

## Supporting note

# Whistleblowing (making a disclosure in the public interest) by staff in registered organisations

Supporting notes are written for CQC’s assessors and inspectors, to help them make consistent judgements on compliance with the essential standards of quality and safety. Supporting notes only act to clarify key aspects of some of the essential standards; they do not introduce additional requirements. Providers may also find the information useful.

<b>Purpose of note</b>	To help define what is meant by the term ‘whistleblowing’; to assist inspectors when assessing a regulated provider’s policy and position with regard to whistleblowing; and to clarify where employees stand in relation to the law.	
<b>Main outcome</b>	Supporting workers	14D
<b>Specific prompt(s)</b>	There is an open culture in the service which allows staff to feel supported to raise concerns without any fear of recrimination.	
<b>The note may also be relevant, in part, to the following outcomes</b>	7E, 12 A, 12 B	

### This note is relevant to the following service types

All relevant regulated services where staff are employed.

### Detail of the note to the essential standards

Whistleblowing is a term that is widely used when a current or former member of staff (hereafter referred to as ‘worker’) raises a concern about their place of work, sometimes by going to the press or another organisation. The official name for whistleblowing is ‘making a disclosure in the public interest’.

Registered bodies should have a policy that states to its workers the correct pathway to follow if they have a concern about the organisation. As a guide, the employer’s policy on whistleblowing should include:

- Details of the prescribed person. That is, the person to receive the concern.
- Alternative reporting methods, for example, to regulatory bodies, the police

and/or the media.

- An outline of the worker's rights in relation to the law and protection against victimisation.

As a general rule, workers are not advised to go directly to alternative bodies, the press or media without first trying to follow the pathway outlined in the employer's policy on whistleblowing.

Workers should also be encouraged to follow the organisation's policy for reporting incidents that place people using services or employees at risk of harm alongside any policy on whistleblowing.

Whistleblowers are protected for public interest, to encourage people to speak out if they find malpractice in an organisation or workplace. Malpractice could be improper, illegal or negligent behaviour by anyone in the workplace. This protection is under the Public Interest Disclosure Act 1998, but it is conditional.

You are protected as a whistleblower if you:

- Are a 'worker'.
- Believe that malpractice in the workplace is happening, has happened in the past or will happen in the future.
- Are revealing information of the right type (a '**qualifying disclosure**').
- Reveal information to the right person, and in the right way (making it a '**protected disclosure**').

'Worker' has a special wide meaning in the case of whistleblowing. As well as employees, it includes agency workers and people who aren't employed but are in training with employers. Some self-employed people may be considered to be workers for the purpose of whistleblowing if they are supervised or work off-site. It also includes individuals who are former employees.

### **Qualifying disclosures**

- Criminal offences.
- Failure to comply with a legal obligation.
- Miscarriages of justice.
- Threats to an individual's health and safety, including safeguarding concerns.
- Damage to the environment.
- A deliberate attempt to cover up any of the above.

There are some disclosures that can't be qualifying disclosures. Workers won't be protected for whistleblowing if:

- They break the law when making a disclosure. For example, if they signed the Official Secrets Act as part of their employment contract.
- The information is protected under legal professional privilege. For example, if

the information was disclosed to the worker when someone wanted legal advice.

### **Protected disclosures**

For a worker's disclosure to be protected by the law they should make it to the right person and in the right way. They must:

- Make the disclosure in good faith, which means with honest intent and without malice.
- Reasonably believe that the information is substantially true.
- Reasonably believe they are making the disclosure to the right 'prescribed person or body'.

### **Prescribed person or body**

The Act makes special provision for disclosure to prescribed persons or bodies.

Each employer should designate a prescribed person with whom concerns may be raised internally under their whistleblowing policy.

The list of external prescribed bodies is defined by the Secretary of State for Trade and Industry and includes regulators such as CQC and the Health and Safety Executive. Such disclosures are protected where the whistleblower meets the tests for internal disclosure and reasonably believes that the matter is substantially true and of relevance to the regulator.

### **Wider disclosures**

Wider disclosures, such as to the police and media, are also protected if, in addition to the tests for regulatory disclosures, they are reasonable in the circumstances and do not relate to personal gain. In addition, wider disclosures will only be protected if:

- The whistleblower reasonably believed they would be victimised if they had raised the matter internally or with a prescribed regulator, or
- There was no prescribed regulator and they reasonably believed the evidence was likely to be concealed or destroyed, or
- The concern had already been raised with the employer or a prescribed regulator, or
- The concern was of an exceptionally serious nature.
- **and** the tribunal is satisfied that the particular disclosure was reasonable.

Public Concern at Work offers free advice to employers and employees and is able to provide guidance on whistleblowing policies.

<http://www.pcaaw.co.uk/organisations/organisations.htm>

CQC has published its own guidance on whistleblowing for registered providers, which can be found here:

[http://www.cqc.org.uk/publications.cfm?fde\\_id=18488](http://www.cqc.org.uk/publications.cfm?fde_id=18488)

CQC has also published guidance on whistleblowing for current or former employees of registered bodies, which can be found here:

[http://www.cqc.org.uk/publications.cfm?fde\\_id=18489](http://www.cqc.org.uk/publications.cfm?fde_id=18489)

## Background and references

**Public Concern at Work:** [www.pcaw.co.uk](http://www.pcaw.co.uk)

**Government guidance:**

[http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG\\_10026552](http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_10026552)