing policies</p>	<p>We expect companies to put in place regular reviews of their whistleblowing policy. This is to ensure the policy is fit for purpose and is regularly updated with the right contact details.</p>
<p>6. A clear process for managing disclosures</p>	<p>We expect companies to have a clear, simple, process in place to ensure that any disclosures are considered for investigation in an appropriate, sensitive, and effective way; any accompanying concerns are addressed; and feedback is provided. An effective process:</p> <ul style="list-style-type: none"> • ensures all disclosures are treated in a sensitive manner, with confidentiality clearly considered. • is clearly independent from any staff who are the subject of a disclosure. • ensures any investigators assigned to investigate disclosures are appropriately qualified, and trained, to review the specific concerns that have been raised. • where possible, provides clear feedback to the whistleblower on actions/outcomes in a reasonable timeframe.

<p>7. Clear outcomes and insight</p>	<p>We expect companies processes to ensure that all whistleblower complaints reach a clear conclusion. This may be through steps to directly address a particular concern raised, and / or to take the insight and learning gained from the complaint to inform future business practices. These outcomes should be followed up.</p>
<p>8. An Executive team and Board that have oversight and a clear line of sight of what is happening with whistleblowing</p>	<p>We expect companies to have an Executive team and Board that have oversight and a clear line of sight of what is happening with whistleblowing including:</p> <ul style="list-style-type: none"> • A company's whistleblowing policy. • The volumes of whistleblowing and any complaints about victimisation for making a disclosure (including complaints about breaches in confidentiality) and what this says about the company's culture and behaviours. • The types of issues being raised by whistleblowers and the insight this may provide on the company's day-to-day operations. • The outcomes of resulting investigations and how these are taken forward.
<p>9. A Board that regularly considers the effectiveness of its whistleblowing policies and procedures</p>	<p>We expect companies to have a Board that regularly considers the effectiveness of its whistleblowing policies and procedures as part of its oversight of internal controls.</p> <p>A company's internal audit function may support a Board in considering this. A Board may choose to seek independent assurance that its organisation's policy and procedure is effective.</p>
<p>10. Regular communications and training for workers on whistleblowing</p>	<p>We expect companies to reinforce a culture of "doing the right thing" within the organisations, including by putting in place regular training, communications, and awareness raising for all workers (including contractors) on the importance of whistleblowing, how to make disclosures, and how their whistleblowing process works.</p> <p>Managers – who may be recipients of disclosures – and investigators should also receive appropriate training on handling and investigating disclosures respectively.</p>

3. Consultation

We would welcome your thoughts on the following questions:

- Do you have any comments or concerns about our proposed good practice expectations?
- Is there anything that our expectations do not cover that you consider would be relevant to enabling effective whistleblowing arrangements in water companies?

The closing date for this consultation is **13 October 2023** and we will consider all responses carefully before publishing our final version of our good practice expectations with respect to whistleblowing. Please email us at mailbox@ofwat.gov.uk with your response.

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.**

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