



**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
<b>Engage workers in the development and delivery of services.</b>	<ul style="list-style-type: none"> <li>• Encourage ongoing open dialogue and feedback on matters relating to provision of care/service delivery through supervision, team or departmental meetings, staff forums etc.</li> <li>• Actively seek suggestions for improvement and regularly review ways of working.</li> <li>• Focus positively on shared responsibility for quality of service/care, continuous improvement, problem solving.</li> </ul>
<b>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’.</b>	<ul style="list-style-type: none"> <li>• Acting promptly and dealing with concerns at an early stage involves less time, effort, and cost and minimises risk or damage to the organisation.</li> <li>• Some policy standards are set out on page 21.</li> <li>• Good examples of policies are provided on page 22.</li> </ul>
<b>Communicate and promote the organisation’s policy and procedure as widely as possible.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Communicate this with the backing and support from Trade Unions where applicable.</li> </ul>
<b>Demonstrate clear leadership and develop a positive culture.</b>	<ul style="list-style-type: none"> <li>• Make it clear that the Board/management are committed to the organisation’s policy.</li> <li>• 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).</li> <li>• 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).</li> <li>• Lead by example and be aware that your attitude and behaviour can influence the organisation’s culture.</li> </ul>

Key responsibility	Examples of how this can be achieved (cont.)
<b>Provide training and/or briefings for all senior managers and all those with line management responsibilities.</b>	<ul style="list-style-type: none"> <li>• Provide additional/specific training for any managers or others with a designated role in handling concerns.</li> </ul>
<b>Provide training for workers on the organisation's policy and procedure and how they can raise concerns.</b>	<ul style="list-style-type: none"> <li>• Include in induction training and/or mandatory training days.</li> <li>• Provide further training/updates on any changes or developments to policy/procedure.</li> </ul>
<b>Identify appropriate people or functions to support workers who raise concerns.</b>	<ul style="list-style-type: none"> <li>• In larger organisations support will normally be available from Trade Unions, Human Resources, employee support workers, Occupational Health, counselling/employee assistance programmes etc.</li> <li>• Smaller organisations may want to identify a (trained) named person or refer workers to the national whistleblowing helpline.</li> <li>• 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.</li> </ul>
<b>Ensure compliance with the legal obligation to take all reasonable steps to prevent co-workers from subjecting "whistleblowers" to bad treatment or victimisation.</b>	<ul style="list-style-type: none"> <li>• Adopt a zero tolerance approach to any unacceptable behaviour towards an individual raising concerns e.g. reprisals, bullying, harassment, victimisation.</li> <li>• Make sure workers are clear that action will be taken where behaviour is unacceptable.</li> </ul>
<b>Set up a monitoring system where data on concerns raised formally through the raising concerns/whistleblowing procedure are recorded, logged, tracked and analysed.</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>Learn from the concerns raised, the action taken and the outcome.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Provide guarantees of protection for individuals who raise genuine concerns (whistleblowers).</b>	<ul style="list-style-type: none"> <li>• Make a clear statement of the organisation's commitment e.g. "<i>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</i>".</li> <li>• 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.</li> </ul>

## 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
<b>General points.</b>	<ul style="list-style-type: none"> <li>• Date of Policy (and version number).</li> <li>• Date of Policy Review.</li> <li>• Title to suit the culture of your organisation (e.g. 'raising concerns'/'speaking up' may be more appropriate than 'whistleblowing').</li> </ul>
<b>Introduction.</b>	<ul style="list-style-type: none"> <li>• 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).</li> <li>• Purpose of policy. <ul style="list-style-type: none"> <li>▪ Explain why your organisation believes raising concerns/speaking up is important to ensure patient/service user safety.</li> <li>▪ Clearly state what is expected of workers (encourage them to report concerns and refer to professional codes of conduct).</li> <li>▪ 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.</li> <li>▪ State that the aim of the policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace.</li> </ul> </li> <li>• 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.</li> <li>• Make a clear statement of the organisation's commitment e.g. "<i>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</i>".</li> </ul>
<b>Scope of the Policy.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Explain how to raise concerns about someone who works for another employer (see page 34).</li> <li>• Explain the difference between a disclosure in the public interest and a personal grievance.</li> <li>• Give examples of the type of concerns that should be raised and disclosures that would be protected under the law.</li> <li>• Identify/cross reference any related policies/procedures e.g. safeguarding, disciplinary, grievance, bullying and harassment.</li> </ul>

**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.)
<b>Procedure for raising a concern.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Explain the procedure for investigating the concern raised.</li> <li>• Indicate normal timescales involved in dealing with the concern.</li> <li>• Describe arrangements for keeping the individual informed/updated during an investigation and for giving feedback on the outcome.</li> <li>• 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).</li> <li>• Explain in what circumstances and how a concern may be appropriately raised outside the organisation (e.g. with regulator).</li> <li>• 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.</li> </ul>
<b>Confidentiality.</b>	<ul style="list-style-type: none"> <li>• Explain how concerns can be raised in confidence if the individual wishes to do this.</li> <li>• 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.</li> <li>• Confirm your organisation's position on anonymous reporting.</li> </ul>
<b>Support.</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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).</li> <li>• Confirm specific training available for managers/named contacts to understand their role and responsibilities if a concern is raised with them.</li> <li>• 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.</li> <li>• 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.</li> <li>• If the person has a mentor, that is another route for support.</li> </ul>
<b>Monitoring and review.</b>	<ul style="list-style-type: none"> <li>• Describe arrangements to monitor/log/record concerns raised formally under the procedure and the outcomes (whether found to be valid or not).</li> <li>• Confirm arrangements for reporting to the Board/senior management, so that they can be assured that issues are being dealt with properly.</li> <li>• Explain how the policy will be reviewed and how employee experience of using the policy will be assessed.</li> </ul>
<b>False allegations.</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

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/](http://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](http://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](http://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](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://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](http://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.