

Whistleblowing Policy

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1 Legislative Framework and Guidance

- Blowing the Whistle to a Prescribed Person, List of prescribed persons and bodies 2015
- Public Interest Disclosure Act 1998
- The Criminal Justice and Courts Act 2015
- The Enterprise and Regulatory Reform Act 2013
- The Care Act 2014
- The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012

2 Underpinning knowledge

- Public Concern at Work, (2016), PAS 1998:2008 Whistleblowing Arrangements Code of Practice. [Online] Available from: [Accessed:]
- The Care Quality Commission, (2013), Whistleblowing: Guidance for providers who are registered with The Care Quality Commission. [Online] Available from: http://www.cqc.org.uk/sites/default/files/documents/20131107_100495_v5_00_whistleblowing [Accessed: 2/10/2020]
- NHS Improvement Service, (2016), Freedom to speak up: raising concerns (whistleblowing) policy for the NHS. [Online] Available from: https://nhsicorporatesite.blob.core.windows.net/green/uploads/documents/whistleblowing_p [Accessed: 2/10/2020]
- CQC, (2019), Whistleblowing and why we can't protect you in disputes with your employer. [Online] Available from: <http://www.cqc.org.uk/contact-us/report-concern/report-concern-if-you-are-member-staff> [Accessed: 2/10/2020]
- Nursing and Midwifery Council, (2019), Whistleblowing to the NMC. [Online] Available from: <https://www.nmc.org.uk/standards/guidance/raising-concerns-guidance-for-nurses-and-midwives/whistleblowing/> [Accessed: 2/10/2020]

3 Purpose

The purpose of this policy is

- To comply with the Public Interest Disclosure Act 1998.
- To encourage staff to feel confident in passing on information concerning wrongdoing. In this Policy, we call that 'making a disclosure' or 'blowing the whistle'.
- To reassure staff that they will be protected from possible reprisals or victimisation
- To distinguish between Whistle blowing and personal grievances and complaints
- To provide staff with guidance as to how to raise those concerns

This policy and procedure does not apply if a member of the workforce is aggrieved about their personal position. They must use the Grievances Policy and Procedure.

This policy covers all employees, officers, consultants, contractors, volunteers, interns, casual workers and agency workers.

This policy does not form part of any employee's contract of employment and CareTech may amend it at any time.

4 Policy

CareTech is committed to the highest standards of openness, probity and accountability. The Board/senior management will ensure that any individual who raises a genuine concern under this policy will not be at risk of losing their job or suffer any form of retribution as a result. Members of the Board will not tolerate the harassment or victimisation of anyone raising a genuine concern.

CareTech is committed to a high standard of care, to honesty, openness and decency in all its activities. It is recognised that patients safety must come first at all times and, whilst it can be difficult for staff to raise concerns about the practice of others, including managers, the implications of not raising those concerns are potentially very serious for CareTech, its employees and most importantly for those receiving its services.

CareTech encourages a free and open culture in its dealings with its employees and all people with whom it engages in business and legal relations. In particular, CareTech recognises that effective and honest communication is essential if any wrongdoing or malpractice is to be effectively dealt with and the organisation's success ensured.

CareTech recognises that staff members are likely to be the first to realise that there may be something seriously wrong within the organisation but may feel that speaking up would be disloyal to colleagues or their employer who may, under certain circumstances, face criminal charges. They may also fear harassment or victimisation and fear for a loss of job or a reduction in work hours.

CareTech will not tolerate the ill treatment, including any bullying or harassment, of anyone raising a

concern. It will ensure that any individual who raises a concern, can do so confidentially in line with the Public Interest Disclosure Act 1998 (PIDA).

CareTech will ensure that any individual who raises a genuine concern under the Whistleblowing Policy and Procedure will not be at risk of termination of their employment or suffer any form or reprisal which includes, but is not limited to, loss or reduction of hours or changes to regular working patterns because of it.

CareTech will ensure that it follows not only the law on whistleblowing, but also best practice and guidance from regulatory bodies including the Care Quality Commission and the NHS.

5 Scope

All employees including Agency and Volunteer workers are welcome and encouraged to make disclosures under this policy.

6 Public Interest Disclosure

Whistleblowing is when a worker reports suspected wrongdoing at work. Officially this is called 'making a disclosure in the public interest'. Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998).

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 'Qualifying' 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

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'. PIDA (Public Interest Disclosure Act 1998) gives employees two safeguards in respect of disclosures of information.

- An employee is entitled not be subjected to any detriment by virtue of having made a protected disclosure.
- The dismissal of any employee directly due to the individual having made such a disclosure will automatically be regarded as unfair dismissal.

7 Protection

As from 25 June 2013, to qualify for protection under PIDA a disclosure should be in relation to a concern which is in the 'public interest'. The public interest means the public good, not what is of interest to the public, and not the private interests of the person raising the concern. Whilst there is no longer a requirement for someone to have good faith when they raise a concern, an employment tribunal has the power to reduce any compensation award by up to 25

8 Types of Whistleblowing Eligible for Protection

Certain conditions must be met for a whistleblower to qualify for protection under the legislation, depending on to whom the disclosure is being made and whether it is being made internally or externally. To be protected, the disclosure must be in the public interest, the individual must have a reasonable belief that the information shows that one of the categories of wrongdoing listed in the legislation has occurred or is likely to occur and the concern must be raised in the correct way.

9 Internal Disclosures

Workers are encouraged to make internal disclosures (raise concerns with their employer) with the view that employers will then have an opportunity to address the issue. If a worker makes a qualifying disclosure internally to an employer (or other reasonable person), they will be protected.

10 External Disclosures

If a disclosure is made externally there are conditions which need to be satisfied before a disclosure will be protected. One of these conditions must be met if a worker is considering making an external disclosure.

- If the disclosure is made to a 'prescribed person' (a list of prescribed persons is made under PIDA, and you can find details of relevant prescribed persons for the NHS and social care on line at <http://wbhelpline.org.uk/wp-content/uploads/2014/04/Raising-Concerns-at-Work.pdf> or in Section 'How the Matter can be taken Further' of this policy), the worker must reasonably believe that the concern that they are raising is one which is relevant to that prescribed person (i.e. comes under their area of responsibility as a regulator) and that the

disclosure is substantially true;

- A worker can also be protected if they reasonably believe that the disclosure is substantially true, the disclosure is not made for personal gain, it is reasonable to make the disclosure, and one of the following conditions apply:
 - at the time he/she makes the disclosure, the worker reasonably believes that he/she will be subjected to a detriment by his/her employer if he/she makes a disclosure to his/her employer; or
 - the worker reasonably believes that it is likely that evidence relating to the failure/wrongdoing will be concealed or destroyed if the disclosure is made to the employer; or
 - the worker has previously made a disclosure to his/her employer.
- Additional conditions apply to other, wider disclosures to the police or the media. These disclosures can be protected if the worker reasonably believes that the disclosure is substantially true, the disclosure is of an exceptionally serious nature, and it is reasonable to make the disclosure. Please note that these conditions do not apply to disclosures made to legal advisors in the course of obtaining legal advice.

11 Who's Protected

The following people are protected:

- employees
- agency workers
- people that are training with an employer, but not employed
- self-employed workers, if supervised or working off-site

12 Confidentiality

CareTech will treat all such disclosures in a confidential and sensitive manner. The identity of the staff making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

13 Anonymous Allegations

Concerns expressed anonymously may be considered at the discretion of CareTech. In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised

- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

14 Untrue Allegations

If an employee makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that employee.

In making a disclosure, the employee should exercise due care to ensure the accuracy of the information. If, however, an employee makes malicious or vexatious allegations, and particularly if (s)he persists with making them, disciplinary action may be taken against that employee.

15 How to blow the Whistle

As a first step, you should normally raise concerns with your line Manager. This may depend, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that management is involved you should approach a more senior level of management.

Concerns are better raised in writing. You are invited to set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation. If you do not feel able to put your concern in writing, you can telephone or meet the appropriate Manager/Director.

The earlier you express the concern, the easier it is to take action.

Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.

All staff have a duty to raise concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour to ensure standards of quality care.

This procedure is intended to provide a safeguard to enable members of staff to raise concerns about one or more of the following that has occurred, is occurring, or is likely to occur. These qualifying disclosures mean that staff can raise a concern about risk, malpractice or wrongdoing that they think is harming the services, might harm or has harmed in the past any aspect of the services that CareTech delivers. A few examples of this might include (but are by no means restricted to):

- Unsafe care
- Unsafe working conditions

- Inadequate induction or training for staff
- Lack of, or poor, response to a reported patients safety incident
- Suspicions of fraud (which can also be reported to the local counter-fraud team)
- Damaging the environment - e.g. disposing of materials or waste incorrectly, for example, flushing medicines or syringes down the toilet or sink
- A bullying culture (across a team or organisation rather than individual instances of bullying)
- Incidents of unsafe staffing, falsification of timesheets, patients visit logs or MARs or clinical or care records
- Failure to investigate claims of physical or sexual assault
- Physical, verbal or sexual abuse of any patient, colleague or other person on the premises of CareTech
- Breaching the Data Protection Act

15.1 How to Raise a Concern - Step 1

- If a member of staff has a concern about a risk, malpractice or wrongdoing at work, it is hoped that they feel they will be able to raise it first with their line manager
- This may be done verbally or in writing
- It is better to raise a concern as soon as it arises
- Where possible, unless, for example, where the concern relates to a safeguarding matter, the concerns raised will be treated confidentially
- The member of staff's line manager will inform them if they cannot keep the concern confidential
- The Register Home Manager has overall responsibility for concerns raised and the member of staff's line manager may need to share the concern with the Registered Home Manager.

15.2 How to Raise a Concern - Step 2

If a member of staff does not feel they can raise the concern with their line manager or the concern relates to or involves the line manager (or they have raised it with the line manager and no action has been taken) the member of staff should then escalate their concerns to the Registered Home Manager

15.3 How to Raise a Concern - Step 3

- If the member of staff does not feel that the Registered Home Manager will appropriately handle their concerns, the member of staff should report their concerns to the compliance and regulation team or 'Tell us line' where the appropriate referral may be made to escalate or directly to the Care Quality Commission on 03000 61 61 61 or through its website

- The CQC will not disclose the member of staff's identity without their consent unless there are legal reasons requiring the CQC to do so, e.g. where the information is about a child or vulnerable adult who is at risk

16 Investigation

The Registered Home Manager, in consultation with CareTech senior management, shall have discretion over the nature of the investigation into concerns raised, including, where it is considered appropriate, the involvement of others such as Adult Social Services or auditors. If there is evidence of criminal activity, the Police will be informed.

17 Registered Home Manager and CareTech Responsibility

- Responsibility for dealing with any concerns reported will lie with the Register Home Manager. All Whistle blowings must be reported to Line management and logged onto reporting systems.
- If the concerns relate to the Register Home Manager, concerns should be escalated to the compliance and regulation team or "Tell us line" where the appropriate referral may be made to escalate

18 Protected Disclosures and Safeguarding

- Where a safeguarding concern is received by a member of staff, County Council safeguarding policies and procedures will be followed
- Where a safeguarding concern is received by a member of staff and refers to the actions of the Manager or Deputy Manager, refer to the Safeguarding policy and inform the compliance and regulation team or "Tell us line" where the appropriate referral may be made to escalate.

19 Raising a Concern – Timescales

The individual with whom the concern is raised will acknowledge the concern within locally agreed timescales and in line with best practice.

The investigating officer will be confirmed to the member of staff along with any further information required including contact information and an estimate of the likely timescales involved.

Where possible, the responsible manager will feed back to the member of staff who raised the concern on the outcome of any investigation, although this may not always be possible in full due to the nature of the disclosure.

A record of the information provided and details of the proceedings will be kept in line with best practice.

20 False Allegations

All whistleblowing concerns will be investigated. However, if a member of staff is found to have made allegations maliciously and/or not in good faith, disciplinary action may be taken. A member of staff will never be disciplined for raising a concern, so long as they follow the whistleblowing procedure or make disclosures in accordance with the Public Interest Disclosure Act 1998.

21 Tell Us Campaign

We have introduced our 'Tell Us' campaign. It is designed to encourage whistleblowing so that Directors can take a personal responsibility to investigate and resolve any issues of concern.

Each member of staff will be provided with a prompt card with details of how they can blow the whistle, in strict confidence, which will be directed to the Chief Executive and to the Chief Operating Officer. These are Board level positions and the process will be under the scrutiny of our Board level Care Governance and Safeguarding Committee.

Our 'Tell Us' hotline is 0800 999 8247 and email address is whistleblower@caretech-uk.com.

22 How CareTech will Respond

The action taken by CareTech will depend on the nature of the concern. The matters raised may:

- be investigated internally
- be referred to the Police
- form the subject of an independent inquiry

CareTech will make initial enquires to decide whether an investigation is appropriate and, if so, what form it should take.

Some concerns may be resolved by agreed action without the need for investigation.

Within 10 working days of a concern being received, CareTech will write to you:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;
- giving an estimate of how long it will take to provide a final response;

- telling you whether any initial enquiries have been made; and
- telling you whether further investigations will take place, and if not, why not.

When any meeting is arranged, you have the right, if you so wish, to be accompanied by a Trade Union representative or a colleague from CareTech who is not directly involved in the area of work to which the concern relates.

CareTech will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, CareTech will advise you about the procedure.

Subject to legal constraints, CareTech will send you information about the outcomes of any investigations.

23 Tribunals

If an employee is dismissed for whistleblowing, they can go to an Employment Tribunal. If the tribunal decides the employee has been unfairly dismissed, it will order that they are:

- reinstated (get their job back)
- paid compensation

24 How the Matter can be taken Further

The procedure outlined above is intended to provide individuals with an avenue to raise concerns within CareTech. However, if the whistleblower decides to blow the whistle to a prescribed person or body, rather than CareTech, the details of whom can be found below.

While we hope this policy gives you the reassurance you need to raise your concern internally with us, we recognise that there may be circumstances where you can properly report a concern to an outside body. In fact, we would rather you raised a matter with the appropriate regulator – such as those listed below – than not at all.

'PROTECT' (Formerly known as Public Concern at Work (PCaW)) is the independent authority on public interest whistleblowing. Established as a charity in 1993 following a series of scandals and disasters, 'PROTECT' has played a leading role in putting whistleblowing on the governance agenda and in developing legislation in the UK and abroad.

They are able to offer free advice to people with whistleblowing dilemmas.

If you are unsure whether to use this policy or you want confidential advice at any stage, you may contact 'PROTECT' who can talk you through your options and help you raise a concern.

24.1 PROTECT Contact Details

Telephone: Protect Advice Line: 020 7404 6609

Email: Protect Advice line: whistle@protect-advice.org.uk

24.2 Social Care

24.2.1 Social Care Wales

About matters relating to the registration of social care workers in Wales.

Social Care Wales
South Gate House
Wood Street
Cardiff CF10 1EW
Tel: 0300 303 3444
ftp@ccwales.org.uk

24.2.2 Care Inspectorate

About matters relating to the provision of care services in Scotland.

Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel: 0345 600 9527
Email: enquiries@careinspectorate.com

24.2.3 Care Quality Commission

About the provision of adult social care services in England.

CQC National Customer Service Centre
Citygate
Gallowgate
Newcastle upon Tyne NE1 4PA
Tel: 03000 616161

www.cqc.org.uk

24.2.4 Health and Care Professions Council

About matters relating to the registration and fitness to practise of health and care professional.

Health and Care Professions Council

Park House

184 Kennington Park Road

London SE11 8BU

Tel: 0300 500 6184

<http://www.hcpc-uk.org/>

24.2.5 Healthcare Improvement Scotland

About matters relating to furthering the improvement in quality of health care in Scotland.

Healthcare Improvement Scotland

Gyle Square

1 South Gyle Crescent

Edinburgh EH12 9EB

Tel: 0131 623 4300

Email: comments.his@nhs.net

www.healthcareimprovementscotland.org

24.2.6 Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector')

About matters relating to regulation and inspection of establishment and agencies for children's social care services.

Ofsted

Piccadilly Gate

Store Street

Manchester M1 2WD

Tel: 0300 123 3155

Email: whistleblowing@ofsted.gov.uk

24.2.7 Scottish Social Services Council

About matters relating to the registration of the social services workforce in Scotland.

Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel: 01382 207101
Email: registration@sssc.uk.com
www.sssc.uk.com

24.2.8 Social Services and Child Welfare

Her Majesty 's Chief Inspector of Education, Children 's Services and Skills ('the Chief Inspector') about matters relating to regulation and inspection of establishment and agencies for children's social care services.

24.2.9 Ofsted

Piccadilly Gate
Store Street
Manchester M1 2WD
Tel: 0300 123 3155
Email: whistleblowing@ofsted.gov.uk

24.2.10 Scottish Social Services Council

About matters relating to the registration of the social services workforce in Scotland.

Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel: 01382 207 101
Email: registration@sssc.uk.com
www.sssc.uk.com

24.2.11 Welsh Ministers

About the inspection and performance assessment of Welsh local authority social services.

Welsh Government
Cathays Park
Cardiff CF10 3NQ
Tel: English: 0300 060 3300

Tel: Welsh: 0300 060 4400

24.2.12 Public Services Ombudsman for Wales

Has legal powers to look into complaints about public services and independent care providers in Wales.

Complaints Advice Team: 0300 790 0203

E-mail ask@ombudsman-wales.org.uk

Visit the website www.ombudsman-wales.org.uk

Write to: Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae, Pencoed

CF35 5LJ

25 Revision History

Date of next review: February 2024

Date of review: February 2022

Date of review: March 2021

Date of review: October 2018

Date of review: January 2018

Date of review: July 2016

Date of review: May 2015

Date of review: May 2014

Date of review: March 2013

Date of release: January 2013