

WHISTLE - BLOWING POLICY AND PROCEDURE

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OVERVIEW

1. What is whistleblowing?

Whistleblowing is the term used when someone who works for an employer raises a concern about malpractice, risk (for example about patient safety), wrongdoing or possible illegality, which harms, or creates a risk of harm, to people who use the service, colleagues or the wider public. Ideally, such concerns should be dealt with by the employer.

However, if the management have not dealt with those concerns by responding appropriately to them, perhaps by using the employer's own whistleblowing policy, or the worker does not feel confident that the management will deal with those concerns properly, they can instead make a disclosure to a 'prescribed body', such as a regulator like CQC. The **Public Interest Disclosure Act 1998** (PIDA) protects workers by providing a remedy if they suffer a workplace reprisal for raising a concern which they believe to be genuine. Disclosures could be about the safety of people who use services, the failure of a provider to comply with the law or the national standards of quality and safety, financial malpractice or risks to staff or other people.

If a worker is concerned that vulnerable adults using a service are not being cared for in a way that keeps them safe, they can also raise their concern with the local authority (local council, 'Social Care Direct on Tel.: 0345 60 80 191 during office hours; Tel.: 01323 636 399 out of office hours), under their safeguarding procedures. They can do this as well as whistleblowing to CQC or another body such as the police.

Whistleblowing encourages and enables employees to raise serious concerns **within** the home rather than overlooking a problem or 'blowing the whistle' outside. Employees are often the first to realise that there is something seriously wrong with the home. However, they may not express their concerns as they feel that speaking up would be disloyal to their colleagues or to the home.

2. Is Whistleblowing the same as making a complaint?

No. Whistleblowing is different from a complaint or a grievance and usually refers to situations where a worker raises a concern about something they have witnessed at their workplace. People who use services, their relatives or representatives, or others, can make complaints about a service using the service's complaints procedure. This is not whistleblowing.

Good employment practice and this home has a grievance procedure for staff to use in respect of their employment rights and conditions of service.

BACKGROUND

1. Employer responsibilities

There is no duty on employers to investigate concerns raised by their employees (Lewis, 2008). There are also no specific whistleblowing requirements in the Care Quality Commission's Essential Standards of Quality and Safety (2010) it does, however, provide guidance separately.

The Francis report (2013), following failings in Mid Staffordshire, called for better safeguards for whistleblowers recommending a new criminal offence for wilfully obstructing someone

who is trying to raise a concern. Francis also recommended a 'duty of candour', which would require openness and honesty from both staff and management. In the wake of this report, in March 2013, the Government banned the NHS from including 'gagging clauses' in severance packages to stop staff from speaking out about their concerns.

Public Concern at Work (2013) has called for changes to the Public Interest Disclosure Act 1998, including to ensure that employers take measures to prevent the bullying of whistleblowers by colleagues, for example, in the same way that the Equality Act seeks to prevent discrimination by colleagues. In February 2013 the Government announced such protection, known as 'vicarious liability', in a proposed amendment to the Enterprise and Regulatory Reform Bill. The amendment provides a defence for employers who have taken all reasonable steps to prevent such detrimental treatment.

a) Research from number of sources (Holihead, 2000, BSI, 2008, IBE, 2007) has highlighted the advantages for organisations of supporting whistleblowers. Some of the benefits include:

- protecting staff, people using the service and the public
- maintaining and protecting the organisation's reputation
- deterring wrongdoing
- minimising risk by picking up potential problems early
- improving performance and management awareness
- improving staff morale and reducing turnover
- demonstrating that the organisation is accountable and well managed
- reducing the risk of anonymous and malicious leaks
- minimising costs and compensation from accidents, investigations and litigation.

b) Employers should:

- implement a whistleblowing policy
- encourage staff to report concerns and ensure they understand they will be supported and offered protection if they make a disclosure
- take time to listen to new staff who will have a fresh perspective on practice within the organisation
- include whistleblowing awareness in induction, supervision and training.
- give staff information on external means of support such as [Whistleblowing Helpline](#)

From 25 June 2013, a "qualifying disclosure" means any disclosure of information that, in the reasonable belief of the worker, is made in the public interest and the requirement that a whistleblower make a qualifying disclosure "in good faith" is removed.

From 25 June 2013, a consequence of the new "public interest" requirement is that employees will generally be precluded from being able to "blow the whistle" about breaches of their own employment contract, and also make it clear that an employee making such a complaint can still use the employer's grievance procedure.

2. Obligations on Staff to Report Abuse

The organisation requires its entire staff to observe the organisation's work carefully and report diligently on anything that causes them concern. We believe that teamwork and loyalty to colleagues should not be allowed to deter staff from reporting suspected abuse, criminal acts, and neglect of residents or bad practice, and follows the guidelines issued by the Care Quality Commission (CQC). Any member of staff who witnesses or suspects abuse by another member of staff should report it as soon as possible to their line manager. The manager will accept responsibility for the actions that follow and will assure the whistleblower that they have acted correctly by reporting the matter and that they will not be victimised.

Despite the assurances given by our organisation, we accept that there may be incidents that a staff member does not feel confident enough or able to report in the first instance to the manager. Where this is not appropriate or considered too sensitive the worker should report to a director or other service manager/advisor. Where this is not considered appropriate the

organisation then accepts the right and obligation of the staff member to report their concerns to an outside authority such as the police, the local authority safeguarding unit or to the CQC to initiate an investigation. The company provides every staff member with the contact details which are also included in this policy of these agencies in the staff handbook. The company will not penalise or victimise any staff member who responsibly reports their concerns in these ways.

3. Investigating and Dealing with Allegations

The manager to whom abuse by a staff member is reported should take the necessary steps under the Adult Safeguarding Policy. In addition, they should also protect the source of the information, if possible. If a manager fails to act promptly, suppresses evidence, or is involved in any action to discourage whistleblowing, they may render themselves liable to disciplinary action.

4. Dealing with Interference with or Victimisation of Staff who have Reported Abuse

Any member of staff who attempts to prevent a staff member from reporting their concerns to a manager, or who bullies, attempts to intimidate or discriminates against a colleague in these circumstances will be dealt with under disciplinary proceedings. A whistleblower who feels themselves to be subject to hostile action from colleagues should inform their manager, who should, if necessary, take steps to alter the staff member's duties so as to protect them from the hostile action. The company includes in its staff handbook information on how to make contact with the Public Concern at Work organisation that has been established to protect whistleblowers from victimisation and bullying as a result of their actions.

5. What concerns can be raised

Risk, wrongdoing and bad practice which you believe is harming the service we deliver should be raised as a concern. Some examples are:

-  unsafe care
-  unsafe working conditions
-  inadequate induction or training
-  lack of or a poor response to reported incidents
-  bullying culture

This list is not exhaustive

Proof is not required, we encourage you to raise the matter while it is a concern. It does not matter if you turn out to be mistaken as long as you are genuinely troubled.

6. Unjustified Reporting

This organisation's managers take reports from whistleblowers seriously and investigate all allegations thoroughly. Any allegations against colleagues that are found to be merely flippant or malicious may render the accuser liable to disciplinary action and criminal proceedings.

7. What is the law on whistleblowing?

The Public Interest Disclosure Act 1998 (PIDA) protects the public by providing a remedy for individuals who suffer a detriment by any act or any deliberate failure to act by their employer for raising a genuine concern, whether it be a risk to patients, financial malpractice, or other wrongdoing.

The Act's tiered disclosure regime, which means that a worker is protected when raising a concern internally with their employer or externally to a regulatory body prescribed by the legislation (such as CQC), encourages workplace accountability and self-regulation.

Essentially, under PIDA, **workers who act honestly and reasonably are given automatic protection for raising a matter internally with their employer.**

In certain circumstances, wider disclosures (for example, to an MP or to the media) may also be protected. A number of additional tests apply when going wider including:

- Whether it is an exceptionally serious concern.
- Whether the matter has already been raised.

- Whether there is good reason to believe that the individual will be subject to a detriment by his employer if the matter were raised internally or with the appropriate regulator, and
- Whether it was reasonable in all the circumstances.

PIDA also makes it clear that any clause in a contract is void if it attempts to gag an individual from raising a concern that would have been protected under the Act. Where an individual is subjected to a detriment by their employer for raising a concern or is dismissed in breach of PIDA, they can bring a claim for compensation under PIDA in the Employment Tribunal. Awards are uncapped and based on the losses suffered.

a) The Public Interest Disclosure Act 1998

i Recent changes

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a 'protected disclosure'.

To qualify as a '**protected disclosure**' the disclosure must satisfy a number of requirements under PIDA:

- The worker must have made a '**qualifying disclosure**'. This is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more of the following:
 - That a criminal offence has been committed, is being committed, or is likely to be committed.
 - That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject.
 - That a miscarriage of justice has occurred, is occurring, or is likely to occur.
 - That the health and safety of any individual has been, is being, or is likely to be endangered.
 - That the environment has been, is being, or is likely to be damaged.
 - That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed.
 - A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.
- The qualifying disclosure must be made **in good faith (as from 25th June 2013, 'in the public interest')**
- The worker must make the qualifying disclosure to one of a number of '**specified persons**' set out in PIDA, which include:
 - The worker's employer or, if they reasonably believe that the failure relates solely or mainly to the conduct of a person other than their employer or any other matter for which a person other than their employer has legal responsibility, that other person.
 - A 'prescribed person', which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed body.

ii Who is protected by PIDA?

PIDA provides protection for people who can make protected disclosures. These people are:

- Workers who are directly employed by the registered provider.
- Workers who have left their job after making a protected disclosure.
- Other workers who provide services to the registered provider. Examples are agency staff, visiting community health staff, GPs, independent activities organisers, contractors, visiting hairdressers and trainees, self – employed workers, if supervised or working off – site. This is not a complete list – there will

be other types of workers that provide services to a registered provider. However, note that it does not cover volunteers.

- A worker will be eligible for protection if they honestly think what they are reporting is true and they think they're telling the right person.

iii Who is not protected?

Workers aren't protected from dismissal if:

- they break the law when they report something (eg they signed the Official Secrets Act)
- they found out about the wrongdoing when someone wanted legal advice ('legal professional privilege'), eg if they're a solicitor
- Workers who are not [employees](#) cannot claim unfair dismissal because of whistleblowing, but they're protected and can claim 'detrimental treatment'.

iv Tribunals

Workers dismissed for whistleblowing can go to an [Employment Tribunal](#). If the tribunal decides the employee has been unfairly dismissed, it will order that they are:

- reinstated (get their job back) and / or
- paid compensation
- From 25 June 2013 a tribunal judge can reduce any compensation awarded by 25% if they find the person has acted dishonestly.
- A whistleblower who is bullied at work will also be able to bring a claim to the Employment Tribunal against their employer or co-workers.

b) How to prepare to 'blow the whistle'

Where there is no threat of immediate danger, whistleblowers should protect themselves. Potential whistleblowers should prepare carefully to make a disclosure, making a note of any relevant evidence (for example, record dates, times and the names of any witnesses), Consider the following whistleblowing *DOs* and *DON'Ts*:

DOs:

- consider if you should not approach your manager in the first instance
- keep calm
- think about the risks and outcomes before you act
- remember you are a witness, not a complainant

DON'Ts:

- forget there may be an innocent or good explanation and hence,
- you should first consider approaching your manager
- become a private detective
- use a whistleblowing procedure to pursue a personal grievance. ***Employees should distinguish between having personal grievances with for example the employer and related to employment (such as if you did not receive a pay increase as you expected, or your manager expressed dissatisfaction for your poor work performance, etc.), and concerns that are in the public interest.***
- expect thanks. (*Van Den Hendel, 2001*)

c) Who can help and advise before you 'blow the whistle'?

i [Public Concern at Work \(PCaW\)](#) is an independent charity that offers support to whistleblowers. The organisation supports both individuals and employers by:

- offering free, confidential advice to people concerned about crime, danger or wrongdoing at work
- helping organisations to deliver and demonstrate good governance
- informing public policy
- promoting individual responsibility, organisational accountability and the public interest.

ii The [Whistleblowing Helpline](#) is a free-phone service (Tel.: 08000 724 725) for employees, and organisations working within the social care sector. It is not a

disclosure line; it provides advice and guidance to staff, employers, contractors, unions and professional bodies. This includes:

- free, confidential advice to NHS and social care staff who witness wrongdoing and are unsure whether or how to raise their concern
- advice and support to managers or those responsible for matters of policy development and best practice within the health and social care market
- assistance with developing and embedding whistleblowing procedures
- assistance with whistleblowing policy review and development
- advice on how to respond to whistleblowing concerns that have been raised.

d) Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish by the 'prescribed body' such as CQC. At the appropriate time, however, you may need to come forward as a witness.

This policy encourages you however to put your name to your concern whenever possible. Please note that:

- Staff must believe the disclosure of information is in the public interest.*
- Staff must believe it to be substantially true.*

- Staff must not act maliciously or make false allegations.*
- Staff must not seek any personal gain.*

POLICY

1. Policy Statement

Whistleblowing is the term used when someone who works for an employer raises a concern about **bad practice**, or risk, for example to a person's safety, wrongdoing which harms, or creates risk to harm, to people who use the service, colleagues or the wider public.

This organisation's policy on whistleblowing sets out to comply, in every aspect, with the *Public Interest Disclosure Act 1998* in protecting and not victimising staff who seek to report, and who have investigated genuine and reasonable concerns about any form of malpractice that they encounter in their work.

At the same time, the company aims to create an atmosphere of open communication and commitment to high standards of work, within which criticisms can be frankly made and thoroughly investigated.

This organisation also recommends that its staff make arrangements to have access to independent legal advice in the event of any involvement in allegations as whistleblowers or as people against whom allegations are made. They are encouraged to do this through membership of a trade union or professional organisation that includes legal advice as part of its services.

Speak up, we will listen. Speaking up about any concerns you have at work is really important. In fact, it's vital because it will help us to keep improving our services for all residents and the working environment for the staff.

You may feel worried about raising a concern, and we understand this but please don't be put off. In accordance with our duty of candour, our senior management are committed to an open and honest culture. We will look into what you say and you will always have access to the support you need

1. The Aims of the Policy

- To encourage you to feel confident in raising concerns and to question and act upon concerns about practice.
- To provide avenues for you to raise concerns in confidence and receive feedback on any action taken.

- To ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- To reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure which is in the public interest.

2. The Policy

- a) This home has an active whistle blowing policy and procedure that encourages all staff to report to their manager any concerns they may have about care issues or staff conduct. We also promote a secure helpline and e-mail email address for staff who feel more comfortable raising concerns in this way. It is our policy that any concerns raised by either staff, people living in our homes, or their relatives are taken seriously and notified to the authorities when appropriate so that they may be investigated in a transparent manner.
- b) This home and the law, encourages employees to exhaust internal process before considering any course of action external to the Company.
- c) Any complaints or allegations should be referred to your direct manager, or if you feel more comfortable send an e-mail to mariana@kindcare.co.uk. Once the concern is raised it will be investigated and initially assessed to determine what action should be taken. This may involve an internal enquiry or a more formal investigation. For disclosure that concerns potential criminal allegations, the company may have to inform the police. For disclosures that concern e.g. abuse of a service user the appropriate regulatory body may have to be informed. The regulatory body for adult social care is the Care Quality Commission (CQC) and the Local Authority, Social Care Direct
- d) The types of disclosure that this policy is intended to cover include the following:
 - a criminal offence
 - a failure to comply with a legal obligation
 - endangering the health and safety of any individual
 - damage to the environment
 - financial malpractice, including fraud, theft, corruption and deliberate damage to property
 - clinical incompetence
 - concealment of information relating to any of the above.

PROCEDURE

If concerned about any form of malpractice or any of the areas listed above staff should:

- normally first raise the issue with the home's manager either verbally, in person, or send an e-mail to mariana@kindcare.co.uk
- if the above channel has been followed, and the member of staff still have concerns, or if she or he feels the matter is so serious that they cannot discuss it with the home's manager, the member of staff should contact the local Care Quality Commission inspector.

Central CQC office contact details:

Care Quality Commission (CQC)
 National Correspondence
 City Gate
 Gallowgate
 Newcastle Upon Tyne
 NE1 4PA
 Tel No: **03000616161**
 Email enquiries to: enquiries@cqc.org.uk.

- or if a worker is concerned that vulnerable adults using a service are not being cared for in a way that keeps them safe, they can also raise their concern with the local authority, East Sussex County Council:

'Social Care Direct' contact details:

Social Care Direct (Adult Services),
 St. Mary's House, 52 St Leonards Road,

Eastbourne,
East Sussex
BN21 3UU
Tel.: 0345 60 80 191 during office hours;
Tel.: 01323 636 399 out of office hours

In addition, the government has set up a whistle blowing helpline for *NHS and Social care*. This is available to both managers for advice and staff for reporting purposes. This telephone number is 08000 724 725.

Staff who fail to follow this procedure and knowingly withhold information or evidence on any of the above occurrences or areas may be subject to disciplinary action, or to criminal proceedings in the event of a criminal investigation.

Training Statement

All new staff receive training in this policy on whistle blowing as part of the induction training. Staff receive updated training as needed due to policy changes.

Related Policies

Adult Safeguarding

Confidentiality

Cyber Security

Duty of Candour

Recruitment and Selection

Guidance



www.wbhelpline.org.uk



CQC whistleblowing “Guidance for providers who are registered with CQC (issued November 2013)
www.cqc.org.uk/whistleblowing