



Department for Business Innovation & Skills

WHISTLEBLOWING

Guidance for Employers and
Code of Practice

MARCH 2015

Contents

What is whistleblowing?	3
What are an employer's responsibilities in regards to whistleblowing?	3
Recognising workers are valuable ears and eyes:.....	4
Getting the right culture:.....	4
Training and support:	4
Being able to respond:	4
Better control:.....	4
Resolving the wrongdoing quickly:	4
Communicate policy and procedure	5
How?.....	5
Has the issue been resolved	5
Disclosure or grievance?	5
Is there a standard whistleblowing policy?	6
Promoting a policy and making sure it is easily accessible	7
Written policies are not enough.....	7
Deciding how to deal with the whistleblowing disclosure.....	7
Dealing with disclosures	8
What happens when a worker blows the whistle to someone other than their employer?	9
What happens if a whistleblower believes they have been unfairly treated?	9
Confidentiality	10
Whistleblowing Code of Practice.....	11

What is whistleblowing?

Whistleblowing is the term used when a worker passes on information concerning wrongdoing. In this guidance, we call that “making a disclosure” or “blowing the whistle”. The wrongdoing will typically (although not necessarily) be something they have witnessed at work.

To be covered by whistleblowing law, a worker who makes a disclosure must reasonably believe two things. The first is that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistleblowing law.

The second thing that a worker must reasonably believe is that the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the following categories:

- criminal offences (this may include, for example, types of financial impropriety such as fraud)
- failure to comply with an obligation set out in law
- miscarriages of justice
- endangering of someone’s health and safety
- damage to the environment
- covering up wrongdoing in the above categories

Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). It provides the right for a worker to take a case to an employment tribunal if they have been victimised at work or they have lost their job because they have ‘blown the whistle’.

What are an employer’s responsibilities in regards to whistleblowing?

As an employer it is good practice to create an open, transparent and safe working environment where workers feel able to speak up. Although the law does not require employers to have a whistleblowing policy in place, the existence of a whistleblowing policy shows an employer’s commitment to listen to the concerns of workers. By having clear policies and procedures for dealing with whistleblowing, an organisation demonstrates that it welcomes information being brought to the attention of management. This is also demonstrated by the following:

Recognising workers are valuable ears and eyes: Workers are often the first people to witness any type of wrongdoing within an organisation. The information that workers may uncover could prevent wrongdoing, which may damage an organisation's reputation and/or performance, and could even save people from harm or death.

Getting the right culture: If an organisation hasn't created an open and supportive culture, the worker may not feel comfortable making a disclosure, for fear of the consequences. The two main barriers whistleblowers face are a fear of reprisal as a result of making a disclosure and that no action will be taken if they do make the decision to 'blow the whistle'. There have been a number of high profile cases, including evidence collated by the Mid-Staffordshire NHS Foundation Trust Public Inquiry¹, the Freedom to Speak Up Independent Review into creating an open and honest culture in the NHS²; and the Parliamentary Commission on Banking Standards³ that confirm many workers are scared of speaking up about poor practice. Making sure your staff can approach management with important concerns is the most important step in creating an open culture. Employers should demonstrate, through visible leadership at all levels of the organisation, that they welcome and encourage workers to make disclosures.

Training and support: An organisation should implement training, mentoring, advice and other support systems to ensure workers can easily approach a range of people in the organisation.

Being able to respond: It is in the organisation's best interests to deal with a whistleblowing disclosure when it is first raised by a worker. This allows the organisation to investigate promptly, ask further questions of a worker and where applicable provide feedback. A policy should help explain the benefits of making a disclosure.

Better control: Organisations that embrace whistleblowing as an important source of information find that managers have better information to make decisions and control risk. Whistleblowers respond more positively when they feel that they are listened to.

Resolving the wrongdoing quickly: There are benefits for the organisation if a worker can make a disclosure internally rather than going to a third party. This way there is an opportunity to act promptly on the information and put right whatever wrongdoing is found.

¹ <http://www.midstaffspublicinquiry.com/>

² <https://freedomtospeakup.org.uk/the-report/>

³ <http://www.publications.parliament.uk/pa/jt201213/jtselect/jtpcbs/98/98.pdf>

Communicate policy and procedure

Having a policy is a good first step to encourage workers to blow the whistle but each organisation needs to let its workers know about the policy and make sure they know how to make a disclosure. Some organisations choose to publicise their policy via their intranet or through a staff newsletter. If an organisation recognises a trade union it might develop a policy in consultation with them. It is a good idea for organisations to share the information with all staff regularly to make sure they are all reminded of the policy and procedures and to inform any newcomers. Providing training at all levels of an organisation on the effective implementation of whistleblowing arrangements will help to develop a supportive and open culture.

How? When someone blows the whistle an organisation should explain its procedures for making a disclosure and whether the whistleblower can expect to receive any feedback. Often a whistleblower expects to influence the action the organisation might take, or expects to make a judgement on whether an issue has been resolved – such expectations need to be managed.

Has the issue been resolved? It is for the organisation to be satisfied that the disclosure has been acted upon appropriately and that the issue has been resolved. There should be clear and prompt communications between the whistleblower and the organisation. It is best practice for organisations to provide feedback to whistleblowers, within the confines of their internal policies and procedures. Feedback is vital so that whistleblowers understand how their disclosure has been handled and dealt with. If a whistleblower is unhappy with the process or the outcome it will make them more likely to approach other individuals and organisations to ‘blow the whistle’, such as a “prescribed person”.

Disclosure or grievance?

Sometimes an employee believes they are blowing the whistle when, in fact, their complaint is a personal grievance. Workers who make a disclosure under an organisation’s whistleblowing policy should believe that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistleblowing law. It is important that any policy, procedures and other communications make this clear.

An organisation may want to direct workers to the Government’s guidance for whistleblowers to verify the position that a personal grievance is not generally regarded as a protected disclosure. Workers can also contact the Advisory, Conciliation and Arbitration Service (Acas) for guidance on whistleblowing and grievances. Useful information can be found at: www.acas.org.uk/grievances, add link to whistleblowing page

Is there a standard whistleblowing policy?

There is no one-size-fits-all whistleblowing policy as policies will vary depending on the size and nature of the organisation. Some organisations may choose to have a standalone policy whereas others may look to implement their policy into a code of ethics or may have 'local' whistleblowing procedures relevant to their specific business units.

A large organisation may have a policy where employees can contact their immediate manager or a specific team of individuals who are trained to handle whistleblowing disclosures. Smaller organisations may not have sufficient resources to do this.

Any whistleblowing policies or procedures should be clear, simple and easily understood.

Here are some tips about what a policy should include:

- An explanation of what whistleblowing is, particularly in relation to the organisation
- A clear explanation of the organisation's procedures for handling whistleblowing, which can be communicated through training
- A commitment to training workers at all levels of the organisation in relation to whistleblowing law and the organisation's policy
- A commitment to treat all disclosures consistently and fairly
- A commitment to take all reasonable steps to maintain the confidentiality of the whistleblower where it is requested (unless required by law to break that confidentiality)
- Clarification that any so-called 'gagging clauses' in settlement agreements do not prevent workers from making disclosures in the public interest
- An idea about what feedback a whistleblower might receive
- An explanation that anonymous whistleblowers will not ordinarily be able to receive feedback and that any action taken to look into a disclosure could be limited – anonymous whistleblowers may seek feedback through a telephone appointment or by using an anonymised email address
- A commitment to emphasise in a whistleblowing policy that victimisation of a whistleblower is not acceptable. Any instances of victimisation will be taken seriously and managed appropriately
- An idea of the time frame for handling any disclosures raised
- An idea of the time frame for handling any disclosures raised
- Clarification that the whistleblower does not need to provide evidence for the employer to look into the concerns raised
- Signpost to information and advice to those thinking of blowing the whistle, for example the guidance from the Government, Acas, Public Concern at Work or Trade Unions
- Information about blowing the whistle to the relevant prescribed person(s)

Promoting a policy and making sure it is easily accessible

It's no good having a policy in place if no one knows about it. Actively promoting a policy shows the organisation is genuinely open to hearing concerns from its staff. Managers and leaders in the organisation can also promote a policy in the way they behave at work. Conduct and written policies will help to create an open culture, which will increase the likelihood of a worker speaking up about any wrongdoing they come across.

Written policies are not enough. Training should be provided to all staff on the key arrangements of the policy. Additional training should be provided to those with whistleblowing responsibilities, such as managers or designated contacts, so they are able to provide guidance confidently to workers. Managers should also lead by example and ensure they are committed to creating an open culture where disclosures are welcome. It is also a good idea to include handling whistleblowing disclosures as part of discipline and grievance training for managers and staff. Training should be offered at regular points to make sure it stays fresh in managers' minds and to capture any newcomers to the organisation.

Here are some ideas about how to promote a policy:

- Hold a staff session or in larger organisations require managers to hold smaller, consistent team meetings
- Make the policy accessible on the staff intranet
- Appoint a whistleblowers' champion to drive the commitment to valuing whistleblowing and protecting whistleblowers within the organisation
- Use promotional posters around the building
- Include the policy within induction packs for newcomers
- Set the policy out in staff handbooks and contracts

Deciding how to deal with the whistleblowing disclosure

Where a worker feels able to do so they may make a disclosure to their immediate manager who will be able to decide whether they can take forward the disclosure or whether it will require escalation. An organisation will need to equip managers with the knowledge and confidence to make these judgements. A whistleblowing policy and training can help with this.

Larger organisations may have a designated team who can be approached when workers make a disclosure. Although this may not be possible for smaller organisations, it is

considered best practice that there is at least one senior member of staff as a point of contact for individuals who wish to blow the whistle. This is particularly helpful in cases where the immediate line management relationship is damaged or where the disclosure involves the manager. Alternatively, there are commercial providers who will manage a whistleblowing process on the employer's behalf.

Dealing with disclosures

Once a disclosure has been made it is good practice to hold a meeting with the whistleblower to gather all the information needed to understand the situation. In some cases a suitable conclusion may be reached through an initial conversation with a manager. In more serious cases there may be a need for a formal investigation. It is for the organisation to decide what the most appropriate action to take is.

It is important to note that if an investigation concludes that the disclosure was untrue it does not automatically mean that it was raised maliciously by a worker.

When dealing with disclosures, it is good practice for managers to:

- Have a facility for anonymous reporting
- Treat all disclosures made seriously and consistently
- Provide support to the worker during what can be a difficult or anxious time with access to mentoring, advice and counselling
- Reassure the whistleblower that their disclosure will not affect their position at work
- Document whether the whistleblower has requested confidentiality
- Manage the expectations of the whistleblower in terms of what action and/or feedback they can expect as well clear timescales for providing updates
- Produce a summary of the meeting for record keeping purposes and provide a copy to the whistleblower
- Allow the worker to be accompanied by a trade union representative or colleague at any meeting about the disclosure, if they wish to do so
- Provide support services after a disclosure has been made such as mediation and dispute resolution, to help rebuild trust and relationships in the workplace

It will be useful to document any decisions or action taken following the making of a disclosure by a worker.

It is also good practice for organisations to:

- Record the number of whistleblowing disclosures they receive and their nature
- Maintain records of the date and content of feedback provided to whistleblowers
- Conduct regular surveys to ascertain the satisfaction of whistleblowers.

What happens when a worker blows the whistle to someone other than their employer?

Ideally workers will feel able to make a disclosure to their organisation. Good policies and procedures for handling whistleblowing will help encourage this. However, there may be circumstances where they feel unable to. There are other ways, some of which are set out in law, that a worker may make a disclosure without losing their rights under whistleblowing law. One option for external disclosures of this type is prescribed persons. Prescribed persons are mainly regulators and professional bodies but include other persons and bodies such as MPs. The relevant prescribed person depends on the subject matter of the disclosure, for example a disclosure about wrongdoing in a care home could be made to the Care Quality Commission.

A complete list of prescribed persons can be found [here](https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2).
(<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>)

Prescribed persons have individual policies and procedures for handling concerns and complaints. Generally these will be accessible on their websites.

Alternatively, a worker might choose to approach the media with their concerns. If a worker goes to the media, they can expect in most cases to lose their whistleblowing law rights. It is only in exceptional circumstances that a worker can go to the media without losing their rights. They must reasonably believe that the information they disclose and any allegation contained in it are substantially true. They cannot be acting for personal gain. Unless the wrongdoing is exceptionally serious, if they have not already gone to their employer or a prescribed person, they must reasonably believe that their employer will subject them to "detiment" or conceal or destroy evidence if they do so. And even then, their choice to make the disclosure must be reasonable.

What happens if a whistleblower believes they have been unfairly treated?

If a whistleblower believes that they have been unfairly treated because they have blown the whistle they may decide to take their case to an employment tribunal. The process for this would involve attempted resolution through the Advisory, Conciliation and Arbitration Service (Acas) early conciliation service.

Information can be found at: www.acas.org.uk/conciliation and the Acas helpline can provide further advice.

The Acas helpline details are:

Telephone:
Textphone:
Monday to Friday, 8am to 8pm
Saturday, 9am to 1pm

Confidentiality

There may be good reasons why a worker wishes their identity to remain confidential. The law does not compel an organisation to protect the confidentiality of a whistleblower. However, it is considered best practice to maintain that confidentiality, unless required by law to disclose it. Managers dealing with whistleblowing concerns should be briefed to ensure they understand how to handle the disclosure and protect personal information.

It will help to manage the expectations of whistleblowers if the risk that some colleagues may still speculate about who has raised the concern is explained to them.

Anonymous information will be just as important for organisations to act upon. Workers should be made aware that the ability of an organisation to ask follow up questions or provide feedback will be limited if the whistleblower cannot be contacted. It may be possible to overcome these challenges by using telephone appointments or through an anonymised email address.

Workers should be made aware that making a disclosure anonymously means it can be more difficult for them to qualify for protections as a whistleblower. This is because there would be no documentary evidence linking the worker to the disclosure for the employment tribunal to consider.

Whistleblowing Code of Practice

It is important that employers encourage whistleblowing as a way to report wrongdoing and manage risks to the organisation. Employers also need to be well equipped for handling any such concerns raised by workers. It is considered best practice for an employer to:

- Have a whistleblowing policy or appropriate written procedures in place
- Ensure the whistleblowing policy or procedures are easily accessible to all workers
- Raise awareness of the policy or procedures through all available means such as staff engagement, intranet sites, and other marketing communications
- Provide training to all workers on how disclosures should be raised and how they will be acted upon
- Provide training to managers on how to deal with disclosures
- Create an understanding that all staff at all levels of the organisation should demonstrate that they support and encourage whistleblowing
- Confirm that any clauses in settlement agreements do not prevent workers from making disclosures in the public interest
- Ensure the organisation's whistleblowing policy or procedures clearly identify who can be approached by workers that want to raise a disclosure. Organisations should ensure a range of alternative persons who a whistleblower can approach in the event a worker feels unable to approach their manager. If your organisation works with a recognised union, a representative from that union could be an appropriate contact for a worker to approach
- Create an organisational culture where workers feel safe to raise a disclosure in the knowledge that they will not face any detriment from the organisation as a result of speaking up.
- Undertake that any detriment towards an individual who raises a disclosure is not acceptable
- Make a commitment that all disclosures raised will be dealt with appropriately, consistently, fairly and professionally

- Undertake to protect the identity of the worker raising a disclosure, unless required by law to reveal it and to offer support throughout with access to mentoring, advice and counselling
- Provide feedback to the worker who raised the disclosure where possible and appropriate subject to other legal requirements. Feedback should include an indication of timings for any actions or next steps



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk GRO

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication available from www.gov.uk/bis

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills

1 Victoria Street
London SW1H 0ET

Tel: [03000 550 100](tel:03000 550 100) GRO

Email: enquiries@bis.gov.uk GRO