

WHISTLEBLOWING OR RAISING CONCERNS AT WORK

SCOPE

Whistleblowing is when someone raises a concern about a dangerous or illegal activity or any wrongdoing within their organisation. Raising a concern is known as "blowing the whistle" and is a vital process for identifying risks to people's safety. Sharing information or talking through a concern can be the first step to helping an organisation identify problems and improve their practices. Organisations should refer to their agency whistle blowing guidance, the SCP guidance provides the overarching principles.

This should not be confused with NEL Safeguarding Escalation Procedure which is the process to be followed by professionals when on occasions there is disagreement about a decision, or concern about the appropriateness or effectiveness of a response to a child's needs. This process allows for a series of stages to be followed by parties to resolve the disagreement.

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1. INTRODUCTION AND DEFINITION

The importance of raising concerns at work in the public interest or 'whistle blowing' is recognised by employers, workers, trade unions and the general public.

It is important for individuals to feel safe and listened to when raising concerns. An open approach to whistle blowing promotes the values of openness and transparency and encourages employees to treat service users with dignity, respect and compassion. In that way, the wellbeing and safety of service users and the provision of good care become part of the culture and are seen as "the way we do things around here".

From the employer's point of view, there are good business reasons for listening to workers who raise concerns, as it gives an opportunity to stop poor practice at an early stage before it becomes normalised and serious incidents take place. Whistle blowing has been shown to be an effective way to achieve service improvement, which has led to better practice.

From the workers' perspective, the freedom to raise concerns without fear means that they have the confidence to go ahead and "do the right thing". It is part of encouraging workers to reflect on practice as a way of learning.

Definition:

Whistle blowing is when someone who works in or for an organisation passes on information, which they reasonably believe shows wrongdoing or a cover-up by that organisation. For example, the information may be about activity that is illegal or that creates risks to the health and safety of others. The concern may relate to something that has happened, is happening or that a person may fear will happen in the future.

2. LEGAL REQUIREMENTS

The law provides legal protection to workers who have been victimised at work or lost their job because they have 'blown the whistle'.^[1] To receive the legal protection, a whistle-blower must:

- Be a 'worker' for the organisation about which they are whistle blowing.
- Reasonably believe they are acting in the public interest.
- Whistle blow to either the appropriate people within their organisation or to a relevant third party, such as one that inspects or regulates the activity of that organisation.

The definition of 'worker' for whistle blowing purposes includes employees, temporary agency staff, home workers, trainees on vocational schemes, and those whose employment has ceased. It does not cover the self-employed, volunteers or foster carers. While these groups are not covered by the legislation that protects whistle-blowers, their concerns would be listened to seriously and raised with the appropriate person responsible for the children's social care service/agency.

The Public Interest Disclosure Act 1998 (PIDA) [2] amends the Employment Rights Act 1996 (ERA)[3] by inserting Part IVA (protected disclosures) into the ERA. It offers protections to workers from any detriment from their employer that arises from the worker making a protected disclosure ('a qualifying disclosure'). Disclosure is another word for whistle blowing.

To receive these protections, a worker must make a qualifying disclosure. This is any disclosure of information where:

- In the reasonable belief of the worker making the disclosure, it is made in the public interest and tends to show one or more of the factors outlined in section 43B of the PIDA, www.legislation.gov.uk/ukpga/1998/23.
- The worker makes it to one of a number of specified persons outlined in sections 43C to 43F of the PIDA, www.legislation.gov.uk/ukpga/1998/23.
- It may also be appropriate for a worker to make a disclosure under section 43G (disclosure in other cases), or section 43H (disclosure of exceptionally serious failure) of the PIDA.

Complaints and grievances are different to whistle blowing and other employing organisations' policies and procedures should be followed.

THE PROFESSIONAL DUTY OF CANDOUR FOR HEALTH PROFESSIONALS:

Every healthcare professional must be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress. This means that healthcare professionals must:

- Tell the patient (or, where appropriate, the patient's advocate, carer or family) when something has gone wrong.
- Apologise to the patient (or, where appropriate, the patient's advocate, carer or family).
- Offer an appropriate remedy or support to put matters right (if possible); and
- Explain fully to the patient (or, where appropriate, the patient's advocate, carer or family) the short and long term effects of what has happened.

Healthcare professionals must also be open and honest with their colleagues, employers and relevant organisations, and take part in reviews and investigations when requested. Health and care professionals must also be open and honest with their regulators, raising concerns where appropriate. They must support and encourage each other to be open and honest and not stop someone from raising concerns.

[1] **Public Interest Disclosure Act 1998;**

[2] www.legislation.gov.uk/ukpga/1998/23

[3] www.legislation.gov.uk/ukpga/1996/18/contents

3. WHAT TO DO

If a worker is unsure of what to do, there are a number of ways they can talk the matter over in confidence to decide how they would prefer to proceed:

- The union or professional body.
- The independent whistle blowing charity **Protect**.
- An independent legal advisor.

If the employer has a whistle blowing policy, the worker can refer to this. The NEL Safeguarding Children Partnership for the area and the Local Authority may also have a whistle blowing policy to which the worker can refer. Whistle blowing directly to the services the concerns are about can result in a quick response as they have the power to act immediately on the concerns.

The worker can also whistle blow to the relevant regulatory body for example Ofsted, the GMC or HCPC. Similarly, the various Ombudsman offices can be contacted such as the **Parliamentary and Health Service Ombudsman**; or the **Local Government Ombudsman**.

Whichever point the worker decides to make the disclosure to, they will ask a number of questions so that they can determine how to proceed. It is therefore good planning to set down the concerns clearly to ensure that the matter is dealt with more speedily. Some of the questions that may be asked:

- Does the worker believe that a service user is at immediate risk of harm?
- To set out the facts.
- Do other workers share the concerns?
- Whether the concerns have already been raised with the employer and, if so, what the response was?
- What the workers views are about what should be done?

The organisation receiving the concerns must tell the worker what they will do next, what the likely timescale will be and establish a way to keep in contact with the worker. There may be issues of confidentiality which mean that the worker may not be provided with all details but a report of an outcome should be provided.

4. ACTION BY REGULATORY BODIES AND EMPLOYERS

The organisation will assess the information and determine the best way to investigate the concerns in a timely manner. The action they take will depend on the type of service the worker has contacted them about and what the concerns suggest is happening.

The organisation may have support services in place to support the worker while any enquiries are taking place.

The outcome of the investigation into the concerns should be shared with the worker bearing in mind any matters of confidentiality.

The organisation should regularly report all concerns raised (whether substantiated or not), the investigations and outcomes to the senior management/ board of the organisation to raise awareness of the concerns, identify trends and 'hot spots', and ensure issues are being dealt with properly.

5. FURTHER INFORMATION

Whistleblowing helpline

Whistleblowing to Ofsted about children's social care services: Policy and guidance for whistleblowers

Complain about a school, or childminder

Early years compliance handbook

Public Interest Disclosure Act 1998

What to do if you're worried a child is being abused

Public Concern at Work

NSPCC Whistleblowing Advice Line

Whistleblowing for Employees