



Western Health  
and Social Care Trust

**PUBLIC INTEREST DISCLOSURE  
(WHISTLEBLOWING) POLICY**

**JUNE 2011**

<b>Policy Name:</b>	<b>Public Interest Disclosure (Whistleblowing) Policy</b>
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<b>Name of Responsible Officer:</b>	<b>Medical Director</b>

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## **INTRODUCTION**

1. The Trust is committed to achieving and sustaining high standards with regard to behaviour at work, service to the public and in all its working practices. Staff and agents of the Trust are therefore expected to conduct themselves with integrity, impartiality and honesty at all times.
2. The Trust seeks to foster a climate of openness and a culture where it is safe and acceptable to raise concerns about inappropriate behaviour at any level of the organization. To achieve this aim, the Trust wishes to encourage employees to report genuine concerns without fear of reprisal or victimization.
3. The Public Interest Disclosure (Northern Ireland) Order 1998 provides employees with protection against victimization should they reasonably and in good faith report such concerns (“blow the whistle”).
4. Circular HSC(AfC)(4) 2010 includes a new Section 21 to the NHS Terms and Conditions of Service Handbook: Right to Raise Concerns in the Public Interest (Whistleblowing).

## **PURPOSE**

5. The principal emphasis of this policy is to ensure that action is taken to investigate any matters of concern raised by staff and to enable the Trust to initiate corrective action where deemed necessary and appropriate. The policy ensures that the provisions of the Public Interest Disclosure (Northern Ireland) Order 1998 are complied with in terms of safeguards for those raising genuine concerns.
6. In accordance with Section 21 of the NHS Terms and Conditions of Service Handbook, all employees working in the NHS have a contractual right and a duty to raise genuine concerns they have with their employer about

malpractice, patient safety, financial impropriety or any other serious risks they consider to be in the public interest.

7. The policy is intended to provide a mechanism to address issues which are not already provided for within existing policies, e.g. Policy on Harassment, Grievance Procedure, Theft, Fraud and Corruption Response Plan, etc. This policy is not intended to substitute for those policies or other normal management reporting mechanisms, which are already in place within the Trust.

## **SCOPE OF THE POLICY**

8. The Whistleblowing Policy is designed to ensure that concerns around issues that are in the public interest are raised with an appropriate officer of the Trust so that they can be dealt with effectively and in a spirit of openness.
9. The Whistleblowing Policy should be followed if an employee reasonably believes that one of the following either has occurred, is in the process of occurring, or is likely to occur:
  - A criminal offence
  - Failure to comply with a legal obligation or a Trust policy
  - A miscarriage of justice
  - Endangering of an individual's health and safety
  - Fraud (including fraud or misconduct in a research project)
  - Damage to the environment
  - Concerns about malpractice
  - Any other matter that may be of public concern
  - Deliberate concealment of any of the above

10. Concerns raised should be factual (to the best of the person's knowledge) and should cover the following:

- What has occurred (or thought to have occurred);
- When it occurred;
- Where it occurred;
- Who was involved;
- Have patients/staff/the public been put at risk as a result;
- Has it happened before;
- Are there any other witnesses;
- Is there any supporting information;
- How the matter came to light;
- Has it been raised with anyone else? If so, details of when/whom;

11. Such concerns should be raised at the earliest opportunity in order for the Trust to investigate the matter. Inevitably some concerns will be genuinely misconceived because, for example, the full facts have not emerged. However, it should be noted that the malicious raising of unfounded allegations will be treated as misconduct and may lead to disciplinary action.

## **PROCEDURE FOR RAISING CONCERNS**

12. Concerns may be raised verbally or in writing. Employees are encouraged to raise concerns internally at work through their line manager in the first instance. Where they feel unable to do so the employee should contact the Trust's Head of Clinical Quality and Safety who is the nominated officer for receiving reports under the Whistleblowing Policy. Employees may seek the advice of their Trade Union or Professional Association/Organisation to support them in raising concerns.

13. If the concern surrounds the Head of Clinical Quality and Safety or another Trust Director, it should be reported to the Chief Executive. If the concern

relates to the Chief Executive then it should be raised with the Chairman. If the concern involves the Chairman, it should be reported to the Chief Internal Auditor or the Chair of the Audit Committee.

14. Employees are entitled to raise concerns externally with a prescribed regulatory body, but only in certain circumstances. Employees should read Circular HSS (Gen 1) 1/2000 before making such a disclosure, (see appendix 1).

## **CONFIDENTIALITY AND ANONYMITY**

15. Whilst it is possible to raise such matters anonymously staff should not feel inhibited in identifying themselves. If staff request that their identity should not be disclosed, the Organisation will not disclose it without consent. If the situation arises where a concern cannot be investigated or resolved without revealing the employee's identity, or if there is a legal imperative to disclose the identity, the Trust will discuss this with the employee and decide how the issue will be progressed.
16. If an employee wants independent advice at any stage, he/she may contact the independent charity Public Concern at Work on 020 7404 6609 or [www.pcaw.co.uk](http://www.pcaw.co.uk). Their lawyers can give free confidential advice at any stage on how to raise a concern about serious malpractice at work. Employees can, of course, seek legal advice of their own choice at their own expense.

## **PROCESS FOR DEALING WITH CONCERNS**

17. When an employee advises the Trust of a concern, the appropriate officer will determine what action, if any, is appropriate. The matter may be addressed by another existing procedure as described in Paragraph 5 or alternatively, it will be investigated.

18. The employee who raised the concern will be informed of the method by which the concern will be progressed and will be advised if his/her further involvement is required.
19. If the concern is already, or has previously been, the subject of an investigation it will not be appropriate to categorise it under the Whistleblowing Policy.
20. The Trust will ensure that any concern raised by an employee will be dealt with as soon as practicable.
21. The Trust will support employees who raise concerns and will take all reasonable steps to ensure that they are not victimised. Victimisation of staff who raise issues under this policy is a serious offence and will be viewed as misconduct. Such instances will be dealt with under the Trust's Disciplinary Procedure.

## **OUTCOME OF INVESTIGATIONS**

22. On completion of the investigation process, the employee who raised the concern will be informed through appropriate feedback of the outcome of the investigation, including any corrective action.
23. If following investigation an employee's concerns were unfounded, provided that the employee acted in good faith then no further action will be taken. Where it is considered that an employee has made a frivolous, vexatious or malicious complaint, the Trust will consider whether any further action is appropriate, including disciplinary proceedings.

## **OTHER RELATED POLICIES/PROCEDURES**

- Policy on Harassment, 1<sup>st</sup> April 2007. (HR07/011)
- Trust Grievance procedure, September 2007. (HR08/015)
- Incident Reporting Policy and Procedures, November 2007. (Med 08/008)
- Western Trust Fraud Policy Statement, January 2008 (Fin 08/001(B))
- DHSS&PS, Fraud Reporting Hotline

## **Equality and Human Rights**

**EQUALITY AND HUMAN RIGHTS STATEMENT:** The Western Health and Social Care Trust's equality and humane rights statutory obligations have been considered during the development of this policy.

**CIRCULAR HSS (GEN1) 1/2000****Appendix 1**

Our Ref: BP 2878/99

14 January 2000

The General Manager/Chief Executive of each Health and Social Services Board  
The Chief Executive of the Central Services Agency  
The Chief Executive of each HSS Trust and  
The Chief Executive of each Special Agency

For information to:

Human Resources Director of each HSS Board,  
Trust, the Central Services Agency and  
Special Agency

Dear Sir/Madam

**THE PUBLIC INTEREST DISCLOSURE (NORTHERN IRELAND) ORDER 1998 -  
WHISTLEBLOWING IN THE HPSS**

**SUMMARY**

1. On 12 February 1996 a document entitled "Guidance for Staff on Relations with the Public and the Media", was issued under cover of Circular HSS(GEN1) 1/96. The emphasis of the guidance was on the encouragement of a climate of openness and dialogue within the HPSS where the free expression by staff of their concerns are welcomed by their managers as a contribution towards improving services.
2. The Public Interest Disclosure (Northern Ireland) Order 1998 became law on 31 October 1999 and the purpose of this new circular is to update the guidance given previously and to set out the key elements of the Order as it affects employers. It should be noted that the Northern Ireland Order was passed to correspond with the introduction of the Public Interest Disclosure Act 1998 which applies only to England and Wales. The main provisions are the same.
3. The Order gives significant statutory protection to employees who disclose information reasonably and responsibly in the public interest and are victimised as a result. An employee who is victimised in breach of the Order can bring a claim at an employment tribunal. Those who lose their jobs in breach of the Order can be fully compensated for their losses. There is no limit to the amount of awards that employment tribunals can make in these

circumstances. Similarly, there is no cap on the awards for victimisation short of dismissal. Awards will be based on what is just and equitable in all the circumstances.

4. Gagging clauses in employment contracts and severance agreements which conflict with the protection afforded by the Order will be void. A summary of the main provisions of the Order is attached at Annex A.
5. The Order does not require organisations to set up a whistleblowing policy, but provides strong reasons why they should. HSS Boards, HSS Trusts and Agencies should have such policies already in place, but local policies will need to be reviewed and updated as necessary to ensure that they comply with the new statutory protection for employees.
6. Introduced in tandem with the Order, is the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999 which became effective from 31 October 1999. The Prescribed Persons Order lists the persons and bodies who are prescribed by the Public Interest Disclosure (Northern Ireland) Order. This means that a worker will be protected if he makes a qualifying disclosure in good faith to a person prescribed in the Order, reasonably believing that the failure disclosed falls within the matters in respect of which that person is prescribed, and that the information disclosed, and any allegation contained in it, are substantially true.

## **Background**

7. The fear of being labelled a trouble-maker, the fear of appearing disloyal and the fear of victimisation by managers and colleagues are powerful disincentives against speaking up about genuine concerns staff have about criminal activity, failure to comply with a legal duty, miscarriages of justice, danger to health and safety or the environment, and the cover up of any of these in the workplace.
8. In recent years the public has been shocked by disasters and scandals that have claimed lives and damaged others. The enquiries set up to uncover the facts behind these catastrophes have revealed all too often that they had been a consequence of a pattern of poor practice over a long period of time and that, although not officially recognised, were often known about by employees who had been too scared to speak up, or who had raised the matter only to find their concerns ignored.
9. There will have been incidents in the HPSS which could, and should, have been prevented had staff felt able to raise concerns about health and social care matters in a responsible way without fear of victimisation. Such incidents damage public confidence in the HPSS. The public and the wider healthcare community is entitled to ask why it is that staff are unwilling to take it up with the powers that be and where they are why was nothing done about it.

10. There should be a culture and environment everywhere in the HPSS which encourages staff to feel able to raise concerns about health and social care matters sensibly and responsibly without fear of victimisation. The Public Interest Disclosure (Northern Ireland) Order provides a fresh impetus for further action.

### **Action**

11. Every HPSS Trust, Board and Agency should:
- Have in place local policies and procedures which comply with the provisions of the Public Interest Disclosure (Northern Ireland) Order 1998. The minimum requirements of local policies should include:-
    - (i) the designation of a senior manager with specific responsibilities for addressing concerns raised in confidence which need to be handled outside the usual line management chain;
    - (ii) guidance to help staff who have concerns about malpractice to do so reasonably and responsibly with the right people;
    - (iii) a clear commitment that staff concerns will be taken seriously, and investigated;
    - (iv) an unequivocal guarantee that staff who raise concerns responsibly and reasonably will be protected against victimisation;and should prohibit:-
    - (v) confidentiality “gagging” clauses in contracts of employment, and compromise agreements which seek to prevent the disclosure of information in the public interest.
  - Ensure that all their staff are aware of local policy and procedures and their own responsibilities for raising genuine concerns in a reasonable and responsible way.
12. A Whistleblowing Policy Pack has been produced by Public Concern at Work, an independent charity and a leading authority on public interest whistleblowing. This pack costs £360 (incl VAT and P&P) and can be obtained by contacting them at Suite 306, 16 Baldwins Gardens, London EC1N 7RJ, telephone number 0171 4046609 or through CIPFA, Publications Section, Freepost SW 2959, London WC2N 6BR, telephone number 0171 5435600. It must be noted that the Pack is based on the Public

Interest Disclosure Act and not the Northern Ireland Order but as stated, the provisions are the same.

13. The pack includes a copy of the Public Interest Disclosure Act and a toolkit which has been designed particularly to help employers to draw up whistleblowing policies and procedures and, where these already exist, to update them to ensure compliance with the Act. The components of the toolkit are:-
- An introductory booklet which explains in simple terms what whistleblowing is and why it is important to your organisation and everyone involved with it. Along with four case studies and a practical summary of the Public Interest Disclosure Act, it takes you through the key aspects of whistleblowing policies.
  - An implementation guide which gives a practical, easy-to-follow guide with all you need to roll-out a successful whistleblowing policy. Starting from the first meeting with management, taking you step-by-step through to the launch and monitoring of your policy. It includes a model policy, promotional and training aids and letters to legal advisers and staff.
  - A computer disk which contains PowerPoint slides and OHPs with speaking notes for training and presentations to managers and staff. It also has file copies of key documents.
  - Other tools, including a checklist to guide you through the preparation and implementation of your policy, the full Act with authoritative notes for use by you and your legal advisers, posters to display throughout your organisation, a pocket guide to reproduce for staff and gives details of a free helpline for staff.

#### **ASSOCIATED DOCUMENTATION:**

- 'Guidance to staff on relations with the public and the media - Circular HSS(GEN1) 1/96'. (February 1996).
- Maintaining Good Medical Practice, General Medical Council (July 1998).
- The Code of Professional Conduct, United Kingdom Central Council for Nursing, Midwifery and Health Visitors (1992).

**Enquiries**

Enquiries concerning this circular to the Pay and Employment Unit, Room 3B, Dundonald House, Upper Newtownards Road, Belfast BT4 3SF, telephone number 01232 524247.

Yours faithfully

**T A McNEILL**

Deputy Director  
Human Resources Directorate

**Summary of the main provisions of the Public Interest Disclosure (NORTHERN IRELAND) ORDER 1998****MALPRACTICE**

The Order applies to people at work raising genuine concerns about crime, breach of a legal obligation (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and any cover up of these. In the HPSS this would include a worker raising concerns about risks to patients/clients or about financial malpractice. It applies whether or not the information is confidential.

**INDIVIDUALS COVERED**

In addition to employees, it covers other workers, trainees, agency staff, home workers and all self-employed HPSS professionals (ie doctors, dentists, ophthalmologists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the HPSS), volunteers, the intelligence services, the army or the police.

**INTERNAL DISCLOSURES**

A disclosure to the employer will be protected if the whistleblower has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. For the purposes of the Order, the employer of self-employed HPSS professionals is deemed to be the Health and Social Services Boards. Where a third party is responsible for the malpractice this same test applies to disclosures made to it.

**LEGAL ADVICE**

To ensure that people concerned about malpractice can get independent and confidential advice about how the Order works, disclosures to lawyers are protected.

**HPSS AND QUANGO'S**

To promote accountability in public life, the same protection as for internal disclosures applies where someone in the HPSS or a public body blows the whistle direct to the sponsoring Department. There is no requirement that such concerns should be raised internally first.

## **REGULATORY DISCLOSURES**

Special provision is made for disclosures to persons and bodies which are prescribed under the Order. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and, additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

## **WIDER DISCLOSURES**

Wider disclosures (eg to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and if they satisfy a further two provisions. That is the concern must have been raised with the employer or a prescribed regulator, unless, there was reasonable belief of victimisation, there was no prescribed regulator and there was reasonable belief that there would be a cover up, and the matter was exceptionally serious. If one of these preconditions is met and the tribunal is satisfied that the disclosure was reasonable, the whistleblower will be protected.

## **FULL PROTECTION**

Where a worker or employee is victimised for blowing the whistle in breach of the Order, they may bring a claim to an employment tribunal. Workers and employees who lose their jobs in breach of the Order will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

## **GAGGING CLAUSES**

Such clauses in employment contracts and severance agreements are void insofar as they conflict with the Order's protection.