



Whistleblowing in the Public Sector

A good practice guide for workers
and employers

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Foreword

Workers are the most valuable resource in any organisation, not just because of what they do, but also because they have a unique perspective on frontline services. They are the eyes and ears that witness bad practice and wrongdoing that could harm individuals, colleagues, organisations and members of the public. It is essential that employers tap into this rich vein of intelligence and welcome workers who are courageous enough to speak out.

Encouraging workers to speak out has many benefits: it protects others by preventing further wrongdoing; it promotes a transparent culture; it protects and reassures the workforce; and it helps to maintain a healthy working culture and efficient organisation. An organisation's willingness to examine areas of potential weakness, and to listen to all staff, means that issues and concerns can be addressed promptly.

Whistleblowing needs to be encouraged by employers 'as the right thing to do'. It is clear that there needs to be a cultural change throughout the public sector and a very clear message must come from the top of every organisation that senior management supports workers who raise genuine concerns and that all such concerns raised will be taken seriously and investigated appropriately.

There is a wealth of good practice guidance available on how workers can raise concerns and how employers should treat those workers and deal with their concerns. This Guide draws on that good practice to set out clearly and simply the key aspects to be considered by both workers and employers.

We believe it is essential that all public sector employers embed the principles of this good practice within their organisation and that all workers should have the confidence to raise genuine concerns in safety and with the assurance that they will be treated properly.

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Our Purpose

The purpose of this Guide is to set out clearly and simply how public sector workers can raise concerns and what they should expect from their employer when they do so. It also provides guidance for public sector employers on how to encourage workers to raise concerns and how to deal effectively with concerns in an open and transparent way.

The past year has seen a number of significant developments in relation to whistleblowing in the public sector:

- Whistleblowing framework: call for evidence by the Government, June 2013
- the Government's response to the call for evidence, June 2014
- a report by the Westminster Public Accounts Committee (PAC) on whistleblowing, July 2014.

PAC said:

"Whistleblowing is an important source of intelligence to help government identify wrongdoing and risks to public service delivery.....However, far too often, whistleblowers have been shockingly treated."

Public Concern at Work (PCaW) has reported that calls to its advice line from the public sector have increased by 41 per cent in the past year. It established a Whistleblowing Commission, which reported in November 2013.

In all of these recent developments, common themes have emerged, including:

- the overwhelming need for a culture change;
- poor treatment of whistleblowers;
- lack of knowledge about how to raise concerns; and
- defensive behaviour by workers and employers.

In response to the PAC report, PCaW said:

"This report demonstrates that a sea change in attitude towards whistleblowers is needed from the front line to the boardroom. Central government should see this as an opportunity to lead by example and change the experience of many whistleblowers."

As public sector audit agencies, we believe it is important that we add our voice to those sentiments. We have all experienced cases where concerns have been raised directly with us because the worker did not know how to raise concerns internally, did not have faith in internal arrangements, or had suffered as a result of raising concerns. This situation has to change. There needs to be an open and honest culture throughout the public sector, where workers have clear information on how to raise concerns (both internally and externally) and are encouraged to do so in the knowledge that they will be listened to and treated with respect, without fear of reprisal.

Section 1

Introduction



What is whistleblowing?

Generic definitions:

- Bringing an activity to a sharp conclusion as if by the blast of a whistle. (Oxford English Dictionary)
- Raising concerns about misconduct within an organisation or within an independent structure associated with it. (Nolan Committee on Standards in Public Life)
- Giving information (usually to the authorities) about illegal or underhand practices. (Chambers Dictionary)
- (origins) Police constable summoning public help to apprehend a criminal; signal to stop work in the industrial age; referee stopping play after a foul in football.



Public Concern at Work (PCaW)¹ definition:

A worker raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and/or externally (i.e. regulators, media, MPs)

Whistleblowing, or raising a concern, should be welcomed by public bodies as an important source of information that may highlight serious risks, potential fraud or corruption. Workers are often best placed to identify deficiencies and problems before any damage is done, so the importance of their role as the ‘eyes and ears’ of organisations cannot be overstated.

¹Public Concern at Work is a whistleblowing charity. Established in 1993, it offers free confidential advice to people concerned about crime, danger or wrongdoing at work.

Whistleblower or Complainant?



A simple way to establish whether an individual raising a concern is a ‘whistleblower’ or a ‘complainant’ is to consider the nature of the concern:

- Does the concern refer to ‘others’ e.g. the organisation, other staff, clients, the wider public?**Whistleblower**
- Does the concern refer to the individual (‘self’) e.g. a personal grievance about terms of employment, pay, unfair treatment?.....**Complainant**

Generally a whistleblower has no self interest in the issue being raised. However, the distinction may not always be clear cut. If in doubt, workers and employers can contact PCaW for advice (see page 49 for contact details). This good practice guide only applies to whistleblowing concerns.

Is whistleblowing encouraged?

Public Concern at Work

“Whistleblowing can inform those who need to know about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and many other problems. Often it is only through whistleblowing that this information comes to light and can be addressed before damage is done. Whistleblowing is a valuable activity which can positively influence all of our lives.”

Audit Scotland

“Every public sector organisation needs to take whistleblowing seriously as it can both detect and prevent financial corruption and mismanagement.”

National Audit Office

“Whistleblowing is important to safeguard the effective delivery of public services, and to ensure value for money. It serves to protect and reassure the workforce, and to maintain a healthy working culture and an efficient organisation.”

Northern Ireland Audit Office

“Whistleblowers have an important role to play in bringing information to departments about matters that are troubling them in relation to the proper conduct of public business.”

Wales Audit Office

“Whistleblowing can act as a catalyst to real improvements in governance and accountability.”

Public Accounts Committee

“It is essential that employees have trust in the system for handling whistleblowers and confidence that they will be taken seriously, protected and supported by their organisations if they blow the whistle.”

Why is whistleblowing needed?

Whistleblowing best practice, and the legislation² to protect workers raising concerns (see Appendix 1), developed following a number of disasters and public scandals in the late 1980s and early 1990s:

- the capsizing of the passenger ferry the Herald of Free Enterprise outside the port of Zeebrugge, 1987;
- the explosion on the Piper Alpha oil platform, 1988; and
- the train collision at Clapham, London, 1988.

The **Bristol Royal Infirmary scandal** emerged in the early 1990s. A consultant anaesthetist had concerns about death rates following heart surgery on babies. When he presented data to his employers which supported his concerns, no action was taken so he went to the Department of Health. A General Medical Council (GMC) case against two heart surgeons resulted in one being struck off and one being suspended from operating for three years.

The GMC case prompted a public inquiry which reported in 2001. It made 200 recommendations for improvements in safety, management and regulation within the health service.

In each of these cases, workers had known of the dangers but did not know what to do or who to approach, were too frightened to speak out in fear of losing their jobs or being victimized, or spoke out but were not listened to.

²Public Interest Disclosure Act, 1998; Public Interest Disclosure (Northern Ireland) Order, 1998

A workplace culture which encouraged whistleblowing and where workers felt confident that they could safely raise concerns without reprisal or discrimination could have prevented these disasters and scandals or greatly reduced their impact.

Whistleblowing is therefore essential to:

- safeguard the integrity of the organisation;
- safeguard employees;
- safeguard the wider public; and
- prevent damage.



Section 2

Workers



Why should I raise concerns?

“The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing”

Albert Einstein

The disasters and scandals that prompted the introduction of Public Interest Disclosure legislation clearly demonstrate why concerns should be raised. The fear of reprisal and the absence of a means of reporting wrongdoing often meant that workers were unwilling or unable to voice their concerns, with the result that lives were lost and financial institutions collapsed. The legislation now provides a remedy for workers who have been victimised or dismissed for raising a concern.

While the examples on page 9 are extreme, the same principles can apply throughout public sector organisations. For example:

- If you work in procurement, are you aware of favouritism towards certain contractors?
- If you work in finance, have you noticed unusual accounting transactions being processed?
- If you work in the areas of environment or agriculture, are you aware of work practices which could seriously damage the environment?
- Are you aware of a colleague claiming for overtime which wasn't actually worked? Or claiming travel expenses for journeys not made?

These examples potentially all indicate malpractice, risk, abuse or wrongdoing. So the dilemma is:

Speak out?



or



Say nothing?

Still unsure?



The decision to raise a concern can be a difficult one. However, workers are the eyes and ears of organisations and responsible employers should want to address health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and other such issues. Addressing problems before damage is done should be the ultimate goal for both workers and employers.

The following case example shows the difference that whistleblowing can make.

Mid Staffordshire Hospital Trust

Helene Donnelly, a nurse in Stafford Hospital Accident and Emergency Department, raised concerns after she *"saw people dying in very, very undignified situations which could have been avoided"*. Examples included patients being so thirsty that they had to drink water from vases and receptionists left to decide which patients to treat. Nurses were not trained properly to use vital equipment, while inexperienced doctors were put in charge of critically ill patients. Some patients needing pain relief either got it late or not at all, leaving them crying out for help, and there were cases where food and drinks were left out of reach.

The public inquiry into the failings revealed one of the biggest scandals in the history of the National Health Service (NHS). Data showed that there were between 400 and 1,200 more deaths than would have been expected, although it is impossible to say if all of these patients would have survived if they had received better treatment. However, it is clear many were let down by a culture that put cost-cutting and target-chasing ahead of the quality of care.

The inquiry report made 290 recommendations for improvements in care across the NHS. Work continues on their implementation.

Public Recognition

Helene Donnelly was recognised in the 2014 New Year's honours list, receiving an OBE for services to the NHS.

Helene is also now an ambassador for cultural change at the Staffordshire and Stoke-on-Trent Partnership NHS Trust and takes staff concerns directly to the Chief Executive. She said *"I hope this [honour] is recognition for lots of other people trying to raise concerns and this is also for the positive change we're trying to encourage now."*

How do I raise a concern?

Good practice guidance strongly recommends that employers should have a whistleblowing policy in place, but this is not required by legislation. If your employer has a whistleblowing policy, you can raise your concerns internally in line with the policy. Be aware that:

- you are not required to have firm evidence before raising a concern, only a reasonable suspicion of wrongdoing;
- you are a witness to a potential wrongdoing and are merely relaying that information to your employer; and
- it is the responsibility of your employer to use the information you provide to investigate the issue raised.

Public Interest Disclosure legislation still applies if there is no whistleblowing policy in place. If this is the case, your concern can still be raised with management or the relevant prescribed person (see page 16). Most organisations have a number of ways to raise concerns.

Raising a concern internally

Step one

If you have a concern, raise it first with your manager or team leader. This may be done verbally or in writing.

Step two

If you feel unable to raise the matter with your manager, for whatever reason, raise the matter with a designated officer.

This person will have been given special responsibility and training in dealing with whistleblowing concerns.

If you want to raise the matter in confidence, you should say so at the outset so that appropriate arrangements can be made.

Step three

If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of those listed in steps one or two, you should contact the head of your organisation and/or a Board Member (Non Executive Director, Chair, Audit Committee).

If you prefer, you may raise the matter directly with the department that funds your organisation.

If your employer **does not** have a whistleblowing policy, you should still report your concerns to your line manager or human resources (HR) department.

You also have the option of raising the concern externally.

Raising a concern externally

If you feel unable to raise a concern internally, or have done so but feel that the matter has not been adequately addressed, you have the option of approaching an external organisation, known as a 'prescribed person'.

A full list of prescribed persons and organisations, and the issues they are prescribed to deal with, is available on the Department for Business, Innovation and Skills website at www.gov.uk for England, Scotland and Wales, or the Department for Employment and Learning website at www.delni.gov.uk for Northern Ireland.

You can also contact PCaW at www.pcaw.org.uk for advice on raising concerns externally.



What types of concerns can I raise?

You can raise concerns about any issue relating to suspected malpractice, risk, abuse or wrongdoing. You need only have a reasonable belief that the issue has occurred, is occurring, or is likely to occur in the future. It is best to raise the concern as early as possible, even if it is only a suspicion, to allow the matter to be looked into promptly. You will not need to have evidence or proof of wrongdoing. As long as you have an honest belief, it does not matter if you are mistaken.

The following list illustrates the types of issues that may be raised:

- the abuse of children and /or vulnerable adults (physical or psychological);
- health and safety risks, either to the public or other employees;
- any unlawful act (e.g. theft);
- the unauthorised use of public funds (e.g. expenditure for improper purpose);
- a breach of the Employee Code of Conduct;
- maladministration (e.g. not adhering to procedures, negligence);
- failing to safeguard personal and/or sensitive information (data protection);
- damage to the environment (e.g. pollution);
- fraud and corruption (e.g. to give or receive any gift/reward as a bribe);
- abuse of power;
- poor value for money;
- other unethical conduct; and
- any deliberate concealment of information tending to show any of the above.

Case Examples

Actual examples of the types of concerns raised by whistleblowers include:

- A care worker raised concerns about the mistreatment of a dementia patient in a care home.
- A finance manager raised concerns about another manager's fraudulent use of an employer's credit card.
- A teacher raised concerns about poor value for money and poor service in relation to his school's new IT system.
- An employee raised concerns about irregularities in a health authority's estate management contracting arrangements.
- An employee raised concerns about abuse of position and misuse of public funds by a director in a local authority.
- An employee in a local authority leisure centre raised concerns about a colleague abusing overtime arrangements.
- A medical secretary in a health authority raised concerns that the majority of a colleague's work was for a consultant's private practice rather than the NHS.



Will my confidentiality be assured?

You can raise a concern openly, confidentially or anonymously. If you raise a concern openly, your employer should ensure that you do not suffer any detriment or harassment as a result.

It is not a requirement of the Public Interest Disclosure legislation to provide confidentiality; in fact it encourages workers to raise their concerns openly, but a good whistleblowing policy will provide a confidential port of call for a worried worker, and employers should respect any promise of confidentiality they make.

If you raise a concern in confidence, your confidentiality should be protected as far as possible. Your employer's arrangements should provide assurance that this will be the case. However, it may not always be possible to maintain confidentiality if this impedes the investigation. In such circumstances, it is vital that you are consulted and, if possible, your informed consent obtained.

Your organisation's whistleblowing policy should include:

- procedures for maintaining your confidentiality to the maximum extent possible;
- procedures for consulting with you and, where possible, gaining your consent prior to any action that could identify you; and
- strategies for supporting you and ensuring you suffer no detriment or harassment when confidentiality is not possible or cannot be maintained.

Even if your organisation's whistleblowing policy does not include assurances about protecting your confidentiality, your employer's duty of care towards you should ensure that they respect your confidentiality if you request it.

If your confidentiality is not protected, and you suffer detriment as a result, you may be able to seek recourse through an Employment Tribunal, as the following case example demonstrates:

Lingard V HM Prison Service (2004)

Lingard, a female prison officer, raised concerns with senior managers that a fellow officer had arranged for a bogus assault charge to be filed against a prisoner and had asked other colleagues to plant pornography in the cell of a convicted paedophile. Without telling her, Lingard's managers identified her as the source of the concerns. As a result, she was ostracised. She received no support from the Prison Service even though she was clearly suffering stress. A senior manager argued that Lingard's whistleblowing showed she was disloyal and she was eventually forced out. Lingard took her case to an Employment Tribunal citing detriment caused by her identity being revealed. Lingard won her case and received a substantial financial award. The Director General of the Prison Service said the case was indefensible and that lessons needed to be learned.

Source: PCaW, Where's Whistleblowing Now? 10 years of legal protection for whistleblowers

CONFIDENTIAL

Can I make an anonymous disclosure?

The purpose of Public Interest Disclosure legislation is to encourage the open raising of concerns, however, you can make a disclosure anonymously. Your employer should still accept concerns raised anonymously and give a commitment that they will be acted upon, with channels of communication, such as hotlines, provided to facilitate them.

You should be made aware, via your internal whistleblowing policy, of the disadvantages of raising concerns anonymously, including:

- Detailed investigations may be more difficult, or even impossible, to progress if you choose to remain anonymous and cannot be contacted for further information.
- The information and documentation you provide may not easily be understood and may need clarification or further explanation.
- There is a chance that the documents you provide might reveal your identity.
- It may not be possible to remain anonymous throughout an in-depth investigation.
- It may be difficult to demonstrate to a tribunal that any detriment you have suffered is as a result of raising a concern.

If you decide to reveal your identity to your employer during the process, your confidentiality should still be protected by your employer, as described on page 19.



What should I expect from my employer if I raise a concern?

Your employer should ensure that you are fully aware of your organisation's whistleblowing policy. The policy and procedures should clearly outline the process, including timescales and the nature of feedback that you can expect. They should also set out clearly who you should report to, and who to ask for support and advice.

In addition, you should expect that your employer will:

- formally acknowledge receipt of your concern;
- formally notify you who will be investigating your concern;
- offer you the opportunity of a meeting to fully discuss the issue, so long as you have not submitted your concern in writing anonymously;
- respect your confidentiality where this has been requested. Confidentiality should not be breached unless required by law;
- take steps to ensure that you have appropriate support and advice;
- agree a timetable for feedback. If this cannot be adhered to, your employer should let you know;
- provide you with as much feedback as it properly can; and
- take appropriate and timely action against anyone who victimises you.

Even if your employer's whistleblowing policy is not as comprehensive as it should be, you should not be deterred from raising your concerns with your line manager.

Section 3

Employers



Why is whistleblowing important to my organisation?

As an employer, you should ask yourself this question:

*“Do I **want** to know about malpractice, risk, abuse or wrongdoing in my organisation?”*

If your honest answer is ‘yes’ then you should take steps to encourage workers to raise concerns (see page 30). Effective arrangements for raising concerns should be a key part of a healthy organisational culture.

Workers who are prepared to speak up about malpractice, risk, abuse or wrongdoing should be recognised as one of the most important sources of information for any organisation seeking to enhance its reputation by identifying and addressing problems that disadvantage or endanger other people.

The benefits to your organisation of encouraging staff to report concerns include:

- identifying wrongdoing as early as possible;
- exposing weak or flawed processes and procedures which make the organisation vulnerable to loss, criticism or legal action;
- ensuring critical information gets to the right people who can deal with the concerns;
- avoiding financial loss and inefficiency;
- maintaining a positive corporate reputation;
- reducing the risks to the environment or the health or safety of employees or the wider community;
- improving accountability; and
- deterring workers from engaging in improper conduct.



The potential risks in discouraging whistleblowing include:

- missing an opportunity to deal with a problem before it escalates;
- compromising your organisation's ability to deal with the allegation appropriately;
- serious legal implications if a concern is not managed appropriately;
- significant financial or other loss;
- the reputation and standing of your organisation suffering;
- a decline in public confidence in your organisation and the wider public sector; and
- referral by a worker to an external regulator or prescribed person potentially bringing adverse publicity to your organisation (see page 16).





The key message for employers is:

LISTEN TO THE MESSAGE

DON'T SHOOT THE MESSENGER

In many organisations this may require a significant cultural change but it is essential that this change happens.

The British Standards' *Whistleblowing arrangements Code of Practice*³ notes:

“.....the main reason enlightened organisations implement whistleblowing arrangements is that they recognise that it makes good business sense”.

The Mid Staffordshire case (see page 14) shows clearly what can happen if concerns raised by employees are not treated seriously and dealt with properly. There can be very serious consequences and great personal suffering. However, on the positive side, the whistleblower is now an ambassador for cultural change at the Staffordshire and Stoke-on-Trent Partnership NHS Trust and takes staff concerns directly to the Chief Executive.

The following case is another example that clearly demonstrates the potential risks involved for both the employer and the employee when an organisation does not treat a whistleblower correctly.

³British Standards Institution (BSI) - BSI is the independent national body responsible for preparing British Standards. It presents the UK view on standards in Europe and at the international level. It is incorporated by Royal Charter.

Case example

Linda Ford, a financial accountant in the Northern Ireland Fire and Rescue Service (NIFRS), raised a number of concerns including:

- unapproved bonus payments for certain senior staff;
- unresolved corporation tax status; and
- manipulation of financial data.

She first raised the issues internally in 2010, in line with Public Interest Disclosure legislation and the organisation's whistleblowing policy, but they were not taken seriously. Ms Ford then brought the issues to the attention of the Northern Ireland Audit Office in May 2011, and to the NIFRS' parent department, the Department of Health, Social Services and Public Safety (DHSSPS), in July 2011.

The NIFRS suspended Ms Ford in August 2011 but she wrote to the Northern Ireland Assembly's Public Accounts Committee (PAC) in October 2011 with further allegations. On investigation, all but two of the allegations were substantiated, either fully or partly.

Ms Ford, who remained suspended for a year, returned to work in July 2012, and eventually received an apology from the Permanent Secretary of the DHSSPS for the way the case was handled. She also received financial compensation from her employer at an Employment Tribunal.

In this case the messenger was initially 'shot', but the message was eventually heard and acted upon.

Lessons to be learned

- All allegations should have been taken seriously.
- Allegations raised internally should have been investigated.
- Failure to deal with the matter properly led to escalation of the issues to PAC.
- The case has taken a toll on the health and wellbeing of the whistleblower; this could have been avoided if the case had been handled properly.

What types of concerns can workers raise?

Workers can raise concerns about any issue relating to suspected malpractice, risk, abuse or wrongdoing. The worker need only have a reasonable belief that the issue has occurred, either in the past, the present or is likely to happen in the future. Page 17 illustrates the types of issues that may be raised.

As an employer, you should ensure that your workers are fully aware of the differences between raising a concern and raising a grievance. It is important that you:

- have a whistleblowing policy in place which clearly distinguishes the two types of concerns (see below);
- have a grievance policy and procedure in place;
- make sure that these policies are accessible to all workers, e.g. on the intranet or notice boards, with posters in staff rooms, canteens and other communal areas highlighting the policies; and
- make sure that workers are aware of, and understand, the policies (e.g. through awareness training).

The difference between a whistleblowing concern and a grievance:

A whistleblowing concern is about a risk, malpractice or wrongdoing **that affects others**. It could be something which adversely affects other workers, the organisation itself and/or the public.

A grievance is a personal complaint about someone's own employment situation.

How can my organisation encourage whistleblowing?

If your organisation is serious about addressing misconduct, risk, abuse and wrongdoing, it must take steps to ensure that workers have the confidence to raise concerns openly. **Management commitment** to a positive and supportive whistleblowing culture is critical. It must be clearly stated in your policies and code of conduct, and managers must personally and explicitly commit to developing and maintaining an ethical culture. The head of your organisation should strongly endorse the policy. **There should be a clear message that no issue or concern is too small.** A checklist for employers is at Appendix 2.

Elements in encouraging workers to raise concerns include:

- a supportive organisational culture where raising concerns is welcomed;
- clear and explicit management commitment, from the top of the organisation, to an open and honest culture;
- a strong policy and code of conduct reinforcing the expectation of ethical behaviour from staff at all levels (see Appendix 3);
- clear roles and responsibilities in relation to dealing with concerns;
- clear procedures and lines of reporting for workers wishing to raise concerns;
- consistent handling of concerns raised, which should all be treated seriously;
- a specialist resource with detailed knowledge of whistleblowing, who can provide advice to management and staff and be an alternative to line management for workers raising concerns;
- effective awareness training for all staff so they know what concerns they can raise and how to raise them;
- effective training for line managers in dealing with concerns raised;
- a clear understanding of the benefits of whistleblowing (see page 25);
- continuing communication of your organisation's commitment to an open and ethical culture, through circulars, posters, emails and your intranet; and
- regular attitude surveys to determine the level of confidence staff have in arrangements for raising concerns.

As a line manager, what are my responsibilities towards staff who raise a concern?

Your organisation's whistleblowing policy should recommend that concerns are raised internally in the first instance, usually through a line manager⁴. It is essential that you, as a line manager, fulfil your responsibilities in a way that supports the person raising a concern.

Managers who receive disclosures from workers should:

- have a positive and supportive attitude towards workers raising a concern;
- record as much detail as possible about the concern being raised and agree this record with the worker;
- be aware of the process following the raising of a concern and explain this to the worker;
- make sure the worker knows what to expect, for example in relation to feedback on their concern;
- assure the worker that their confidentiality will be protected as far as possible, if they request this (see page 19);
- make no promises and manage the expectations of the worker;
- make clear that your organisation will not tolerate harassment of anyone raising a genuine concern and ask the worker to let you know if this happens;
- refer the worker to available sources of support, for example PCaW or a union; and
- pass the information as quickly as possible to those within your organisation responsible for dealing with concerns (usually someone within senior management), so that the appropriate procedures for consideration and investigation of the concern can be initiated.

⁴The option of raising a concern to a prescribed person is always available, even though it is not always included in organisations' policies (see page 16).

As an employer, what responsibilities have I to ensure confidentiality?

The best organisational culture is one in which whistleblowers feel comfortable raising concerns openly without fear of reprisal, and where the raising of concerns is welcomed. This makes it easier for the organisation to assess and investigate any issues, gather more information and reduce any misunderstandings.

Confidentiality

While openness is the ideal, in practice some staff will have good reason to feel anxious about identifying themselves at the outset and so your whistleblowing policy should ensure they can also approach someone confidentially. This means that their name will not be revealed without their consent, unless required by law⁵.

While confidentiality should be assured if requested, you should point out potential risks to the worker:

- colleagues may try to guess the worker's identity if they become aware that a concern has been raised; and
- as any investigation progresses, there may be a legal requirement to disclose the identity of the person raising the concern, for example, under court disclosure rules.

As an employer you must ensure that, where the identity of a whistleblower is, or becomes, known, they are protected and supported. Appropriate and timely action must be taken against anyone who victimises the whistleblower.



⁵ British Standards Institute: Whistleblowing Arrangements Code of Practice

There are practical steps that your organisation can take to protect the confidentiality of workers raising concerns. These include:

- ensuring that paper files are properly classified as confidential and that electronic files are password protected;
- ensuring that the minimum number of people have access to case files;
- being discreet about when and where any meetings are held with the worker; and
- ensuring that confidential case papers are not left on printers or photocopiers.

The case on page 20 of this guide (Lingard v HM Prison Service, 2004) demonstrates the potential consequences of not protecting the confidentiality of a worker.

Anonymity

Whistleblowing policies should not actively encourage workers to raise concerns anonymously because this makes it difficult to:

- investigate the concern;
- liaise with the worker;
- seek clarification or further information; and
- assure the worker and give them feedback.



Your policy should emphasise that, by making their identity known, workers are more likely to secure a positive outcome. However, your organisation may still receive anonymous disclosures. These should not be ignored. You still need to assess the information provided and take appropriate action in line with your organisation's policy.

How should my organisation deal with concerns?

As an employer, you must take all concerns raised seriously. However, it may not be necessary to carry out a formal investigation in each case. You should consider a range of possibilities depending on the nature of each case:

- Explaining the context of an issue to the person raising a concern may be enough to alleviate their concerns.
- Minor concerns might be dealt with straight away by line management.
- A review by internal audit as part of planned audit work might be sufficient to address the issue e.g. through a change to the control environment.
- There may be a role for external audit in addressing the concerns raised and either providing assurance or recommending changes to working practices.
- There may be a clear need for a formal investigation.

Having considered the options, it is important that you clearly document the rationale for the way forward on the case file. Your whistleblowing policy should make clear whose responsibility it is to decide on the approach to be adopted.

If necessary you can also seek advice and guidance from the relevant prescribed person (see page 16).

How should we conduct a formal investigation if required?

It is important that investigations are undertaken by people with the necessary expertise and experience. If your organisation does not have such staff, you will need to consider engaging external resources. Your internal auditors may be able to advise on this but may not be the best people to undertake the work if they do not have investigative qualifications. Where your internal auditors carry out investigations under your whistleblowing arrangements, and may also be involved in providing assurance on the effectiveness of those arrangements, any potential or perceived conflict of interest needs to be managed.

You should have documented procedures in place to be followed when conducting an investigation. These may be adapted from your fraud response plan or set out in a standard operating procedure.

Key considerations for any investigative process should include:

- employing investigators with the necessary skills;
- ensuring no conflict of interest between the investigator and the issue being investigated;
- having clear terms of reference;
- setting a clear scope for the investigation and drawing up a detailed investigation plan;
- clarifying what evidence needs to be gathered and how it will be gathered (document search, interviews etc.);
- deciding how best to engage with the whistleblower and manage their expectations; and
- ensuring that all investigative work is clearly documented.

How should we record, monitor and report on whistleblowing caseload?

Concerns raised by workers are an important source of information for your organisation. It is important that you capture key aspects so that the value of your whistleblowing arrangements can be determined and lessons learned where appropriate. Government departments should have procedures in place for receiving information about concerns raised in all arm's length bodies for which they are responsible. This can help identify concerns of a systemic nature.

In addition to individual case files, you should maintain a central record of all concerns raised, in a readily accessible format such as a spreadsheet or database. Any system for recording concerns should be proportionate, secure, and accessible by the minimum necessary number of staff.

The types of information recorded may include:

- the date the concern was raised;
- the nature of the concern (you may wish to compile a list of options relevant to your business) and/or the risk highlighted;
- who the concern was initially raised with;
- whether confidentiality was requested;
- the approach adopted (see page 34);
- the outcome, in terms of whether the concern was founded or unfounded;
- whether feedback was given to the worker raising the concern;
- whether the worker was satisfied with the outcome and if not, why not; and
- the date the case was closed.

Analysis of the information captured will allow your organisation to identify trends or business risks which may need to be addressed, and will also provide useful management information on the operation of whistleblowing procedures, such as:

- the number and types of concerns raised;
- how concerns were dealt with;
- the length of time taken to resolve concerns;
and
- workers' satisfaction with the procedures.

Analysis of whistleblowing caseload should be reported regularly to senior management, the Audit Committee and the Board. This will help inform those charged with governance that arrangements in place for workers to raise concerns are operating satisfactorily, or will highlight improvements that may be required. Your organisation should also consider reporting on the effectiveness of its whistleblowing arrangements in its annual report and accounts.

Is a small caseload to be welcomed?

A low volume of concerns may have a positive or negative interpretation. It could mean that your organisation is working well and that there are no matters of concern, or it could mean that workers are afraid to speak up or don't know how to raise concerns. It is essential that your organisation has a clear policy of openness and that workers are made aware, and regularly reminded, of arrangements for raising concerns.

How do we know our whistleblowing arrangements are effective?

An open and safe workplace culture is essential for the effective working of whistleblowing arrangements. If arrangements are not seen to be working effectively, then workers will be reluctant to raise concerns and your organisation will not have the opportunity to address issues before they have potentially serious consequences. It is not enough for your organisation to have a policy and procedures in place. You also need positive assurance that your whistleblowing arrangements are working effectively.

“Having a good policy is only part of developing good whistleblowing arrangements. For a policy to be more than a tick-box exercise, it is vital that those at the top of the organisation take the lead on the arrangements and conduct a periodic review.”

PCaW

The Committee on Standards in Public Life has recommended that well run organisations should review their whistleblowing arrangements, both to ensure their effectiveness and to confirm that workers have confidence in the arrangements.

Your Audit Committee should have a key role in ensuring effective whistleblowing arrangements are in place, given that such arrangements form part of the control environment of your organisation and can highlight risks to your organisation.

HM Treasury’s Audit and Risk Assurance Committee Handbook suggests that part of the terms of reference for the Committee should be to *“advise the Board and Accounting Officer on.....whistleblowing processes.....”*

A range of guidance is available for audit committees on reviewing whistleblowing arrangements. Key questions include:

- Is there evidence that the board regularly considers whistleblowing procedures as part of its review of the system of internal controls?
- Is there a comprehensive record of the number and types of concerns raised, follow-up action taken and the outcomes of investigations?
- Are there issues or incidents which have otherwise come to the board's attention which they would have expected to have been raised earlier under the company's whistleblowing procedures?
- Are there adequate procedures for retaining evidence in relation to each concern?
- Have confidentiality issues been handled effectively? Have there been any failures to maintain confidentiality?
- Is there evidence of timely and constructive feedback to the worker raising the concern?
- Is there evidence of satisfactory feedback from individuals who have used the arrangements?
- Have any events come to the committee's or the board's attention that might indicate that a worker has been victimised or unfairly treated as a result of raising their concerns?
- Has there been a review of staff awareness, trust and confidence in the arrangements?
- Where appropriate, has internal audit performed any work that provides additional assurance on the effectiveness of the whistleblowing procedures?

*Sources: Institute of Chartered Accountants in England and Wales Guidance for Audit Committees - Whistleblowing arrangements, March 2004
PCaW - Whistleblowing Commission Report, November 2013*

Appendices



Appendix 1 - Legislation

Public Interest Disclosure legislation⁶ was introduced to protect workers (see below) who wish to report a wrongdoing at work. It enables workers to make a 'protected disclosure'. **This means you can take an employer to an employment tribunal if you are discriminated against or victimised in any way as a result of making a disclosure.**

The greatest level of protection is assured if you first raise your concerns internally (see page 15) in accordance with your organisation's whistleblowing policy. This will strengthen your case at tribunal. However, you have the option to raise your concerns externally (see page 16).

What is a worker?⁷

In Public Interest Disclosure legislation, the definition of worker includes employees, contractors, trainees, agency staff, home workers, police officers and every professional in the NHS. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services or the armed forces. In addition, non-executive directors and councillors do not have protection under the legislation.

You will not be protected under Public Interest Disclosure legislation if, by raising a concern or making a disclosure, you are committing an offence.

If you have any doubts about whether you will be protected, you should seek impartial expert advice from:

Public Concern at Work
www.pcaaw.org.uk
whistle@pcaaw.org.uk
Tel: 020 7404 6609.



The following examples illustrate employment tribunal cases:

⁶ Public Interest Disclosure Act, 1998; Public Interest Disclosure (Northern Ireland) Order, 1998

⁷ Public Concern at Work guide to the Public Interest Disclosure Act, 1998

Case examples

Balmer V Church View Ltd (2002)

Miss Balmer was a young, junior member of staff in a care home who witnessed three co-workers repeatedly hit an elderly resident then refused to feed him when he complained. After reporting the incident, Miss Balmer's manager attempted to persuade her to state that she was mistaken, but she refused. Miss Balmer was dismissed for 'gross misconduct' in making a false report. The Employment Tribunal found an obvious inference in the dismissal letter that her release was 'inextricably linked to her having made the protected disclosure'. The employer failed to show that there was any investigation into the incident. The appeal hearing it conducted took no notice of Miss Balmer's grounds for appeal.

Holden V Connex SE (2002)

Mr Holden, a train driver and health and safety representative, raised concerns about public and workplace safety. After being denied sight of a risk assessment of a new rota for drivers, Mr Holden sent two reports to the Health and Safety Executive (HSE), believing there was an increased risk that signals would be passed at red. Copies were made available to colleagues. Following the Ladbroke Grove crash, a colleague told the media about the reports. Mr Holden was charged with sending an emotive and inaccurate report to the HSE. After receiving a final written warning, he resigned. The Employment Tribunal found in his favour and held that it was not necessary that all allegations in the reports to the HSE were accurate. It said that Connex paid lip-service to safety concerns and had tried to deter Mr Holden from speaking out.

Harper V Torbay Council (2006)

Mr Harper questioned the Council's tendering process for new refuse lorries and was criticised for doing so. An internal audit report found that the process was seriously deficient, but Mr Harper, who was not shown the report, was asked to sign a letter confirming that he agreed that there was no wrongdoing. Mr Harper refused and raised the issue with external auditors. He was then subjected to numerous detriments and was eventually dismissed. The Employment Tribunal found in Mr Harper's favour, citing various examples of detriment including excessive criticism, a transfer out of his department, stress, a refusal to allow him to return to work and suppression of the internal audit report. The Employment Tribunal said that from the moment Mr Harper made the disclosure, his job was in jeopardy. It also said that there had been a cover-up, a failure to manage and deception.

Appendix 2 - Employer Checklist

- Does your organisation have a whistleblowing policy in place?
- Is the policy supported by an open and transparent culture which encourages the raising of concerns?
- Are workers made aware of the policy?
- Is training provided on the content of the policy?
- Is there evidence of clear and explicit management commitment from the top of the organisation to an open and honest culture?
- Is there a code of conduct in place that reinforces the expectation of ethical behaviour from workers at all levels?
- Are there clear procedures and lines of reporting for workers wishing to raise concerns, perhaps using a flowchart or diagram for clarity?
- Are there clear roles and responsibilities in place for handling concerns raised?
- Does the policy offer alternative ways of raising concerns, including externally?
- Is there a specialist resource with detailed knowledge of whistleblowing who can provide advice to management and staff and be an alternative route for raising concerns?
- Is there effective awareness training for all staff so they know what concerns they can raise and how to raise them?
- Is there effective training for line managers who may have to deal with concerns?
- Is there continuing communication of your organisation's commitment to an open and ethical culture, through circulars, posters, emails and your intranet?
- Are there regular attitude surveys to determine the level of confidence staff have in arrangements for raising concerns?
- Does the whistleblowing policy make clear that your organisation will not tolerate harassment of anyone raising a genuine concern?
- Does the policy direct workers to available sources of support and advice, for example Public Concern at Work or a union?
- Are practical steps taken to protect the confidentiality of workers raising concerns?
- Do you have a plan in place should an investigation be required e.g. access to trained fraud investigators?
- Do you have adequate systems in place for recording, monitoring and reporting on whistleblowing caseload?

Appendix 3 - A Strong Policy

A National Audit Office review into Government whistleblowing policies (published January 2014) highlighted key criteria for a successful whistleblowing policy:

Commitment, clarity and tone from the top

Guidance should make clear that any concerns are welcomed and will be treated seriously. Guidance should reassure the reader who may be thinking of raising a concern that the organisation's leadership will take the concern seriously and will not punish the employee if the concern turns out to be untrue, as long as they had reasonable suspicion of wrongdoing.

Openness, confidentiality and anonymity

Guidance should make sensible and realistic statements about respecting whistleblowers' confidentiality. Guidance should also outline the potential issues that could arise from employees reporting concerns anonymously.

Offering an alternative to line management

Concerns may relate to behaviours of line management, or employees may be unwilling to discuss concerns with immediate management. Alternative channels inside the organisation should be offered.

Structure

It is important that guidance is easy to use so that readers are clear about how they should raise concerns. The policy should cover all areas expected under best practice. It should be clear, concise and avoid including irrelevant detail that might confuse readers. Flow charts or similar pictorial and diagrammatic representations that outline the step-by-step process are useful techniques to support a well laid out policy.

Access to independent advice

Employees may need advice where they feel unsure or unaware of how to raise a concern. Guidance should indicate where employees can seek advice, e.g. Public Concern at Work.

Whistleblowing to external bodies (prescribed persons)

Guidance should make employees aware of how they can raise concerns outside the department, e.g. to an external auditor or regulator. This is an obligation for officials in certain circumstances, for example where there is evidence of criminal activity.

Reassuring potential whistleblowers

Guidance should make clear that it is an offence for management and staff to victimise employees thinking of making a complaint. Similarly, it should make clear that employees who deliberately raise malicious and unfounded grievances will be subject to disciplinary action.

Addressing concerns and providing feedback

Whistleblowing policies should set out procedures for handling concerns. This should reassure employees that their concerns will be taken seriously and will ensure that instances of malpractice are identified and dealt with appropriately.

But remember, a strong policy is of little value if it is not supported by an open, transparent and supportive culture in which concerns can be raised without fear.

Appendix 4 - Sources

In compiling this Guide, we have drawn on a range of available good practice, in particular:

- PCaW: Guide to the Public Interest Disclosure Act, 1998
- PCaW: Best Practice Guide for Subscribers
- PCaW: Where's Whistleblowing Now? 10 years of legal protection for whistleblowers
- PCaW: The Whistleblowing Commission: Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK
- PCaW: FAQ Answers
- House of Commons Committee of Public Accounts: Whistleblowing, 9th Report of Session 2014-15
- Department for Business Innovation and Skills: Whistleblowing Framework Call for Evidence: Government Response, June 2014
- National Audit Office: Review into Government Whistleblowing Policies, January 2014
- Managing a Public Interest Disclosure Program: A Guide for Public Sector Organisations, 2011, published jointly by the Crime and Misconduct Commission, Queensland, Australia; Queensland Ombudsman; and Queensland Government, Public Service Commission



Contacts

Public Audit Bodies

England:

The Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
London SW1W 9SP
Tel: 020 7798 7999
Email: enquiries@nao.gsi.gov.uk
www.nao.org.uk

Scotland:

Correspondence Team
Audit Scotland
18 George Street
Edinburgh EH2 2QU
Tel: 0131 625 1500
Email: Correspondence@audit-scotland.gov.uk
www.audit-scotland.gov.uk

Wales:

PIDA Officer
The Auditor General for Wales
24 Cathedral Road
Cardiff CF11 9LJ
Tel: 01244 525980
Email: whistleblowing@wao.gov.uk
www.wao.gov.uk

Northern Ireland:

The Comptroller and Auditor General
Northern Ireland Audit Office
106 University Street
Belfast BT7 1EU
Tel: (028) 9025 1062 or (028) 9025 1000
Email: whistleblowing@niauditoffice.gov.uk
www.niauditoffice.gov.uk

Independent Advice

PCaW:

Public Concern at Work
3rd Floor, Bank Chambers
6-10 Borough High Street
London SE1 9QQ
Tel: 020 7404 6609 (helpline)
Tel: 020 3117 2520 (other enquiries)
Email: whistle@pcaw.org.uk
www.pcaw.org.uk





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