



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 to 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.