

## Whistle Blowing Policy

### 1. Introduction

- 1.1 The Public Interest Disclosure Act 1998 came into force on 2 July 1999. This Act recognised that workers have the right to “blow the whistle” and disclose certain information, e.g. the fraudulent activities of management, malpractice and/or concerns about health and safety.
- 1.2 The Act introduced specific rights for those who disclose information to a third party about an alleged wrong-doing in defined circumstances. There is no general right for all so-called whistle-blowers to receive special protection. To qualify, the following issues must be met:
  - 1.2.1 The Disclosure in question must relate to one of the specified categories contained within the Act; and
  - 1.2.2 The Disclosure must be made in one of the ways specified.
- 1.3 Protection under the Act applies to workers and the definition used is substantially wider than that used in other employment legislation. It includes not just employees and the common definition of workers, but also third-party contractors including limited company contractors whose work is controlled by the employer and would therefore cover all, including dentists and doctors, under statutory schemes and those individuals working under training contracts but not the genuinely self-employed.
- 1.4 On a practical note, the Care Standards Act 2000, through the Nurses Agencies Regulations & Domiciliary Care Regulations and the associated standards require the company or registered person to have robust procedures for responding to suspicion or evidence of abuse or neglect (including whistle-blowing) to ensure the safety and protection of service users. However, such a guidance should also encourage the worker to disclose their concerns internally first, thereby limiting the circumstances in which they are able to make an external Disclosure.

### 2. Subject Matter of the Disclosure

- 2.1 As mentioned above, there are limits on the subject matter that will qualify for protection. A qualifying Disclosure means any Disclosure of information, which, in the reasonable belief of the worker making the Disclosure, tends to show one or more of the following:
  - 2.1.1 That a criminal offence has been committed, is being committed or is likely to be committed; or
  - 2.1.2 That a person has failed, is failing or is likely to fail to comply with any legal obligation which he or she is subject; or
  - 2.1.3 That a miscarriage of justice has occurred, is occurring or is likely to occur; or
  - 2.1.4 That the health or safety of an individual has been, or is being or is likely to be endangered; or
  - 2.1.5 That the environment has been, is being or is likely to be damaged, or
  - 2.1.6 That information tending to show any massive failing within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- 2.2 The worker simply has to show that they have a reasonable belief that the information disclosed demonstrates one or more of the above criteria. However, there are two important exceptions where the Disclosure will not qualify for protection and they are:
  - 2.2.1 if the person making the Disclosure commits an offence by making it, or
  - 2.2.2 it is a matter in which a legal, professional privilege would apply, namely, correspondence between the employer and their lawyers regarding a specific case.
- 2.3 It is not sufficient for the worker to show that the circumstances give rise to a qualifying Disclosure, the worker will also have to ensure that the proper procedures are adhered to.

### 3. Procedures for Disclosures

- 3.1 In order to qualify for the whistle-blowing protection, the worker must use one of the six specified ways to make the Disclosure. The aim of the legislation is to encourage workers to disclose the

information through appropriate internal channels first rather than going directly to an outside person such as a member of the media.

3.2 The six permitted ways of Disclosure are as follows:

3.2.1 Disclosure to an Employer or Other Responsible Person

3.2.2 This method of Disclosure will ensure that workers are protected in respect to Disclosures made in good faith. Where the worker believes that the relevant failure relates solely or mainly to the conduct of a person other than the employer or to a matter for which that other person has responsibility, the Disclosure should be made to that other person.

3.2.3 In the context of temporary workers supplied by an employment business, it may well be appropriate for the temporary worker to raise the concern with the client in the first instance rather than the company

3.3 Disclosure to a Legal Adviser:

3.3.1 This protects workers who disclose information in the course of obtaining legal advice.

3.4 Disclosure to a Minister of the Crown:

3.4.1 This will only apply where the worker's employer is an individual appointed under any enactment by a Minister of the Crown or a body whose members are so appointed. Examples include the Utility Regulatory Bodies and NHS trusts, i.e. could apply to nurses, care staff and workers supplied to local authorities.

3.5 Disclosure to a Prescribed Person:

3.5.1 Workers will qualify for protection when they make a Disclosure in good faith to a person prescribed by an order made by the Secretary of State. The list of prescribed persons was recently amended and the New Public Interest Disclosure Prescribed Persons Amendment Order came into force on 1 October 2003 and the relevant list is attached at Appendix A.

3.6 Disclosure in Other Cases:

3.6.1 Disclosure in other cases apply where the worker makes the Disclosure in good faith, reasonably believes that the information disclosed and any allegations contained within it are substantively true, does not make the Disclosure for the purposes of personal gain and meets one of the specified conditions set out below, namely:

3.6.1.1 That at the time he or she makes a Disclosure, the worker reasonably believes that he or she will be subject to detriment by his or her employer if that worker makes a Disclosure to his or her employer or to a prescribed person;

3.6.1.2 That in the case where no person is prescribed in relation to the relevant circumstances, the worker reasonably believes that it is likely that the evidence relating to the relevant failure would be concealed or destroyed if he or she made the Disclosure to the employer; or

3.6.1.3 That the worker has previously made a Disclosure of substantially the same information to the employer or a prescribed person. Further details are contained within the Act.

3.7 Disclosure of Exceptionally Serious Breaches

3.7.1 The final type of protected Disclosure is one which covers situations where the subject matter is serious enough to merit by-passing one of the other procedures. The relevant criteria set out above must be met together with the matter which must be exceptionally serious. It does not mean that people will be protected where they act unreasonably, for example, by going straight to the press where there would clearly have been other less damaging ways to resolve the matter.

3.7.2 This would be particularly true where there was a whistle-blowing guidance which encourages the worker to raise the matter with the employer or another responsible body first.

3.8 Protection for the Worker

3.8.1 The protection given under the Public Interest Disclosure Act 1998 only applies in certain situations where the worker makes a protected Disclosure to the bodies named in the Act. The protection applies to all workers without any restriction on age, however, it is limited and it is

important that the worker follows the correct procedure or else they will be denied the protection. The protection, which includes financial compensation without the statutory cap applying in the case of protection against dismissal, further includes the right not to suffer a detriment as a consequence of making a protected disclosure.

#### **4. Practical Issues**

- 4.1 The company will take whistle-blowing and issues of malpractice seriously
- 4.2 It is important that matters are treated confidentially. If a worker is not happy with the way in which a matter has been addressed, he/she should be encouraged to raise that fact as a complaint rather than leaving the matter unresolved.
- 4.3 However, workers who make false allegations maliciously may be subject to the appropriate action.
- 4.4 If there is not a sufficiently senior person to deal with the complaint within the organisation, then external routes should be considered.

#### **5. Safeguarding Issues**

- 5.1 This policy is designed to cover concerns that staff have about the conduct of individuals in a position of trust within an organisation which could be detrimental to the safety or wellbeing of young people and where staff, for whatever reason, feel unable to raise them under GEM Partnerships standard Safeguarding procedures around dealing with such allegations.
  - 5.2 Issues would include;
    - 5.2.1 Bullying of staff
    - 5.2.2 Unprofessional behaviour
    - 5.2.3 Any form of abuse (physical, sexual, emotional or neglect)
    - 5.2.4 Name calling
    - 5.2.5 Personal contact with young people or vulnerable adults which is contrary to the organisations policies and code of conduct
    - 5.2.6 Any form of racial abuse
    - 5.2.7 Inappropriate sexualised behaviour
    - 5.2.8 Knowledge about an individual's personal circumstances which may indicate they could be a risk to young people or vulnerable adults or unsuitable to work with them
    - 5.2.9 Please be mindful that these are examples of concerns, and are not exhaustive.
  - 5.3 GEM Partnership is committed to professional standards and to supporting staff. It is recognised that the decision to report a concern is difficult one to make. Harassment or victimisation will not be tolerated and GEM will take appropriate action in order to protect the person raising the concern when they are acting in good faith.
  - 5.4 All concerns will be treated in confidence, however, there may be a need for a whistle blower to give evidence for example if they have witnessed a crime or in regard to disciplinary procedures if this is the outcome.
  
  - 5.5 This policy encourages staff to raise concerns identified in doing so as part of their professional role/responsibility. However, anonymous allegations will be investigated as thoroughly as possible.
  - 5.6 If a member of staff raises a concern in good faith, which is not confirmed by an investigation, no action will be taken. However, if a concern is raised maliciously, disciplinary action may be taken.
- #### **6. How to raise a concern**
- 6.1 Staff should normally raise their concerns with Julie Hunter, Designated Safeguarding Lead or Kelly Lee, Safeguarding Officer by completing Whistle Blowing Report Form Appendix 1.
  - 6.2 Any concerns regarding a young person (below the age of 18) regarding child protection will be referred to external agencies for investigation. If the concern is not of this nature there will be;

- 6.2.1 Investigation by management
- 6.2.2 Disciplinary process if appropriate
- 6.2.3 Consideration of policies, processes and procedures if such issues arise from the investigation
- 6.3 Within 10-working days of concern being raised the refer will receive a written response from the person responsible which will;
  - 6.3.1 Acknowledge that the concern has been received
  - 6.3.2 Supply information on relevant support mechanisms
  - 6.3.3 Advise whether further investigation will take place; or
  - 6.3.4 Advise that no further action has taken place and why.

## **7. Other Support**

- 7.1 Regulatory bodies such as Ofsted also have 'whistle blowing' hotlines. Ofsted's whistle blowing hotline is: 0300 123 3155. The email address is [whistleblowing@ofsted.gov.uk](mailto:whistleblowing@ofsted.gov.uk)
- 7.2 Protect is a registered whistleblowing charity.
  - 7.2.1 Helpline: 02031172520 (option 1)
  - 7.2.2 Email: [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk)

## Whistle Blowing Report Form

Name	
Date	
Location / Department	

**Please give a brief outline of your concern?** (please give relevant names, dates, locations etc)

**Were there any other witnesses?** (if so, please give their full contact details)

**Did you take any action at the time?** (If so, please outline what action took)

**If you did not take action at the time, please give details as to why you took no action?**

Signed: \_\_\_\_\_