

## PM11 - Whistleblowing Policy and Procedure

Category: Human Resources Sub-category: Miscellaneous







### Policy Review Sheet

Last Reviewed: 20/02/19 Last Amended: 12/12/16

Next planned review in 12 months, or sooner as required.

Note: The full policy change history is available in your online management system.

Business Impact:	Low	Medium	High	Critical
		X		
Changes are important, but urgent implementation is not required, incorporate into your existing workflow.				

 <b>Reason for this review:</b>	Scheduled review
 <b>Were changes made?</b>	Yes
 <b>Summary:</b>	Updated policy into new format. Additional section regarding investigation, updated legislation with Criminal Courts Act 2015 and additional references.
 <b>Relevant Legislation:</b>	<ul style="list-style-type: none"> <li>• The Criminal Justice and Courts Act 2015</li> <li>• The Enterprise and Regulatory Reform Act 2013</li> <li>• The Care Act 2014</li> <li>• The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015</li> <li>• Public Interest Disclosure Act 1998</li> </ul>
 <b>Underpinning Knowledge - What have we used to ensure that the policy is current:</b>	<ul style="list-style-type: none"> <li>• Public Concern at Work, (2016), <i>PAS 1998:2008 Whistleblowing Arrangements Code of Practice</i>. [Book] British Standards Institute</li> <li>• The Care Quality Commission, (2013), <i>Whistleblowing: Guidance for providers who are registered with The Care Quality Commission</i>. [Online] Available from: <a href="http://www.cqc.org.uk/sites/default/files/documents/20131107_100495_v5_00_whistleblowing_guidance_for_providers_registered_with_cqc.pdf">http://www.cqc.org.uk/sites/default/files/documents/20131107_100495_v5_00_whistleblowing_guidance_for_providers_registered_with_cqc.pdf</a> [Accessed: 24/10/2016]</li> <li>• Speak Up, (2014), <i>Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health and Social Care</i>. [Online] Available from: <a href="https://speakup.direct/assets/Uploads/Raising-Concerns-at-Work.pdf">https://speakup.direct/assets/Uploads/Raising-Concerns-at-Work.pdf</a> [Accessed: 19/04/2018]</li> <li>• Speak up, (2014), <i>Training materials for social care managers</i>. [Online] Available from: <a href="https://speakup.direct/assets/Uploads/Training-Materials-Manager-Social-Care.pptx">https://speakup.direct/assets/Uploads/Training-Materials-Manager-Social-Care.pptx</a> [Accessed: 21/11/2017]</li> <li>• Speak Up, (2012), <i>Settlement Agreements and Gagging Clauses</i>. [Online] Available from: <a href="https://speakup.direct/assets/Uploads/Settlement-Agreements-and-Gagging-Clauses.pdf">https://speakup.direct/assets/Uploads/Settlement-Agreements-and-Gagging-Clauses.pdf</a> [Accessed: 21/11/2017]</li> <li>• NHS Improvement Service, (2016), <i>Freedom to speak up: raising concerns (whistleblowing) policy for the NHS</i>. [Online] Available from: <a href="https://nhsicorporatesite.blob.core.windows.net/green/uploads/documents/whistleblowing_policy_final.pdf">https://nhsicorporatesite.blob.core.windows.net/green/uploads/documents/whistleblowing_policy_final.pdf</a> [Accessed: 19/04/2018]</li> </ul>
 <b>Suggested action:</b>	<ul style="list-style-type: none"> <li>• Encourage sharing the policy through the use of the QCS App</li> </ul>

## PM11 - Whistleblowing Policy and Procedure

This page is deliberately left blank

## PM11 - Whistleblowing Policy and Procedure

### 1. Purpose

1.1 This policy outlines the process to follow if a person wishes to 'whistleblow' and raise a concern about a wrongdoing in their workplace.

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

1.3 To support Carers Direct Homecare Ltd in meeting the following Key Lines of Enquiry:

Key Question	Key Line of Enquiry (KLOE)
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.4 To meet the legal requirements of the regulated activities that Carers Direct Homecare Ltd is registered to provide:

- 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 2015
- Public Interest Disclosure Act 1998

### 2. Scope

2.1 The following roles may be affected by this policy:

- All staff
- NHS staff
- Persons working on training courses
- Temporary Agency Staff

2.2 The following people may be affected by this policy:

- Service Users

2.3 The following stakeholders may be affected by this policy:

- Commissioners
- Local Authority
- Care Quality Commission

### 3. Objectives

3.1 All staff have a duty to ensure standards of quality care by raising concerns regarding wrongdoing or malpractice. This policy will provide the means of ensuring that staff can confidentially raise genuine concerns of malpractice and/or misconduct through appropriate means at the earliest point without fear of reprisal.

## PM11 - Whistleblowing Policy and Procedure



### 4. Policy

**4.1** Carers Direct Homecare Ltd is committed to the principals of whistleblowing and supporting and providing mechanisms for employees to fulfil their duty without fear of any reprisals.

**4.2** Carers Direct Homecare Ltd is committed to a high standard of care, to honesty, openness and decency in all its activities. It is recognised that Service User 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 Carers Direct Homecare Ltd, its employees and most importantly for those receiving our services.

**4.3** This organisation 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, Carers Direct Homecare Ltd 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.

**4.4** Carers Direct Homecare Ltd believes raising concerns/speaking up is important to ensure the safety of Service User, employee and public safety.

**4.5** Carers Direct Homecare Ltd recognises 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 reduction in work hours.

**4.6** Carers Direct Homecare Ltd will not tolerate the ill treatment including any bullying or harassment of anyone raising a concern. We will ensure that any individual who raises a concern, can do so confidentially in line with the Public Interest Disclosure Act 1998 (PIDA).

**4.7** Carers Direct Homecare Ltd 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 not limited to loss or reduction of hours or changes to regular working patterns because of it.

**4.8** Carers Direct Homecare Ltd will support and enable members of staff and volunteers to speak out regarding misconduct and malpractice through a structured and regularly reviewed process.

**4.9** Carers Direct Homecare Ltd recognise that whistleblowing concerns are often raised when employees do not feel their earlier concerns have been listened to or that any action has been taken. Carers Direct Homecare Ltd will put in place mechanisms for our staff to discuss concerns when they arise and endeavour to give feedback on any actions if confidentiality will not be breached.

## PM11 - Whistleblowing Policy and Procedure

### 5. Procedure

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

**5.2** 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 (see definition) mean that you can raise a concern about risk, malpractice or wrongdoing you think is harming the services, might harm or has in past harmed any aspect of the services we deliver. 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 Service User safety incident
- Suspicions of fraud (which can also be reported to the local counter-fraud team)
- Damaging the environment - e.g. disposing 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, Service User visit logs or MAR charts or clinical or care records
- Failure to investigate claims of physical or sexual assault
- Physical, verbal or sexual abuse of any Service User, colleague or other
- Breaching the Data Protection Act

#### **5.3 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, your concerns will be treated confidentially
- Your line manager will inform you if they cannot keep the concern confidential
- The Registered Manager has overall responsibility for concerns raised and your line manager may need to share your concern with the Registered Manager who will have access to the Registered Provider

#### **5.4 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 or involves the line manager, or they have raised it with the line manager and no action has been taken - the colleague should then escalate their concerns to the Registered Manager

#### **5.5 Registered Manager and Registered Providers Responsibility**

- Responsibility for dealing with any concerns reported will lie with the Registered Manager who will have access to the Registered Provider
- If the concerns relate to the Registered Manager, concerns should be escalated to the Registered Provider
- If your concerns involve both or they are fulfilling the both roles you can contact the CQC

#### **5.6 How to Raise a Concern - Step 3**

- If you do not feel that the Registered Manager or Registered Provider will appropriately handle your concerns, you may report your concerns directly to the Care Quality Commission on 03000 616161 or through their website
- The CQC will not disclose your identity without your consent unless there are legal reasons requiring them to do so, e.g. where your information is about a child or vulnerable adult who is at risk

#### **5.7 Investigation**

The Registered Manager, in consultation with the Registered Provider, shall have discretion over the nature of the

## PM11 - Whistleblowing Policy and Procedure

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.

### 5.8 Protected Disclosures and Safeguarding

- Where a safeguarding concern is received by a member of staff, local 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, then the referral must in the first instance be made to the Social Services Adult Protection Team
- The Adult Protection Team will take the responsibility of informing other agencies. The contact details for your local Social Services are as follows:

**Leicester City Council, Adult Social Care – Contact & Response, Bosworth House, 9 – 15 Princess Road West, Leicester Le1 6<sup>TH</sup>, Tel: 01164541004 or in emergency 0116 255 1606**

### 5.9 Raising a Concern - Timescales

The Manager will acknowledge your disclosure within locally agreed timescales and in line with best practice.

They will let you know who will be investigating the disclosure and any contact information you or they will require and how they will keep you informed.

Any further clarification will be asked for and a review and/or completion date to the investigation.

**5.10** Where possible, the responsible manager will feedback on the outcome of any investigation, although this may not always be possible in full due to the nature of the disclosure.

**5.11** A record of the information you have given and proceedings will be kept in line with best practice.

### 5.12 False Allegations

All whistleblowing concerns will be investigated, however if an employee is found to have made allegations maliciously and/or not in good faith, disciplinary action may take place. 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. The Registered Provider shall decide whether disciplinary action is to commence.

### 5.13 Bullying and Harassment of Whistleblowers

The Enterprise and Regulatory Reform Act imposed a new personal liability on co-workers who victimise or harass whistleblowers as well as vicarious liability on the part of their employers. Unless an employer has taken reasonable steps to prevent this type of victimisation by co-workers, it will be deemed liable for the acts of its staff. It is therefore no longer enough to deal with incidents of bullying or harassment as and when they arise, on a case by case basis. The only basis upon which an employer will now be able to defend itself against liability for the actions of its staff will be by proactive steps. In order to demonstrate a “reasonable steps” defence, an employer will need to anticipate conduct such as bullying and harassment. To avoid incidents of bullying or harassment occurring Carers Direct Homecare Ltd will take the following steps:

- Adhere to the Whistleblowing Policy
- Embed a culture of openness and transparency
- Communicate the policy
- Offer any necessary training to ensure it is put into effect
- Take action if any worker bullies or harasses a whistleblower

### 5.14 Implementing Whistleblowing Procedures

The Whistleblowing Policy and Procedure will form part of induction. Raising concerns will be discussed regularly during supervision and team meetings to promote an open culture and ensure whistleblowing processes are embedded within our business.

### 5.15 Employment Contracts, Whistleblowing and Confidentiality

A settlement agreement is used to bring an employment relationship to an end in a manner which is mutually agreed by the parties. In some instances, they may be used where the employee and employer agree that the

## PM11 - Whistleblowing Policy and Procedure

employment relationship can no longer proceed and must be brought to an end. They may also be used to resolve a dispute or issue, where the employment does not need to be terminated, for example a dispute over pay. Carers Direct Homecare Ltd will seek legal or Human Resource advice when drawing up any compromise agreements or employment contracts to avoid the risk of breaching the Public Interest Disclosure Act.



### 6. Definitions

#### 6.1 Whistleblowing

- A member of staff who raises a concern about something they have seen first hand at work in relation to malpractice or wrongdoing. This could be concerns about inappropriate or unlawful conduct, financial mismanagement, poor practice or behaviour

#### 6.2 Qualifying Disclosure

- Qualifying disclosures are disclosures of information where the worker reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.
  - A criminal offence
  - The breach of a legal obligation
  - A miscarriage of justice
  - A danger to the health and safety of any individual
  - Damage to the environment
  - Deliberate attempt to conceal any of the above

#### 6.3 Public Interest

- A disclosure made in the interest of the public, i.e. not relating to an individual such as in a grievance case

#### 6.4 Grievance or Private Complaint

- A dispute about the employee's own employment position without a public interest aspect

#### 6.5 PIDA

- Public Information and Disclosure Act - Legislation which provides protection to workers who make disclosures in the public interest

#### 6.6 Employee/Staff

- PIDA refers to 'workers'. This policy has used the term employee/staff /colleagues to reflect the relevant persons this policy relates to. The NHS integrated Policy (2016) Freedom to Speak Up: Whistleblowing Policy for the NHS refers to Volunteers being included however PIDA does not specifically include volunteers as they are not paid employees and therefore cannot be compensated financially for ill treatment or unfair dismissal

#### 6.7 Criminal Justice and Courts Act 2015

- Legislation which lays out the offences involving ill-treatment or wilful neglect by a person providing health or social care

#### 6.8 Anonymously

- Made or done by someone whose name is not known or made public

## PM11 - Whistleblowing Policy and Procedure



### Key Facts - Professionals

Professionals providing this service should be aware of the following:

- All staff have a duty to ensure standards of quality care by raising concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour and will be protected and supported to do so
- All whistleblowers will be treated in fair way and not be victimised or prejudiced as a result of a genuine concern
- Carers Direct Homecare Ltd is committed to the Whistleblowing policy and procedure, and will act on information given in line with it



### Key Facts - People Affected by The Service

People affected by this service should be aware of the following:

- People affected by the Service can raise concerns through the complaints process



### Further Reading

As well as the information in the 'Underpinning Knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

- Safeguarding Policy and Procedure
- Grievance Policy and Procedure
- Duty of Candour Policy and Procedure
- Complaints and Procedure
- Anti-Bullying Policy and Procedure
- Confidentiality Policy and Procedure



### Outstanding Practice

To be 'Outstanding' in this policy area you could provide evidence that:

- Staff report that the organisation is extremely open, transparent and actively support and encourage whistleblowing
- Carers Direct Homecare Ltd uses lessons learnt from concerns, without breaching confidentiality, to ensure continuous improvement of your service
- Carers Direct Homecare Ltd enables employees to raise concerns by providing support (such as a helpline) from an independent agency in regard to whistleblowing concerns
- Carers Direct Homecare Ltd has a designated Whistleblowing Champion and evidence of the proactive nature of this role and how it is a success
- The wide understanding of the policy is enabled by proactive use of the QCS App