

Whistleblowing.

January 2015.



This information is designed to provide CSP members with the key messages that relate specifically to Whistleblowing, and to signpost members to more detailed resources and sources of help.

Background

- The phrase ‘whistle-blowing’ is widely used and misused in everyday language to describe a whole range of actions around raising concerns. Whistle-blowing is in reality, a very defined and very serious action.
- ‘Whistle-blowing’ refers to the act of making a disclosure of information that is in the public interest. The Public Interest Disclosure Act 1998 provides the statutory framework for protecting individuals who make such disclosures, which are known as ‘protected disclosures.’
- Not every concern that you may wish to raise about standards of care and/or health services meets the requirements of severity that would warrant a ‘whistle-blow’. Making a public interest disclosure is an extremely serious action and demonstrates that all other appropriate means of raising concerns have failed.
- Examples of serious organisational failings that were undetected until a whistle-blower acted include Bristol Paediatric Heart Surgery (1995) – unexpectedly high mortality rates for babies undergoing heart surgery; Winterbourne View (2011) – carers convicted of abusing vulnerable adults in a private care facility; Mid Staffordshire NHS Foundation Trust (2012) – up to 1400 unexpected deaths in a large NHS acute hospital and Hill Croft Care Home, Lancashire (2013) – 3 carers convicted of abusing residents with dementia.

When is whistleblowing justified?

Only as a last resort, and when it is in the ‘public interest’ i.e. it is agreed that the information should be known by the public at large.

- ‘Public interest’ covers a range of values and principles that broadly relate to public good and/or the interests of society. However, the fact that a topic is discussed publicly in the media and the public finds it interesting does not automatically mean that there is a ‘public interest’ in the disclosure of the information.
- A whistle-blower will be protected from adverse consequences of making a protected disclosure if the disclosure is made in order to:
 - To prevent serious harm to individuals
 - To prevent and detect crime
 - Show when a company is breaking the law, or when there is damage to the environment.

Who is protected?

- All types of ‘worker’ have protection, this includes employees, agency workers, students and trainees and the self-employed who work either supervised or off-site.

Employers and company directors are excluded from protection under whistleblowing laws.

What rights to ‘whistleblowers’ have?

- The right to make a ‘public interest disclosure’
- All ‘employees’ have the right to not be dismissed from their employment and to claim unfair dismissal if they are dismissed because of whistleblowing activity.
- All ‘workers’ have protection against ‘detrimental treatment’ as a result of whistleblowing activity.

What should employers have in place?

- Whistle-blowers’ rights are important and need to be protected. However, having a whistleblowing policy in place does not absolve an employer of its duty to have an open and transparent culture, and suitably robust policies and procedures in place to ensure that concerns can be raised at the earliest opportunity in an appropriate manner.
- There should be an open and transparent working culture, with meaningful staff engagement, that encourages the open reporting of concerns, adverse events and near misses.
- There must be written clear and escalating policies and procedures for raising concerns in the workplace including a clear written Whistleblowing policy.

Key messages for members

- Public interest disclosure, ie whistleblowing , should be used as a last resort.
- There may be other more appropriate mechanisms to use such as clinical incident reporting, health and safety notifications, complaints and grievance procedures, or bullying and harassment policies.
- You must have exhausted all other reasonable, proper and proportionate routes for raising your concerns.
- You must have an honestly held good reason, supported by facts and evidence, that patients, or others, are at risk of serious harm, or a crime is being committed.
- You must have had proper advice from your CSP employment relations specialist on the possible effects and impact of ‘Whistleblowing’, and in some cases you may need legal advice.
- You must not breach patient confidentiality.

Selected other resources/ References

- ‘Speaking Up’ Charter <http://www.nhsemployers.org/your-workforce/retain-and-improve/raising-concerns-at-work-whistleblowing/speaking-up-charter>
- NHS Constitution for England <https://www.gov.uk/government/publications/the-nhs-constitution-for-england>
- Public Concern at Work www.pcaw.org.uk

- The Whistleblowing helpline www.wbhelpline.org.uk
- Social Partnership Forum <http://www.socialpartnershipforum.org/priority-areas/whistleblowing/>