

WHISTLEBLOWING POLICY

1. Background

- 1.1 Whistleblowing is the term used when an employee passes on information concerning wrong-doing. In this policy, we call that making a “disclosure” or “blowing the whistle”. The wrongdoing will typically (although not necessarily) be something they have witnessed at work.
- 1.2 In accordance with the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998 (PIDA)), CHS’ Whistleblowing Policy enables the disclosure of serious concerns about acts carried out by CHS or, indeed, individual employees. The Act fundamentally endorses that any serious concerns disclosed should be raised in a manner that provides protection to the employee in that they are free from fear of intimidation or reprisals. It also enables staff “blowing the whistle” to complain to an employment tribunal if they suffer any form of detriment in doing so, including dismissal. This policy reflects advice outlined in the Department for Business, Innovation & Skills Whistleblowing: guidance and code of practice for employers (2015).
- 1.3 CHS recognises that wrong doing could damage our reputation and/or performance, and affect vulnerable children and young people. We want a culture which is open, honest and transparent, in line with our National Standards, our commitments to equality and diversity and provides a good standard of customer service. We will treat all disclosures consistently, fairly and professionally.
- 1.4 The policy is available to all employees and ex-employees of CHS who have concerns relating to the delivery of CHS’ frontline services, the health and safety of employees or visitors, or the impairment of the viability or integrity of CHS. CHS is committed to achieving high professional and ethical standards of work in all aspects of practice. Volunteers (panel or AST members) who help deliver CHS services and who have concerns around how CHS operates should raise these in accordance with CHS’ Core Policies for Children’s Panel and Areas Support Teams published on our website: <http://www.chscotland.gov.uk/our-publications/policies/>. Volunteers are not covered by this whistle blowing policy.
- 1.5 All employees of CHS have a fundamental right to raise issues of concern with their line manager, to be accompanied by a staff representative or colleague if they so wish and to appeal to a higher level if they feel the issue has not been resolved satisfactorily. This procedure is based upon evidence of best practice in dealing with employee concerns and provides recommendations that integrate partnership working into local procedures.

1.6 All new staff to CHS will be advised of this policy through their employment contracts and the formal induction process. All existing staff in CHS will be advised of changes to the policy through the team meeting process. The policy will be published on CHS' intranet and internet and updated in line with any legislative changes.

2. Qualifying Disclosures that Provide Protection to the Employee

2.1 The PIDA does not introduce a general protection for whistleblowers in all circumstances. A disclosure will only qualify for protection if it is reasonably believed that it tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- That a criminal offence has been committed, is being committed or is likely to be committed.
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health or safety of any individual has been, is being or is likely to be endangered.
- That the environment has been, is being or is likely to be damaged.
- That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

2.2 A whistleblower will qualify for protection under the Act if the disclosure is made:

- In good faith to the Children's Hearings Scotland or to another person who is reasonably believed to be solely or mainly responsible for the failure in question.
- To a legal adviser in the course of obtaining legal advice.
- In good faith to a Government Minister by a worker employed in a Government-appointed body like CHS.
- To a person or body prescribed by the Secretary of State in Statutory Instrument 1999 No. 1549 ("a prescribed body"), e.g. the Health and Safety Executive. In this case, a disclosure must be made in good faith. It must also be reasonably believed that the information and any allegation in it is substantially true and that it is reasonably believed to be a matter that falls within the description of matters for which the person has been prescribed.

2.3 Qualifying disclosures will also be protected if they are made, other than described in section 2.2 above, provided that the individual makes the disclosure in good faith, reasonably believes that the information and any allegation contained in it are substantially true and they are not acting for personal gain. One or more of the following conditions must also apply:

- The individual reasonably believed that he or she would be victimised if he or she had made the disclosure to CHS or to a prescribed person.
- There was no designated officer and the individual reasonably believed that disclosure to CHS would result in the destruction or concealment of evidence.

- The individual had already disclosed substantially the same information to the employer or the designated officer.

3. Procedure

- 3.1 It is preferable, and at the heart of the PIDA, to raise the matter internally, if appropriate and practical but only the employee can make the decision to proceed in this way. . If there is any doubt about how to proceed, the employee should speak to the designated officer. If an employee/former employee goes to the media they will generally lose their whistleblowing rights.
- 3.2 There are a range of policies and procedures which deal with standards of behaviour at work e.g. discipline, dignity at work, staff code of conduct, equal opportunities, grievance, , capability, recruitment and selection etc. Employees are encouraged to use these procedures when appropriate. There may be times, however, when the matter is not about the employee's personal employment position, is a matter of serious concern and requires to be managed in a different way. It may be appropriate in these instances for the employee to refer to the Whistleblowing Policy.
- 3.3 CHS will not tolerate any harassment or victimisation of any member of staff who raises a serious concern via this policy (including informal pressure). This will be treated as gross misconduct which will be dealt with under CHS' Disciplinary Procedure.
- 3.4 An employee should normally raise concerns in the first instance with their line manager. However, in recognition that there may be circumstances when matters require to be handled outwith normal channels of communication, or the first procedure is not deemed to have reached a satisfactory conclusion, the employee can approach, in confidence, the Depute Chief Executive as the designated officer who has been entrusted by the Board with the duty of investigating staff concerns. The Depute Chief Executive will act impartially to give appropriate advice and support. Where concerns are raised with the Depute Chief Executive an initial interview will be arranged which will, if requested, remain confidential (unless required by law), to ascertain the area of concern. The Depute Chief Executive will ascertain whether the employee raising the concern wishes their identity to be disclosed and will reassure the employee about protection from possible reprisals or victimisation. If the employee does not feel it appropriate to approach the Depute Chief Executive, they should consider another member of the senior management team who will proceed in accordance with this policy. Current employees can seek free confidential support and counselling from CHS' Employee Assistance provider at any point in the process or seek support from their staff representative.
- 3.5 The Depute Chief Executive will also ask the employee whether they wish to make a written or verbal statement. In either case the Depute Chief Executive will write a brief summary of the interview which will be agreed by both parties. The Depute Chief Executive has the responsibility to ensure that the concerns raised by the employee are progressed with the appropriate person within CHS.

4. Concerns about the National Convener/Chief Executive or Board Members

- 4.1 If the concern is about the National Convener/Chief Executive or the Depute Chief Executive, this should be made to the Board Chair, who will advise how the investigation should proceed and the route for any subsequent appeals.
- 4.2 Where the concern raised is about a Board Member, then the individual should raise their concern directly with the Board Chair. Where the concern is about the Board Chair, then the individual should raise their concern with the relevant Head of Division in the Scottish Government, either by using the following internal link (hosted on Saltire) or seeking advice from the Head of HR.

5. The Investigation

- 5.1 Dependent on the nature of the serious concern/issue raised the Depute Chief Executive will appoint a competent manager/officer to conduct the investigation. Where appropriate a representative from Human Resources will assist. Neither should have previous knowledge of the concern raised. The investigation will be conducted in strictest confidence having due regard to the requirement to conduct a fair and reasonable investigation.
- 5.2 Normally, the investigation will be conducted within 20 working days, concluding with a recommendation on what action requires to be taken. All parties involved will be guaranteed a fair and impartial hearing. Where the investigation or feedback is delayed for any reason, the Depute Chief Executive will advise the employee of this.
- 5.3 If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation should be conducted in accordance with the provisions of the disciplinary procedure and in line with the gravity of the offence. The investigation should be concluded as quickly as is reasonably possible. However CHS will allow for some flexibility in the timescales for completion given the possible complexity of the concerns raised. A date to conclude the investigation should be agreed at the outset and all parties concerned should be advised of this in writing. Should it be thought necessary to suspend an employee during the course of an investigation, this action should be taken in line with CHS' Disciplinary Procedure.
- 5.4 At all stages of the process any employee interviewed as part of the investigation will have the right to be accompanied by a colleague or staff representative.

6. Possible Outcomes

- 6.1 If the investigation shows there are grounds for further action against individuals the appropriate policies and procedures should be followed.
- 6.2 It may also be appropriate during the investigation to report concerns to external agencies e.g. Police, Social Services, Health and Safety Executive and/or other public bodies. It may

be necessary to suspend internal investigations until the outcome of any criminal proceedings are known.

- 6.3 Where the investigation concludes that false concerns were raised with malicious intent or for personal gain, this would constitute grounds for disciplinary action to be taken against the employee raising the concerns.
- 6.4 If the concerns are unfounded, no action will be taken against the employee. The employee will receive feedback on the investigation and outcome.
- 6.5 Every effort will be made to ensure a staff member who raises concerns in good faith will not suffer adversely as a consequence of their actions, even if these concerns are unfounded. Mediation and dispute resolution, to help rebuild trust and relationships may be considered.
- 6.6 The employee who raised the concerns has the right to appeal the outcome of the investigation if they believe that the investigation is flawed. . Any appeal should be made to the Chief Executive within 10 working days of the written outcome of the investigation. The Chief Executive will arrange a hearing where the employee and the manager/officer who conducted the investigation will present their cases. The appointed Chair of the hearing will make a decision based on the information presented as to whether or not to uphold the appeal.

7. Feedback

- 7.1 Once the investigation has been completed the employee who raised the concerns originally should receive feedback. This should include whether the original concerns were upheld, respecting the confidentiality of all parties.
- 7.2 Following the conclusion of the internal process, it is possible that an employee may continue to be concerned about an issue. If this is the case there are a number of options open to them. Employees may:
 - Report the matter to CHS' Sponsor Branch in accordance with the Regulatory Framework for CHS.
 - Report the matter to the appropriate professional or regulatory body.
 - Access voluntary agencies for advice.
- 7.3 Anonymous whistleblowers will not ordinarily be able to receive feedback and any action taken to look into a disclosure could be limited.
- 7.4 CHS' Information Governance Officer (where appropriate) will:
 - Record the number of whistleblowing disclosure they receive and their nature.
 - Maintain records of the data and content of feedback provided to whistleblowers

8. More Information

More information can be obtained from:

The Government: <https://www.gov.uk/whistleblowing>

ACAS: <http://www.acas.org.uk/index.aspx?articleid=1919>

UNISON: <https://www.unison.org.uk/get-help/knowledge/disputes-grievances/whistleblowing/>