



Whistle-Blowing

All agencies whether from the statutory, voluntary, independent or private sector should have their own procedures to enable staff to express their concerns. These may be called 'whistle-blowing' procedures or codes of conduct/practice.

The client's interest is paramount and the common law 'duty of care' requires that each employee has a responsibility to:

- Draw attention to any matter they consider to be damaging to the interests of a service user, carer or colleague
 - Put forward suggestions that may improve a service
 - Correct any statutory omissions
 - Prevent malpractice.
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The Public Interest Disclosure Act 1998

People have in the past often been deterred from 'whistle-blowing' about abuse or neglect by duties of confidentiality and/or fear of the consequences of speaking out.

The Public Interest Disclosure Act seeks to protect disclosure of the following:

- A criminal offence (past, ongoing or prospective)
- Failure to meet a legal obligation
- A miscarriage of justice
- Health and safety being endangered
- Risk of environmental damage

OR deliberate concealment of any of the above.



The Act envisages that disclosure about such malpractice will generally be made in the in the first instance to the person's employer, or another person or body who appears responsible for the malpractice (e.g. a relative of a resident reporting matters to managers of a Home).

The Act envisages employers establishing procedures, so staff that may have justified concerns about breaches of practice or the law can pass on these concerns to be investigated.

Whistle-blowers are only protected by the Act if they are acting in good faith, and reasonably believe that their allegations are true. Allegations made for financial gain are not protected, even if they are true.

Staff making disclosures to people, other than their employer, are likely to be protected if:

- They reasonably believe that they will be treated detrimentally for disclosing to the employer
- They reasonably believe that the evidence will be destroyed or hidden if the employer is 'tipped off'
- The employer has been told, but has not taken appropriate action.

Disclosure to third parties must be a 'reasonable' step in all circumstances, including:

- Whom one tells (e.g. disclosure to a statutory inspectorate in preference to the press)
- How serious the concern is, and whether it is a continuing problem
- Whether the employer has a whistle-blowing procedure and if so, whether the employee has followed it
- In addition, if the failure is 'exceptionally serious' (a term not defined in the Act), it may be justified for the whistle-blower to disclose to a third party in the first instance, rather than their employer.

A disclosure made in accordance with the Act's expectations will mean that:

- No confidentiality clause in an employment contract can be used to prevent one from disclosing relevant breaches of the law or practice. This means that employers who are responsible for breaking a law, or for abuse or neglect or other malpractice cannot use confidentiality terms, in employment contracts.
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Someone who is treated detrimentally at work because of making a disclosure that is protected by the Act can claim compensation at the Employment Tribunal.

Whistle-blowers will always:

- Be treated seriously
 - Be treated confidentially where relevant
 - Be treated in a fair and equitable manner
 - Be kept informed of action taken and its outcome
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If you require further information or advice, please contact:

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