

Whistleblowing

1. Policy

Youth Mental Health Foundation is committed to being open, honest and accountable. It encourages a free and open culture in its dealings between the Trustees and those working in Youth Mental Health Foundation, both employees and volunteers.

This policy aims to help the Trustees and employees/volunteers to raise any serious concerns they may have about colleagues or their employer with confidence and without having to worry about being victimised, discriminated against or disadvantaged in any way as a result.

It is written in the context of the Public Interest Disclosure Act 1998 which protects employees who 'blow the whistle' on malpractices within their organisation.

1.1 What types of concerns?

The policy is intended to deal with serious or sensitive concerns about wrongdoings such as the following:

- a criminal offence
- a failure to comply with any legal obligation
- a failure in the protection of children or vulnerable adults
- a miscarriage of justice
- a health and safety risk to an individual
- damage to the environment
- or concealment of the above.

It is not necessary for individuals who raise the concern to prove the wrongdoing that is alleged to have occurred or is likely to occur.

However if an individual knowingly or maliciously makes an untrue allegation (*eg*: in order to cause disruption with Youth Mental Health Foundation), Youth Mental Health Foundation will take appropriate disciplinary action against them. It may constitute gross misconduct.

Individuals should note that they will not be protected from the consequences of making a disclosure if, by doing so, they commit a criminal offence.

This policy does not deal with any complaints staff may have about their employment. This should be dealt with through Youth Mental Health Foundation's Grievance Procedure.

Youth Mental Health Foundation's Bullying and Harassment policy offers protection to workers against harassment, bullying and discrimination.

Volunteers should make complaints or raise concerns through the Volunteer Complaints Procedure.

Service users should make complaints or raise concerns through the Service Users Complaints Procedure.

1.2 How to raise a concern in the workplace

The officer designated to handle whistleblowing concerns is Xxxxxxxx and shall be known as the Whistleblowing Officer.

Individuals should in most cases, first report their concern to their line manager, who is expected to respond to that matter. If the relevant manager cannot deal with the matter, he or she will refer the concern to the Whistleblowing Officer.

Dependent on the seriousness and sensitivity of the matter, and who is suspected of the wrongdoing, the individual can, if necessary report directly to the Whistleblowing Officer. If the matter concerns the Whistleblowing Officer, it should be raised with the Trustees.

Individuals are encouraged to raise their concerns in writing where possible, setting out the background and history of their concerns (giving names, dates and places where possible) and indicating the reasons for their concerns.

Employees may wish to seek the assistance of their trade union representative before raising the concern. The trade union representative may, where the employee so desires, raise the concern on behalf of the employee. Employees may also invite a trade union representative or colleague to be present during any meetings or interviews about the concerns they have raised.

If any individual is unsure whether to use this procedure or they want independent advice at any stage, they should contact:

- their trade union (if applicable), or
- the independent charity, Public Concern at Work's legal helpline on 020 7404 6609, email: helpline@pcaw.co.uk

Public Concern at Work will be able to advise on how and with whom to raise a concern about malpractice.

Disclosures made to a legal advisor in the course of obtaining legal advice will be protected under the Public Interest Disclosure Act.

If the individual reasonably believes that the matter relates wholly or mainly to the conduct of a person or body other than Youth Mental Health Foundation or any other matter for which a person or body other than Youth Mental Health Foundation has legal responsibility, the disclosure should be made to that other person or body.

1.3 Protecting the individual raising the concern

If an individual raises a concern which they believe to be true, Youth Mental Health Foundation will take appropriate action to protect the individual from any harassment, victimisation or bullying. Employees who raise a genuine concern under this policy will not be at risk of losing their job, nor will it influence any unrelated disciplinary action or redundancy procedures.

The matter will be treated confidentially if the individual requests it and their name or position will not be revealed without their permission unless Youth Mental Health Foundation has to do so by law. If in other circumstances the concern cannot be resolved without revealing the individual's identity, the Whistleblowing Officer will discuss with the individual whether and how to proceed.

Concerns raised anonymously tend to be far less effective but the Whistleblowing Officer will decide whether or not to consider the matter taking into account:

- the seriousness of the matter;
- whether the concern is believable;
- whether an investigation can be carried out based on the information provided.

1.4 How Youth Mental Health Foundation will deal with the concern

How the concern will be dealt with, will depend on what it involves. It is likely that further enquiries and/or investigation will be necessary. The concern may be investigated by Youth Mental Health Foundation's Whistleblowing Officer, the Trustees, through the disciplinary process or it may be referred to the police, other agencies such as Social Services, an external auditor or an independent investigator.

It may be necessary for the individual to give evidence in criminal or disciplinary proceedings.

Youth Mental Health Foundation will give the individual feedback on the progress and outcome of any investigation wherever possible.

If the suspicions are not confirmed by an investigation, the matter will be closed. Staff will not be treated or regarded any differently for raising the concern, and their confidentiality will continue to be protected.



2. General Guidance

2.1 What is Whistleblowing?

Whistleblowing, or public interest disclosure, is when a worker reports a concern about the improper actions or omissions of their colleagues or their employer which may cause harm to others or to the organisation. Obvious examples of such improper actions include theft, fraud, abuse, breaches of health & safety.

The disclosure should be made 'in good faith'. In other words the disclosure must be made out of real concern about wrongdoing. Knowingly and maliciously making false accusations for ulterior motives is not whistleblowing. The whistleblower should reasonably believe the information and allegation is substantially true, even if the information later turns out to have been incorrect.

Whistleblowing is not the same as making a complaint or raising a grievance, where the individual is saying that they have personally been poorly treated. A whistleblower is usually not directly or personally affected by the concern and therefore rarely has a direct personal interest in the outcome of any investigation into their concerns.

The whistleblower raises the concern so that others can address it. Examples of concern may include:

- an employee or volunteer defrauding the Youth Mental Health Foundation or anyone using Youth Mental Health Foundation;
- the physical or emotional abuse of children, young people, vulnerable adults or the elderly;
- anyone making inappropriate use of Youth Mental Health Foundation's resource (eg: for their own personal use);
- faulty machinery that puts the safety of employees or users of Youth Mental Health Foundation at risk.

2.2 Good Practice

For effective risk management, employees need to be confident that they can raise matters of concern without suffering any detriment. Not dealing with problems early could have a devastating effect on organisations with costly fines, compensation, higher insurance premiums, damaged reputation, regulatory investigation, lost jobs, and even lost lives. Whistleblowing can be an early warning system for employers and an effective policy can provide a clear framework for action for employees and employers alike.

Following its public consultation on whistleblowing, the UK Financial Services Authority (FSA) found that:

A whistleblowing policy will improve the trust and confidence among workers by creating what one respondent called a "culture of honesty and openness" by encouraging workers to report internally. This was seen as "good for the morale of workers", giving them confidence to come forward with concerns. Senior managers will be the first to know of any issues that they may need to address. These can be dealt with internally. This also means that the costs of investigating any problems, such as fraud, are reduced as problems can be caught quickly.

If workers voice concerns within the organisation rather than being forced to go to an external body, employers can often tackle a problem before it becomes a crisis, thus helping to avoid potentially damaging media coverage, regulatory sanctions and/or costly compensation payments. A whistleblowing policy can provide a clear framework for constructive problem solving in a reasonable, appropriate and controllable way.

Employees should not be expected to prove their case should they have a concern about malpractice. Therefore, an organisation's policy on - and response to - whistleblowing should be different from its policy on and response to a grievance.

The main points to consider within a whistleblowing policy or approach to whistleblowing at work:

- Involve workers by consulting with them, either through the trade union where present, through staff groups, or – in smaller organisations – individually, before the introducing the policy;
- Discuss the types of risk your organisation may face with your workers;
- Be clear about what conduct is unacceptable and about the standards expected of your workers;
- Encourage workers to share their concerns internally and in confidence – they do not need to have proof or need to investigate the matter themselves;

- Be clear that concerned employees will be supported and protected from reprisals;
- Explain that a whistleblower is a witness, not a complainant;
- Deal with wrongdoing seriously and effectively;
- Train managers on how to deal with whistleblowing;
- If employees feel uncomfortable raising their concern with their line manager, explain that they should then raise it at a senior level such as to a member of the Board of Directors ;
- Emphasise to managers and workers that victimisation is a disciplinary offence as is knowingly raising malicious untrue allegations;
- Offer confidentiality to any worker who asks for it but be clear that there may be circumstances when their identity might have to be revealed such as when you are ordered by court;
- Report back to employees about the progress and outcome of any enquiry or action taken;
- Be prepared to explain how you have handled the concern;
- Under no circumstances try to suppress evidence of malpractice.

2.3 The Legislation

The Public Interest Disclosure Act came into force in July 1999. It protects most workers against unfair dismissal or being subjected to any other detriment by their employer (such as denial of promotion, pay rise or training) for making disclosures about wrongdoing. It covers all employees, trainees, agency staff, contractors and homeworkers, regardless of length of service or age. However the genuinely self-employed and volunteers are not covered by the Act.

The Act encourages workers to raise concerns about malpractice – dangerous or illegal activity – in the workplace. It does not matter whether the wrongdoing takes place in the United Kingdom or abroad. In order for it to be a ‘qualifying disclosure’ under the Act, the whistleblower should reasonably believe that there is

- a criminal offence
- a failure to comply with any legal obligation
- a miscarriage of justice
- a health and safety risk to an individual
- damage to the environment
- or concealment of the above.

Case law has shown that the second reason for a qualifying disclosure, a failure to comply with any legal obligation can be interpreted broadly. For example this includes breach of a contract of employment, but for the disclosure to be protected there must be a real legal obligation not just a belief that there is one.

Once a disclosure has been made in good faith to a manager or employer it will be protected under the Act. This should normally be the first route for workers, rather than having to disclose the concern externally. However it does mean that the matter should be dealt with by employers, quickly and thoroughly.



If the matter is not dealt with internally, whistleblowers can disclose to appropriate external bodies. The Act protects disclosures made to prescribed bodies such as the Health and Safety Executive, the Inland Revenue, the Audit Commission, the Charity Commission, the Commission for Social Care Inspection, the Financial Services, General Social Care Council, the Housing Corporation, the Information Commissioner and the National Care Standards Commission (full list can be found at www.pcaw.co.uk/law/lawregulatorses.htm).

The disclosure is also protected if it is made to a legal advisor in order to obtain legal advice.

The Act also helps ensure that organisations respond without trying to cover up, or to victimise or dismiss the whistleblower. If the whistleblower fears they may be victimised, or that a cover-up is likely or there is no appropriate prescribed regulator, or if the matter has already been raised internally or with a prescribed body, wider disclosures can be made and still be protected.

Wider disclosures might be to another professional body, the police, an MP, the media, etc. They should still be reasonable in all circumstances taking into account the seriousness of the matter and likelihood of re-occurrence. Reasonableness would also include consideration of whether the worker first followed any internal whistleblowing procedure the organisation may have.

However if the wrongdoing is of an 'exceptionally serious nature', (such as involving a murder enquiry) the whistleblower need not fear victimisation or cover up to make a protected disclosure to an external body, although it should still be reasonable particularly with regard to whom the disclosure is made.

If the whistleblower is victimised for making the disclosure, they can bring a claim to an employment tribunal for compensation. Dismissals of employees for making a protected disclosure are automatically unfair. Compensation awards will be uncapped and based on the losses suffered.

Any clauses in an agreement between a worker and the employer which prevent the worker from making disclosures protected under the Act will be void.

2.4 Further Information

Public Concern at Work

This charity is an independent authority on public interest and whistleblowing. It promotes compliance with the law and good practice. They also aim to influence public policy and legislation. <http://www.pcaw.org.uk/>

ACAS

The Arbitration Conciliation & Advisory Service website provides guidance on whistleblowing for both employers and employees www.acas.org.uk/index.aspx?articleid=1919

Direct.Gov

Information on whistleblowing can be accessed through the government websites. www.gov.uk/whistleblowing/overview

Business Link

The government website which has advice, guidance and tools for businesses, has a section on whistleblowing and dismissal.

www.businesslink.gov.uk/bdotg/action/detail?r.lc=en&type=RESOURCES&itemId=1082104950&r.s=sl

The Chartered Institute of Personnel and Development (CIPD)

CIPD is the professional body for those involved in the management and development of people. They have a factsheet on whistleblowing.

www.cipd.co.uk/subjects/empreltns/whistleblw/whistle.htm

Change Record

Date of Change:	Changed By:	Comments:
dd/mm/yy	XX	Policy approved by the Trustees