RAISING CONCERNS AT WORK

Whistleblowing Guidance for Workers and Employers in Health and Social Care

Whistleblowing Helpline

free advice for the NHS and Social Care

08000 724 725

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FOREWORD BY SECRETARY OF STATE FOR HEALTH

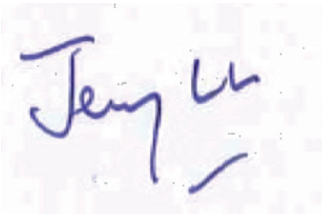
Dear colleagues

I am pleased to welcome the publication of this guidance on raising concerns at work.

People who raise concerns ('whistleblowers') have sometimes had difficult experiences in the past. The failures of Mid Staffordshire NHS Foundation Trust and Winterbourne View Hospital were overshadowed by secrecy and a defensive culture - a refusal to listen to staff, patients and carers who felt strongly enough to raise concerns and on countless occasions were not listened to. I hope we are moving to a defining moment where the response to Robert Francis's Public Inquiry will create a culture of openness with greater accountability and a relentless focus on safety in an NHS which puts compassion at its heart. I urge all employers and staff to work together towards embedding a culture in which it is the norm to report on problems and to act on them.

This guidance aims to support employers and employees to make the process of raising concerns work better in the future. Staff in the health and social care sector should never be stopped from raising concerns about patient safety. Staff should be supported and protected when they raise concerns, as well as praised for their courage and thanked by management as a key part of the effort to build the safe, effective and compassionate culture that patients, service users, the public and the overwhelming majority of staff across health and social care expect.

Yours sincerely



Rt Hon. Jeremy Hunt MP

Secretary of State for Health

INTRODUCTION

Health and Social care services exist to promote the health, wellbeing and dignity of patients and service users and the people who deliver these services want to do the best for those they serve. However, there will be occasions when wrongdoing occurs in the workplace. This is why encouraging workers to raise concerns openly as part of normal day-to-day practice is an important part of improving the quality of service user support and patient safety. When concerns are raised at an early stage, corrective action can be put in place to ensure high quality and compassionate care based on individual human rights.

The importance of raising concerns at work in the public interest (or "*whistleblowing*") is recognised by employers, workers, trade union and the general public. Working in partnership with Trade Unions, staff associations and employee representatives is an important part of ensuring fairness and promoting awareness of the policies, procedures and support mechanisms which a good employer will have in place.

We would like to acknowledge the contribution and input towards this guidance made by key stakeholders. There are too many for us to thank individually, but they include Trade Unions, employers' associations, campaigning groups, regulators, professional bodies and whistleblowers themselves. The contents of this Guidance have been endorsed by the Social Partnership Forum and the Social Care Institute for Excellence.

How to use this Guidance:

After the first introductory pages, the body of the Guidance is made up of three main sections: one aimed at **workers**, one at **operational managers**, and one at **employers**. Each section can be easily identified by its colour coding and text in the border of the page. All pages relating to workers have a turquoise border, pages for managers have a pink border, and pages for employers have a gold border. The Contents page sets out the structure of the Guidance in more detail.

We hope you find it useful – please get in touch if you need further help by contacting the Whistleblowing Helpline on 08000 724725, or email enquiries@wbhelpline.org.uk

WHY IS IT IMPORTANT TO RAISE CONCERNS?

It is important for individuals to feel safe and listened to when raising concerns. An open approach to whistleblowing promotes the values of openness, transparency and candour and encourages employees to treat patients and service users with dignity, respect and compassion. In that way, the wellbeing and safety of patients and 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. Whistleblowing has been shown to be an effective way to achieve service improvement, leading to better patient care and promoting dignity.

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.

What the research says

There have been a number of reports into whistleblowing and people's experience of whistleblowing. Recent research includes the Whistleblowing Helpline's Bridging the Gap report, the 2012 NHS Staff Survey, the Royal College of Nursing survey in April 2013 and Public Concern at Work and the University of Greenwich's report "*Whistleblowing: the inside story*" in May 2013. The main findings are summarised below:

- There is a gap between the proportion of people who know about the raising concerns (or "*whistleblowing*") policy and the proportion of individuals who feel safe to use it. For example, the 2013 NHS Staff Survey found that although 89% of staff say they know how to report concerns, only 71% would actually feel safe to raise concerns.
- The Royal College of Nursing survey and the Bridging the Gap report show there are a number of barriers which prevent workers from speaking out, which include being viewed as a troublemaker, the fear of reprisals from managers and/or colleagues and feeling that nothing will be done to address the concern.
- 60% of whistleblowers received no response or feedback (negative or positive) from management. *(Taken from the PC@W survey)*.
- 83% of workers only blow the whistle twice internally, meaning organisations have a limited opportunity to address the concern before it escalates. Swift and appropriate action needs to be taken. *(Taken from the PC@W survey)*.
- If people report concerns to the Care Quality Commission (CQC) at the second or third time a concern is raised, it decreases the chances of dismissal. However the likelihood of formal reprisals is increased. *(Taken from the PC@W survey)*.
- Newer workers are most likely to blow the whistle (39% have less than 2 years' service). *(Taken from the PC@W survey)*.

The whistleblower can experience considerable stress and isolation as the Bridging the Gap report shows. For sources of support, see the section on advice and support on page 12.

People who raise concerns ("*whistleblowers*") have sometimes had difficult experiences in the past and we need to ensure that they are supported and protected, in line with the need for an open, transparent and honest culture. This guidance aims to support employers and employees to make the process of raising concerns work better in the future.

Expectations within our sector

As a worker in health or social care, there are moral, ethical and professional issues to consider in relation to raising concerns.

Staff registered with a professional regulatory body such as the General Medical Council (GMC) or the Nursing and Midwifery Council (NMC) have to adhere to their respective codes of conduct. Professional codes of conduct usually place a duty on the practitioner to raise concerns where they see instances of poor practice or wrongdoing. The professional regulators are able to offer advice to whistleblowers as well as register complaints against their members.

Social workers, now registered with the Health and Care Professions Council, are subject to the HCPC's standards of conduct, performance and ethics which state that practitioners 'must act in the best interests of service users' and 'must protect service users' from danger (Health and Care Professions Council, 2012).

Large numbers of workers in the sector are not regulated in this way, but will be expected to raise concerns in the interests of patients and service users.

The **Social Care Code of Conduct**, which sets out what is expected of adult social care workers, refers to whistleblowing in the first principle, and this is reinforced in the Social Care Commitment.

The **NHS Constitution** emphasises the importance of honesty and openness and was updated in March 2013. It pledges that the NHS will "*encourage and support all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice or wrongdoing at work, responding to and, where necessary, investigating the concerns raised and acting consistently with the Public Interest Disclosure Act 1998*".

For the latest version of the NHS Constitution, follow this link:
www.gov.uk/government/publications/the-nhs-constitution-for-england

The professional duty of candour

The report of the Mid-Staffordshire Foundation Trust Public Inquiry, better known as the Francis report, was published in February 2013. In the Government's final response to the Francis report, "*Hard Truths*", published in November 2013, it was stated that the GMC, the NMC and other professional regulators are to develop a consistent approach to the professional duty of candour for doctors, nurses and other health professionals, making clear a requirement to be open with patients and families when mistakes occur, whether the mistake is serious or not. The guidance will make clear that obstructing colleagues in being candid will be a breach of their professional codes.

The relationship to the safeguarding framework:

Safeguarding the health and wellbeing of patients and service users means they should not be exposed to abuse, whether physical, psychological, sexual or financial, neglect or institutional abuse. It is not the worker's responsibility to investigate or decide if abuse has happened, only to make sure that the appropriate agencies are told about their concerns or suspicions. Workers should make sure that they understand and follow their local authority's safeguarding policies regarding referral of their concern to the appropriate agency via the designated safeguarding officer, a manager or themselves, if possible on the same day as they have the concern.

WHAT THE LAW SAYS - SUMMARY

Following a number of high profile events, the government introduced the Public Interest Disclosure Act 1998 (PIDA), which provides legal protection against detriment for workers who raise concerns in the public interest (also known as making a disclosure) about a danger, risk, malpractice or wrongdoing in the workplace which affects others.

To be protected, the disclosure must be in the public interest, the worker must have a reasonable belief that the information shows that one of the categories of wrongdoing listed in the legislation has occurred or is likely to occur, and the concern must be raised in the correct way.

PIDA is a complex piece of legislation and more detail is provided on page 29. The way PIDA works is for the worker to be able to claim a remedy at an Employment Tribunal if they are subjected to bad treatment as a result of their whistleblowing.

TOP TIPS

The following tips are intended to support workers in raising concerns and to help managers respond appropriately when handling concerns raised.

It is important to create a culture of openness and transparency, where workers feel safe and are encouraged to speak up. For this to happen the Board and senior management will need to demonstrate that they are committed to open dialogue and communication. They will also need to ensure that the safety and wellbeing of patients and service users are seen as the responsibility of everyone involved in the provision of health and social care services.

Raising concerns as soon as possible is an effective early warning of wrongdoing, malpractice or risks. Where possible, opportunities to raise concerns should be embedded into routine discussions on service delivery and patient care, (e.g. problem solving, service review, performance improvement, quality assessment, training and development).

Top tips for workers

Whistleblowing is when you speak out about something you are concerned about at work because you think it needs bringing out into the open for the public good. It can be a hard decision to do this. Here are some top tips to help you make your decision in an informed way and to help you access any support you may need:

1. **Read the whistleblowing policy and procedure where you work.** (This is sometimes called the "*Raising Concerns Policy*"). It should tell you:
   - what type of concerns are covered
   - when and how a concern should be raised and who with.

   In larger organisations, you can normally find the policy on the staff intranet or ask the HR department. In smaller organisations, you might find it in the Staff Handbook or you could ask your manager for a copy. You need to follow the procedure to make sure you remain protected under the law – this is called the **Public Interest Disclosure Act 1998 (PIDA)**.

   You can get independent advice by contacting your Trade Union representative, the Whistleblowing Helpline on 08000 724725, an HR manager or a Citizens Advice Bureau. In some circumstances, you may also wish to obtain independent legal advice.

2. **Raise the concern immediately or at the earliest opportunity.**

   If you believe that something is wrong, you do not need proof. Speaking out early could stop the issue from becoming more serious, dangerous or damaging.

3. **Think about whether your concern can be discussed in an informal way** or at things like supervision meetings, at your appraisal, team or departmental meetings or at staff forums.

4. **Find out if other workers share your concerns.**

   If so, you may be able to raise your concern as a group - there can be strength in numbers.

5. **Check your organisation's policy to find out who you should report your concerns to.**

   Your line manager is usually the first person to go to. If you believe that your manager may be involved or you feel unable to raise it with them, you may need to go to another manager or someone else that is listed in the whistleblowing policy. If you work for a small organisation where there are no more senior managers, then you might need to go to a regulator such as the Care Quality Commission (CQC).

   If you think the ways to report are not clear or you do not feel supported or safe then you should contact HR or your Trade Union for advice in the first instance. Alternatively, you may wish to seek independent confidential advice from the national Whistleblowing Helpline. You can call them on 08000 724 725.

6. **Try to see if you can sort things out inside your organisation first.**

   But if you are not satisfied, then you might need to tell someone outside of where you work. This might mean telling your professional regulator or the CQC. These are listed on page 39.

   Reporting anything to the media should always be the LAST thing you turn to. Try all the other places talked about first – particularly if what you want to report involves private or confidential information.

7. **When you report your concern, focus on as much factual information/evidence as possible.**

   This means things like being specific about;

   - dates and times
   - what happened and the order of events
   - who was involved
   - any witnesses.

   Act honestly and professionally at all times in the interests of patients and service users.

8. **Try to present the situation as clearly and with as much information as possible – either verbally or in writing.**

   Identify what you believe to be the key issues and risks. For example, is there a risk to the patient/service user or is it to do with a professional/clinical practice etc.?
   Writing it down will help you to get your thoughts in order particularly if you are upset, worried or feeling emotional about it. Your trade union and the Whistleblowing Helpline can offer support.

   Provide as much supporting information as you can, for example files or emails. ALWAYS ask for further advice, for example from your Trade Union or professional body, if these contain private or confidential information.

9. **Check out the process and what will happen next.**

Talk about what might happen next with your manager or the person nominated in the whistleblowing policy.

You will need to give them a reasonable amount of time to check the facts and to find out more if they need to, before they feed back to you.

Respect the fact that your manager may need to keep some information private and confidential if it relates to other people.

Try to cooperate with any investigation into what you have reported and the attempts to resolve the issues and put things right.

You are entitled to get support from a work colleague or union representative at any meeting to discuss your concerns or during any investigation that takes place.

10. **Keep track of what is happening.**

Even if you raise your concern verbally, you should also keep a record in writing of any discussions relating to your concern – this means things like the dates things happened, who you talked to, what was said, what the response was.

One way of keeping track of things is to email the manager/nominated person after any discussion with a summary of the main points. Make it clear that you are raising a concern in line with your organisation's whistleblowing policy and the **Public Interest Disclosure Act 1998 (PIDA)**. This is the law to do with whistleblowing.

11. **Maintain confidentiality.**

It is best if you can speak out openly about what you think, although you can ask for your identity to be kept confidential.

The person/manager with whom you talk about things should make every effort to protect your identity. However, there may be times when, because of the nature of the investigation or what you want to say, it will be necessary to say who you are publicly. If this IS going to happen then the person you raise your concerns with should make every effort to let you know first.

Remember, if you work in a small team then people you work with might guess or work out your identity. If this happens, tell your manager and let him/her know if you are being bullied or harrassed or being treated badly as a result.

Concerns raised anonymously – this means when you do not reveal your name - can be more difficult to deal with and investigate in the best way. More action is likely and possible if your identity is known when you report something.

12. **If you are not satisfied…**

If you feel your concern has not been addressed or the issues have not been resolved to achieve a solution and positive outcome, you should use the sources of support and help available to pursue the matter. Not speaking up might mean that poor care will carry on and may even get worse.

If this is the case, you will need to refer to your organisation's policy in order to be clear about what action you can take and where you can go next.

If there is nothing more you can do inside your organisation, then you can raise a concern with a regulator. This means somewhere like the **Care Quality Commission (CQC)**. They have a confidential number you can call on 03000 616161. If your concern is regarding an individual professional's practice, the professional regulator would be best placed to take action - a list of them is given on page 39. If you do this, you need to have reason to believe that the information you give and any allegation you make is substantially true – if you only suspect something then that is not enough when you report concerns outside of where you work. You can raise your concern with a regulator such as the Care Quality Commission even if you have left your job. And, as from 6 April 2014, members of the House of Commons (MPs) have been added to the list of 'prescribed persons' (see page 39).

Talking to the police or the media are also protected under the PIDA law, but only under certain circumstances. For example, if you genuinely believe you would be victimised or bullied if you raised the matter internally or with a regulator, you would probably be protected.

Going to the media should always be the last resort. Doing this could have an impact on your employment and it is a good idea to get advice before telling anyone outside of work.

If you are leaving your employment, your employer may ask you to sign a settlement agreement. Before doing this, read the further information on page 25 and seek advice from an independent advisor or the Whistleblowing Helpline.

Remember…

PIDA is there to protect you. So if you are being bullied or experience bad treatment as a result of raising a concern, tell your manager, Trade Union representative, or HR.

Sources of good advice are listed below. Remember, the Whistleblowing Helpline is available to help advise on the whistleblowing process – our phone number is 08000 724725.

Advice and support

People who have raised concerns often say they feel isolated and unsure of what to do. It is important to access appropriate support at an early stage. There are different types of advice and support available:

- Advice on the whistleblowing process – how to raise a concern:
  - Available from the HR department of your organisation, the National Whistleblowing Helpline, or your Trade Union.
  - In certain cases, a public law solicitor may be appropriate.
- Local support for you in the workplace and representation at formal meetings.
  - Your Trade Union, professional body or work colleagues.
- Emotional and/or therapeutic support.
  - Counselling services via your employer or your GP. If you have no access to counselling services please call the helpline to discuss how we might be able to help.

National contact details for these organisations are given below.

Trade Unions:

Royal College of Nursing (RCN), 0345 772 6300 www.rcn.org.uk/raisingconcerns

Royal College of Midwives (RCM), 0300 303 0444 www.rcm.org.uk

UNISON, 0845 355 0845 www.unison.org.uk

Unite, 020 7611 2500 www.unitetheunion.org

British Medical Association (BMA), 020 7387 4499 www.bma.org.uk

Chartered Society of Physiotherapy www.csp.org.uk

Managers in Partnership www.miphealth.org.uk

GMB www.gmb.org.uk

British Dietetic Association www.bda.uk.com

British Orthoptic Society www.orthoptics.org.uk

Federation of Clinical Scientists www.acb.org.uk

Hospital Consultants & Specialists Association www.hcsa.com

Society of Chiropodists and Podiatrists www.feetforlife.org

Society of Radiographers www.sor.org

British Association of Occupational Therapists www.cot.co.uk

Independent organisations:

Whistleblowing Helpline, 08000 724 725 www.wbhelpline.org.uk

Public Concern at Work, 020 7404 6609 www.pcaw.co.uk

The College of Social Work is the new professional body for social work. Its website is: www.tcsw.org.uk/home/

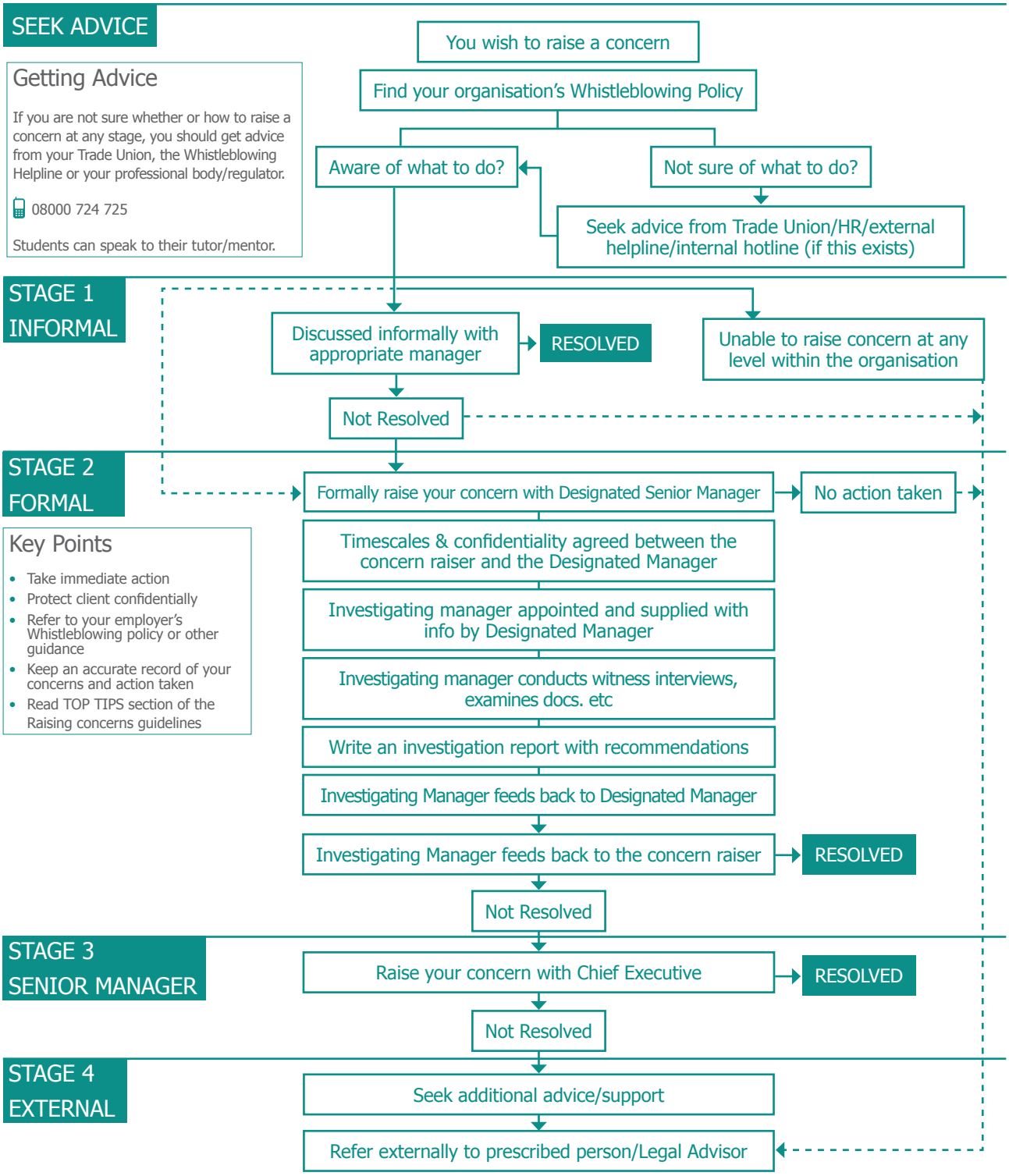
Medical Defence Union, 0800 716 646 www.themdu.com

Medical and Dental Defence Union of Scotland, 0845 270 2034 www.mddus.com

Patients First, www.patientsfirst.org.uk

FLOWCHART OF WHISTLEBLOWING PROCESS

This flowchart sets out the stages in raising a concern and shows the management levels for internal disclosure. In a small organisation, there may not be more than one or two levels of management to whom you can escalate your concerns. In these cases, you should consider escalating your concern to the regulator or other prescribed person at an earlier stage than is shown on the flowchart.



Guidance for Managers

Create a good culture to allow workers to feel confident about raising concerns

1. **Consider your management style.**

- Read through the section on the responsibilities for employers on page 19, which sets out what support your organisation should be providing to help you to respond positively to workers who raise concerns at work (also known as "*blowing the whistle*"). It's important that you are approachable, and foster a climate of openness and mutual respect.

2. **Be prepared.**

- Find, read and understand the whistleblowing policy and procedure where you work. (This is sometimes called the "*Raising Concerns*" or "*Speaking Up*" policy). The policy will help you to:
  - Understand your role and responsibilities as a manager in how to respond to and handle concerns raised. Seek advice from HR when required, where this available.
  - Know how and where to escalate serious concerns which need to be dealt with by senior staff, and explain this to the worker raising the concern.
- Attend any training provided, or request training when needed. In a smaller organisation, find out what training may be available and arrange to attend.
- Train workers to understand and practice values and demonstrate acceptable behaviour in their everyday work. In social care, the Common Induction Standards have to be completed by every worker new to social care and new and aspiring managers are recommended to use the Manager Induction Standards. Both of these require understanding of raising concerns/ whistleblowing procedures.
- Train and inform staff about their personal responsibility for respectful treatment of co-workers who raise concerns for the public good, and their legal liability for any bad treatment (for more detail, see page 33).

3. **Offer support and encourage early action.**

- Support and encourage workers to raise concerns at the earliest opportunity. Concerns at work could be a regular agenda item for discussion in normal communication and regular meetings such as 1:1 meetings, team meetings and departmental meetings.
- Focus on constructive discussion and dialogue, finding a solution, making improvements and dealing with risk.
- Be approachable and encourage workers to check if they are unsure what is appropriate and to admit mistakes rather than concealing them, so that they can be remedied.
- Identify any training or development needs for workers to support competency in the role.

MANAGERS

What to do when a worker reports a concern

Top tips for managers

1. **Listen carefully to any worker raising a concern.**

- Commit to taking the matter seriously.
- Thank the person for raising it (even if you think they may be mistaken).
- Acknowledge how they may be feeling, that it may be a difficult or stressful situation, and offer reassurance.
- Respect the worker's belief that they are raising a genuine concern in the public interest.
- Treat this as being reasonable.
- Avoid prejudging whether this is correct or valid until an appropriate investigation has taken place.

2. **Respond positively and clearly.**

- Reassure the person that the concern will be looked into promptly and (where appropriate) investigated thoroughly and fairly as soon as possible.
- Manage expectations of the individual - discuss next steps, reasonable timeframes, and arrangements for feedback on the outcome.
- Respect a worker's request for confidentiality and any concerns about their job or career, but explain any circumstances where there may be limits on confidentiality (see page 32, FAQs).
- Offer advice about the type of support available to them (e.g. relevant contacts they can speak to such as: a designated whistleblowing lead within the organisation, HR, Trade Union, counselling, occupational health, or where they can seek independent advice – such as the Whistleblowing Helpline, or Citizen's Advice Bureau).
- Be clear on what the worker should do and where they should go if they experience any reprisals or unacceptable behaviour, e.g. bullying, harassment or victimisation, from managers or colleagues.
- Give the individual a copy or refer them to your organisation's whistleblowing or "raising concerns" policy.

3. **Ensure a fair process of investigation.**

- Ensure any investigation is carried out fairly and thoroughly.
- Keep an open mind – you may not want to believe all that you hear, but it's important to remain objective.
- Focus on the information that is being disclosed, not on the worker who is raising the concern.
- Don't let personal views influence your assessment of the issues.
- Recognise any strong emotions you may have and ask for help if you need it. (It is not unusual to have feelings such as anger, shock or distress).

4. **Assess how serious and urgent the risk is.**

- Decide whether the concern would be best dealt with under the whistleblowing policy or some other procedure (such as grievance).
- Don't dismiss the disclosure as an exaggeration or being trivial unless there is clear evidence to support this assessment.
- Decide whether the assistance of, or referral to, senior managers or a specialist function (e.g. Finance) is desirable or necessary.
- Where there are grounds for concern, take prompt action to investigate or if the concern is potentially very serious or wide-reaching make sure this is escalated to the most appropriate person within the organisation to undertake further investigations.

5. **Maintain good communication with the worker who raised the concern.**

- Keep the worker advised and informed on progress.
- Update on any changes or delays in process.
- Give feedback on the outcome to the worker.
- Explain any action to be taken (or not), but maintain confidentiality where this involves other parties.
- Explain any mistaken perceptions or misunderstandings which may have occurred.
- Ideally feedback should be given face to face and followed up in writing.

6. **Act fairly.**

- Understand that you are accountable for your actions.
- Be clear on any action taken or not taken and the reasons for this.
- Never attempt to ignore or cover up evidence of wrongdoing.
- Always remember that you may have to explain how you have handled the concern.
- Don't ever penalise someone for making a disclosure that proves unfounded if, despite making a mistake, s/he genuinely believed that the information was true.

7. **Seek appropriate advice and/or support where required.**

- If you are uncertain about how to proceed with a concern, always seek advice from HR or other relevant person/department within your organisation that has lead responsibility for personnel functions.
- They will also be able to support and advise you throughout any investigations you need to undertake into the issues raised, and in undertaking any actions required as a result of evidence being presented.

8. **Keep clear concise records of all discussions.**

- Date(s), what was said, response given by whom.

- Keep a record/log of all concerns raised (can be anonymised).
- Note the nature of the concern.
- Record how the investigation was conducted,
- Record outcome, decisions or action taken.
- Retain record for a minimum of five years.

9. **Follow up action.**

- Consider the potential actions:
  - Is this a serious disciplinary matter?
  - Are there alternative ways to achieve constructive, positive solutions for future improvement rather than simply apportioning blame?
  - Address any issues of competence or ability highlighted, via training and development.
- Report on issues identified to the Board or owner (perhaps through your organisational monitoring system – see page 20).
- Make recommendations across the organisation where appropriate i.e. feed into the 'bigger picture' and take remedial, proactive and preventative action where it is needed.
- Take steps to help share any learning, establish long-term solutions and prevent recurrence of the issue elsewhere in the organisation.
- Raise any issues identified in other relevant forums e.g.
  - Health and safety,
  - Risk assessment,
  - Incident reporting,
  - Quality reviews,
  - Service or performance reviews,
  - Business planning discussions,
  - Training and development reviews.

10. **Ensure the process has a positive outcome**

- Publicise and 'celebrate' positive outcomes/actions/improvements resulting from someone raising a concern and speaking up (the person need not be named). This may encourage others to do the same.
- Provide appropriate feedback on the outcome to the person raising the concern.
- Build or rebuild working relationships and teams after a concern has been raised (the whistle has been blown) with appropriate support and advice from HR, Trade Unions etc.
- Check on the worker's wellbeing at regular intervals to ensure they have not suffered any disadvantage, bullying, harassment or victimisation as a consequence of raising a concern.

EMPLOYER GUIDANCE

Whether you are from a large or small organisation, THIS GUIDANCE IS FOR YOU

Employers need to make sure they have clear mechanisms in place for workers to raise concerns, and gain commitment from the top level of management in the organisation.

Responsibilities of employer:

This section focuses on the responsibilities of the employer. It also provides links to examples of policies on raising concerns/whistleblowing from a range of organisations, and sets out standards for policies.

Key responsibility	Examples of how this can be achieved
Engage workers in the development and delivery of services.	• Encourage ongoing open dialogue and feedback on matters relating to provision of care/service delivery through supervision, team or departmental meetings, staff forums etc. • Actively seek suggestions for improvement and regularly review ways of working. • Focus positively on shared responsibility for quality of service/care, continuous improvement, problem solving.
Establish and regularly review the organisation's Raising Concerns Policy (*or Whistleblowing Policy*) following best practice guidelines and recognise the business/financial benefits of 'getting it right'.	• Acting promptly and dealing with concerns at an early stage involves less time, effort, and cost and minimises risk or damage to the organisation. • Some policy standards are set out on page 21. • Good examples of policies are provided on page 22.
Communicate and promote the organisation's policy and procedure as widely as possible.	• Ensure all workers are informed about the policy and procedure and know where to find it e.g. through induction, regular training, posters, leaflets, attachments to payslips, noticeboards, intranet, team meetings/briefings. • Communicate this with the backing and support from Trade Unions where applicable.
Demonstrate clear leadership and develop a positive culture.	• Make it clear that the Board/management are committed to the organisation's policy. • Develop a statement of positive organisational values/expectations of all staff – this can underpin all aspects of people management (e.g. recruitment, training, development, performance). • Raise awareness of acceptable and unacceptable behaviour (through induction, training, appraisal, objective setting, organisation's code of behaviour, professional code of practice, professional standards etc). • Lead by example and be aware that your attitude and behaviour can influence the organisation's culture.

Key responsibility	Examples of how this can be achieved (cont.)
Provide training and/or briefings for all senior managers and all those with line management responsibilities.	• Provide additional/specific training for any managers or others with a designated role in handling concerns.
Provide training for workers on the organisation's policy and procedure and how they can raise concerns.	• Include in induction training and/or mandatory training days. • Provide further training/updates on any changes or developments to policy/procedure.
Identify appropriate people or functions to support workers who raise concerns.	• In larger organisations support will normally be available from Trade Unions, Human Resources, employee support workers, Occupational Health, counselling/employee assistance programmes etc. • Smaller organisations may want to identify a (trained) named person or refer workers to the national whistleblowing helpline. • Use internal feedback 'tools' or arrangements such as staff surveys, suggestion schemes etc to gauge/assess staff confidence and trust that they will be supported and their concerns will be dealt with.
Ensure compliance with the legal obligation to take all reasonable steps to prevent co-workers from subjecting "whistleblowers" to bad treatment or victimisation.	• Adopt a zero tolerance approach to any unacceptable behaviour towards an individual raising concerns e.g. reprisals, bullying, harassment, victimisation. • Make sure workers are clear that action will be taken where behaviour is unacceptable.
Set up a monitoring system where data on concerns raised formally through the raising concerns/whistleblowing procedure are recorded, logged, tracked and analysed.	• Regular reports to the Board/senior management summarising concerns which have been raised, (whether substantiated or not) will help to raise awareness of the concerns, identify trends and 'hot spots', and ensure issues are being dealt with properly.
Learn from the concerns raised, the action taken and the outcome.	• Consider adding statistical information such as the number and types of concerns raised and the outcomes of investigations into cases dealt with under the raising concerns/whistleblowing policy and procedure into the annual report. • This may help to move away from a 'blame culture' and normalise the raising of concerns as a way of improving services, encouraging others to come forward or feel confident that they will be listened to and valued.
Provide guarantees of protection for individuals who raise genuine concerns (whistleblowers).	• Make a clear statement of the organisation's commitment e.g. "*the Board/ senior management will ensure that any individual who raises a genuine concern under the raising concerns policy will not be at risk of losing their job or suffer any form of retribution as a result. Members of the Board will not tolerate the harassment or victimisation of anyone raising a genuine concern*". • Consider identifying a senior management role and/or a designated senior HR professional to protect and offer ongoing support to "*whistleblowers*" for some years after the initial disclosure is made.

Standards for policies

Policies on raising concerns in the public interest ('*whistleblowing*') should include key information, set out clear procedures for handling/dealing with concerns, ensure that legal requirements are met, and positively encourage staff to raise concerns at an early stage. The specific procedures under the policy may vary to suit the culture and structure of the organisation. The table below sets out standards for all policies that focus on both the legal requirements and best practice.

Standard Sections	Standard information
General points.	• Date of Policy (and version number). • Date of Policy Review. • Title to suit the culture of your organisation (e.g. 'raising concerns'/'speaking up' may be more appropriate than 'whistleblowing').

Introduction.	• Summary of the relevant legislation, context and definitions to explain the responsibilities of the organisation and the individual under the Public Interest Disclosure Act (PIDA).
	• Purpose of policy.
	  ▪ Explain why your organisation believes raising concerns/speaking up is important to ensure patient/service user safety.
	  ▪ Clearly state what is expected of workers (encourage them to report concerns and refer to professional codes of conduct).
	  ▪ Describe your organisation's approach to openness and transparency so that workers are encouraged to raise concerns about wrongdoing, misconduct, poor practice etc and are reassured that this can be done safely.
	  ▪ State that the aim of the policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace.
	• Confirm who has overall responsibility within your organisation for ensuring the policy works effectively and procedures are followed. This may be a designated Whistleblowing Officer, the Chief Executive or other trusted senior position.
	• Make a clear statement of the organisation's commitment e.g. "*The Board/senior management will ensure that any individual who raises a genuine concern under the raising concerns policy will not be at risk of losing their job or suffer any form or retribution as a result. Members of the Board will not tolerate the harassment or victimisation of anyone raising a genuine concern*".

Scope of the Policy.	• Be clear on who the policy applies to. The law applies to workers, so that employees and agency workers are covered. As a matter of good practice, it is recommended that policies include volunteers although the policy should be explicit about the lack of protection under PIDA. • Explain how to raise concerns about someone who works for another employer (see page 34). • Explain the difference between a disclosure in the public interest and a personal grievance. • Give examples of the type of concerns that should be raised and disclosures that would be protected under the law. • Identify/cross reference any related policies/procedures e.g. safeguarding, disciplinary, grievance, bullying and harassment.

Adopt a zero tolerance approach to any unacceptable behaviour towards an individual raising concerns e.g. reprisals, bullying, harassment, victimisation.

Standard Sections	Standard information (cont.)
Procedure for raising a concern.	• Give reasons why concerns should normally be raised internally in the first instance with line management. For example, so that they can be dealt with promptly and informally wherever possible. • Confirm how the matter should normally be raised e.g. face to face, by telephone, in writing (may be letter or email). A model letter for staff to raise concerns can be found on page 41. • Explain the procedure for investigating the concern raised. • Indicate normal timescales involved in dealing with the concern. • Describe arrangements for keeping the individual informed/updated during an investigation and for giving feedback on the outcome. • Be clear as to whom the individual can report their concern if it cannot be raised with line management or if they are unhappy with how the matter is being handled e.g. referral to a more senior manager, internal hotline, named contact within the organisation (who could be the CEO, a Board member or similar). • Explain in what circumstances and how a concern may be appropriately raised outside the organisation (e.g. with regulator). • Emphasise the need to seek further advice e.g. from Trade Union, HR or independent helpline if considering wider disclosure (e.g. to police or the media). It will rarely if ever be appropriate to alert the media.
Confidentiality.	• Explain how concerns can be raised in confidence if the individual wishes to do this. • Be clear on any limits to confidentiality and any circumstances where the individual's identity may be made public e.g. during legal, disciplinary or police investigations and proceedings. • Confirm your organisation's position on anonymous reporting.
Support.	• Include information on sources of advice and support, e.g. Human Resources, Trade Union, the Whistleblowing Helpline or other independent helpline, counselling, employee assistance services. • Confirm any training available for workers on understanding the policy and procedure and how to raise a concern (e.g. at induction and at regular intervals thereafter). • Confirm specific training available for managers/named contacts to understand their role and responsibilities if a concern is raised with them. • Clearly state that victimisation, bullying or harassment of any person raising a concern will not be tolerated by the organisation and that co-workers who are involved in such activity may be subject to disciplinary proceedings and/or be personally liable under the law. • Consider designating a senior manager or Non-Executive Director to act as a "*whistleblowers' champion*", to check up on the welfare of the person raising a concern at regular intervals. • If the person has a mentor, that is another route for support.
Monitoring and review.	• Describe arrangements to monitor/log/record concerns raised formally under the procedure and the outcomes (whether found to be valid or not). • Confirm arrangements for reporting to the Board/senior management, so that they can be assured that issues are being dealt with properly. • Explain how the policy will be reviewed and how employee experience of using the policy will be assessed.
False allegations.	• Be clear on how your organisation views false allegations and what action will be taken if someone maliciously makes a disclosure that they know to be untrue. However, people making a genuine mistake will not be penalised.

The Whistleblowing Helpline collects examples of policies used by a range of organisations, large and small, all of which have significant strengths that we can recommend. To access these policies, visit www.wbhelpline.org.uk/resources/employer-policy-information/

Model policy for small organisations

[Name of Organisation]

Draft Whistleblowing Policy

Introduction

Whistleblowing refers to making a disclosure in the public interest regarding malpractice or wrongdoing in the workplace. This means that you should speak out if you have any concerns about inappropriate or unlawful conduct, financial mismanagement or poor practice and behaviour.

Policy Statement

At [name of organisation] we are committed to achieving the highest possible standards of service. In order to achieve this standard we encourage staff to use the whistleblowing policy to report any malpractice or illegal acts or omissions by people working at the [type of organisation e.g. care home, GP practice].

Law

This policy has been written to take into account the Public Interest Disclosure Act 1998, which protects workers from suffering bad treatment or losing their job because they have made a disclosure.

Procedure

All staff have a duty to support and maintain standards of care. If a staff member has any concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour they are expected to raise their concern. The following guidelines provide the steps for staff members to follow:

1. Your concern must be raised in the public interest – it should be something that needs to be reported for the public good.
2. In the first instance you should talk to [Line Manager] and discuss the issue.
3. If you feel that your concern is not being dealt with or you do not feel comfortable talking to [Line Manager] you should arrange a meeting with [more senior manager, possibly the owner or the Chief Executive].
4. If you still feel that your concern has not been dealt with to your satisfaction you can contact the regulatory body the Care Quality Commission on their disclosure line 03000 616161 or via their website www.cqc.org.uk You need to have reason to believe that the information you give and any allegation you make is substantially true (suspicion is not enough).

5. You should always seek to resolve the problem internally and exhaust all internal procedure before raising your concern more widely. In circumstances where you feel that your concern has not been dealt with in a satisfactory manner by the [organisation] or the Care Quality Commission you may be able to raise your concern more widely, for instance with the police or your M.P. Caution should be taken as this is strictly regulated by the law. You should seek advice prior to taking this step.

Examples of Concerns:

- Physical or emotional abuse.
- Bullying.
- Theft, fraud or bribery.
- Health and safety issues and risks.
- Abuse of power, position or authority.
- Failure to treat people with dignity.
- Financial mismanagement.

Patient Confidentiality

If you make the decision to raise a concern you should not breach patient confidentiality. Patient information can only be disclosed if you are requested to do so by the Police conducting an investigation.

Bullying or Harassment

If you experience bad treatment such as bullying or harassment because you have spoken up or raised a concern, let your manager know and ask to be protected in line with the Public Interest Disclosure Act.

Further Advice and Information

For further advice on whistleblowing contact the Whistleblowing Helpline for the NHS and Social Care 08000 724725, www.wbhelpline.org.uk If you are a member of a Trade Union, they will also be able to offer you guidance. [Sources of information and advice are in the Advice and support section on page "Advice and support" on page 12]

Settlement agreements

So-called "*gagging clauses*" in employment contracts and settlement agreements (previously called compromise agreements) are void insofar as they conflict with the protections provided by PIDA. The Government now requires the inclusion of an explicit clause in settlement agreements to make it clear that staff can make a disclosure in the public interest in accordance with PIDA, regardless of any confidentiality clause.

Settlement agreements are a well established mechanism for ending the employment relationship between an employer and employee. These documents set out the terms and conditions agreed between the employer and the employee when they agree to settle a potential employment tribunal claim or other court proceedings. As such, they may be used in cases where a dispute involving whistleblowing arises. It is important to remember, however, that the majority of whistleblowing cases do not give rise to settlement agreements.

A settlement agreement is used to bring an employment relationship to an end in a manner which is mutually agreed by the parties. In some instances, they may be used where the employee and employer agree that the employment relationship can no longer proceed and must be brought to an end. They may also be used to resolve a dispute or issue, where the employment does not need to be terminated, for example a dispute over pay.

Over the years organisations have asked employees to sign settlement agreements which contain a provision for payment and confidentiality clauses which prevent people from talking about the agreement and the issues behind the dispute and/or dismissal or from making disparaging comments about either party. These types of clauses are commonly called "*gagging clauses*".

Although such clauses cannot prevent someone from making a "*protected disclosure*" under the Public Interest Disclosure Act 1998, where they are used some people may 'feel' as though they are prevented from making such a disclosure. It is generally these "*chilling effect*" type clauses that have proved problematic in the past when used in settlement agreements.

Confidentiality clauses can legitimately be used in a settlement agreement. However, it is important to note that any confidentiality clause between an employer and an employee or ex-employee which seeks to prevent the employee from making a "*protected disclosure*" in accordance with the Public Interest Disclosure Act 1998 is void and ineffective. This means that settlement agreements can not be used in an attempt to stop employees from whistleblowing.

The main features of a settlement agreement are as follows:

- They are legally binding.
- An employee may have to surrender their rights to bring a claim which is covered by the agreement.

- The employee will usually receive some form of payment and may be provided with a reference as part of the agreed terms.
- The parties must enter the agreement mutually and therefore the agreement is voluntary.
- They are normally reached following a process of discussion and negotiation or through a form of mediation.

The negotiation process is often confidential and "*without prejudice*". This means that if an agreement is not reached, the negotiations may not be admissible as evidence in claims before an employment tribunal or other court proceedings.

In order for a settlement agreement to be valid, there are certain statutory requirements which must be met:

- The agreement must be in writing.
- The agreement must relate to a particular complaint, or particular proceedings.
- The employee must have received legal advice from an independent adviser.
- The independent adviser must be identified in the agreement and have a current contract of insurance or professional indemnity insurance covering the risk of the claim against them by the employee in respect of advice.
- The agreement must state that the statutory provisions which set out the above conditions regulating the validity of the settlement agreement have been satisfied.

If these statutory requirements are not met the agreement will be invalid and cannot be enforced.

This section provides an overview of settlement agreements in relation to cases of whistleblowing. Advice should be sought prior to commencing any settlement negotiations.

Further details can be found in the following documents:

HSC 2004/001:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4069937.pdf

HSC 1999/138:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4012081.pdf

http://www.nhsemployers.org/Aboutus/Publications/Documents/settlement-agreements.pdf

What does good practice look like? - Some case studies

We know from talking to people and the experience of others that some organisations can demonstrate best practice in responding to whistleblowing concerns. We have identified three case studies of good practice for you to consider.

Case study - staff training

mcch society ltd

Social care provider **mcch society ltd** (mcch) supports around 2,000 people with learning disabilities, autism and mental health needs across the South East. Providing a wide range of services that help people to live the lives they choose, mcch has over 25 years experience and employs over 1,600 staff. Services include registered care, supported living, respite, community support and children's playschemes. In addition, mcch also runs social enterprises, employment support services and wellbeing centres.

Safeguarding the people mcch supports is a key concern for mcch and it employs a dedicated Corporate Safeguarding Specialist, who is responsible for running a comprehensive training programme for its staff. Using the Skills for Care Qualification and Credit Framework Care Unit HSC 024, the training uses a realistic case study to demonstrate criteria five (know how to recognise and report unsafe practices).

Training is given to every new member of staff within their induction week (prior to staff commencing their employment) and refresher training is given to staff and volunteers every year. The training incorporates film clips showing the different types of abuse, individuals' personal perspectives of incidents that have happened to them and the initial process of dealing with reported abuse. This brings the training to life, by using real examples of safeguarding concerns, acted out by people mcch supports.

Every staff member and volunteer has access to the handouts and policies/procedures, which are also available in easy read, along with details of external support and a national helpline. They are also given a pocket-sized 'safeguarding card', which contains information about recognising abuse, how to respond (best practice in what you should and shouldn't do), reporting incidents and mcch's internal free whistleblowing phone line.

Case study - Staffordshire and Stoke On Trent partnership NHS Foundation Trust

Follow this link to see this case study about how Staffordshire and Stoke On Trent Partnership NHS Foundation Trust have created a more open and transparent environment to ensure that individuals have the support they need when they raise a concern.

www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/RaisingConcerns/Pages/StaffordshireandStokeOnTrentPartnershipNHSTrust.aspx

Case study - Wrightington, Wigan and Leigh NHS Foundation Trust (WWL)

The policy about raising concerns at WWL is called the Open Door Policy, and it clearly links to the organisation's cultural values of respect and dignity. It stresses the importance of the informal stage, where line managers are expected to deal with concerns promptly, sensitively and in a timely way. And it highlights the importance of wider communication of learning from concerns and the need for debriefing to the team/teambuilding after a concern has been raised.

An example of the policy working in practice occurred at the Sterile Services and Decontamination Unit (SSDU), which was opened in December 2010 and provides a Surgical Instrument Decontamination Service to all theatres, wards and clinics in WWL and Salford Royal (SRFT) Trusts. A change in management structure took place in early January 2012, and with this an attitude of openness was introduced and staff were encouraged to highlight any concerns with an understanding that direct positive action would be taken. The workforce were informed that gossip and rumour were not acceptable but if a serious concern was identified and raised then the employee should expect action.

Within the month of the new management structure an anonymous phone call was received from a member of staff identifying that an auditable process was not being implemented by a number of staff which could result in a breach in health and safety processes and ultimately cause risk and harm to patients.

An immediate investigation and audit of processes was put into practice both current and historic. The outcomes from this were documented and broadly communicated to both executive teams and the staff. Corrective measures were immediately put in place. This is a good example of the quality of the service improving as a direct result of staff raising a concern and being listened to.

The concern was welcomed by the new manager and sensitivity was used when communicating back to the informant. The manager ensured that the communication given to staff focused on the concerns and not how they were raised in order to preserve anonymity. The Trust Board also responded by summarising the outcomes and discreetly congratulated the member of staff who raised the concerns.

The unit then proceeded through a significant restructure which affected all staff. Due to the historic issues the new manager immediately implemented a programme of focused engagement with the staff and their representatives. The staff were encouraged to contribute to the proposals for change both in terms of processes and workforce.

During this there was an additional concern raised in relation to the implementation of the restructure. Again this concern was proactively responded to by not only the manager but the staff themselves. The individual was reassured and the unit again benefitted from the positive approach that was starting to embed and all staff have embraced a direct and open dialogue with the management team when concerns are identified.

WHAT THE LAW SAYS - DETAIL OF PIDA

What is the Public Interest Disclosure Act 1998 (PIDA)?

The Public Interest Disclosure Act 1998 protects whistleblowers from detrimental or unfavourable treatment and victimisation from their employers and co-workers after they have made a qualifying disclosure of a concern in the public interest.

The way PIDA works is to allow people to apply to an Employment Tribunal for a remedy or compensation if they feel they have suffered bad treatment as a result of whistleblowing. The Employment Tribunal route is, however, not an easy one. It is important to take advice from a Trade Union, solicitor or an independent helpline at an early stage to support you through this process.

Who is covered?

The Act covers all workers including those on temporary contracts or supplied by an agency, and trainees. PIDA does not cover volunteers or Governors of NHS Foundation Trusts (who are not employees of the Trust), and does not usually cover students

NOTE: Students should take advice if they are thinking of raising concerns during their placements. They can talk to their university tutor or lecturer, their mentor, professional body, trade union or independent helpline.

Will you be automatically protected if you make a disclosure?

As from 25 June 2013, to qualify for protection under PIDA a disclosure should be in relation to a concern which is in the "*public interest*". The public interest means the public good, not what is of interest to the public, and not the private interests of the person raising the concern. (For the difference between a grievance and a disclosure in the public interest, please see page 32). Whilst there is no longer a requirement for someone to have good faith when they raise a concern, an employment tribunal has the power to reduce any compensation award by up to 25% if it considers that the disclosure was made in bad faith (for example if the whistleblower's motives were to pursue a personal grudge against their manager).

What is a qualifying disclosure?

PIDA details six subject areas under which disclosures have to fit so as to be "qualifying disclosures":

- criminal offences;
- failure to comply with legal obligations;
- miscarriages of justice;
- threats to health and safety of an individual;
- damage to the environment; or
- a deliberate attempt to cover up any of the above.

Are all disclosures protected under PIDA?

Certain conditions must be met for a whistleblower to qualify for protection under the legislation, depending on to whom the disclosure is being made and whether it is being made internally or externally. To be protected, the disclosure must be in the public interest, the individual must have a reasonable belief that the information shows that one of the categories of wrongdoing listed in the legislation has occurred or is likely to occur (see **What is a qualifying disclosure?**, above), and the concern must be raised in the correct way.

Internal disclosures:

Workers are encouraged to make internal disclosures (raise concerns with their employer) with the view that employers will then have an opportunity to address the issue. If a worker makes a qualifying disclosure internally to an employer (or other reasonable person), they will be protected.

External disclosures:

If a disclosure is made externally there are conditions which need to be satisfied before a disclosure will be protected. One of these conditions must be met if a worker is considering making an external disclosure.

- If the disclosure is made to a "*prescribed person*" (a list of prescribed persons is made under PIDA, and you can find details of relevant prescribed persons for the NHS and social care in the Appendix at page 39), the worker must reasonably believe that the concern that they are raising is one which is relevant to that prescribed person (i.e. comes under their area of responsibility as a regulator) and that the disclosure is substantially true;
- A worker can also be protected if they reasonably believe that the disclosure is substantially true, the disclosure is not made for personal gain, it is reasonable to make the disclosure, and one of the following conditions apply:
  - at the time he/she makes the disclosure, the worker reasonably believes that he/she will be subjected to a detriment by his/her employer if he/she makes a disclosure to his/her employer; or
  - the worker reasonably believes that it is likely that evidence relating to the failure/wrongdoing will be concealed or destroyed if the disclosure is made to the employer; or
  - the worker has previously made a disclosure to his/her employer.
- Additional conditions apply to other, wider disclosures to the police or the media. These disclosures can be protected if the worker reasonably believes that the disclosure is substantially true, the disclosure is of an exceptionally serious nature, and it is reasonable to make the disclosure.

Please note that these conditions do not apply to disclosures made to legal advisors in the course of obtaining legal advice.

Other considerations:

The government has now extended whistleblowing protection to allow workers who blow the whistle protection against bullying and harassment by co-workers. Co-workers who victimise whistleblowers could be held personally liable for their actions. Where bullying and harassment has taken place by co-workers, employers can be held vicariously liable (also responsible) for the actions of these employees unless they can show that they took reasonable steps to prevent victimisation. **For further information see the government website:** www.gov.uk/whistleblowing

The role of prescribed persons

Whilst your organisation's policy will hopefully give you the reassurance you need to raise your concern internally, there may be circumstances where it would be appropriate to report a concern to an outside body.

Special provision is made for disclosures to organisations or people designated as "*prescribed persons*" under PIDA. Those relevant to the NHS and social care include: the Care Quality Commission, Monitor, the Health and Safety Executive, the Charity Commissioners for England and Wales and the professional regulatory bodies. You can find details of prescribed persons for health and social care on page 39. From 6 April 2014, members of the House of Commons (M.P.s) have been added to the list of prescribed persons.

Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

The role of the Care Quality Commission (CQC)

The CQC is the regulator of healthcare and adult social care in England. It has a specially trained team at its National Customer Service Centre, that deals with all whistleblowing concerns that come to it. All whistleblowing emails, phone calls, letters, concerns raised in person at one of their offices or during an inspection, are routed and logged through the central team. The team then tracks each stage of follow-up until completion. All relevant concerns are passed to, and handled by, the local CQC inspector responsible for the care provider in question.

The Care Quality Commission is using staff surveys and the whistleblowing concerns it receives as part of the data in its new intelligent monitoring system, and since September 2013 the Care Quality Commission's new inspection system includes discussions with hospitals about how they deal with, and handle, whistleblowers.

FREQUENTLY ASKED QUESTIONS (FAQS)

1. Is whistleblowing the same as making a complaint?

Whistleblowing is about reporting a concern at work, and the Public Interest Disclosure Act only applies to workers raising concerns at work. Consequently the whistleblowing process cannot be used by a service user to make a complaint about poor care. If an individual or a carer has a complaint about poor care, they should ask to see the complaints procedure of the service about which they are complaining. All health and social care services are required to have a complaints procedure in place. The Care Quality Commission gives information about how to make a complaint on their website on link: www.cqc.org.uk/public/sharing-your-experience

2. What is the difference between a grievance and a public interest disclosure?

When someone raises a grievance, this tends to be an issue, problem or complaint about their work, working conditions or employment rights. The person wishes to complain to management about their treatment and they have a personal interest in ensuring the issue is addressed.

A concern raised through a protected public interest disclosure (a whistleblow) tends to be about malpractice or serious wrongdoing such as dangerous or criminal activity which affects others (e.g. patients or service users, members of the public, or their employer).

The whistleblower is not usually directly, personally affected by the danger or illegality. Therefore, the whistleblower should be treated as a messenger alerting others to a concern so that they can address it, and not be expected to prove the malpractice. They do not have a vested interest in the outcome of the whistleblow, unlike a grievance where they will normally be expected to be able to prove their case under the grievance procedure.

When an individual raises a concern with a manager, they should consider whether it is a qualifying whistleblowing issue or whether the matter is a personal employment issue which would be more appropriately dealt with through the organisation's grievance procedure.

3. Can a concern be raised in confidence or anonymously?

Workers are often concerned about possible reprisals and can ask for their identity to be kept confidential. If they want do this, the employer should make every effort to keep their identity secret. There may be circumstances in which, because of the nature of the investigation or disclosure, it will be necessary to disclose their identity. For example this could occur in connection with associated disciplinary, legal or police investigations. Where this is the case this should be fully discussed with the worker.

Concerns raised anonymously can be more difficult to deal with and investigate appropriately as the investigating manager may have little or no confirmed evidence to substantiate the allegations and cannot obtain further information from the worker or give them feedback. More action is likely or possible if concerns are not raised anonymously. It may be possible to raise the concern as a team/ group of colleagues if the worker does not want their individual identity to be known.

4. What about using confidential information?

In terms of confidential patient information, if you intend to report a concern outside of your health or social care team which might reveal someone's identity, you should get advice from your professional body or Trade Union. In particular, if you are thinking about things such as filming individuals you should be aware of the implications for their dignity and privacy. In the past, Employment Tribunals have not been sympathetic towards this kind of 'undercover' act as whistleblowing is primarily about disclosing information.

5. What about bullying and harassment?

*The Enterprise and Regulatory Reform Act imposed a new personal liability on co-workers who victimise or harass whistleblowers as well as vicarious liability on the part of their employers. Unless an employer has taken reasonable steps to prevent this type of victimisation by co-workers, it will be deemed liable for the acts of its staff. This means that it is no longer enough to deal with incidents of bullying or harassment as and when they arise, on a case by case basis. The only basis upon which an employer will now be able to defend itself against liability for the actions of its staff will be by proactive steps. In order to demonstrate a "**reasonable steps**" defence, an employer will need to anticipate conduct such as bullying and harassment.*

Having a clear policy is a vital first step, but it is just as important to ensure the communication of the policy and offering any necessary training to ensure it is put into effect. Undertaking any of these steps after the event is too late. It will also be important to take appropriate action if any workers are found guilty of causing detriments to other workers.

Proactive management to build/rebuild working relationships/teams after a concern has been raised (whistle has been blown) is recommended, with appropriate support and advice from HR, Trade Unions etc. It is always best to anticipate repercussions or reprisals and to take action to nip these types of behaviour in the bud.

6. What happens when you have concerns about someone who is employed by another organisation (e.g. in a multidisciplinary team)?

If you have concerns about someone's practice who works for another employer, you may wish to approach the person directly on an informal basis. If this is not possible or appropriate, you should report these concerns to your own manager and they should raise your concerns with the manager of the person about whom you have concerns.

7. What happens if someone has left their job (or been dismissed) but wants to pursue their concern?

If someone has raised a concern with their employer and then subsequently leaves their employment or has been dismissed, as a result of raising the concern, they could still be given protection under PIDA. However, if someone chooses to leave their employment or is dismissed and later decides to pursue a concern, it is unlikely that they would be protected under PIDA. Whilst there may not be protection under PIDA, if they wish to pursue the concern, the CQC have a disclosure line they can ring on 03000 616161. They can use this service to alert the CQC to a concern in confidence or anonymously. For full details, follow this link:
www.cqc.org.uk/content/whistleblowing-quick-guide-raising-concern-cqc

8. When an organisation is drafting its Whistleblowing Policy, it usually defines the scope of the policy, so that it is clear who the policy applies to. The law applies to workers, so that employees and agency workers are covered. What about subcontracted workers?

When drafting a whistleblowing policy it is important to consider the wider scope of the workforce. If an organisation contracts out work, they will need to think about how to approach subcontractors. One way of dealing with this is to establish that the subcontractor has its own effective whistleblowing procedures or agrees that the organisation's whistleblowing policy is adopted in relation to a threat or risk to the organisation. These options can be achieved through contractual arrangements with the subcontractor and legal advice should be sought.

FURTHER INFORMATION AND LINKS

NHS and Healthcare

Berwick, Professor Don (2013) "*A Promise to Learn: A Commitment to Act: Improving the Safety of Patients in England*" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf

The Care Quality Commission gives advice on whistleblowing in the following pages: http://www.cqc.org.uk/sites/default/files/media/documents/20120117_whistleblowing_quick_guide_final_update.pdf

Care Quality Commission "*Whistleblowing: guidance for workers of registered care providers*", October 2012 (currently unavailable on website)

Care Quality Commission "*Whistleblowing: guidance for providers who are registered with the Care Quality Commission*", December 2011: http://www.cqc.org.uk/sites/default/files/media/documents/20120117_whistleblowing_quick_guide_final_update.pdf

Department of Health "*Confidentiality: NHS Code of Practice (2003) and supplementary code of practice on public interest disclosures (2010)*"

Department of Health (2013) "*Hard Truths: the journey to putting patients first*", Vols. 1 & 2 and Command Paper. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270368/34658_Cm_8777_Vol_1_accessible.pdf

Department of Health "*NHS Constitution*" (2013 edition) www.gov.uk/government/publications/the-nhs-constitution-for-england

Department of Health (2013) Patients First and Foremost: The Initial Response to the Report of The Mid Staffordshire NHS Foundation Trust Public Inquiry, March 2013 https://www.gov.uk/government/publications/government-initial-response-to-the-mid-staffs-report

Francis R (2013) Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, London: Stationery Office. Vols 1, 2 & 3. http://www.midstaffspublicinquiry.com/report

Rt. Hon Ann Clwyd MP and Professor Tricia Hart (2013) A Review of the NHS Hospitals Complaints System: Putting Patients Back in the picture.

General Dental Council gives advice on raising concerns at: http://www.gdc-uk.org/Dentalprofessionals/Fitnesstopractise/Pages/Advice-on-raising-concerns.aspx

General Medical Council (GMC) (2012) "*Raising and acting on concerns about patient safety*" http://www.gmc-uk.org/guidance/ethical_guidance/raising_concerns.asp

The GMC has also developed a decision-making tool for doctors with concerns about patient safety to help them decide what to do: www.gmc-uk.org/guidance/ethical_guidance/decision_tool.asp

General Optical Council gives information on raising concerns at:
http://www.optical.org/en/Investigating_complaints/

General Osteopathic Council gives advice on raising concerns at:
http://www.osteopathy.org.uk/information/complaints/

General Pharmaceutical Council gives advice on raising concerns at:
http://pharmacyregulation.org/raising-concerns

Health Service Circular HSC 1999/198 "*The Public Interest Disclosure Act 1998: Whistleblowing in the NHS*", NHS Executive, 1999

Monitor is a regulator for the health sector and gives details of how to raise a concern with them at http://www.monitor-nhsft.gov.uk/about-monitor/contact-us/whistleblowing-policy

The **NHS Employers** organisation provides advice, guidance and examples of effective practice for NHS organisations on a wide range of workforce issues, including raising (whistleblowing) concerns and the use of settlement agreements and confidentiality clauses – see further information at
www.nhsemployers.org/raisingconcerns

Nursing and Midwifery Council Guidance on www.nmc-uk.org/Documents/NMC-Publications/NMC-Raising-and-escalating-concerns.pdf

Royal College of Nursing "*Raising concerns: a guide for RCN members*", March 2013
http://www.rcn.org.uk/support/raising_concerns

Royal College of Nursing "*Speaking Out – Whistleblowing Helpline*" gives straightforward guidance for nurses: http://www.rcn.org.uk/__data/assets/pdf_file/0015/510180/004391.pdf

Royal College of Surgeons gives guidance for surgeons "*Acting on Concerns*" at
http://www.rcseng.ac.uk/publications/docs/acting-on-concerns?searchterm=acting+on+concerns

Whistleblowing Helpline website www.wbhelpline.org.uk

Social Care

Care Quality Commission gives advice on whistleblowing in the following pages:
http://www.cqc.org.uk/sites/default/files/media/documents/20120117_whistleblowing_quick_guide_final_update.pdf

Care Quality Commission "*Whistleblowing: guidance for workers of registered care providers*", October 2012 (currently unavailable on website)

Care Quality Commission "*Whistleblowing: guidance for providers who are registered with the Care Quality Commission*", December 2011: http://www.cqc.org.uk/sites/default/files/media/documents/20120117_whistleblowing_quick_guide_final_update.pdf

Department of Health (2012) Transforming Care: A National Response to Winterbourne View Hospital. tinyurl.com/winterbourne-resp

The Social Care Institute for Excellence (SCIE) has webpages on whistleblowing for employees and employers on: www.scie.org.uk/publications/guides/guide15/whistleblowing/

Department of Health (2000) "*No Secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*" https://www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care

Department of Health (2009) "*The report on the consultation on the review of "No Secrets"*

Health and Care Professions Council gives advice on raising concerns at: http://www.hpc-uk.org/complaints/

Skills for Care – the Social Care Commitment – a promise to improve the quality of care and support in adult social care www.thesocialcarecommitment.org.uk/Home/About

Skills for Care: the Common Induction Standards and Manager Induction Standards – find out more at: www.skillsforcare.org.uk/Standards/Standards.aspx

Skills for Care: the Code of Conduct for Healthcare Support Workers and Adult Social Care Workers in England – find out more at: www.skillsforcare.org.uk/Document-library/Standards/National-minimum-training-standard-and-code/CodeofConduct.pdf

Whistleblowing Helpline website www.wbhelpline.org.uk

General

Audit Commission for England and Wales has a document on Whistleblowing and the Public Interest Disclosure Act which can be downloaded from http://www.audit-commission.gov.uk/about-us/contact-us/whistleblowing/

British Standards Institute "*Code of Practice on Whistleblowing Arrangements*", PAS 1998:2008

Charity Commissioners for England and Wales gives guidance on whistleblowing at: http://www.charitycommission.gov.uk/detailed-guidance/protecting-your-charity/guidance-for-auditors-and-independent-examiners/the-public-interest-disclosure-act/

Chartered Institute of Personnel and Development "*Whistleblowing*" CIPD factsheet, revised May 2013 http://www.cipd.co.uk/hr-resources/factsheets/whistleblowing.aspx

Chartered Institute of Personnel and Development "*Whistleblowing law FAQs*"

Department for Business Innovation & Skills "*The Whistleblowing Framework: Call for Evidence*", July 2013

The Government's website on whistleblowing: www.gov.uk/whistleblowing

The Health and Safety Executive provides information on raising concerns on:
http://www.hse.gov.uk/contact/concerns.htm

National Audit Office "*Assessment criteria for whistleblowing policies*" January 2014
http://www.nao.org.uk/wp-content/uploads/2014/01/Assessment-criteria-for-whistleblowing-policies.pdf

National Audit Office "*Making a whistleblowing policy work*", March 2014
http://www.nao.org.uk/wp-content/uploads/2015/03/Making-a-whistleblowing-policy-work-summary.pdf

The Pensions Regulator gives information on raising concerns on:
http://www.thepensionsregulator.gov.uk/individuals/reporting-a-concern.aspx

Public Concern at Work and the University of Greenwich (2013) "*Whistleblowing: the Inside Story – a study of the experiences of 1,000 whistleblowers*", Public Concern at Work.

The Whistleblowing Commission (2013) "*Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK*", Public Concern at Work.

The Whistleblowing Helpline (2013) "*Bridging the Gap*".
http://www.wbhelpline.org.uk/category/campaigns/

Training tools and resources

The Whistleblowing Helpline can provide training packages on raising concerns for delivery to workers, and training for managers on how to respond positively to workers raising concerns. To find out more, email enquiries@wbhelpline.org.uk, telephone 08000 724725 or visit the Whistleblowing Helpline website www.wbhelpline.org.uk

The North West Dignity Leads Network have produced a training package on Speaking Up on Poor Practice aimed at staff who witness poor practice in social care and health. It uses a workbook approach, offering guidance on assessing the situation and deciding what action to take. As well as giving practical suggestions on handling the situation, the package includes case studies and practice scenarios.
The pack is available for free download from www.nwdignity.co.uk/challenge-poor-practice

LIST OF PRESCRIBED PERSONS

a) The secondary legislation under PIDA lists "prescribed persons". The following are the most relevant to the health and care sectors:

Care Quality Commission, 03000 616 161 www.cqc.org.uk

Monitor, 020 7340 2400 – the regulator for the health sector, making sure the system works effectively for patients www.monitor-nhsft.gov.uk

Nursing and Midwifery Council (NMC) http://www.nmc-uk.org/

General Chiropractic Council (GCC) http://www.gcc-uk.org/page.cfm

General Dental Council (GDC) http://www.gdc-uk.org/Pages/default.aspx

General Medical Council (GMC) – regulator for medical doctors throughout the UK in all healthcare sectors 0161 923 6602 www.gmc-uk.org

Health and Care Professions Council (HCPC) – regulator for the allied health professions 0845 300 6184 http://www.hpc-uk.org/

General Optical Council (GOC) http://www.optical.org/

General Osteopathic Council (GOsC) http://www.osteopathy.org.uk/

General Pharmaceutical Council (GPhC) http://pharmacyregulation.org/

Audit Commission for England and Wales and auditors appointed by the Commission to audit the accounts of local government, and health service, bodies www.audit-commission.gov.uk

Charity Commissioners for England and Wales www.charitycommission.gov.uk

Comptroller and Auditor General

Children's Commissioner

Health and Safety Executive www.hse.gov.uk

Information Commissioner

Pensions Regulator www.thepensionsregulator.gov.uk

b) Other persons to which a protected disclosure may be made:

These include the Secretary of State for Health and other health and social care Ministers, and legal advisers (provided other criteria and procedural requirements in PIDA are met). With effect from 6 April 2014, members of the House of Commons (M.P.s) have been added to the list of prescribed persons, in respect of any matter listed in the Schedule (which includes health and social care).

c) Other bodies to which a concern may be raised, but it will not be treated as a protected disclosure within the meaning of PIDA:

Department of Health (England), 020 7210 4850 www.dh.gov.uk

Professional Standards Authority for Health and Social Care, 020 7389 8030
www.professionalstandards.org.uk

The **NHS Fraud and Corruption Reporting Line** is 0800 028 40 60. All calls will be treated in confidence and investigated by professionally trained staff.
Email: ciu@nhsprotect.gsi.gov.uk www.reportnhsfraud.nhs.uk

This guidance is intended for workers/employers in England. For Scotland and Wales, other prescribed persons and organisations exist:

Wales:

Care and Social Services Inspectorate Wales – Responsible for social services and care homes
0300 060 3300 www.cssiw.org.uk

Health Inspectorate Wales – Responsible for all NHS-funded care (including independent hospitals) 029 2092 8850 www.hiw.org.uk

Department for Health and Social Services (Wales):

English 0845 010 3300

Welsh 0845 010 4400 www.wales.gov.uk

Scotland:

Care Inspectorate 0845 600 9527 www.careinspectorate.com

Healthcare Improvement Scotland

Edinburgh 0131 623 4300

Glasgow 0141 225 6999

http://www.healthcareimprovementscotland.org/

The Scottish Government 0131 556 8400 or 0845 7741 741 www.scotland.gov.uk

Scottish Social Services Council www.sssc.uk.com

Social Care and Social Work Improvement Scotland www.cne-siar.gov.uk

MODEL LETTER FOR STAFF TO RAISE CONCERNS INTERNALLY

Raising Concerns Disclosure Form
STRICTLY CONFIDENTIAL

This form is to be completed by individuals who want to raise a concern under the Public Interest Disclosure Act 1998. Please send when complete to one of the [employer to insert names/job titles of appropriate managers as per organisation's policy], in an envelope marked Private and Confidential.

SECTION 1 – DETAILS OF THE PERSON RAISING THE CONCERN

If you wish to remain anonymous, please go straight to section 2. However please note that whilst such concerns will be given due consideration, it will not be possible to progress matters in accordance with this policy (cross refer to the section of your policy which deals with anonymous reporting)

Name:.....

Home Address: .....

.....

.....

Home contact number/mobile:.....

Work Address: .....

.....

.....

Work contact number/mobile.....

Which address do you wish any correspondence to be sent to? :

Home address/Work address (please delete as appropriate)

Date disclosure form submitted:.....

SECTION 2 – DETAILS OF THE DISCLOSURE

What is your concern about? (please tick)

- ☐ Patient/service user care
- ☐ Patient/service user safety
- ☐ Conduct (including malpractice, unethical conduct)
- ☐ Criminal offence/legal obligation
- ☐ Professional/clinical practice or competence

Other (please state).....

Who is involved? Please list witnesses and anyone carrying out the act causing you concern, and the date(s), time and place(s) the act occurred:

.....

.....

Please describe what has happened/what you think will happen. Please provide as much detail as you can (use additional sheets of paper as needed):

.....

.....

SECTION 3 – PERSONAL INVOLVEMENT/PERSONAL INTEREST

Please declare any personal interest you may have in this matter (i.e. does the outcome of this matter have the potential to affect you personally in any way?)

.....

Have you personally been involved in this matter previously? YES / NO

If yes, please outline your involvement:

.....

SECTION 4 – EXPRESSED PREFERENCES

Do you wish your identity to be kept confidential (bearing in mind that, depending on the nature of the investigation or disclosure, it may become necessary to disclose your identity)? YES/NO

NOTES

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You can download this publication or order copies online at: www.wbhelpline.org.uk

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Role of the Whistleblowing Helpline:

The Whistleblowing Helpline offers free*, confidential and independent advice about whistleblowing processes to people working in the NHS and adult social care.

The helpline can be reached by telephoning 08000 724725,
emailing enquiries@wbhelpline.org.uk or visiting the website on www.wbhelpline.org.uk

The helpline is available weekdays between 08.00 and 18.00 with an out of hours answering service on weekends and public holidays.

*Call charges from mobiles may vary.

Whistleblowing Helpline

free advice for the NHS and Social Care

08000 724 725