

WHISTLE-BLOWING POLICY

Below is a referral to Whistleblowing, what it means and its purpose. Procedures are covered within Orchid's Complaints Procedure, Orchid's Disciplinary Procedure, Abuse and Confidentiality Policies.

1.0 INTRODUCTION

The Public Interest Disclosure Act 1998 came into force on 2 July 1999. This Act recognised that workers have the right to "blow the whistle" and disclose certain information, e.g. the fraudulent activities of management, malpractice and/or concerns about health and safety.

The Act introduced specific rights for those who disclose information to a third party about an alleged wrong-doing in defined circumstances.

Protection under the Act applies to workers, and the definition used is substantially wider than that used in other employment legislation. It includes not just employees and the common definition of workers, but also third party contractors including limited company contractors whose work is controlled by the employer and would therefore cover all, including dentists and doctors, under statutory schemes and those individuals working under training contracts but not the genuinely self-employed.

On a practical note, the Care Standards Act 2000, through the Nurses Agencies Regulations & Domiciliary Care Regulations and the associated standards, require Orchid National Nursing Supply to have robust procedures in place for responding to suspicion or evidence of abuse or neglect (including whistle-blowing) to ensure the safety and protection of service users. However, our policy also encourages the worker to disclose their concerns internally first, and our reporting procedure is laid down in Orchid's Abuse Policy.

1.1. *Disclosure Matters*

- A qualifying Disclosure means any Disclosure of information, which, in the reasonable belief of the worker, tends to show one or more of the following:
- that a criminal offence has been committed, is being committed or is likely to be committed; or
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject; or
- that a miscarriage of justice has occurred, is occurring or is likely to occur; or

- that the health or safety of an individual has been, or is being or is likely to be endangered; or
- that the environment has been, is being or is likely to be damaged, or
- that information tending to show any massive failing within any one of the proceeding paragraphs has been, is being or is likely to be deliberately concealed.

The worker simply has to show that they have a reasonable belief that the information disclosed demonstrates one or more of the above criteria. However, there are two important exceptions where the Disclosure will not qualify for protection and they are:

- if the person making the Disclosure commits an offence by making it, or
- if it is a matter in which a legal, professional privilege would apply, namely, correspondence between the employer and their lawyers regarding a specific case.

It is not sufficient for the worker to show that the circumstances give rise to a qualifying Disclosure, the worker will also have to ensure that the proper procedures are adhered to.

1.2. Procedures for Disclosures

In order to qualify for the whistle-blowing protection, the worker must use one of the six specified ways to make the Disclosure. The aim of the legislation is to encourage workers to disclose the information through appropriate internal channels first rather than going directly to an outside person such as a member of the media.

The six permitted ways of Disclosure are as follows:

1) Disclosure to an Employer or Other Responsible Person

This method of Disclosure will ensure that workers are protected in respect to Disclosures made in good faith. Where the worker believes that the relevant failure relates solely or mainly to the conduct of a person other than the employer or to a matter for which that other person has responsibility, the Disclosure should be made to that other person.

In the context of temporary workers supplied by an employment business, it may well be appropriate for the temporary worker to raise the concern with the client in the first instance rather than the agency/employment business.

2) Disclosure to a Legal Adviser

This protects workers who disclose information in the course of obtaining legal advice.

3) Disclosure to a Minister of the Crown

This will only apply where the worker's employer is an individual appointed under any enactment by a Minister of the Crown or a body whose members are so appointed. Examples include the Utility Regulatory Bodies and NHS trusts, i.e. could apply to nurses, care staff and workers supplied to local authorities.

4) Disclosure to a Prescribed Person

Workers will qualify for protection when they make a Disclosure in good faith to a person prescribed by an order made by the Secretary of State. The list of prescribed persons was recently amended and the New Public Interest Disclosure Prescribed Persons Amendment Order came into force on 1 October 2003 and the relevant list is attached at Appendix A.

5) Disclosure in Other Cases

Disclosure in other cases apply where the worker makes the Disclosure in good faith, reasonably believes that the information disclosed and any allegations contained within it are substantively true, does not make the Disclosure for the purposes of personal gain and meets one of the specified conditions set out below, namely:

- that at the time he or she makes a Disclosure, the worker reasonably believes that he or she will be subject to detriment by his or her employer if that worker makes a Disclosure to his or her employer or to a prescribed person;
- that in the case where no person is prescribed in relation to the relevant circumstances, the worker reasonably believes that it is likely that the evidence relating to the relevant failure would be concealed or destroyed if he or she made the Disclosure to the employer; or
- that the worker has previously made a Disclosure of substantially the same information to the employer or a prescribed person. Further details are contained within the Act.

6) Disclosure of Exceptionally Serious Breaches

The final type of protected Disclosure is one which covers situations where the subject matter is serious enough to merit by-passing one of the other procedures. The relevant criteria set out above must be met together with the matter which must be exceptionally serious. It does not mean that people will be protected where they act unreasonably, for example, by going straight to the press where there would clearly have been other less damaging ways to resolve the matter.

This would be particularly true where there was a whistle-blowing policy which encourages the worker to raise the matter with the employer or another responsible body first.

1.3. Protection for the Worker

The protection given under the Public Interest Disclosure Act 1998 only applies in certain situations where the worker makes a protected Disclosure to the bodies named in the Act. The protection applies to all workers without any restriction on age, however, it is limited and it is important that the worker follows the correct procedure or else they will be denied the protection. The protection, which includes financial compensation without the statutory cap applying in the case of protection against dismissal, further includes the right not to suffer a detriment as a consequence of making a protected Disclosure.

1.4. Practical Issues

The Agency Orchid National Nursing Supply take whistle-blowing and issues of malpractice seriously.

Our whistle-blowing policy, is approved by the REC (Recruitment and Employment Confederation) to which 'Orchid' is a member, and is specific for nurses and domiciliary care agencies, it makes it clear that the worker wishing to voice his/her concern should raise the matter with the named person first, who will deal with the matter objectively. It is important that Orchid's responsible person or manager takes the time to listen to any issues raised and investigates in an objective and confidential manner. Issues should be dealt with when they arise and workers should not be told to wait until they have proof of or to investigate the matters themselves.

It is important that matters are treated confidentially. If a worker is not happy with the way in which a matter has been addressed, he/she should be encouraged to raise that fact as a complaint rather than leaving the matter unresolved.

However, workers who make false allegations maliciously may be subject to the appropriate action.

Please refer to Orchid's Complaints Procedure, Orchid's Disciplinary Procedure, Abuse and Confidentiality Policy.