

WHISTLEBLOWING

Part of the Policy and Compliance Collection

INTRODUCTION

Whether the metaphor originated from Victorian police officers blowing a whistle to alert the public about a crime, or a referee using a whistle to call a foul during a game, nowadays, the term whistleblower is used to describe someone who exposes dangerous or illegal activity in a public or private organisation.

Blowing the whistle is more formally known as 'making a disclosure in the public interest'.

It's an incredibly valuable activity because it informs those who need to know about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, and cover-ups.

Often it's only through whistleblowing that information comes to light and can be addressed before any damage is done.

So it's essential that you have trust in the system, so you can act with confidence, knowing that you'll be taken seriously, protected, and supported by your organisation should you ever need to blow the whistle.

And that's what this factsheet is all about.

We're going to look back in history to see why whistleblowing is so important.

We'll remove any barriers you might have about raising a concern, ensuring you understand when you are, and are not, protected by whistleblowing law.

And we'll explain who you should tell, and what to expect, should you need to blow the whistle at work.

By the end of this factsheet, you'll know everything you need to know about whistleblowing.



WHY BLOW THE WHISTLE?

Whistleblowing legislation to protect workers raising concerns was developed following a number of disasters and public scandals in the late 80s and early 90s.

In each of these cases, workers had known of the dangers, but did not know what to do, or who to approach.

Often, they were too frightened to speak out in fear of losing their jobs or being victimised.

Had a workplace culture existed where workers felt confident that they could safely raise concerns, then many of these disasters could have been prevented.

Therefore, whistleblowing is essential for four main reasons:

- To safeguard the integrity of the organisation.
- To safeguard employees
- To safeguard the wider public; and
- Prevent damage.

BARRIERS TO BLOWING THE WHISTLE

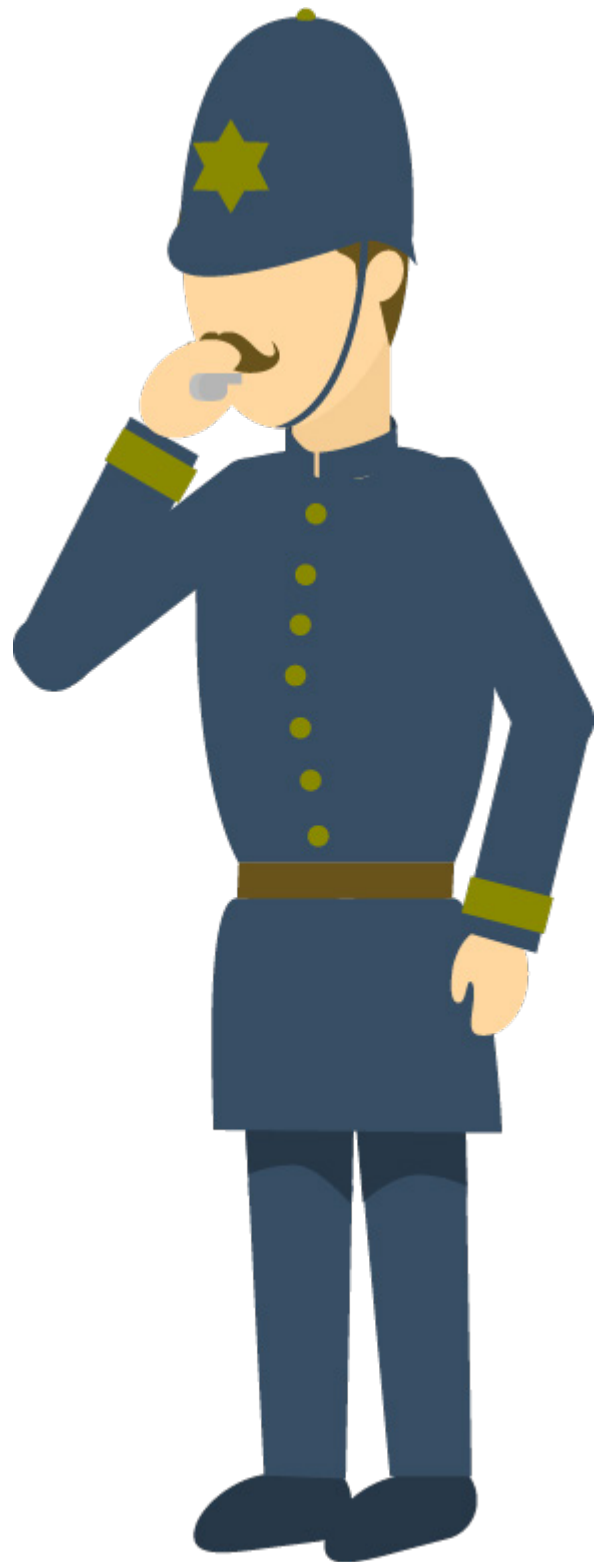
Unfortunately, there are still some people who believe that “whistleblower” is a dirty word. But these people don’t realise that whistleblowing can save lives, jobs, money and reputations.

If you’re unsure whether blowing the whistle is doing the right thing, you might want to consider this question.

If you had a baby, and it required an operation in hospital, would you want a nurse to tell someone if they thought the surgeon was incompetent and dangerous?

A similar situation was faced by nurse Helene Donnelly.

Take a few moments to have a read of Helene’s inspirational story, in which she bravely spoke out against wrongdoing at work.



HELENE'S STORY

Within Mid Staffordshire Hospital Trust – Helene Donnelly, a nurse in Stafford Hospital Accident and Emergency Department, raised concerns after she “saw people dying in very, very undignified situations which could have been avoided”.

Examples included patients being so thirsty that they had to drink water from vases and receptionists left to decide which patients to treat. Nurses were not properly trained to use vital equipment, while inexperienced doctors were put in charge of critically ill patients. Some patients needing pain relief either got it late or not at all, leaving them crying out for help, and there were cases where meals and drinks were left out of reach.

The public inquiry into the failings revealed one of the biggest scandals in the history of the National Health Service (NHS). Data showed that there were between 400 and 1,200 more deaths than would have been expected, although it is impossible to say if all of these patients would have survived if they had received better treatment.

However, it is clear many were let down by a culture that put cost-cutting and target-chasing ahead of the quality of care. The inquiry report made 290 recommendations for improvements in care across the NHS.

Work continues on their implementation. Helene Donnelly was recognised in the 2014 New Year's honours list, receiving an OBE for services to the NHS.

Helene is also now an ambassador for cultural change at the Staffordshire and Stoke-on-Trent Partnership NHS Trust and takes staff concerns directly to the Chief Executive.

She said, “I hope this [honour] is recognition for lots of other people trying to raise concerns and this is also for the positive change we're trying to encourage now.”

WHO IS PROTECTED?

As a whistleblower, you're protected from victimisation if you're:

A worker.

Revealing information of the right type by making what is known as a 'qualifying disclosure'.

And revealing it to the right person, and in the right way, making it a 'protected disclosure'.

It's important to note that 'worker' has a special and wide meaning for these protections.

As well as to employees, the protection extends to the self-employed, agency workers and people who aren't employed but are in training with employers.

For detailed information on employment status, you can visit the Gov.uk website:

<https://www.gov.uk/employment-status/worker>

COMPLAINT OR BLOWING THE WHISTLE?

It's important that you recognise the difference between making a complaint, and blowing the whistle.

When someone blows the whistle, they are raising a concern about danger or illegality that affects others.

This is very different from a complaint. When someone complains, they are saying that they have personally been poorly treated.

You must separate out personal grievances.

A public concern and a personal grievance are not the same thing.

Your manager changing your shift pattern might be hugely frustrating, but it is a personal complaint, not a qualifying disclosure.

If you are aggrieved about your personal position, you should follow your organisation's internal grievance procedure to make this known.

SPEAK OUT OR SAY NOTHING

The decision to raise a concern can be a difficult one.

Let's think about some real world examples and see how you feel about them.

For example, you could work in procurement, and become aware of favouritism toward a certain contractor.

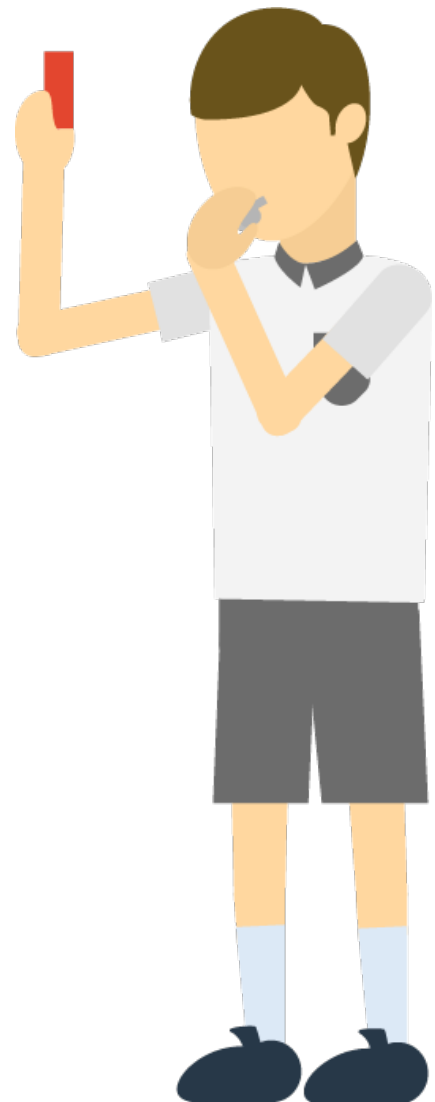
Or perhaps you work in finance, and have noticed some irregularity in the accounting transactions reported.

Or maybe you work in environmental services, and have spotted practices which could seriously damage the environment.

These examples all potentially indicate malpractice, risk or wrongdoing. But what would you do... speak out, or say nothing?

All responsible employers will want to address health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and other such issues.

In the next section, we'll cover whistleblowing good practice so you fully understand how to raise a concern.



RAISING A CONCERN

You can raise your concern at any time about an incident that happened in the past, is happening now, or you believe will happen in the near future.

You're protected by law if you report any of the following:

- criminal offences, such as fraud.
- failure to comply with a legal obligation
- miscarriages of justice
- threats to people's health and safety, and;
- damage or risk to the environment

The law also covers any deliberate attempt to cover up any of these.

WHO TO TELL?

First things first, don't go all private detective on us.

Remember that you may be mistaken, or that there may be an innocent or valid explanation.

For this reason, for your disclosure to be protected by the law, you must make it to the right person and in the right way.

And if you make a qualifying disclosure in good faith to your employer, the law protects you.

There are other options if you don't want to report your concern to your employer, such as getting legal advice from a lawyer, or telling a prescribed person or body.

For example, you might raise concerns about health and safety with your health and safety representative.

Or if you worked in a care home, you could tell the Care Quality Commission.

If you're unsure, you should always get professional advice before going ahead and making a disclosure. You should remember that anything you say to a legal adviser in order to get advice is automatically protected.

You can tell your employer or a prescribed person anonymously, but they may not be able to take the claim further if you haven't provided all the information they need.

WHAT YOUR EMPLOYER OR A PRESCRIBED PERSON WILL DO

Your employer or the prescribed person will listen to your concern and decide if any action is needed. Be prepared to be asked for further information.

And say straight away if you don't want anyone else to know it was you who raised the concern.

You won't have a say in how your concern is dealt with, but your employer or the prescribed person will keep you informed about the action they've taken.

It's worth recognising that they can't give you much detail if they have to keep the confidence of other people. If you're not satisfied with how your concern is dealt with, you do have options.

You could tell somebody else, such as a more senior member of staff.

Alternatively you can contact an independent body such as the whistleblowing charity Public Concern at Work, ACAS or your trade union for more guidance.

IF YOU'RE TREATED UNFAIRLY

If you're an employee and you are treated unfairly after raising a concern, for example you're demoted, victimised or sacked, then you can take a case to an employment tribunal.

If you're not an employee, but are covered by the whistleblowing protections and have a contract that's terminated for whistleblowing, you can take your case to an Industrial Tribunal and claim that you have suffered 'detrimental treatment'.

WHERE TO GET SUPPORT

Making a public disclosure is a serious matter. If you're unsure, you should always get professional advice before making a disclosure.

Public Concern at Work is an independent organisation that can provide you free advice if you're not sure if you should raise a concern about workplace malpractice or how to raise your concern.

FINAL SUMMARY

Let's quickly recap the key messages from this factsheet.

- You're a whistleblower if you're a worker and you report certain types of wrongdoing.
- The wrongdoing you disclose must be in the public interest. This means it must affect others.
- Personal grievances aren't covered by whistleblowing law, unless your particular case is in the public interest.
- If you make a qualifying disclosure in good faith to your employer, the law protects you.
- Your employer or the prescribed person will listen to your concern and decide if any action is needed.
- If you're not satisfied with how your employer dealt with your concern, you still have options.
- And if you're treated unfairly after whistleblowing there is support available.

Whistleblowing is a valuable activity which can positively influence all of our lives.

"Remember that one person of integrity can make a difference" (Elie Wiesel).

