

# Whistleblowing Annual Report 2023/24

September 2024

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# 1. Summary of the Public Interest Disclosure Act 1998

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- 1.1 The Public Interest Disclosure Act 1998 gives legal protection to employees against being dismissed or penalised by their employers as a result of disclosing information which is considered to be in the public interest. On 15 December 2022, ESS became a 'prescribed person' as defined under the Public Interest Disclosure (Prescribed Persons) Order Public Interest Disclosure (Prescribed Persons) Order 2014.
- 1.2 This means that anyone who has concerns that their employer is not properly handling its environmental responsibilities can report the matter directly to us. This could include, for example, telling us about a failure to comply with, or properly implement, legal obligations in respect of the environment, or any gaps in the law which have caused, or have the potential to cause, environmental harm.

## 2. The reporting duty and the reasons for reporting

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- 2.1 As a prescribed person, ESS has a duty to report annually on the number of qualifying disclosures made to us and to provide a summary of the action taken in respect of these.
- 2.2 Under the Prescribed Persons (Reports on Disclosure of Information) Regulations 2017, ESS, as a prescribed person, must report the following information every year:
- the number of disclosures received (which met certain criteria)
  - the number of those disclosures where no further action was taken
  - a summary of the action taken in relation to the disclosures
  - a summary of how workers' disclosures have impacted our ability to perform our functions and meet our objectives
  - an explanation of ESS' functions and objectives
- 2.3 The reporting duty aims to increase transparency in the way that whistleblowing disclosures are dealt with and to reassure whistleblowers that their disclosures are taken seriously.

### 3. ESS' functions, objectives and powers

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- 3.1 ESS is an independent body whose role is to scrutinise, investigate and secure improvements in: public authorities' compliance with environmental law; the effectiveness of environmental law; and the way it is being implemented and applied in Scotland. ESS' remit covers all Scottish public bodies including: local authorities; health boards; the Scottish Government and its agencies.
- 3.2 ESS' objective is to ensure that Scotland's environmental laws and standards are complied with, and their effectiveness improved. This is so that Scotland's people and nature benefit from a high-quality environment, and are protected from harm through the consistent application of effective environmental laws, which are recognised internationally as setting high standards.
- 3.3 ESS has a range of statutory powers to help secure compliance or improvements in effectiveness, including:
- issuing an information notice requiring a public authority(s) to provide us with any information needed to carry out our functions
  - issuing a compliance notice requiring a public authority(s) to take the steps specified in the notice to address its failure to comply with environmental law, and to prevent that failure, and the environmental harm associated with it, from being repeated in the future
  - issuing an improvement report, where we consider that the actions of a public authority(s) represents a 'systemic failure', recommending measures that Scottish Ministers and public authorities should take to ensure compliance with environmental law and/or improve its effectiveness
  - in order to prevent or mitigate serious environmental harm, making an application for judicial review (or applying to the Court for permission to intervene in an existing judicial review) where we consider that the conduct of a public authority(s) constitutes a 'serious' failure to comply with environmental law

## 4. Why is whistleblowing important?

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- 4.1 Globally we face significant environmental challenges: the Intergovernmental Panel on Climate Change has made clear the threat the climate emergency poses to people and planetary health and the need to take urgent action to protect our planet. In Scotland, the Scottish Government has declared twin crises of climate change and biodiversity loss.
- 4.2 Whistleblowing disclosures help us to detect serious problems of non-compliance with environmental law, or with the effectiveness of the law itself. Whistleblowing therefore plays a valuable role in protecting the environment from harm.
- 4.3 We are likely to treat employees of Scottish public authorities and others who have concerns about how their organisation handles its environmental responsibilities as whistleblowers. Their role within these bodies mean they may be well placed to identify and report serious problems to us.
- 4.4 When we receive a whistleblowing disclosure, our assessment will depend on what we are told and the severity of the matter. Having considered the information disclosed to us, we will decide what action, if any, to take according to the nature and level of risk.

## 5. Whistleblowing disclosures

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- 5.1 The reporting period ranges from 01 April 2023 to 31 March 2024. The report must be published within six months of the end of the reporting period.
- 5.2 To protect the confidentiality of whistleblowers and other parties involved, no information is included here that would enable a worker who has made a disclosure or the employer, place or person about whom a disclosure has been made to be identified.
- 5.3 In the reporting period ESS received one disclosure relating to a public authorities' compliance with environmental law, which ESS considered to be a qualifying disclosure. Following discussion with the individual concerned, it was agreed that further information would be supplied to ESS. As this information was not received, the disclosure was closed with no action taken. The information received will be held as intelligence should similar concerns be raised with ESS.

## 6. Impact of disclosures

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6.1 In light of the low volume, and the decision to close, the disclosure we received has had no impact on our ability to perform our statutory functions and objectives during this period.

## CONTACT

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