

Whistleblowing

Guidance for providers who are registered
with the Care Quality Commission

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Introduction

This guidance is for all providers of health and adult social care who are registered with the Care Quality Commission (CQC) under the Health and Social Care Act 2008. In this guidance, the term 'worker' refers to a person who is directly employed by the provider, an agency worker, someone who is in training with them or who provides services to them. It tells you:

- About CQC.
- About whistleblowing.
- Why you should have a whistleblowing policy.
- The protection the law gives to workers who raise concerns.
- The benefits of encouraging workers to raise concerns.
- What we will do when we receive information from a whistleblower.

CQC is a signatory to the NHS 'Speaking Up Charter' and we provide this guidance as part of our commitment to it. This guidance is in the [whistleblowing](#) section of our website.

1. What is CQC?

The Care Quality Commission is the independent regulator of healthcare and adult social care services in England. We register providers under the Health and Social Care Act 2008. We then inspect them regularly to check that they are meeting the national standards of quality and safety required by law, and take action against them if they are not. If we believe people are at unacceptable risk of poor care, we have a range of strong enforcement powers.

CQC's role is to regulate **providers** of care – for example, NHS trusts, private hospitals, care home owners and dental and GP practices. This is separate to professional regulatory bodies that regulate care professionals as individual practitioners.

The national standards cover a range of things that are essential to the quality and safety of care, such as:

- How patients and people are being treated,
- The welfare of patients and people receiving care,
- The safety and safeguarding of people receiving care, and people's dignity and privacy.

2. What is whistleblowing?

Whistleblowing is the term used when someone who works for an employer raises a concern about malpractice, risk (for example about patient safety), wrongdoing or possible illegality, which harms, or creates a risk of harm, to people who use the service, colleagues or the wider public.

Ideally, such concerns should be dealt with by the employer. However, if the management have not dealt with those concerns by responding appropriately to them, perhaps by using the employer's own whistleblowing policy, or the worker does not feel confident that the management will deal with those concerns properly, they can instead make a disclosure to a 'prescribed body', such as a regulator like CQC.

The [Public Interest Disclosure Act 1998](#) (PIDA) protects workers by providing a remedy if they suffer a workplace reprisal for raising a concern which they believe to be genuine. See questions 12-15 below for further information.

Disclosures could be about the safety of patients or people who use services, the failure of a provider to comply with the law or the national standards of quality and safety, financial malpractice or risks to staff or other people.

If a worker is concerned that vulnerable adults or children using a service are not being cared for in a way that keeps them safe, they can also raise their concern with the local authority (local council) under their safeguarding procedures. They can do this as well as whistleblowing to CQC or another body such as the police.

We also provide guidance about whistleblowing for [workers of registered providers](#) on our website.

3. Is whistleblowing the same as making a complaint?

No. Whistleblowing is different from a complaint or a grievance and usually refers to situations where a worker raises a concern about something they have witnessed at their workplace.

People who use services, their relatives or representatives, or others, can make complaints about a service using the service's complaints procedure. This is not whistleblowing.

Good employment practice includes providing a grievance procedure for staff to use in respect of their employment rights and conditions of service.

See our website for information on how people can [make a complaint](#) or raise a concern about a service and how we deal with any that we receive. This information also includes guidance on how to complain about CQC.

4. Why should my organisation have a whistleblowing policy and procedure?

A good service provider will create an atmosphere where workers feel able to report concerns and will thoroughly investigate and address such concerns within the service. A good whistleblowing policy is an important tool in creating this atmosphere.

Having an open culture will help staff to be more confident about raising concerns. Workers are more likely to raise concerns at an early stage if your policy and procedures are clear and easy to use. It is also easier for you to deal with concerns at an early stage.

Employers who promote whistleblowing are more likely to be seen as better employers by staff and as better service providers by the public. Your policy and procedure should make it clear to workers that they can go outside their normal line management or accountability arrangements to raise concerns. They should also make it clear to other people who provide services to you, such as agency workers, that they too can raise concerns and have the protection of PIDA.

Your policy and advice to workers should also make it clear that disclosures – whether made in the workplace or externally to an outside body – that are malicious or knowingly untrue are not protected under PIDA.

If you don't have a whistleblowing policy, staff may be less confident about reporting concerns promptly. This could mean that:

- Bad practice could continue for longer than necessary.
- There will be more complaints from people who use the service or their representatives.
- Staff may leave or perform less well.
- Your service may receive more negative reports.

Furthermore, if there is no whistleblowing policy, staff are more likely to go to an outside body in order to protect people in vulnerable circumstances. Any subsequent public reporting could result in damage to your reputation that could have been avoided.

5. What does CQC advise registered providers to do about whistleblowing?

Registered providers must meet the regulations and national standards of quality and safety.

Our publication [Guidance about compliance: Essential standards of quality and safety](#) focuses on the outcomes that people who use a service should expect when a provider is meeting the standards. It includes prompts about how providers and staff can achieve the outcomes.

You should look in particular at Outcome 7 'Safeguarding people who use services from abuse' and Outcome 14 'Supporting staff'.

Generally, you should ensure that the people who use your services receive care, treatment and support from staff who are confident about reporting any safeguarding and other concerns, without worrying about the consequences.

There should be an open culture in your service that allows staff to feel supported to raise concerns, both inside and outside of the service, without fear of recrimination.

Legal protection is very important to encourage staff to raise a concern about wrongdoing or malpractice, but employers should also make it easy for staff to raise concerns, and contribute to good practice. You should make sure that your workers are aware of their rights under PIDA.

If you are a large organisation, you may wish to identify one or more senior managers outside of the usual line management arrangements as having a lead role for receiving concerns from staff in confidence. An individual provider may identify themselves as the person to approach, but could also consider some impartial outside party to perform this role. The arrangements should reassure staff that their concerns will be received supportively and addressed appropriately without fear of reprisals of any kind.

Any such arrangements will support your risk management systems, but are not a substitute for them.

6. Where can I get advice on the best way to respond to concerns from staff and providing my own whistleblowing policy?

The Whistleblowing Helpline offers free advice to both workers and employers in the NHS and social care; you can call the helpline on **08000 724 725**.

The charity Protect offers advice to employers as well as workers. You can get advice by telephoning 020 3117 2520 or visit the [Protect website](#).

The NHS Social Partnership Forum (SPF) has produced a resource pack for NHS providers, which other providers may find useful. This is available on its [website](#).

7. Can a worker give information in confidence or anonymously?

Yes. Although a worker will be unlikely to use your whistleblowing policy anonymously, you should ensure as far as possible that you respect their confidentiality and you do not disclose their identity to anyone who does not need to know it.

This is particularly important if the disclosure involves concerns about the worker's superiors or colleagues.

How CQC handles whistleblowing disclosures

8. Will CQC always act on a protected disclosure?

There are a number of ways we may respond to a disclosure, depending on what the worker tells us and how serious the matter is. In the first place, we need to decide if:

- The concern is within the scope of our regulatory duties.
- We are the right organisation to investigate the concern.
- Another organisation is best placed to deal with the concern instead of, or as well as, us. For example, the General Medical Council will look at the fitness to practise of a doctor, and we will consider the impact on the people who use the service where that doctor works, if the service is regulated by us.

We will always ask if the person contacting us has tried to raise their concern with their employer but we will still respond to their concerns if they have not.

9. What will CQC do with the information in the protected disclosure?

We will do one or more of the following:

- Note the concern for information – we will log it and check whether it adds to existing concerns about the service or whether it is a new concern. All concerns will be reviewed by the compliance inspector for the service. The inspector will consider the information when monitoring the registered provider's compliance with national standards of quality and safety.

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- Use the information to help us to decide whether to urgently inspect the service or bring forward a planned inspection.
 - Raise the issue directly with the appropriate registered person, that is, the registered provider or the registered manager of the service. We will protect the confidentiality of the whistleblower when we do so. See [question 11](#) Will CQC give the name of a whistleblower to an employer?
 - Make a safeguarding alert to the local authority if the information is about possible harm or abuse. We will follow our safeguarding procedure and actively follow up the alert. The compliance inspector for the service will monitor the progress and outcome of the local authority's investigation. To support that investigation, we may carry out a review of the provider's compliance with the national standards.
 - Notify another regulator or official body if it is appropriate for them to look into the concern instead of, or as well as us.
 - Notify the police if the information is about possible illegal activity. We can do this as well as any of the above actions.

10. Will CQC keep in contact with the whistleblower?

Where a whistleblower contacts us by telephone or in person, we will always ask them if they want the compliance inspector for the service to contact them about their concern. If they raise their concern in an email or letter, and provide contact details, the compliance inspector will contact them to check whether they would like us to keep in contact with them, depending on the nature of the concern, or if they have asked us to contact them.

If a whistleblower contacts a compliance inspector during an inspection of the service, we will make a record of their concern and check whether they want us to keep in touch with them after the inspection.

In all cases, we will also ask them if they would prefer their identity to be known or kept confidential. If they would like to be kept informed of what we do about their concern or would like feedback on the outcome of what we found, we will do that. If they don't want us to keep in touch with them, we will respect their wishes.

Our local compliance inspector for the service in question will always follow up concerns. They will be the person who will keep in touch with the whistleblower, where they have confirmed they wish us to do that.

11. Will CQC give the name of a whistleblower to an employer?

No. You do not have a right to know this and we will make every effort to avoid disclosing the identity of a whistleblower who has raised a concern with us, if they request this. Where this is not possible, PIDA may provide them with protection from suffering a detriment (see below).

However, in some circumstances, we might have to disclose information that could identify a whistleblower to another body. For example, we might have to make this disclosure to protect people from harm, to ensure that national standards of quality and safety are met, or if we suspect that a serious criminal offence may have been committed. We may make this disclosure to the police or another official body, or if required to do so by a court.

Our website has further information about how we deal with [confidential personal information](#).

If you believe a whistleblower has given information to us, or to another prescribed body, you should not try to work out the identity of the worker. However, it is an opportunity to promote your own approach to whistleblowing and reassure your staff that it is safe to raise concerns at work.

If you identify a whistleblower and your subsequent actions cause them any detriment, you could face a claim under PIDA in an Employment Tribunal, which may award unlimited compensation in cases of unfair dismissal and discrimination.

The Law

12. Who is protected by PIDA?

PIDA provides protection for people who can make protected disclosures. These people are:

- Workers who are directly employed by the registered provider.
 - Workers who have left their job after making a protected disclosure.
 - Other workers who provide services to the registered provider. Examples are agency staff, visiting community health staff, GPs, independent activities organisers, contractors, visiting hairdressers and trainees, but not volunteers. This is not a complete list – there will be other types of workers that provide services to a registered provider.
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If a worker makes a disclosure after they leave their job, they may be protected by PIDA. They may wish to take independent legal advice. They can get free, independent and confidential advice from the Whistleblowing Helpline for NHS and Social Care on 08000 724725. They can also call Protect for free and confidential advice on 020 3117 2520.

CQC cannot give legal advice to workers or employers. We have provided this document as guidance only – it is not legal advice.

Other people who are not workers can raise concerns about a service with the provider of the service or with organisations such as CQC, but PIDA does not cover such disclosures and this is not called ‘whistleblowing’.

13. What is a protected disclosure?

For a worker’s disclosure to be protected by PIDA, it must be a ‘protected disclosure’. The worker must:

- Make sure the information is of a ‘qualifying’ nature (see the appendix).
- Make the disclosure in good faith, which means with honest intent and without malice.
- Reasonably believe that the information is substantially true.
- Reasonably believe that they are making the disclosure to the right ‘specified person’.

See the appendix for further information about making disclosures under PIDA.

14. What is a prescribed body?

A ‘prescribed body’ is one that is identified under PIDA as able to receive concerns about organisations. Most regulators, including CQC, are prescribed bodies.

Workers can raise their concerns with a prescribed body such as CQC, or any other body, if the concern is relevant to that body. Such disclosures are protected under PIDA, where the whistleblower meets the criteria for disclosure. They must also reasonably believe that the matter is substantially true and relevant to the regulator.

15. How does the law protect workers who whistleblow?

PIDA provides a remedy for a worker who suffers a detriment or any form of retribution as a result of their whistleblowing, provided that:

- The information is a protected disclosure.
- It is made in good faith.
- The worker reasonably believes that information, and any allegations contained in it, are substantially true.
- Making the disclosure does not involve the worker committing a criminal offence.

Appendix: The Public Interest Disclosure Act 1998

Recent changes

The Enterprise and Regulatory Reform Act (ERRA) received Royal Assent on 25 April 2013. It includes major changes to employment law, which will affect aspects of whistleblower protection. For further information, see the legal updates on the [Protect website](#). You may also wish to take your own legal advice.

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a 'protected disclosure'.

To qualify as a '**protected disclosure**' the disclosure must satisfy a number of requirements under PIDA:

1. The worker must have made a '**qualifying disclosure**'. **This is** a disclosure of information which, in the reasonable belief of the worker, tends to show one or more of the following:
 - a) That a criminal offence has been committed, is being committed, or is likely to be committed.
 - b) That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject.
 - c) That a miscarriage of justice has occurred, is occurring, or is likely to occur.
 - d) That the health and safety of any individual has been, is being, or is likely to be endangered.
 - e) That the environment has been, is being, or is likely to be damaged.
 - f) That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed.

A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.

2. The qualifying disclosure must be made **in good faith**.
3. The worker must make the qualifying disclosure to one of a number of '**specified persons**' set out in PIDA, which include:
 - a) The worker's employer or, if they reasonably believe that the failure relates solely or mainly to (i) the conduct of a person other than their employer or (ii) any other matter for which a person other than their employer has legal responsibility, that other person.

- b) A 'prescribed person', which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed person.

Where the above requirements are satisfied, a worker who has made a protected disclosure is protected under PIDA from dismissal or any other detriment arising from making that disclosure. Detriment can include detriment suffered from a previous employer where, for example, the employer refuses to give a reference because the worker has made a protected disclosure. A worker who suffers dismissal or detriment may bring a claim for compensation (which is unlimited) in the Employment Tribunal. The term 'worker' includes employees, contractors or self-employed people.

You can read more about this on the [Protect website](#).