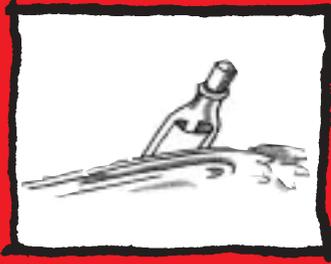
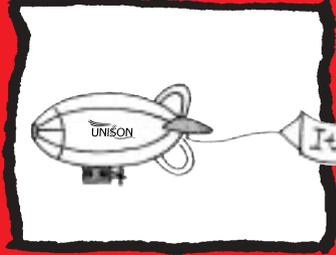
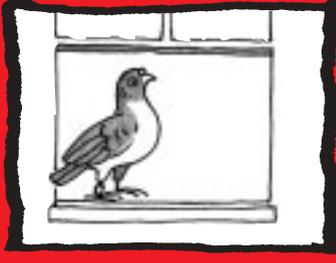
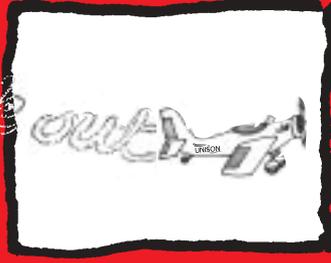


SPEAKING OUT WITHOUT FEAR

Speak out



UNISON GUIDE TO WHISTLEBLOWING

**Written by UNISON Policy & Research
with assistance from UNISON Service Groups
and Public Concern at Work**

June 1999

CONTENTS

INTRODUCTION	2
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I WHISTLEBLOWER'S RIGHTS	4
---------------------------------	----------

2 FIRST STEPS	6
----------------------	----------

3 DECIDING ON PROCEDURES	8
A A whistleblowing policy and procedure for your workplace	
B Advice to members who are concerned about malpractice, wrongdoing and health and safety breaches	
C Advice to members who choose to act independently	
D Dealing with cases where a member blows the whistle, before getting advice	
E Dealing with whistleblowing cases in your branch	
F Conflicts of interest	
G Building on best practice	
H UNISON Hotline for whistleblowers	

4 APPENDIX ONE	23
Sample model whistleblowing policy and agreement	

5 APPENDIX TWO	29
Prescribed persons	

6 APPENDIX THREE	30
Public Interest Disclosure Act 1998	

7 FURTHER HELP	35
-----------------------	-----------



INTRODUCTION

UNISON recognises employees in the public services are often in the best position to know when the public's interest is being put at risk. Staff can act as an early warning system on safety issues, and help uncover fraud and mismanagement in the workplace.

But employees wondering whether to raise concerns or 'blow the whistle' on wrongdoing often fear they won't be listened to, or that they will be putting their jobs at risk.

Under the Public Interest Disclosure Act 1998, which came into force in July 1999, workers who speak out against corruption and malpractice at work have statutory protection against victimisation and dismissal.

Legal protection is very important if employees are to be encouraged to raise concerns. But a more open culture also needs to develop, which recognises the potential of employees to make a valuable contribution to the running of public services, and the protection of the public interest.

Unions have a major role to play in creating that culture, in raising concerns with management, and ensuring that the employer's policies and practices are fair and have the confidence of staff. We provide support for employees who blow the whistle, and have established a role as watchdogs.

This guide is aimed at branch officers and stewards. It provides advice on how to negotiate agreements and procedures on whistleblowing.

Branch officers and stewards have a key role to play in raising concerns about wrongdoing, and in assisting members to speak out. With the new legislation, there is a need to negotiate good agreements to help protect whistleblowers, and ensure their concerns are taken up.

FOR ADVICE ON:

- ▶ **the law on ‘whistleblowing’**
- ▶ **how whistleblowing agreements can benefit employers and employees**
- ▶ **whistleblowing policies**
- ▶ **procedures to include in agreements on whistleblowing**
- ▶ **how to assist members to raise concerns about wrongdoing or malpractice**
- ▶ **how to deal with members who choose to act independently**
- ▶ **how to deal with cases where a member blows the whistle before getting advice**
- ▶ **how to deal with whistleblowing cases in the branch**
- ▶ **how to deal with conflicts of interest**
- ▶ **how to publicise good agreements**
- ▶ **the UNISON Hotline for whistleblowers**

READ ON.

A model agreement is included in Appendix I as a guide to the wording and procedures you may want to include in your whistleblowing agreement.

For further advice, contact your regional officer and national service group officers. Assistance will also be available from an officer in each region with special responsibility for assisting branches to deal with whistleblowing cases.

1

WHISTLEBLOWER'S RIGHTS



The Public Interest Disclosure Act 1998 aims to protect whistleblowers from victimisation and dismissal, where they raise genuine concerns about a range of misconduct and malpractice.

It covers virtually all employees in the public, private and voluntary sectors, and certain other workers, including agency staff, homeworkers, trainees, contractors, and all professionals in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply.

A worker who blows the whistle will be protected if the disclosure is made in good faith and is about:

- ▶ a criminal act
- ▶ a failure to comply with a legal obligation
- ▶ miscarriage of justice
- ▶ danger to health and safety
- ▶ any damage to the environment
- ▶ an attempt to cover up any of these.

The Act extends protection given to health and safety representatives to individuals who raise genuine concerns

about health, safety or environmental risks. (The Employment Rights Act 1996 already gives some legal protection to employees who take action over, or raise concerns about, health and safety at work.)

Whistleblowers will be protected when in good faith they:

- ▶ **raise concerns internally**
- ▶ **raise concerns with the relevant Government minister if they work in quangos or in the NHS**
- ▶ **make disclosures to prescribed persons, such as the Health and Safety Executive, the Inland Revenue, the Audit Commission and the utility regulators (see Appendix 2)**
- ▶ **make wider disclosures (which could include to the media, MPs or the police), where the matter:**
 - is exceptionally serious;
 - is not raised internally or with a prescribed regulator, because the worker reasonably feared that he/she would be victimised;
 - is not raised internally because the worker reasonably believed that there would be a cover-up and there is no prescribed person;
 - was raised internally or with a prescribed person, but was not dealt with properly.
- ▶ **Such wider disclosures must be reasonable in all the circumstances.**

Where a whistleblower is victimised following a protected disclosure, he/she can take a claim to an employment tribunal for compensation. If a whistleblower is dismissed, he/she can apply for an interim order to keep his/her job, pending a full hearing. There is no qualifying period for bringing an unfair dismissal claim under this Act and awards made under it are unlimited.

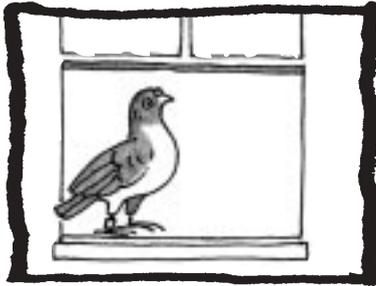
Confidentiality clauses, such as gagging clauses in employment contracts and severance agreements, which conflict with the protection provided by the Act, will not be legally binding.

For further details see Appendix 3.

2

FIRST STEPS

Increasing numbers of organisations in the public and private sectors are introducing whistleblowing procedures. But others are lagging behind and still need to develop whistleblowing systems.



Whistleblowing arrangements are particularly important where organisations are providing services for the public.

While the Public Interest Disclosure Act 1998 does not require employers to adopt whistleblowing policies, it gives them every reason to do so. Unless there are effective procedures in place, which demonstrate an organisation's willingness to listen to and address concerns, workers are more likely to take their concerns outside (to prescribed persons, or to the media, MPs or the police) – and be protected by the Act in doing so. An effective whistleblowing policy can also help foster good relations, avoid crisis management, and minimise damaging incidents and unpleasant publicity.

If your workplace has no whistleblowing systems, you could explain the benefits of introducing a new procedure for workers. For example, a whistleblowing procedure:

- ▶ **demonstrates an organisation is committed to ensuring its affairs are carried out ethically, honestly, and to high standards**
- ▶ **does not cost a great deal to introduce**
- ▶ **is good employment practice**
- ▶ **shows an organisation is keen to introduce procedures to protect public safety and public money**
- ▶ **will help develop a culture of openness, accountability and integrity**
- ▶ **will encourage employees workers to raise matters internally, making wider disclosures (to non-prescribed persons, or to the media, MPs or the police) less likely**
- ▶ **will contribute to the efficient running of the organisation and the delivery of services**
- ▶ **will help curb corruption, fraud and mismanagement**
- ▶ **will help uphold the reputation of the organisation, and maintain public confidence.**

3

DECIDING ON PROCEDURES

As a branch representative, you will have a major role to play in raising members' concerns about wrongdoing and malpractice with management, and commenting on your employer's policies and practices.

But it is also very important to ensure the culture in your workplace is one where workers can raise concerns without fear of being seen as troublemakers.

Whistleblowing agreements offer important protection for employees wanting to raise concerns about wrongdoing and malpractice. And they can help change the culture, enabling concerns to be dealt with and resolved at local level. So a whistleblowing agreement can be an important tool in building up union organisation in your workplace.

You are likely to be the first port of call for members who are troubled about wrongdoing or mismanagement at your workplace. So you will need to agree a whistleblowing procedure with your employer which recognises your role in advising and representing members when they raise concerns.

You will also need to decide how to deal with:

- ▶ **members who wish to pursue their own case**
- ▶ **members who come to you after they have already blown the whistle**
- ▶ **whistleblowing cases in your branch**
- ▶ **conflicts of interest, where both the whistleblower and the alleged wrongdoer are members.**

The next section gives practical guidance on how to draw up a whistleblowing policy and procedure with your employer. It includes a checklist of the different stages you will need to cover to protect whistleblowers and develop a more open culture in your workplace.

Following sections explain:

- ▶ **advice you can give to members who are concerned about malpractice**
- ▶ **advice you can give to members who wish to raise concerns independently**
- ▶ **how to deal with members who have already blown the whistle before they come to you**
- ▶ **how to deal with whistleblowing cases in the branch**
- ▶ **how to deal with conflicts of interest, where both the whistleblower and the alleged wrongdoer are members**
- ▶ **how you can help other branches build up good practice on whistleblowing.**
- ▶ **how members can use the UNISON Hotline for whistleblowers**

A WHISTLEBLOWING POLICY AND PROCEDURE FOR YOUR WORKPLACE

A whistleblowing policy

A whistleblowing policy is designed to encourage employees to raise concerns about malpractice, danger and wrongdoing internally.

But it should do nothing to deter staff from making disclosures to prescribed persons, such as the Health and Safety Executive, the Audit Commission or the utility regulators. The policy should also ensure any public sector workers, whose employer has a Government appointed

member on its board, are aware that they may disclose information direct to the Secretary of State, and will not be victimised or dismissed for doing so.

It may state the organisation is committed to achieving the highest possible standards in the delivery of public services, and wishes to encourage freedom of speech to help achieve this.

A whistleblowing policy should:

- ▶ **be in writing**
- ▶ **say who and what it applies to**
- ▶ **provide for concerns to be dealt with quickly, preferably within clearly set out time limits**
- ▶ **ensure feedback is provided about the progress and outcome of the investigation**
- ▶ **make it clear the employer is committed to tackling malpractice and wrongdoing**
- ▶ **ensure staff know malpractice and wrongdoing will be dealt with seriously**
- ▶ **ensure confidentiality for the whistleblower, if this is requested**
- ▶ **ensure concerns and responses to them are properly recorded**
- ▶ **set out the relationship between the whistleblowing policy and the employer's other procedures (e.g. disciplinary, grievance, harassment)**
- ▶ **allow concerns to be raised independently from line management**
- ▶ **recognise employees may lawfully raise concerns externally**
- ▶ **explain that employees wanting to raise concerns can seek the help of their trade union representative.**

A whistleblowing procedure

It is important to agree a proper whistleblowing procedure with your employer, because the Act lays down rules whistleblowers must follow to be legally protected.

Any whistleblowing procedure you agree should ensure trade union representatives can advise and represent members during investigations.

There may be occasions when the concern raised is so serious that an inquiry may need to be held. You should try to ensure any whistleblowing procedure you agree includes arrangements for inquiries. Where possible, try to negotiate the union's involvement in the inquiry, including drawing up the terms of reference and deciding on the membership of the panel, and the implementation of the recommendations' of the inquiry.

It can be very helpful if your employer agrees that the most senior person in your organisation has an 'open door' policy, which encourages trade union representatives or whistleblowers to raise serious concerns with them directly.

If your employer agrees to proper procedures and has an open door policy which encourages individuals to raise concerns, it will help create an open culture where workers feel their concerns will be heard and acted upon.

Alongside a whistleblowing policy and procedure, it is important to negotiate a procedure for evaluating standards of service delivery in your workplace. It should ensure the trade union is involved in any monitoring and evaluation exercises.

Your employer's disciplinary procedure will also need to be amended to take account of the whistleblowing policy and procedure. The disciplinary procedure should make it clear that harassing or victimising a whistleblower (including

informal pressures) will be considered a serious disciplinary offence, and will be dealt with under the disciplinary procedure.

The main steps you could include in any whistleblowing procedure are:

▶ **Role of Trade Unions**

The employer should recognise the right of whistleblowers to be advised and represented by their union when raising concerns under the whistleblowing procedure.

▶ **Designated officer**

The employer should appoint a designated officer to be a point of contact for concerns raised under the whistleblowing procedure. He/she should be a senior officer, and report directly to the most senior person in the organisation. The designated officer should be impartial and capable of taking an independent view on the concern raised. Large organisations may appoint several designated officers.

▶ **Raising a concern**

An employee should normally raise concerns about wrongdoing and malpractice with his/her immediate manager first. The manager would notify the matter to the designated officer.

Where it is not appropriate to go via normal management reporting channels, because the matter is sensitive and serious (for example, if the whistleblower believes his/her manager is involved), he/she should contact the designated officer.

▶ **Employer's response**

The designated officer or line manager would, if requested, arrange an initial interview. At this stage, the whistleblower would be reassured he/she would be protected from possible victimisation, and would be asked if he/she wanted

confidentiality and/or wanted to make a written or verbal statement. In either case, the designated officer or line manager would write a brief summary of the interview, which would be agreed by both parties.

The designated officer or line manager would report to the most senior person in the organisation, who would set up any further necessary investigation.

Where exceptionally the concern is about the most senior person, the chair of the board/governing body would decide on how to proceed. This may include an external investigation.

▶ **The investigation**

It may be necessary that certain investigations would be carried out in strict confidence (with the employee under investigation not being informed until necessary). Where there are allegations of ill treatment of patients/ clients/ customers, the employee under investigation may have to be suspended.

The designated officer would give regular feedback on the outcome of the investigation to the whistleblower.

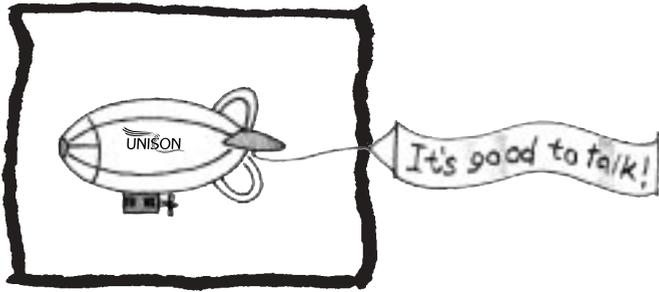
If the investigation shows there is a case to be answered, the disciplinary rules and procedures would be used.

If there is no case to answer, the designated officer would ensure the employee is protected, provided the disclosure was made in good faith.

Disciplinary action would only be taken where a false allegation is made maliciously.

▶ **Inquiries**

Where the concern raised is sufficiently serious, an inquiry may need to be held.



The union should seek to negotiate its involvement in the inquiry, including drawing up the terms of reference and deciding on the membership of the panel, and the implementation of the recommendations of the inquiry.

► **After the investigation**

The most senior person would brief the designated officer about the outcome of the investigation. The designated officer would then arrange a meeting with the whistleblower to give feedback on any action taken. (This would not include details of any disciplinary action, which would remain confidential.) The feedback would be provided within agreed time limits. Where the issue has been raised and dealt with by the line manager, the line manager will provide feedback as above. A note of the concern raised and how it was resolved will be lodged with the designated officer.

If the whistleblower is not satisfied with the outcome of the investigation, he/she would have to be notified of their right to make an external disclosure to a prescribed person, such as the Health and Safety Executive, or where justified, elsewhere, notwithstanding the result of the investigation.

► **Time limits**

Time limits should be allocated for each stage of the procedure. If the time limits pass without any satisfactory action being taken, the concerns should be raised at the next level.

ADVISING MEMBERS WHO HAVE CONCERNS

Golden rules

Remember:

Encourage members to use the internal whistleblowing procedure first, when raising concerns about wrongdoing and malpractice in your workplace. He/she should give your employer a reasonable opportunity to respond to concerns, before taking any further action.

Be sure of the facts:

- ▶ **Check the whistleblower has a reasonable belief and some evidence to back it up, before you advise or help him/her to raise any concerns under the whistleblowing procedure.**
- ▶ **Before making a disclosure to a prescribed body (such as the Health and Safety Executive), the whistleblower should have good evidence to show he/she reasonably believes the information, and any allegations in it, are substantially true. It would help to have supporting evidence from colleagues to corroborate the whistleblower's evidence.**
- ▶ **Before the whistleblower makes a wider disclosure (to the media, MPs or the police), contact your regional officer or a national service group officer, who can help you get legal advice on the whistleblower's position.**

Disclosures are protected under the Act if they are made in good faith. If the whistleblower is acting purely on some ulterior motive, he/she may lose protection.

Make sure members don't use whistleblowing as part of a strategy in a political campaign. Whistleblowing procedures are designed to tackle wrongdoing and malpractice.

Guard against personal vendettas. Warn members against using the whistleblowing procedure to sort out personal disputes.

When negotiating over the recommendations of any investigation or inquiry, try to get the best outcome possible. You may have to accept compromises, with your employer taking action on only some of the concerns raised.

B ADVICE TO MEMBERS WHO ARE CONCERNED ABOUT MALPRACTICE, WRONGDOING AND HEALTH AND SAFETY BREACHES

If a member asks for advice about how to raise a concern about wrongdoing, malpractice or health and safety breaches:

- ▶ **Consult the employer's whistleblowing procedure to check the agreed role of union representatives to advise and represent members raising concerns.**
- ▶ **As a union representative, you could raise his/her concerns with your employer. If this is not agreed under the procedure, you would yourself need to reasonably believe the information tended to show a malpractice or wrongdoing had occurred / is occurring / is likely to occur, to ensure any disclosure you made to the employer was protected.**
- ▶ **If your employer requires further evidence, the whistleblower may need to be involved, but you can advise and represent him/her.**
- ▶ **He/she should try to raise the concern internally within your organisation, using the whistleblowing policy, since the Public Interest Disclosure Act 1998 provides the strongest protection for internal disclosures.**
- ▶ **Do not encourage him/her to blow the whistle anonymously, since this would make it more difficult to win protection at a tribunal, if your employer victimised him/her.**

- ▶ **You could advise the member of the circumstances in which he/she may make a disclosure to a prescribed person.**
- ▶ **If he/she reasonably fears victimisation, or of a cover-up by your employer, or believes the matter is exceptionally serious, he/she could consider making a wider external disclosure. However, he/she should get legal advice from the union, before taking this step, and you could help arrange this. He/she should also bear in mind:**
 - His/her disclosure will be more readily protected if it is to a body whose duty is to investigate the malpractice.
 - Where the public interest will be equally protected by disclosures to two bodies, the disclosure which causes less damage to your employer is likely to be more readily protected than the one which causes much damage.

As a union representative, you could consider making a public disclosure about the concerns he/she had raised, but you would need to get legal advice to ensure any disclosure you made was protected under the Public Interest Disclosure Act.

- ▶ **If he/she is considering making a disclosure to the media, he/she should get legal advice from the union, which you could arrange. Media disclosures are more likely to be protected where:**
 - The information is not confidential
 - If it is confidential, there has been, or is likely to be, a cover-up and there is no prescribed person
 - If it is confidential, more restricted disclosures have not got a reasonable response
 - The matter is exceptionally serious, and he/she can show it is reasonable to make the disclosure to the media.

Again, you could consider making a disclosure to the media about his/her concerns, but you would need to take legal advice to ensure any disclosures you made were protected under the law.

Always try to encourage members to raise concerns themselves, and to follow the procedures laid down in the whistleblowing policy and procedure. If you raise concerns on behalf of members, you should be protected from victimisation and dismissal, as you are acting in the normal course of your trade union duties. But you should ensure you follow the procedures, and make certain any disclosures you make would pass the tests for protected disclosures. If in any doubt, seek advice from your region, where there will be an officer with special responsibility for assisting branches to deal with whistleblowing cases.

C ADVICE TO MEMBERS WHO CHOOSE TO ACT INDEPENDENTLY

Sometimes a member may wish to deal independently with concerns he/she has. Or he/she may disagree with the advice you or other union representatives give him/her.

In either case, get a second independent opinion from your regional office.

If a member still wants to take responsibility for blowing the whistle, you should make him/her aware of the possible consequences.

You can ask the member to:

- ▶ **make sure the situation warrants whistleblowing**
- ▶ **look at:**
 - who is suffering
 - his/her motives
 - relevant workplace policies
 - any professional codes of conduct covering his/her work
- ▶ **consider the consequences of whistleblowing:**
 - is he/she alone? Or is he/she supported by his/her colleagues? And do colleagues have the same sense of resolve?
 - does he/she have the perseverance to see the case through?
 - what toll might the personal stress take on his/her personal life and career?
 - is he/she prepared to undergo possible personal anguish?

If, after thinking these issues through, the member still wishes to blow the whistle, you could give him/her the following advice:

- ▶ **use the whistleblowing policy**
- ▶ **gather information and facts which will support his/her case**
- ▶ **stick to the facts, and avoid personal arguments**
- ▶ **contact Public Concern at Work (for further details see 'Further Help' at the back of this booklet) or a lawyer for advice**
- ▶ **consider other external organisations he/she should might contact, such as Government ministers, professional regulatory bodies, Members of Parliament, the media. Emphasise that he/she should seek legal advice before making such external disclosures.**

D DEALING WITH CASES WHERE A MEMBER BLOWS THE WHISTLE BEFORE GETTING ADVICE

You may have to deal with a case where a member has blown the whistle externally (say to the media), before coming to you for advice. In such a case, you will need to try to protect the member, and limit the effect of any damage from the disclosures.

You could take the following steps:

- ▶ **call a meeting of all members in your workplace**
- ▶ **decide with members how to support the member who blew the whistle**
- ▶ **develop a strategy with other trade unions in your workplace**
- ▶ **campaign for changes in your workplace to remove the original cause for concern**
- ▶ **contact your regional officer for further advice.**

E DEALING WITH WHISTLEBLOWING CASES IN THE BRANCH

Members should be aware they have the right to go directly to the Region, or higher, where they have concerns about branch officials (who they work alongside). If you publicise this, it would help demonstrate UNISON is aware such cases can occur, and has the structures in place to respond.

UNISON recognises there can be wrongdoing or malpractice by union members, and wishes to develop an open culture, where members feel their concerns will be heard and acted upon.

F CONFLICTS OF INTEREST

There may be occasions when the whistleblower and the alleged wrongdoer are both members of your branch. While this is not an unusual situation for a branch to face, it does require special arrangements to ensure both are properly represented.

All members are entitled to representation to ensure that any investigation conducted under the whistleblowing policy and procedure, and any disciplinary procedures that may follow, are conducted fairly. Where the concerns raised prove mistaken, it will be clear to everyone how important it was that the alleged wrongdoer was properly represented.

If the whistleblower and the alleged wrongdoer are both members of your branch, they cannot be represented by the same branch representative. You will need to sort out an appropriate system of representation for such cases, and you may want to seek assistance from your regional office. In this case, it is important that the whistleblower is not represented by an officer of lower rank than the officer representing the alleged wrongdoer.

G BUILDING ON BEST PRACTICE

UNISON wants to monitor how effective this guide and the whistleblowing legislation are in bringing about a change in the culture of workplaces where we organise and represent members. If you have examples of good practice and/or whistleblowing agreements in your workplace, please send these to:

Bargaining Support Group
UNISON
1 Mabledon Place, London WC1H 9AJ
Tel: 0171 388 2366 Fax: 0171 388 3646
e-mail: bsg@unison.co.uk

H **UNISON HOTLINE FOR WHISTLEBLOWERS**

Members wishing to raise a concern about malpractice, wrongdoing and health and safety breaches can also contact a UNISON Whistleblower's Hotline for advice. The number for the Hotline is:

0800 5 97 97 50

APPENDIX ONE

4

SAMPLE MODEL WHISTLE BLOWING POLICY AND PROCEDURE

The following agreement uses the kind of language which employers might require and use themselves. Have a look at what it says. You can pick and choose what you need, and you don't need to stick to the precise wording.



WHISTLE BLOWING AT WORK

Introduction

1 The word whistleblowing in this Policy refers to the disclosure internally or externally by workers of malpractice, as well as illegal acts or omissions at work.

Policy statement

2 (Employer's name) is committed to achieving the highest possible standards of service and the highest possible ethical standards in public life and in all of its practices. To achieve these ends, it encourages freedom of speech. It also encourages staff to use internal mechanisms for reporting any malpractice or illegal acts or omissions by its employees or ex-employees.

Other policies and procedures

3 (Employer's name) has a range of policies and procedures, which deal with standards of behaviour at work; they cover Discipline, Grievance, Harassment and Recruitment and Selection. Employees are encouraged to use the provisions of these procedures when appropriate. There may be times, however, when the matter is not about your personal employment position and needs to be handled in a different way. Examples may be:

- ▶ **Malpractice or ill treatment of a patient/client/customer by a senior member of staff**
- ▶ **Repeated ill treatment of a patient/client/customer, despite a complaint being made**
- ▶ **A criminal offence has been committed, is being committed or is likely to be committed**
- ▶ **Suspected fraud**
- ▶ **Disregard for legislation, particularly in relation to health and safety at work**
- ▶ **The environment has been, or is likely to be, damaged**
- ▶ **Breach of standing financial instructions**
- ▶ **Showing undue favour over a contractual matter or to a job applicant**
- ▶ **A breach of a code of conduct**
- ▶ **Information on any of the above has been, is being, or is likely to be concealed**

This list is not exhaustive.

(Employer's name) will not tolerate any harassment or victimisation of a whistleblower (including informal pressures), and will treat this as a serious disciplinary offence, which will be dealt with under the Disciplinary Rules and Procedure.

Role of Trade Unions

4 (Employer's name) recognises employees may wish to seek advice and be represented by their trade union(s) officers when using the provisions of this policy, and acknowledges and endorses the role trade union officers play in this area.

Designated officers

5 The following people have been nominated and agreed by (employer's name) as designated officers for concerns under this procedure. They will have direct access to the most senior person in the organisation.

X	ADDRESS	TELEPHONE
Y	ADDRESS	TELEPHONE
Z	ADDRESS	TELEPHONE

Role of designated officer

6 Where concerns are not raised with the line manager, the designated officer will be the point of contact for employees who wish to raise concerns under the provisions of this policy. Where concerns are raised with him/her, he/she will arrange an initial interview, which will if requested be confidential, to ascertain the area of concern. At this stage, the whistleblower will be asked whether he/she wishes his/her identity to be disclosed and will be reassured about protection from possible reprisals or victimisation. He/she will also be asked whether or not he/she wishes to make a written or verbal statement. In either case, the designated officer will write a brief summary of the interview, which will be agreed by both parties.

Role of the most senior person in the organisation

7 The designated officer will report to the most senior person in the organisation, who will be responsible for the commission of any further investigation.

Complaints about the most senior person in the organisation

8 If exceptionally the concern is about the most senior person in (Employer's name), this should be made to the chair of the board/governing body, who will decide on how the investigation will proceed. This may include an external investigation.

The investigation

9 The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud. In certain cases, however, such as allegations of ill treatment of patients/clients/ customers, suspension from work may have to be considered immediately. Protection of patients/clients/customers is paramount in all cases.

9.1 The designated officer will offer to keep the whistleblower informed about the investigation and its outcome.

9.2 If the result of the investigation is that there is a case to be answered by any individual, the Disciplinary Rules and Procedure will be used.

9.3 Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the designated officer should ensure that the employee suffers no reprisals.

9.4 Only where false allegations are made maliciously, will it be considered appropriate to act against the whistleblower under the terms of the Disciplinary Rules and Procedure.

Inquiries

10 If the concern raised is very serious or complex, an inquiry may be held.

10.1 (Employer's name) recognises the contribution the trade union(s) can make to an inquiry, and agrees to consult with the trade union(s) about the scope and details of the inquiry, including the implementation of the recommendations of the inquiry. (Employer's name) recognises that in many cases it will be desirable that a trade union(s) representative will be appointed to the panel of the inquiry.

Following the investigation

11 The most senior person in the organisation will brief the designated officer as to the outcome of the investigation. The designated officer will then arrange a meeting with the whistleblower to give feedback on any action taken. (This will not include details of any disciplinary action, which will remain confidential to the individual concerned). The feedback will be provided within the time limits (to be specified).

11.1 If the whistleblower is not satisfied with the outcome of the investigation, (Employer's name) recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive, the Audit Commission, or the utility regulators, or, where justified, elsewhere).

The Law

I2 This policy and procedure has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act's provisions. The Act is incorporated into the Employment Rights Act 1996, which also already protects employees who take action over, or raise concerns about, health and safety at work.

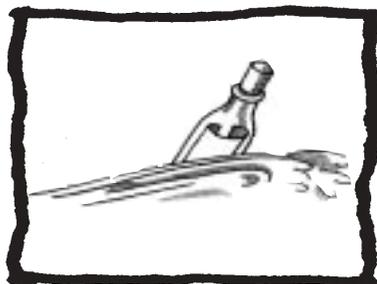
APPENDIX TWO

5

PRESCRIBED PERSONS

Disclosures of information may be made to the following persons, who have been prescribed by the Government:

- 1 **Health & Safety risks:** HSE and local authority
- 2 **Environmental issues:** the Environment Agency
- 3 **Utilities:** OFTEL, OFFER, OFWAT, OFGAS, Rail Regulator
- 4 **Financial Services & the City:** Financial Services Authority (and pending its full operation, its predecessor bodies); HM Treasury (insurance)
- 5 **Fraud & fiscal irregularities:** Serious Fraud Office, Inland Revenue, Customs & Excise
- 6 **Public sector finance:** NAO, Audit Commission, Accounts Commission for Scotland
- 7 **Company law:** Department of Trade & Industry
- 8 **Competition & consumer law:** Office of Fair Trading and local authority
- 9 **Others:** Certification Officer (Trade Unions), Civil Aviation Authority, Charity Commission, Criminal Cases Review Commission, Data Protection Registrar, Occupational Pensions Regulatory Authority.



6

APPENDIX THREE

PUBLIC INTEREST DISCLOSURE ACT 1998

The Public Interest Disclosure Act 1998 came into force in July 1999. Its purpose is to protect workers from victimisation, who want to raise concerns about malpractice, in good faith, in ways specified by the Act.



The popular term for such employees is ‘whistleblower’. The Act does not actually use the term “whistleblowers”, referring instead to “qualifying disclosures” by “workers”.

The Act directs the worker toward raising the matter internally in the first place and, where there is an internal whistleblowing procedure, to use it. However the Act will protect workers where they make an external disclosures in a range of circumstances. If a worker chooses to disclose information in a way which is not covered by the Act, he/she will lose its protection.

Malpractice

The Act applies to people at work raising genuine concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these. It applies whether or not

the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals covered

In addition to employees, it covers workers, contractors, trainees, agency staff, homeworkers, and every self-employed professional in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply to this Act. It does not presently cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, the army or police officers.

Internal disclosures

A disclosure made in good faith to the employer (which may include a manager or director or through an agreed whistleblowing procedure) will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the malpractice, this same test applies to disclosures made to him.

Disclosures for advice

A disclosure made for the purpose of obtaining legal advice is protected. Disclosures to union officials under agreed whistleblowing procedures would also be protected.

Disclosures to Ministers

The same test applies where someone in a public body subject to ministerial appointment (e.g. the NHS and many 'quangos') blows the whistle direct to a Minister in the sponsoring Department.

Regulatory disclosures

The Act makes special provision for disclosures in good faith to prescribed persons. These are likely to be regulators such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority. Such disclosures will be protected where the whistleblower

meets the tests for internal disclosures and, additionally, honestly and reasonably believes that the information and any allegation in it are substantially true.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain.

The whistleblower must, however, meet a precondition to win protection for a wider disclosure. This is either that (a) he/she reasonably believed he/she would be victimised if he/she had raised the matter internally or with a prescribed regulator; or (b) there was no prescribed regulator; and he/she reasonably believed the evidence was likely to be concealed or destroyed; or (c) the concern had already been raised with the employer or a prescribed regulator; or that (d) the concern is of an exceptionally serious nature.

If these provisions are met and the tribunal is satisfied that that disclosure was reasonable, the whistleblower will be protected. In deciding the reasonableness of the disclosure, the tribunal will consider all the circumstances, including the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence which the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the tribunal will also consider the reasonableness of their response. Finally, if the concern had been raised with the employer, the tribunal will consider whether any whistleblowing procedure in the organisation was or should have been used.

Full protection

Where a whistleblower is victimised or dismissed in breach of the Act he can bring a claim to an employment tribunal

for compensation. All awards will be uncapped and based on the losses suffered (though for victimisation short of dismissal the overriding requirement is that the award should be just and equitable). Where the whistleblower is an employee and he/she is sacked, he/she may within seven days seek interim relief so that his/her employment continues or is deemed to continue until the full hearing.

Confidentiality clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Secrecy offences

Where the disclosure of the information is in breach of the Official Secrets Act or another secrecy offence, the whistleblower will lose the protection of the Public Interest Disclosure Act if he/she has been convicted of the offence or if an employment tribunal is satisfied, effectively beyond reasonable doubt, that he/she was guilty of the secrecy offence.

Whistleblowing procedures

Though the Act does not require organisations to set up whistleblowing procedures, the existence of the Act will encourage the adoption of such procedures. Key aspects of such procedures, as endorsed by the Committee on Standards in Public Life are:

- ▶ a clear statement that malpractice is taken seriously in the organisation;
- ▶ respect for the confidentiality of staff raising concerns, if they wish it;
- ▶ the opportunity to raise concerns outside the line management structure;
- ▶ access to independent advice;
- ▶ an indication of the proper way in which concerns may be raised outside the organisation if necessary; and
- ▶ penalties for making false allegations maliciously.

ADDITIONAL PROTECTION DURING UNOFFICIAL INDUSTRIAL ACTION

Generally, a person taking unofficial industrial action who is dismissed cannot bring a claim for unfair dismissal. There are various statutory exceptions (for example if the main reason for the dismissal is, in fact, carrying out specific health and safety activities). Those exceptions have now been extended (Section 16 of the 1998 Act) to apply to cases where the main reason for the dismissal is a protected disclosure.

WHERE TO FIND THE ACT'S PROVISIONS

This Appendix refers to some sections of the 1998 Act above. The Act itself, however, incorporates its provisions into the Employment Rights Act 1996, mostly in new sections 43A to 43L, but also in other new sections.

FURTHER HELP



For further advice, contact your regional officer and national service group officers.

You can also get advice from:

Public Concern at Work

Suite 306

16 Baldwins Gardens

London EC1N 7RJ

Tel: 0207 404 6609

Fax: 0207 404 6576

Email: whistle@pcaw.demon.co.uk

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