

'The How to'

Easy Guide

Raising Concerns

And Whistleblowing

Forward

Over the last year we have seen a number of high profile cases where Safeguarding and Patient Safety have been seriously lacking and downright dangerous for our Patients and Service users.

Having reviewed what information that is available for staff, carers and patients/service users we decided to produce another of our Easy Guides.

We have tried to keep this as simple as possible while answering the most frequently asked questions here at our offices.

It is very difficult to watch and standby as someone is not receiving the best possible care or, worse are being abused. Likewise if you have concerns regarding 'sharp practices', which you are aware of within an organisation then you should raise your concerns.

This Easy Guide does not cover the necessity for reporting all cases of Safeguarding issues, however it does give you some background to the Whistleblowing process and to whom you should direct your concerns.

We hope you find this useful and do let us have some feedback on

<http://www.healthcarelandscape.co.uk/contact.html>

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What is Whistleblowing?

Whistleblowing is the term used when:

- Someone directly employed by a Care Quality Commission (CQC) registered provider or someone providing a service for the provider reports concerns where there is: harm, or the risk of harm, to people, or possible criminal activity

And

- The management have not dealt with those concerns by discussing them or by using the employer's own Whistleblowing policy, or
- Where the worker does not feel confident that the management will deal with those concerns properly and then contacts an organisation like the CQC, which is the Health and Social care services regulator.

The Public Interest Disclosure Act 1998 (**PIDA**) protects a worker who reports concerns about where they work if that worker genuinely believes their concerns are true. To qualify for protection, a concern must be a 'protected disclosure'.

What is a Protected Disclosure?

For a worker's disclosure to be protected by PIDA they should make it to the right person and in the right way. They must:

- Make sure the information meets the 'qualifying' requirements (see the list at the end of the Easy Guide).
- Make the disclosure in good faith, which means with honest intent and without malice.
- Reasonably believe that the information is substantially true.
- Reasonably believe that they are making the disclosure to the right 'specified person'.

PIDA provides protection for people who can make protected disclosures.

These people are:

- Workers who are directly employed by the CQC registered provider.
- Workers who have left their job after making a protected disclosure.
- Other workers who provide services to the CQC registered provider.

Examples are;

Agency staff, visiting community health staff, GPs, independent activities organisers, contractors, visiting hairdressers and volunteers. This is not a complete list – there will be other types of workers that provide services to a CQC registered provider.

If a **worker** makes a disclosure after they leave their job, they may be protected by PIDA. They may wish to take legal advice to clarify this, or talk to the charity Public Concern at Work. Their website provides advice to workers and employers at: www.pcaw.co.uk/index.htm. The CQC cannot give legal advice to workers or employers. Healthcare Landscape has provided this document as guidance only – it is not legal advice.

Other people who are not workers can raise concerns about a service with the registered provider or with organisations such as CQC, but PIDA does not cover such disclosures and this is **not called 'Whistleblowing'**

So now you have the information as to what is considered reason for Whistleblowing but here is what you can do when you feel that things are not right.

1. In the first place, it might be best to talk informally to the manager or someone else in authority at the service.
2. You should also follow any of the service's internal policies about reporting concerns or making statutory notifications to regulators such as CQC.
3. Managers should deal quickly and effectively with concerns from staff about their service. However, if you have tried this, and you do not think the management has dealt with your concern properly, you can take the matter further.
4. Many employers have their own **Whistleblowing policy and procedure**, which you should follow in the first place.
5. If there is no Whistleblowing policy where you work, or you are still not satisfied after using it, you can report your concerns to a 'prescribed body' for example the CQC and continue to have the protection of the law under PIDA.

Workers not directly employed by the service

If you are a worker who is not directly employed by the service in question you might also want to discuss your concerns with your own line manager so that they can consider what action to take.

Example;

A community physiotherapist may have concerns about a care home they visit and report these to their line manager in their NHS trust. These disclosures are also protected.

How to raise a concern

If you are an employee or are a member of the public and you have serious concerns about care or services being provided then you can **contact the CQC Care Quality Commission on.**

This is the CQC Logo and these are the contact details for them



Telephone: 03000 616161

Email: enquiries@cqc.org.uk

Their opening hours are Monday to Friday: 8.30am to 5:30pm

You can also write to them at:

CQC National Correspondence Citygate Gallowgate Newcastle upon Tyne NE1 4PA

You can report a situation **anonymously** to CQC. There is more information on this on their website

<http://www.cqc.org.uk/aboutcqc/howwedoit/usinginformation.cfm>

I am afraid Healthcare Landscape cannot accept notifications of Whistleblowing as we are not a regulator.

What does CQC do with the information you give them?

There are a number of ways CQC may respond, depending on what you tell them, and how serious the matter is. In the first place, they will need to decide if:

- The concern is within the scope of their regulatory duties.
- They will make sure they are the right organisation to investigate the concern.
- Or if another organisation is best placed to deal with the concern instead of, or as well as CQC. For example, the General Medical Council (GMC) will look at the fitness to practise of a doctor and CQC will consider the impact on the people who use the service where that doctor works, if its service is regulated by CQC

So what will CQC do with the information I have given them?

They will do one or more of the following:

- Note your concern for information – they will log it and check whether it adds to existing concerns about the provider, or whether it is a new concern. All concerns will be seen by the CQC inspector for the service. The inspector will consider the information when monitoring the provider's compliance with the essential standards of quality and safety (Legal requirement).
- Use the information to help CQC to decide whether to urgently review the compliance of the service or bring forward a planned review.
 - Notify the police if the information is about possible illegal activity.
 - Notify another regulatory body or authority and request their intervention.
- CQC can notify the local Council safeguarding lead to investigate any concerns you have raised if they feel that this is required

Is Whistleblowing the same as a complaint?

No. Whistleblowing refers only to situations where a worker raises concerns in qualifying disclosures about where they work, or used to work.

For complaints each organisation will have a complaints process and they will be able to offer you support in making such a complaint if not then please get in contact with CQC at the address above for further help and advice.

Raising concerns other than Whistleblowing if you have a concern about a health and social care service provider then please raise these with your local advocate alternatively please do let CQC as this may be the final 'cog in the wheel' to trigger an inspection of this service.

Patient/service user care and safety is very important and if you have concerns then you should air them.

What does the Public interest disclosure act (PIDA) say?

The Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a 'protected disclosure'.

To qualify as a 'protected disclosure' the disclosure must satisfy a number of requirements under PIDA:

1. The worker must have made a 'qualifying disclosure'. This is a disclosure of information which, in the reasonable belief of the worker, 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.

- That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject.
- That a miscarriage of justice has occurred, is occurring, or is likely to occur.
- That the health and safety of any individual has been, is being, or is likely to be endangered.
- That the environment has been, is being, or is likely to be damaged.
- That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed.
- A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.

2. The qualifying disclosure must be made in good faith.

3. The worker must make the qualifying disclosure to one of a number of 'specified persons' set out in PIDA, which include:

- The worker's employer or, if they reasonably believe that the failure relates solely or mainly to (i) the conduct of a person other than their employer or (ii) any other matter for which a person other than their employer has legal responsibility..
- A 'prescribed person', which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed person.

Where the above requirements are satisfied, a worker who has made a protected disclosure is protected under PIDA from dismissal or any other detriment arising from making that disclosure.

Detriment can include detriment suffered from a previous employer where, for example, the employer refuses to give a reference because the worker has made a protected disclosure.

A worker who suffers dismissal or detriment may bring a claim for compensation (which is unlimited) in the Employment Tribunal.

The term 'worker' includes employees, contractors or self-employed people.

HERE are some further websites which may offer you further support .

Local government website

www.direct.gov.uk/.../Whistleblowingintheworkplace/DG_1002655

Health and Safety executive website

www.hse.gov.uk/workers/whistleblowing.htm

ACAS website

www.acas.org.uk/index.aspx?articleid=1919

Financial services agency

www.fsa.gov.uk/Pages/Doing/Contact/Whistle/