



**Civil Service
Commissioners**
for Northern Ireland

CIVIL SERVICE COMMISSIONERS' GUIDANCE DOCUMENT

**Raising a Concern
under the
NICS Code of Ethics**

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1. Introduction

This document sets out the guidance in relation to concerns from existing civil servants under the Northern Ireland Civil Service (NICS) Code of Ethics. It also sets out the process that the Civil Service Commissioners for Northern Ireland (the Commissioners) will follow when considering such concerns and whether or not to investigate them as appeals. It is not exhaustive and issues raised under the Code can be wide-ranging and require a flexible approach.

The guidance explains the position in relation to a number of matters including:

- the legal basis for the Commissioners' role;
- Commissioners' processes for dealing with appeals;
- service standards that the Commissioners work to;
- the Commissioners' policy on vexatious and unreasonable appeals.



This guidance will help you to decide whether you can bring a concern to the Commissioners under the NICS Code of Ethics. It is also intended to be of assistance to departments when a member of their staff brings a concern to the Commissioners. It explains the appeals process and possible outcomes.¹

The decision on whether or not to accept a concern as an appeal, and any subsequent investigation, will be fair and objective and governed by an independent, honest, confidential and impartial approach.

The Commissioners' aim to investigate appeals in an efficient and responsive manner which is sensitive to the circumstances of all participants, particularly as it can sometimes be difficult for existing civil servants to say that they believe that things are going wrong in their department.



It is important to note that the Commissioners can only consider concerns raised by **existing civil servants**. Concerns raised by anyone who is not a current civil servant (e.g. taxpayers, customers, members of the public or their employer), to highlight danger, wrongdoing or illegality that affects others, can be made under the relevant NICS department's Raising Concerns (Whistleblowing) Policy. Further information can be found at www.finance-ni.gov.uk/publications/raising-concern-policy-framework.

¹ A detailed flowchart outlining the appeals process can be found in *Appendix A*

2. Some Definitions

In this guidance, the following words are intended to have the meaning set out below:

Concern: A concern can only be raised by an existing civil servant. A concern is an issue which a civil servant considers requires them to act in a way which conflicts with the values and standards of behaviour described in the NICS Code of Ethics or actions by others which they believe conflict with the Code.

Accordingly, when raising a concern the existing civil servant must explain how they consider that their concern relates to the NICS Code of Ethics.

A concern is different from a grievance which usually relates to a human resources management issue and is not covered by the provisions of the Code – see *Section 9*.

Appeal: A concern* that is brought to the Civil Service Commissioners to investigate and which is accepted by the Commissioners as falling within their remit under the NICS Code of Ethics.

Department: The organisation that employs existing civil servants who are subject to terms set out in the NICS HR Handbook and therefore subject to the NICS Code of Ethics. This can include Arms Length Bodies, Executive Agencies etc.

Appellant: The civil servant raising the concern (this term is used whether or not the concern is accepted by Commissioners as an appeal under the NICS Code of Ethics).

* Whilst the NICS Code of Ethics states at paragraph 26 that the Civil Service Commissioners for Northern Ireland are able to investigate complaints from civil servants, Commissioners' statutory remit is that "Commissioners may consider and determine appeals to them by a civil servant under the Code of Ethics". For the avoidance of doubt, the terminology followed in this guidance is that any matter raised with Commissioners is a "concern". Once Commissioners have determined that the matter falls within their remit under the NICS Code of Ethics they will accept it as an "appeal".

3. What is the NICS Code of Ethics?



The [NICS Code of Ethics](#) is issued by the Department of Finance and sets out the Core Values of the Civil Service and the requirement for existing civil servants to serve a duly constituted administration, whatever its political complexion, with **integrity, honesty, objectivity and impartiality**. It gives illustrations of the standards of behaviour expected from existing civil servants and is part of the contractual relationship between an existing civil servant and their employer.

It also explains the duties of departments to make existing civil servants aware of the Code and its values.

Please note:

Departments must consider concerns raised by existing civil servants under the Code and must ensure that existing civil servants are not penalised for raising such concerns.

4. The Civil Service Commissioners for Northern Ireland

The Commissioners are independent of Government and of the Northern Ireland Civil Service. The Office of Civil Service Commissioners (OCSC) consists of the Commissioners and their Secretariat.

Commissioners are recruited on merit following public advertisement and a fair and open selection competition. As a result of their different careers and interests they bring experience of the public, private and voluntary sectors and a clear and independent perspective.

You can find out who the current Commissioners are and about the work they do on their website www.nicscommissioners.org.

5. The role of the Commissioners in hearing appeals under the NICS Code of Ethics

The Civil Service Commissioners (Northern Ireland) Order 1999 states that:

Article 5 Paragraph (1)

The Commissioners may consider and determine appeals to them by a civil

servant under the Code of Ethics.

Article 5 Paragraph (2)

The Commissioners may –

- (a) *regulate their own procedure;*
- (b) *require parties to any appeal or to any investigation occasioned by an appeal to provide such information and other assistance as the Commissioners think necessary or appropriate; and*
- (c) *make recommendations.*

Article 5 Paragraph (3)

The Commissioners –

- (a) *shall publish annually a report of the number of appeals made to them under the Code of Ethics together with summary information as to the nature of such appeals; and*
- (b) *may make such reports on appeals to them under the Code of Ethics as they think fit.*

6. What is the objective of the appeals process?

The objective of the appeals process is to allow the Commissioners to investigate and determine whether there has been a **breach of the NICS Code of Ethics** and, if so, to make recommendations to ensure that the Civil Service values are upheld.

- ❖ If a department has already investigated an existing civil servant's concern, Commissioners will consider the outcome of that investigation.
- ❖ Commissioners' focus is on upholding the Northern Ireland Civil Service values and the right of existing civil servants to bring an appeal.
- ❖ Commissioners will determine the scope of their investigation on a case-by-case basis, within the limits of their legislative remit.
- ❖ If Commissioners conclude that there has been a breach of the NICS Code of Ethics they will make recommendations to address the situation and to ensure that it is not repeated.

The Commissioners are upholding the effectiveness of the Northern Ireland Civil Service by providing an independent and objective element to the investigation of

appeals. They also provide a strong independent voice with a view to ensuring that those who raise concerns are not penalised for doing so.

7. What is a valid appeal under the NICS Code of Ethics?

If an existing civil servant is asked to do something which conflicts with the values in the NICS Code of Ethics or is aware that another existing civil servant including special advisers is acting in conflict with the values, they should raise a concern within their own department.

If they have raised their concern within their own department and do not receive what they consider to be a satisfactory response they may seek to bring an appeal to the Commissioners.

In certain circumstances, the Commissioners may hear a concern brought to them directly by an existing civil servant. *In section 11 of this guidance we outline situations where Commissioners might decide to do so (without it being first investigated by the department).*

Please note:

- ❖ The NICS Code of Ethics does not cover ‘human resources management’ issues.²
- ❖ The Commissioners have no power to hear appeals from members of the public about the behaviour of existing civil servants.

Most appeals of this nature can be dealt with under the relevant NICS department’s Raising Concerns (Whistleblowing) Policy. Further information can be found at www.finance-ni.gov.uk/publications/raising-concern-policy-framework. Appeals may also be considered by the Northern Ireland Ombudsman and any member of the public can access their website which explains more about their role at www.ni-ombudsman.org.uk.

- ❖ It is important to note that a ‘whistleblowing’ concern raised by an existing Civil Servant may have a Code of Ethics dimension. In such instances elements of the concern may be a matter for consideration by Commissioners under Code of Ethics. Each case will be decided on its own merits.

² Please refer to Section 9 – Why are human resources issues not covered by the NICS?

- ❖ **If you have a concern about a Minister requiring you to act in a way that conflicts with this Code, you should raise this matter with your Permanent Secretary.** This may be a matter to be addressed under the Ministerial Code of Conduct.

It should be noted that Commissioners do not have statutory authority to deal with concerns raised in relation to a Minister as the Minister is not a civil servant. However, if you consider that the manner in which your concern was dealt with by civil servants within a department did not meet the requirements of the Code of Ethics, then you may seek to bring an appeal to Commissioners. In those circumstances, any potential appeal will relate to matters arising from the conduct of the investigation rather than to the original concern raised in relation to the Minister.



In determining whether a concern should be accepted as satisfying the criteria to be taken forward as an appeal Commissioners will look at the following in particular:

- confirmation that the appeal has been raised by an **existing civil servant**;
- confirmation from the existing civil servant's department or agency that all the necessary **internal procedures** set in place for handling matters of concern under the Code of Ethics have been properly exhausted or, alternatively, Commissioners are satisfied that there are proper reasons which justify taking the appeal directly;
- confirmation that the appeal has been **received within the specified time limits** including consideration of any extenuating circumstances if the appeal is received outside the time limits; and
- an evaluation of the nature of the appeal to confirm that it is a matter which **falls within the parameters of the Code of Ethics** and that there is a **demonstrable and significant public interest dimension** to the concern.

Appellants may receive preliminary correspondence from Commissioners who may make further enquiries to establish the eligibility of a concern raised before deciding whether or not to accept it for consideration. Such enquiries should not be deemed to be part of the main investigation process and as such appellants should not assume that their concern has been accepted as an appeal until they are explicitly advised.

8. Why are human resources issues not covered by the NICS Code of Ethics?

The NICS Code of Ethics states that the Civil Service Core Values:

“support good government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, the Executive, the Assembly, the public and its customers.”

The NICS Code of Ethics is concerned with the **outward facing roles** of existing civil servants rather than their internal relations. There will therefore be a public interest dimension to a concern raised under the Code.

Departments will usually have their own mission and values statements that explain the standards expected in relations between existing civil servants. In addition, the relationship between an existing civil servant and their employing department will be subject to employment legislation and departments will have grievance procedures in place to deal with such matters. These are **inward facing relationships** and in the ordinary course of events they do not have a public interest dimension.

Nevertheless, the Commissioners recognise that it is not always easy to make this clear cut distinction between a human resources management issue and a concern under the NICS Code of Ethics. Commissioners acknowledge that situations which primarily touch on an individual's employment may in certain circumstances also have a public interest aspect.³

Please note:

Commissioners will require to be satisfied that there is a ‘demonstrable’ and ‘significant’ public interest dimension relating to any individual human resources grievance before they consider an appeal under the NICS Code of Ethics.

9. Example Case Studies

The following case studies are intended to illustrate the possible application of NICS Code of Ethics to a range of different circumstances.

Scenarios	Has the Code of Ethics been breached in this scenario?	
1. A senior manager takes no action when made aware of possible mechanical problems	NO	This is not a breach of the Code of Ethics. The manager has failed to follow departmental procedures, ignored obligations under health and safety

³ Please refer to Section 10 – Example Case Studies

with equipment that could put staff in danger.		legislation and failed in the duty of care to staff. This complaint should be addressed via internal departmental procedures and considered by line management in terms of the performance management system.
2. A member of staff who applied for the position of DP Accountant through open competition alleges that the Chairperson allowed their personal opinion of the member of staff to influence the panel's decision not to appoint them to the position.	NO	This type of complaint should properly be pursued through the established NICS complaints procedure for open recruitment and/or if appropriate pursued through external employment tribunal.
3. A member of staff is aggrieved about the way in which the department handled an investigation of a complaint which was made against them, under the department's policy on Dignity at Work. They were also dissatisfied with the decision by the department to bring a disciplinary charge against them.	NO	This type of complaint should properly be pursued through the established Dignity at Work appeal mechanisms and/or if appropriate pursued through the external maladministration process.
Scenarios	Has the Code of Ethics been breached in this scenario?	
4. A member of staff is unhappy with their annual performance review. This has been raised with the reporting and countersigning officers but the review remained unchanged. The member of staff feels victimised by management and considers that the facts of their performance during the year have not been fairly and truthfully recorded in the review.	Unlikely	This type of complaint should properly be pursued under the performance review report appeals procedure. If appropriate, the member of staff may also wish to consider the NICS policy on Dignity at Work in relation to discrimination. If, after exhausting the appropriate processes, there are particular circumstances which demonstrate that line managers did not act in line with the Core Values, the individual may wish to consider a complaint under the Code of Ethics.

		<p><i>The individual should raise their concerns through the departmental Code of Ethics complaints procedures in the first instance. There may be circumstances where an appeal is accepted directly. Each case will be examined on its merits.</i></p>
5. A member of staff is openly critical of decisions taken by line management and is subsequently overlooked for opportunities for training, temporary promotion and/or involvement in special projects. The member of staff feels that their input at meetings is not taken seriously and they are belittled in front of colleagues.	Unlikely	Similar to the circumstances in scenario 4, this type of complaint should properly be pursued under the NICS policy on Dignity at Work. Depending on the particular circumstances surrounding this case the individual may also wish to raise the complaint externally under equality legislation.
6. A senior existing civil servant asks a member of staff to prepare a submission to Ministers. The member of staff is instructed to suppress any counter arguments and risks in the submission so as to present the department's preferred option in the best possible light.	YES	The member of staff has been instructed to knowingly provide incomplete and misleading advice to Ministers. This is inconsistent with the NICS Core Values of integrity, honesty, objectivity and impartiality and is a breach of the Code of Ethics. <i>The individual should raise their concerns through the departmental Code of Ethics complaints procedures in the first instance however, there may be circumstances where an appeal is accepted directly. Each case will be examined on its merits.</i> Depending on the particular circumstances surrounding this case, the member of staff may also wish to consider a complaint in line with departmental procedures intended to deal with bullying.
7. A member of staff is instructed by a manager to ensure that a contract is awarded to a particular company that has bid for work	YES	The member of staff has been instructed to ignore departmental procedures established to ensure that all such bids are examined fairly and without bias and all contracts awarded accordingly.

with the department under a competitive tendering process.		Complying with this instruction would result in the member of staff acting in a manner which is inconsistent with the NICS Core Values of integrity, honesty, objectivity and impartiality and is a breach of the Code of Ethics. <i>This type of complaint should be raised under the departmental Code of Ethics complaints procedure however there may be instances where an appeal is accepted directly. Each case will be examined on its merits.</i>
8. A member of staff is aware that a colleague is using information obtained in their capacity as a Planning Officer to assist a planning appeal being pursued by a relative.	YES	If the allegation is true then there is misuse of an officer's official position to further the private interests of others. This is inconsistent with the NICS Core Values of integrity, honesty, objectivity and impartiality and is a breach of the Code of Ethics. <i>This type of complaint should be raised under the departmental Code of Ethics complaints procedure however there may be instances where an appeal is accepted directly. Each case will be examined on its merits.</i>

10. Raising a concern within own Department in the First Instance

The Commissioners consider that in most instances it is better that concerns are dealt with within the department in which they arise. If a department can address and resolve concerns itself then it can learn from the process.



An existing civil servant should normally raise a concern by talking to their line manager or someone else in the line management chain.

It is for departments to determine what processes they put in place to permit staff to raise concerns under the NICS Code of Ethics and how such processes are publicised. They must however be compliant with the Code.

Departments should encourage civil servants to raise what they consider amounts to a concern under the Code. In addition, there should be clear routes for raising concerns which are consistent across all departments and which are regularly and effectively promoted to staff.

If the existing civil servant would find it difficult to raise their concern with their line manager or within their line management chain, they should approach one of their department's **Nominated Officers** who are appointed within each department to advise staff on the NICS Code of Ethics. Details of Nominated Officers should be available on the NICS intranet or from the Human Resources department.

Where no other route is possible, any concerns under this Code can be raised at any time directly with the Permanent Secretary or, exceptionally, with the Head of the Civil Service.

Departments will be asked to report to the Commissioners the number and nature of concerns that have been raised and dealt with within the department each year. These are concerns that have been resolved within the department and where it has not been necessary to refer the concern to Commissioners. This will allow Commissioners to provide an aggregate report of these concerns in their Annual Report.

11. In what circumstances would the Commissioners consider a concern brought to them directly?

There may be a number of reasons why it would be appropriate for the Commissioners to consider a concern brought to them directly without it having been raised with the department in the first instance. This will depend upon the particular facts of an individual case but these might include:

- ❖ where the Permanent Secretary, or Chief Executive, is involved in the matter of concern;
- ❖ where the issue of concern is time-limited, urgent and serious;
- ❖ where the Commissioners consider that the existing civil servant may have suffered a detriment as a result of raising a concern or is likely to suffer a detriment in future.

Before considering a concern directly, Commissioners will seek to satisfy themselves that there is a robust rationale for why a concern cannot first be heard within the

Department. This is to ensure that an appellant can fully exercise their rights and access all escalation stages available to them (as there is no subsequent appeal open to the appellant once Commissioners have made a decision on the matter). Commissioners will ensure the appellant is kept updated on their engagement with the Department on this matter, in line with our Service Standards which are set out at **Appendix B**.

12. How can an existing civil servant raise a concern?

The Commissioners consider that there should be a range of straightforward and easily accessible routes available for existing civil servants to bring requests for appeal investigations under the Code.

The Commissioners do not prescribe any particular mode of access. There are details of how to contact Commissioners on their website which provides a variety of routes of access.

Website	www.nicscommissioners.org
General e-mail address	info@nicscommissioners.org
Postal address	Civil Service Commissioners for Northern Ireland 7 th Floor Erskine House 20-32 Chichester Street Belfast, BT1 4GF
General telephone number	028 9052 3577

- ❖ The Secretariat will be happy to assist with any queries on the telephone.
- ❖ In order that concerns can be formally considered by the Commissioners, they must be submitted in writing either by e-mail or post.
- ❖ It is expected that an appellant, in raising a concern, will consent to the disclosure of information with regard to the appeal to relevant third parties to enable Commissioners to investigate their concern effectively. If consent is not forthcoming, Commissioners may be unable to proceed with their investigation. Any sharing of personal data will be done in compliance with the UK GDPR.
- ❖ If an existing civil servant has difficulty using any of these routes of access, they should contact the office to discuss what other arrangement may suit their needs.

- ❖ Commissioners will liaise with a representative, for example a trade union representative, if that is requested. However, it must be clear that it is the **existing civil servant** who is bringing the complaint.

13. What information is required when submitting a concern to Commissioners?

To help Commissioners with their initial consideration of a concern the following information should be provided:

Name of existing civil servant submitting the concern	
Confirmation that they are an existing civil servant	
The department or agency that they work for	
Their preferred method of communication (email, post etc)	
An address for communication (post or email)	
A telephone number	
An explanation of why they think the values in the NICS Code of Ethics have been breached	
Details of how their department has handled their concern: has there been an investigation; what was the outcome?	
Any indication of how the issue might potentially be resolved	

- ✓ Appellants should provide the supporting documentation which they think would be useful for the Commissioners to have at this stage.
- ✓ Appellants should also provide the letter or report from their department which outlines the department's investigation of the issue.
- ✓ Commissioners will acknowledge receipt of the concern within 3 working days. They will then try to form an initial understanding of the concern. If there is a substantial volume of information, it may not be necessary to send all of it at this stage.

Important:

It will only be in exceptional circumstances that Commissioners will investigate an appeal where a concern has been made anonymously. Anonymity puts enormous barriers in the way of any successful investigation. For example, it does not allow Commissioners to establish that the approach has come from an existing civil servant. It is also difficult to exclude the possibility that an anonymous

approach is motivated by malice. Commissioners consider that a good organisational culture is one where staff who have concerns are confident that the prevailing environment within their department is one which is safe, encouraging and open to the raising of such concerns. **If you have any hesitations about raising a concern within your department you may discuss this with our staff.**

14. What is the time limit for submitting a concern?

A concern should be communicated to Commissioners:

- **within 1 month of the date on which a final written response was received from the department** (if the concern has been raised through the internal departmental procedures)

OR

- **within 3 months of the date of the matter of concern taking place** (if the concern has not been raised through internal departmental procedures – see sections 11 and 12 for guidance)

Upon request, the Commissioners will consider whether there are any extenuating circumstances which would warrant Commissioners agreeing to accept the concern outside the time limit.

15. What happens if a concern is accepted as an appeal for investigation?

Commissioners will aim to write to an appellant **within 20 working days** of receiving their request to advise whether or not they have accepted the concern for investigation.



If they decide to accept the concern as an appeal for investigation, they will contact the appellant to inform them and explain how they will go about conducting their investigation.



If they decide that the concern cannot be accepted they will explain why.



If the appellant has not provided enough information for Commissioners to decide either way, they will ask the appellant for more information to

allow them to decide. Commissioners will aim to advise whether or not they have accepted the concern for investigation within 20 days of receipt of the additional information.

Upon accepting an appeal for investigation, Commissioners will notify the Permanent Secretary or Chief Executive of the department.

16. How will an appeal be investigated by Commissioners?

Commissioners do not have a rigid approach to the conduct of their investigations.

- ❖ The method of investigation will vary according to the facts of the case. Some cases may be decided on an examination of written evidence alone.
- ❖ Commissioners may ask the department for information in response to the evidence that has been presented to them by the existing civil servant. In most cases, this will include information relating to the department's own consideration of the concern.
- ❖ The Commissioner(s) may call upon the services of outside experts to help them.
- ❖ Where the investigation produces evidence of criminal activity, this will be passed onto the relevant authorities, including, where appropriate, the PSNI.

A flowchart setting out how Commissioners will deal with concerns which are raised with them can be found at **Appendix A**.

17. Expectations and Service Standards

Commissioners will treat all parties to an investigation fairly, with respect, honesty and integrity.

In return, Commissioners expect all parties to respond promptly to any queries they may have and to be courteous in their dealings with Commissioners and their Secretariat. Any abusive behaviour may lead to Commissioners terminating their investigation.

Commissioners also expect that departments will encourage a healthy organisational culture which allows it to resolve most concerns that arise. If this is done within an open and respectful working environment then the department will also be able to learn from the experience of resolving the issue.

Commissioners will only inform departments that a concern has been raised if they

accept it as an appeal for investigation. If they have agreed to take an appeal directly, without the appellant having first exhausted internal procedures, they will inform the department of the reasons why they have agreed to take it.

Departments should fully engage with the process of an appeal investigation and provide access to a senior designated contact.

Commissioners may make recommendations as a result of investigating an appeal. In such circumstances, they will expect to receive a management response and a timetable for implementation.⁴

Commissioners' service standards in relation to how they will deal with an appeal can be found at **Appendix B**.

18. Can an appeal be withdrawn?

Commissioners consider that it is preferable that concerns relating to the Civil Service values are dealt with within the department in which they arise, where that is possible.

The Commissioners will be investigating whether there has been a breach of the NICS Code of Ethics. However, they also see the appeals process as one which allows departments to continuously improve, acknowledging where things may have gone wrong and learning lessons for the future.

The Commissioners will therefore support a mutually agreed conclusion to an appeal at any stage of the investigation. Neither the appellant, nor their department should feel that they are locked into an adversarial process from which there is no escape.

However, the Commissioners would be anxious to ensure that an appellant does not feel at any stage that they are being pressured not to bring an appeal or to withdraw one. If an appellant seeks to withdraw their appeal Commissioners will wish to satisfy themselves that the appellant is doing so of their own volition and that it is not being done as a result of any kind of pressure.

⁴ *There will be situations where the Commissioners do not uphold an appeal but nevertheless believe that the investigation has produced evidence that the department should consider further. It may be that there has been no breach of the Code but the policies and procedures in place within the department are in some way short of good practice. In these circumstances the Commissioners will feed back their observations to the department to allow the department to learn and revisit its approach in light of this experience.*

19. What are the possible outcomes of an appeal?

Paragraph 5 (2) (c) of the Civil Service Commissioners (Northern Ireland) Order 1999 provides that Commissioners may make recommendations arising out of an appeal. There is no restriction on the recommendations that the Commissioners may make.

The nature of the recommendations that the Commissioners might make in upholding an appeal will depend upon the particular circumstances of the appeal. If an appeal is upheld, the Commissioners will in effect be agreeing with the appellant that in some way and to some degree the values in the NICS Code of Ethics have not been upheld.

Please note:

It should be understood that the Commissioners do not have any powers to award compensation.

The Commissioners' focus will be to ensure that the department has taken effective steps to ensure that such a breach of the values is unlikely to reoccur. For example:

- Where the reason for the breach was to do with systems and processes, Commissioners will recommend that changes be made to those systems and processes.
- If the breach was due to human error, then their recommendations are more likely to focus on management and training issues.
- It might be that one of their recommendations is a simple apology. It will depend upon the facts of the case.

There may be situations where Commissioners have accepted an appeal directly due to the urgency and seriousness of the alleged breach of the NICS Code of Ethics and their investigation will prevent the breach being further perpetuated.

However, in most situations the breach will have occurred sometime in the past. In these circumstances Commissioners see the primary outcome of their investigation as preventing a future reoccurrence with an expectation that the department will recognise where the breach occurred and will learn from that. Furthermore, Commissioners may make practical recommendations to ensure that it does not happen again.

In some cases their recommendation might be that another body should look at the issue. It may be that another regulator would be more experienced and better equipped to investigate the matter. Alternatively, they might conclude that, where appropriate, the concerns should be the subject matter of an independent enquiry.

Please note:

There is no appeal against the decision of the Commissioners in a NICS Code of Ethics case. Before publication of the decision, the appellant and department are given 20 working days in which to comment on the factual accuracy of the investigation. Upon conclusion of the investigation or of any review requested based on factual grounds, Commissioners may decline to enter into protracted correspondence about the decision.

20. Vexatious and Unreasonable Requests

The Commissioners are committed to providing an efficient and responsive appeal process under the NICS Code of Ethics.

The Commissioners recognise a responsibility to all appellants and potential appellants. However, vexatious and unreasonable requests can have the effect of reducing the Commissioners' ability to provide an appropriate standard of service to all, by commanding a disproportionate share of resources. Accordingly, they will not accept concerns which they consider, in all the circumstances of the case, to be vexatious or unreasonable.

Factors which will determine whether a concern is viewed as vexatious and unreasonable will depend upon all the facts of the case but some of the factors that may be significant in reaching this judgment include:

- Whether the concern has the effect of harassing the Commissioners or Secretariat or of causing distress.
- Whether the concern appears designed to cause disruption or lacks any serious purpose or value.
- Whether investigating an appeal would impose a significant burden on the Commissioners out of proportion to the alleged breach of the Code.
- Where, in the absence of fresh evidence, a civil servant submits a concern the substance of which has already been the subject of consideration by Commissioners.

21. What will happen if a Department ignores the Commissioners' recommendations?

There is no provision in the Civil Service Commissioners (Northern Ireland) Order 1999 requiring a department to follow the Commissioners' recommendations. However, in practice, Commissioners consider that there are significant levers of powers available to them in the event that their recommendations are not followed.

The most obvious of these is to draw the attention of the public and the Assembly to the fact that their recommendations have not been actioned. Experience indicates that departments will take action when an independent, outside regulator concludes that their actions have fallen short of the required standard.

When Commissioners uphold an appeal they return to the department later to ensure that their recommendations have been implemented. If they are not satisfied that their recommendations have been followed, they will initially raise the matter with the Permanent Secretary or Agency Chief Executive concerned. Where this does not produce the required action, they may then draw the matter to the attention of other appropriate bodies.

22. What happens to an appellant if they raise a concern with Commissioners?

It is recognised that some existing civil servants may feel nervous about raising a concern or bringing an appeal to the Commissioners. An appellant may be worried that they will be seen as a troublemaker and that their career may suffer.

The NICS Code of Ethics is clear that existing civil servants should not suffer a detriment as a consequence of raising a concern:

'If you believe that you are being required to act in a way which conflicts with this code, your department or agency must consider your concern, and make sure that you are not penalised for raising it' (paragraph 19 of the NICS Code of Ethics).

The Commissioners consider that departments should encourage their staff to raise concerns and should actively support them in doing so.

Commissioners will take very seriously any suggestion that an appellant is being penalised for raising a concern. They would encourage any existing civil servant to approach them at any time if they believe this is the case and Commissioners will be prepared to use all the remedies available to them to prevent such a situation arising.

23. How are the results of appeals reported?

The appellant and their department or agency will be given an opportunity to see the Commissioners' preliminary determination of facts in draft and to comment on their accuracy and any request for a review based on factual accuracy must be submitted to Commissioners within 20 working days. Commissioners will not normally accept a request to review their decision or recommendations if they receive comments more than 20 working days after the issue of the preliminary determination of facts. Commissioners will send the final report of their investigation and its conclusions to the appellant and the department in confidence.

The outcome of all finalised appeals are included in the **Commissioners' Annual Report**. Only a summary is given of the nature of the appeal with the name of the department and the name of the existing civil servant who brought the appeal remaining confidential. Commissioners' report on the number of concerns dealt with within departments which have not been forwarded to Commissioners.

Commissioners may decide to report separately on a particular case, for example, to convey best practice lessons or where a department or agency decline to accept a recommendation arising from Commissioners' findings. Wherever possible, this will be done in a way that does not disclose the identity of those involved in the case.

24. Confidentiality

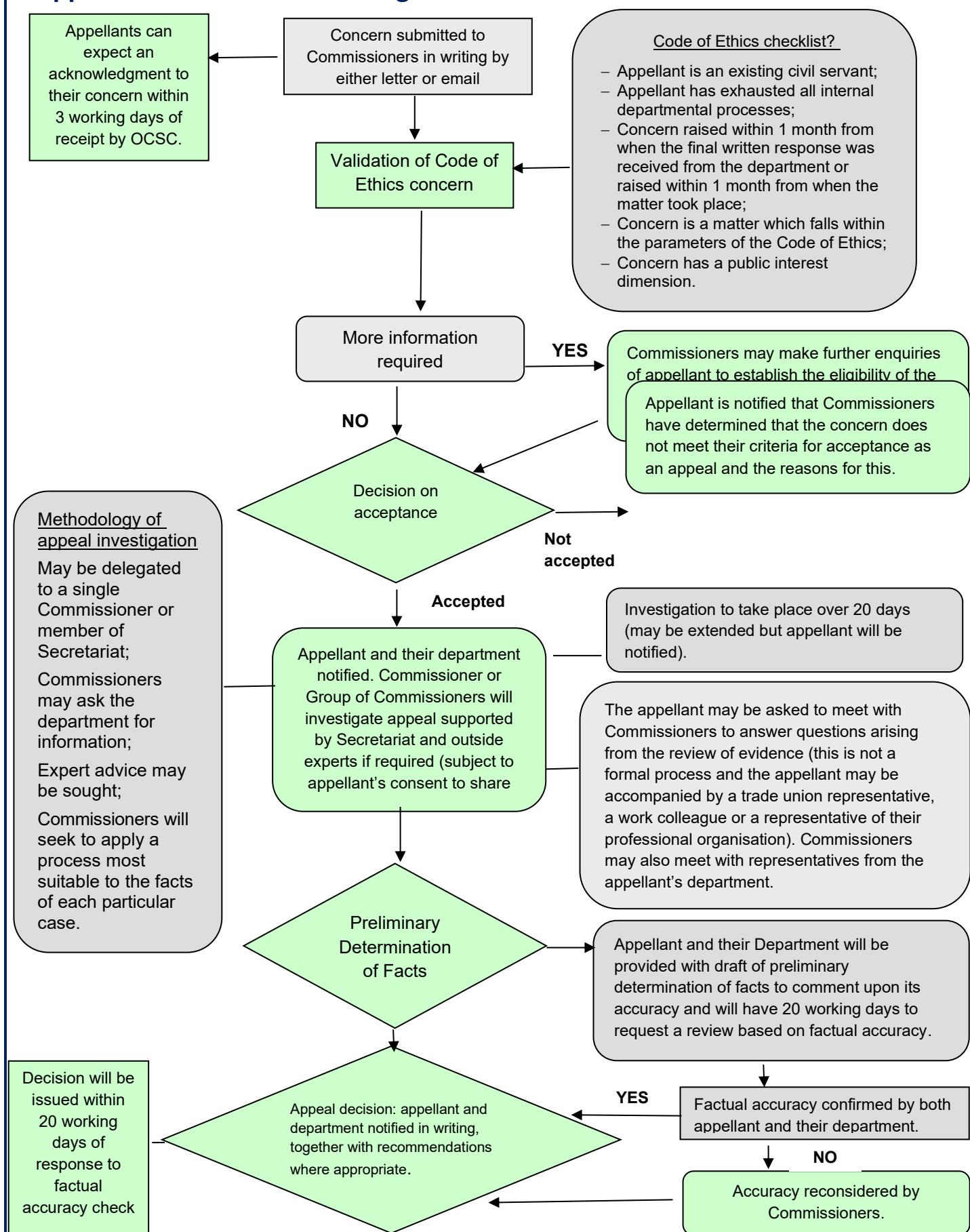
Commissioners consider the appeals process works best when existing civil servants and departments understand that it is intended to be confidential. In such circumstances, all parties can share information and, where appropriate, admit to errors.

The Commissioners are mindful of the legal constraints that preclude an absolute assurance of confidentiality including, for example, the Freedom of Information Act 2000. However, they do consider that confidentiality is important and will take all reasonable steps to protect that confidentiality. There may be circumstances whereby Commissioners are required by legislation to share evidence obtained during the course of conducting their investigations with relevant parties. Such evidence may include, but is not limited to, written statements made by other parties. In these circumstances, Commissioners would inform the subject of the evidence concerned in advance of any information being released.

It is expected that an appellant, in making an appeal, will consent to the disclosure

of information with regard to the appeal to relevant third parties to enable Commissioners to investigate their concern effectively. If consent is not forthcoming, Commissioners may be unable to proceed with their investigation. Any sharing of personal data will be done in compliance with the UK GDPR.

Appendix A – Flowchart setting out how a concern will be handled



Appendix B –Service Standards

Stage of Process	Timeframe for Response	
Acknowledging a concern	Within 3 working days of receipt	The letter or email of acknowledgement will indicate a timetable for the next or subsequent stages of the consideration of the concern.
Acceptance, rejection or clarification of a concern as an appeal	Within 20 working days * of the receipt of a concern	<p>Possible outcomes are:</p> <ol style="list-style-type: none"> 1) Request for more information where this would assist in determining whether the concern should be accepted or rejected. Such preliminary enquiries should not be deemed to be part of the main investigation process. 2) Request for information as to whether the concern has been raised internally and, if so, what was the outcome. 3) Concern not accepted as an appeal and the reason for non-acceptance explained e.g. the issue does not appear to be one under the NICS Code of Ethics or the appellant is not an existing civil servant. 4) Concern accepted as an appeal.
Investigation of an appeal	Within 20 working days * of the receipt requested information	This is the stage of the process where it is most difficult to be precise about the timetable. The Commissioners may need to go back to the existing civil servant bringing the appeal and the department several times to seek further information in order to assist their understanding of the facts of the case.
Decision	Within 20 working days * of completion of the last stage of the investigation	The decision on an appeal should be made and communicated to the appellant and the department.
Appeal against the Commissioners' findings	There is NO appeal against the decision of the Commissioners in a NICS Code of Ethics appeals case	Before publication of the decision, the appellant and department are given 20 working days in which to comment on the factual accuracy of the investigation. Upon conclusion of the investigation or of any review requested based on factual grounds, Commissioners may decline to enter into protracted correspondence about the decision.

* Where it is not possible to deliver the outcome of any stage in line with the 20 working days timeframe, the appellant will be provided with a written explanation for the delay and when a substantive response is likely to be received.