

WHISTLE-BLOWING POLICY

1. INTRODUCTION

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.

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:

- the Disclosure in question must relate to one of the specified categories contained within the Act; and
- the Disclosure must be made in one of the ways specified.

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.

On a practical note, the Care Standards Act 2000, through the Nurses Agencies Regulations & Domiciliary Care Regulations and the associated standards require the agency 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 policy 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.

1.1. Subject Matter of the Disclosure

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:

- that a criminal offence has been committed, is being committed or is likely to be committed; or
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject; or
- that a miscarriage of justice has occurred, is occurring or is likely to occur; or
- that the health or safety of an individual has been, or is being or is likely to be endangered; or
- that the environment has been, is being or is likely to be damaged, or
- 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.

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:

- if the person making the Disclosure commits an offence by making it, or
- it is a matter in which a legal, professional privilege would apply, namely, correspondence between the employer and their lawyers regarding a specific case.

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.

1.2. Procedures for Disclosures

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.

The six permitted ways of Disclosure are as follows:

1) Disclosure to an Employer or Other Responsible Person

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.

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 agency/employment business.

2) Disclosure to a Legal Adviser

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

3) Disclosure to a Minister of the Crown

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.

4) Disclosure to a Prescribed Person

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.

5) Disclosure in Other Cases

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:

- 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;
- 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
- 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.

6) Disclosure of Exceptionally Serious Breaches

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.

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

1.3. Protection for the Worker

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.

1.4. Practical Issues

The agency should take whistle-blowing and issues of malpractice seriously.

A whistle-blowing policy, such as that which is available from the REC specifically for nurses and domiciliary care agencies, should make it clear that the worker wishing to voice his/her concern should raise the matter with the named person first, who will deal with the matter objectively. It is important that the agency takes the time to listen to any issues raised and investigates in an objective and confidential manner. Issues should be dealt with when they arise and workers should not be told to wait until they have proof of or to investigate the matters themselves.

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.

However, workers who make false allegations maliciously may be subject to the appropriate action.

If there is not a sufficiently senior person to deal with the complaint within the organisation, then external routes should be considered. Agencies are referred to the Public Concern At Work web-site for further information, particularly the practical hints for small organisations. This can be down-loaded from the following web-site: www.pcaw.co.uk/policy_pub/checklist.html.

APPENDIX A:

<i>First Column</i>	<i>Second Column</i>
<i>Persons and descriptions of people to whom disclosures may be made</i>	<i>Descriptions of matters about which disclosure may be made</i>
Accounts Commission for Scotland and auditors appointed by the Commission to audit the accounts of local government bodies.	The proper conduct of public business, value for money, fraud and corruption in local government bodies.
Audit Commission for England and Wales and auditors appointed by the Commission to audit the accounts of local government, and health service, bodies.	The proper conduct of public business, value for money, fraud and corruption in local government, and health service, bodies.
Certification Officer.	Fraud, and other irregularities, relating to the financial affairs of trade unions and employers' associations.
Charity Commissioners for England and Wales.	The proper administration of charities and of funds given or held for charitable purposes.
The Scottish Ministers.	The proper administration of charities and of funds given or held for charitable purposes.
Chief Executive of the Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Chief Executive of the Scottish Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Civil Aviation Authority.	Compliance with the requirements of civil aviation legislation including aviation safety.
The competent authority under Part IV of the Financial Services and Markets Act 2000.	The listing of securities on a stock exchange; prospectuses on offers of transferable securities to the public.
Commissioners of Customs and Excise.	Value added tax, insurance premium tax, excise duties and landfill tax. The import and export of prohibited or restricted goods.
Commissioners of the Inland Revenue.	Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the National Minimum Wage.
Comptroller and Auditor General of the National Audit Office.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally-

	funded public services.
Auditor General for Wales.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.
Auditor General for Scotland and persons appointed by or on his behalf under the Public Finance and Accountability (Scotland) Act 2000 to act as auditors or examiners for the purposes of Sections 21 to 24 of that Act.	The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.
Audit Scotland.	The proper conduct of public business, value for money, fraud and corruption in public bodies.
Director General of Electricity Supply.	The generation, transmission, distribution and supply of electricity, and activities ancillary to these matters.
Director General of Gas Supply.	The transportation, shipping and supply of gas through pipes and activities ancillary to these matters.
Director General of Telecommunications.	The provision and use of telecommunications systems, services and apparatus.
Director General of Water Services.	The supply of water and the provision of sewerage services.
Water Industry Commissioner for Scotland.	The supply of water and the provision of sewerage services.
Director of the Serious Fraud Office.	Serious or complex fraud.
Lord Advocate, Scotland.	Serious or complex fraud.
Environment Agency.	Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to pollution, abstraction of water, flooding, the flow in rivers, inland fisheries and migratory salmon or trout.
Scottish Environment Protection Agency.	Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to flood warning systems and pollution.
Food Standards Agency.	Matters which may affect the health of any member of the public in relation to the consumption of food and other matters concerning the protection of the interests of consumers in relation to food.
Financial Services Authority.	The carrying on of investment business

	or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies; the functioning of financial markets, investment exchanges and clearing houses; money laundering, financial crime, and other serious financial misconduct, in connection with activities regulated by the Financial Services Authority.
General Social Care Council.	Matters relating to the registration of social care workers under the Care Standards Act 2000.
Care Council for Wales.	Matters relating to the registration of social care workers under the Care Standards Act 2000.
Scottish Social Services Council.	Matters relating to the registration of the social services workforce by the Scottish Social Services Council.
Children's Commissioner for Wales.	Matters relating to the rights and welfare of children.
Health and Safety Executive.	Matters which may affect the health or safety of any individual at work; matters, which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work.
Housing Corporation.	The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.
Local authorities which are responsible for the enforcement of health and safety legislation.	Matters which may affect the health or safety of any individual at work; matters, which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work.
Information Commissioner.	Compliance with the requirements of legislation relating to data protection and to freedom of information.
Scottish Information Commissioner.	Compliance with the requirements of legislation relating to freedom of information.
National Care Standards Commission.	Matters relating to the provision of regulated care services, as defined in the Care Standards Act 2000.

National Assembly for Wales.	<p>Matters relating to the provision of social care services liable to be registered or inspected under the Care Standards Act 2000 or the Children Act 1989.</p> <p>The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.</p>
Scottish Commission for the Regulation of Care.	Matters relating to the provision of care services, as defined in the Regulation of Care (Scotland) Act 2001.
Occupational Pensions Regulatory Authority.	Matters relating to occupational pension schemes and other private pension arrangements.
Office of Fair Trading.	<p>Matters concerning the sale of goods or the supply of services, which adversely affect the interests of consumers.</p> <p>Competition affecting markets in the United Kingdom.</p>
Rail Regulator.	The provision and supply of railway services.
Standards Board for England.	Breaches by a member or co-opted member of a relevant authority (as defined in Section 49(6) of the Local Government Act 2000) of that authority's Code of Conduct.
Local Commissioner in Wales.	Breaches by a member or co-opted member of a relevant authority (as defined in section 49(6) of the Local Government Act 2000) of that authority's Code of Conduct.
Standards Commission for Scotland and the Chief Investigating Officer.	Breaches by a councillor or a member of a devolved public body (as defined in Section 28 of the Ethical Standards in Public Life, etc., (Scotland) Act 2000) of the Code of Conduct applicable to that councillor or member under that Act.
Treasury.	The carrying on of insurance business.
Secretary of State for Trade and Industry.	<p>Fraud, and other misconduct, in relation to companies, investment business, insurance business, or multi-level marketing schemes (and similar trading schemes); insider dealing.</p> <p>Consumer safety.</p>
Secretary of State for Transport.	Compliance with merchant shipping law, including maritime safety.
Local authorities which are responsible	Compliance with the requirements of

for the enforcement of consumer protection legislation.	consumer protection legislation.
Local authorities which are responsible for the enforcement of food standards.	Compliance with the requirements of food safety legislation.
A person ("person A") carrying out functions, by virtue of legislation, relating to relevant failures falling within one or more matters within a description of matters in respect of which another person ("person B") is prescribed by this Order, where person B was previously responsible for carrying out the same or substantially similar functions and has ceased to be so responsible.	Matters falling within the description of matters in respect of which person B is prescribed by this Order, to the extent that those matters relate to functions currently carried out by person A.