

Bargaining Support Group



Whistleblowing: a bargaining guide and model policy

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If negotiators have any comments on this guidance or any experience of negotiations that could be usefully incorporated in the guidance, please contact Bargaining Support at bsg@unison.co.uk

Raising a concern at work

The standard route for raising a personal concern at work is by raising a grievance.

As [Acas](#) outlines, an employee might [raise the grievance formally](#) if:

- 1) they feel raising it informally has not worked
- 2) it's a serious issue
- 3) they do not want to resolve it informally.

The employee should raise the formal grievance:

- as soon as possible
- in writing, outlining what the problem is
- and follow their workplace grievance policy.

More information on grievance procedures

From UNISON www.unison.org.uk/get-help/knowledge/disputes-grievances/grievances

From Acas www.acas.org.uk/grievance-procedure-step-by-step

Acas Code of Practice on disciplinary and grievance procedures
www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

But there are some circumstances, when there is a wider implication to the wrongdoing that the worker has a concern about, where **disclosure is of public interest**. It will relate to one (or more) of the following types of concerns:

1. criminal offence being committed
2. a person failing to meet a legal obligation to which they are subject
3. miscarriage of justice
4. endangerment to the health and safety of any individual
5. damage to the environment
6. deliberate concealment about any of the above.

In such situations, the worker should have protection from victimisation when disclosing information about this to their employer, authorised third party, legal adviser, or to other types of prescribed persons if it is not possible to speak to the employer. It is unlawful for the employer to subject the worker to a detriment or to dismiss if the reason is because the worker raised a qualifying protected disclosure.

However, if the worker wants to make a wider disclosure beyond these recipients, it will only be protected if it is reasonable to make the disclosure and if certain other narrow conditions are also met.

The worker must reasonably believe that their concern is in the public interest in order for it to be a 'protected disclosure' (see section on 'What is a qualifying protected disclosure' below). They must believe that they will be protecting the public by 'blowing the whistle' on any malpractice in their organisation, in order for them to be protected by the law.

Ideally the employer will treat whistleblowing concerns separately from a grievance, although the law does not specify this.

Many organisations have whistleblowing or reporting wrongdoing policies in place and they should be followed where possible.

Disclosing to a work colleague may not provide protections if the worker is subsequently treated badly or dismissed. It's important that the worker discloses to a more senior member of staff or designated whistleblowing officer in order to be protected.

If a member has made or intends to make a protected disclosure and has asked for support and guidance from UNISON, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

What is a ‘whistleblower’?

There is no legal definition for a ‘whistleblower’.

However, the UK government describes whistleblowing “as the term used **when a worker passes on information concerning wrongdoing**... The wrongdoing will typically (although not necessarily) be something **they have witnessed** at work.” Whistleblowing only applies to passing on information about certain types of wrongdoing. These specific types of wrongdoing are listed in the legislation. If disclosed, they should give the whistleblower protection (see the section below on ‘What is a qualifying protected disclosure.’)

This could mean highlighting possible unlawful activities in the organisation, failures to comply with legal obligations, miscarriages of justice or reporting on risks to the health and safety of individuals or to the environment.

Such activities could be a violation of a law, rule or regulation, or a threat to public interest, such as fraud, health and safety violations or corruption.

The worker must reasonably believe that they are acting in the **public interest**.

UNISON recognises that employees working in the public, private and voluntary sectors are often in the best position to know when the public’s interest is being put at risk. Staff are able to act as an early warning system on safety issues, help uncover fraud and other wrongdoing in the workplace.

In principle, a whistleblower will not personally benefit from the outcome, as the legal protection is due to raising a concern of public importance. If the wrongdoing is really a complaint about how the individual has been treated, rather than being something of public importance, they may have alternative legal protections if they are subjected to a detriment or dismissed unfairly.

As whistleblower protection is complex, expert legal advice is always essential.

The UK charity, [Protect](#) explains that “public interest would generally mean that a concern has an impact on more than one individual’s employment contract (which may be better dealt with by a grievance).

However, there may be matters which affect both you and other individuals, and for which there is sufficient public interest.

For example, if you are being bullied then that’s about your private contract. But if your team is being bullied, people are off work with stress and your vulnerable clients are at risk as a result, that may engage the public interest.”

The employee's right to report suspected malpractice at work

UNISON recognises it is still the case that many workers fear they will be putting their jobs at risk should they raise concerns, particularly if they are in insecure employment such as on zero-hours contracts.

The Institute of Business Ethics' [2018 UK Ethics at Work survey](#) found that the main reasons why employees choose not to speak up are a fear that it may jeopardise their job (or otherwise cause them to be retaliated against) and because they feel that no corrective action will be taken as a result of them speaking up.

The 2019 report from Queen's University Belfast and others called '[Post-disclosure survival strategies: transforming whistleblowers' experiences](#)', found that whistleblowers can incur significant tangible and intangible costs after disclosing wrongdoing. This includes a reduction in employment income, as well as an impact on physical health and mental well-being.

However, the UK charity [Protect](#), through their YouGov research, found that between 2011 and 2018, 1 in 10 UK workers said that they had witnessed possible corruption, wrongdoing or malpractice in the last two years. But, in 2018, 62% of respondents were either unaware of legislation or believed that there was no protection for whistleblowers. 54% stated that either their employer had no whistleblowing policy or were unaware of whether a policy was in place.

Whistleblowing during the COVID-19 Pandemic

Just under half of the 1,000 key workers surveyed by law firm, Slater and Gordon in August 2020, said they had been forced to highlight issues that could put colleagues, customers and patients at risk from COVID-19.

The most common concern among those surveyed was an inability to social distance, cited by more than half. A quarter said they were most concerned about employers forcing vulnerable people back to the workplace.

The research indicated a lack of trust among workers that their employer would act fairly and ethically. One in five said they suspected their employer of using the pandemic as a cover to pursue unethical workplace practices.

Source: [People Management, 14 September 2020](#)

Whistleblowing by care home staff increased by 66% during the coronavirus pandemic, new research carried out by the Daily Express between 1 March and 21 May found. Kate Terroni, the CQC's chief inspector of adult social care, said: "It's in everyone's interests that staff are able to speak up freely and are not prevented from raising their concerns about quality and safety – and all providers have a responsibility to support their staff to share concerns safely without fear of reprisal."

Source: [Care Home Professional, 11 August 2020](#)

Whistleblowing advice service Protect found that one in five whistleblowers who contacted its advice line were dismissed after raising coronavirus concerns in the first six months of the pandemic. This increased to one in four between September 2020 and March 2021.

According to analysis by the Telegraph, some 2,289 employment tribunal claims for whistleblowing detriment were made between April and December 2020 and the number of cases have more than doubled since 2014/15.

Source: [Personnel Today, 23 March 2021](#)

An open workplace culture, where workers are encouraged and supported when they speak out, should be developed by management with the support of workplace reps and branches. Employers should be encouraging staff to raise concerns at the earliest opportunity.

The [Institute of Business Ethics](#) is clear: “Encouraging staff to raise concerns is just one step along the route to developing an open culture. Listening to those concerns, investigating them and acting upon the information received are essential. If companies do not support their employees in this way, they risk a concern becoming a crisis.”

However, if workplaces fail to fully achieve this openness and trust, legal protection is crucial if employees are to continue to raise matters of public interest.

The law

The **Public Interest Disclosure Act 1998** was introduced to provide legal protection for whistleblowers. The equivalent legislation in Northern Ireland is the Public Interest Disclosure (Northern Ireland) Order 1998.

The legislation made substantial amendments to the Employment Rights Act 1996 – and the Employment Rights (NI) Order 1996 in Northern Ireland – to protect whistleblowing workers from dismissal and detrimental treatment.

It aims to protect whistleblowers from all forms of victimisation because they have raised genuine concerns about misconduct or wrongdoing.

The protection is provided to an extended definition of a 'worker', which includes employees, homeworkers, agency workers, police officers, most trainees and most medical staff, including certain self-employed medical professionals in the NHS. But it does not include, for example, volunteers, trustees, nor most self-employed workers.

An employee may bring a case before an employment tribunal, which can award compensation for any successful claim. Where the individual has been dismissed because of whistleblowing, a tribunal can also grant interim relief for the continuation of their employment before a final hearing determines the unfair dismissal case.

As a result of the legislation, some employers have developed internal whistleblowing procedures, although the legislation does not enforce this as a requirement.

The **Enterprise and Regulatory Reform Act 2013**¹ introduced some further changes to the legal test for a qualifying protected disclosure, making it clearer that a disclosure will only qualify if the worker reasonably believes the disclosure is 'in the public interest'. It also introduced personal liability for claims against co-workers and where the detriment is caused by an agent of the employer, acting with its authority.

Generally speaking, a whistleblower who makes a qualifying protected disclosure does not have to demonstrate that they have made the disclosure in good faith in order to be protected. However, this is a point that many employers will challenge and it is important to note that a tribunal can reduce the level of compensation it awards if it feels that the disclosure was not made in good faith.

A whistleblower that makes a qualifying protected disclosure could also be protected if they are bullied or harassed by co-workers. In some cases, employers can be liable, even if this takes place without the employer's knowledge. An employer will

¹ In Northern Ireland the legislation covering this aspect is the Employment Act (Northern Ireland) 2016, (Commencement Number One) Order (Northern Ireland) 2017.

have to prove that it has done everything reasonably possible to protect the whistleblower from bullying and harassment. The whistleblower can also consider bringing separate claims against the individual co-workers.

Confidentiality clauses, such as 'gagging' clauses in employment contracts and settlement agreements, often conflict with legal protections for whistleblowers. There are specific protections to nullify limits on the right to make a protected disclosure in the public interest.

In 2019, the European Parliament adopted a new **EU Directive on Whistleblowing**. Once transposed into UK law (which is due to be no later than 17 December 2021), UK whistleblowing protection will be much broader. For example, it aims to encourage more people to disclose work-related breaches of EU law, extend protection to 'facilitators' who assist whistleblowers and require that whistleblowers have free access to free independent advice.

However, following Brexit, it is unknown as yet how much of the Directive the UK will adopt, if at all, despite there being a need for the UK to ensure its workers' rights are not diminished.

Meanwhile, the existing protections offered by the whistleblowing legislation to workers who 'blow the whistle' remain limited and complex. The legislation does not actively encourage disclosure of malpractice as its protections only cover a whistleblower once they have already suffered harm as a result of making a qualifying protected disclosure in the public interest.

In March 2021, it was [reported](#) that the government was planning to review the whistleblowing regime and to introduce a single body to enforce workers' rights – including whistleblowing protections – as part of its (still awaited) Employment Bill.

A **whistleblowing detriment claim** can be made by workers and employees where the whistleblower has been victimised at work because of the disclosure. Claims can be brought against the employer, agents of the employer acting with the employer's authority and work colleagues.

The claimant will have to show that they have been deliberately disadvantaged in some way, because they made a protected disclosure. Although the law does not clearly define detrimental treatment, examples of detriments may include:

- financial or economic loss
- not being offered training opportunities or promotion
- disruption of working patterns or work relations
- longer commutes
- intrusive monitoring

- bullying, harassment or ostracism
- forced redeployment
- loss of responsibilities or demotion
- blocking of access to resources
- being placed on a performance improvement plan
- getting a bad appraisal
- being suspended or getting a disciplinary warning
- and being given a negative or no reference.

The employer would be liable for detriments inflicted by colleagues at work even though they may not have known nor approved of it. Their only defence would be to show they took every reasonable step to prevent it from happening. However, employers often dispute the individual has made a qualifying protected disclosure, to block the 'gateway' to the whistleblower protections. Also, employers will normally dispute the reason for the alleged treatment suffered by the whistleblower was on the ground that s/he made a qualifying protected disclosure.

Work colleagues can also be held personally liable for detriments suffered by a whistleblower. The Court of Appeal has found that the scope of personal liability is wide and can include the detriment of deciding to dismiss a whistleblower.

A **whistleblowing unfair dismissal claim** can only be made by employees and can only be made against the employer, but the employee does not need the usual 2 years' continuity of service. The evidence must clearly show that the dismissal was wholly or mainly because of the protected disclosure and not for some other reason.

The UK government has produced a non-statutory Code of Practice and guidance for employers who may need to handle whistleblowing reports. Employment tribunals do not have to take the Code into account when making decisions because it is non-statutory. However, it can help inform negotiations when developing whistleblowing policy and procedure.

www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers

If a member has made or intends to make a protected disclosure and has asked for support and guidance from UNISON, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

What is a qualifying protected disclosure?

A 'qualifying protected disclosure' is needed in order to protect a whistleblower. In other words, it must relate to a specific type of wrongdoing (see list below) and it must be **in the public interest**.

A whistleblower may be protected if they reasonably believed at the time of making the disclosure that it was in the public interest, even if they later turn out to have been mistaken.

A disclosure of information will count whether it is made in writing or verbally. Tribunals would normally expect to see **evidence** within the disclosure itself that the reason for making it was, at least in part, because of public interest.

The disclosure should not be a general allegation or opinion but rather, it should contain enough specific factual content to justify the worker believing that the wrongdoing is, or will, or has, taken place.

In *Chesterton Global Limited v Nurmohamed [2017]*, the Court of Appeal highlighted factors to consider when deciding whether a claimant reasonably believed their disclosure to be in the **public interest**:

- the number of people who were affected by the alleged wrongdoing (the more people affected, the more likely the disclosure is to be in the public interest)
- how seriously they were affected
- the type of wrongdoing (disclosure of deliberate wrongdoing is more likely to pass the 'public interest' test than an innocent mistake)
- the alleged wrongdoer's identity (wrongdoing by a public figure in a position of authority is more likely to be in the public interest than the same wrongdoing by someone with no public responsibilities).

The disclosure should also be made in an appropriate manner, so for example not using discriminatory, abusive or intimidating language or behaviour, or in a heated exchange with a manager that may provide the employer's justification for any subsequent dismissal.

Personal grievances and complaints are highly unlikely to be viewed as a qualifying protected disclosure, as they are unlikely to be in the public interest. Any disclosure that is motivated solely by self-interest or is purely in a worker's own personal interest, for example raising a grievance about non-payment of your own wages, is not likely to be protected.

The whistleblower is the messenger of information about the public interest concern through their disclosure. However, if the whistleblower then went on to investigate the concern themselves, or to campaign against the employer's response or lack of response, these actions may not be protected if the worker is subsequently

dismissed or subjected to detrimental treatment. Remember that an employer will normally argue that this type of behaviour prevents it from carrying out a fair investigation and could even be used as evidence of misconduct.

A 'qualifying protected disclosure' must 'tend to show' a **particular category of wrongdoing from a statutory list**, whether it is believed this wrongdoing is ongoing or has happened in the past or is likely to happen in the future.

The statutory categories for wrongdoing are:

- a criminal offence (such as insurance fraud or illegal tax evasion)
- a person failing to meet a legal obligation to which they are subject
- a miscarriage of justice
- endangerment to an individual's health and safety
- damage to the environment
- deliberate concealment of information about any of the above.

But it should also be noted that there are some exceptions to qualifying protected disclosures, in particular:

- disclosure of legally privileged information
- where disclosure is a crime (eg under the Official Secrets Act 1989)
- the legal position for parliamentary staff and armed forces is complex and appears to protect such whistleblowers against unfair dismissal but **not** against detriment.

A disclosure can be made in writing or verbally or through a video recording.

However it is made, there must be clear evidence to back it up.

Tribunals would also expect claimants to be able to clearly identify the disclosure on which they base their claim, specifying when it was made, its content and to whom it was made.

Making the disclosure in writing will help to provide this sort of evidence and detail.

Who is protected under the law?

All employees and certain workers are protected by whistleblowing law.

In the case of *Miss J Panahian-Jand v Barts Health NHS Trust and Barts Health Staff Bank (2019)*, a paediatric nurse complained about alleged racial discrimination and was subsequently banned from booking shifts on the ward and suspended.

The tribunal found that her formal complaint had amounted to a protected disclosure. The employment judge said: “In our judgment this is a classic case of an employer treating far too severely a person who had raised allegations because they had done so. This is contrary to the expressed aims of its own whistleblowing policy.”

Miss Panahian Jand was awarded £26,083.19 in compensation, including awards for injury to feelings and financial loss.

It is a ‘day one’ right, so the worker does not need any period of service before they can make a claim in an employment tribunal.

It includes homeworkers and most freelancers, workers on secondment, most agency workers (as long as the terms of engagement are substantially determined by the agency and/or the organisation, rather than by the worker), people on work experience or training outside an educational establishment, student nurses, student midwives, self-employed doctors, dentists, ophthalmologists and pharmacists working in the NHS, police officers, Crown employees, workers who contract through an umbrella company or a personal service company or who are a member of a limited liability partnership.

However, genuinely self-employed workers, volunteers and job applicants (other than in the NHS) are amongst those not included in the protections.

So, if a **job applicant** is turned down for the job because they made a disclosure in a previous job, they will not normally be protected under the whistleblowing legislation. An exception to this is in the NHS under the *Employment Rights Act 1996 (NHS Recruitment — Protected Disclosure) Regulations 2018* that applies in England, Wales and Scotland. This prohibits NHS employers from treating a job applicant less favourably, because the employer believes the applicant made a protected disclosure in previous employment.

Potential whistleblowers who have not yet reported the malpractice but who receive detrimental treatment before they even get a chance to make the disclosure, may also be protected as shown by the case of *Bilsbrough v Berry Marketing Limited (2019)*.

Mr Bilsbrough had been dismissed by his employers, Berry Marketing when they discovered he was researching how to make a disclosure of malpractice concerning a data security breach.

At the employment tribunal he was awarded compensation for treatment by his line manager and for his suspension as they were linked to the potential whistleblowing. However, it was not awarded for the dismissal itself which was as a result of his getting angry and threatening the organisation, rather than any potential whistleblowing.

Former employees may also be protected should they then receive detrimental treatment such as being given a bad reference, because they made a disclosure during their employment.

In the Employment Appeal Tribunal case, *Onyango v Adrian Berkeley T/A Berkeley Solicitors (2013)*, Mr Onyango could still rely on whistleblowing protections from detrimental treatment even though he had made the disclosure after he had resigned from Berkeley Solicitors.

Mr Onyango had written to the Legal Complaints Service about the firm and the EAT had confirmed that this could be a protected disclosure. In retaliation, Mr Berkeley had reported Mr Onyango to the Solicitors Regulation Authority alleging forgery and dishonesty.

Workers can also be protected from detrimental treatment from their current employer because they had made a disclosure in **a previous employment**.

In the EAT case of *BP v Elstone (2010)* Mr Elstone alleged that he had been sacked from his previous employer because he had made a protected disclosure about safety issues. The previous employer had then told BP for whom he worked as a consultant, that he had been dismissed for revealing confidential information. In response, BP no longer wanted Mr Elstone to work for them.

The EAT ruled that Mr Elstone could bring a whistleblowing detriment claim against his current employer based on its response to a protected disclosure he made whilst working for a different previous employer.

However, it should be remembered that unfortunately the legislation does not provide similar protection to job applicants because they made a disclosure in a previous employment.

Who should receive the disclosure?

In the first instance, the worker should always be encouraged to **disclose a concern to their employer or any third party who is authorised or designated by the employer**, for example, when this is an established practice or has been listed in the organisation's whistleblowing policy.

Disclosure to a trade union rep will not be protected under the whistleblowing legislation, **unless** the organisation's whistleblowing policy specifically allows disclosure to be made to a union rep as **an authorised person**.

However, disclosure to a worker's legal adviser made while getting legal advice, is protected. For example, this could include trade union legal advisers or the [Protect advice line](https://protect-advice.org.uk/contact-protect-advice-line) staffed by legal advisers (<https://protect-advice.org.uk/contact-protect-advice-line>).

Members should take advice from their UNISON rep and if they cannot find any, alert their branch secretary or UNISON regional organiser. If necessary, legal advice will be accessed via their UNISON branch or regional office.

[How to contact UNISON](#)

[UNISON branch finder](#)

If a member has made or intends to make a protected disclosure and has asked for support and guidance from UNISON, **the branch** should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

There may be some occasions, where a worker might be protected when they made a disclosure to another organisation rather than their employer as they felt this other organisation held the responsibility for the wrongdoing.

For example, as suggested by the charity, [Protect](#), a nurse employed by an agency in the care home where she works raises a concern about malpractice with the care home management. However, this type of protection is often very difficult to prove in practice where the worker has not previously disclosed the same information to their employer.

It is important that workers follow their workplace whistleblowing policy if it should have one. Making the disclosure in writing ensures that there is a paper trail confirming what was disclosed, to whom and when.

However, there may be other valid reasons where a worker does not wish to make the disclosure internally if they fear victimisation or if the response has been inadequate from the employer. They are then best advised to disclose to a 'prescribed person' (see below).

Prescribed persons

If the disclosure is not made to the employer, it should be reported to one of a list of external bodies that are called ‘**prescribed persons**’ under the law. The ‘prescribed persons’ are mainly regulators. The whistleblower can also disclose to their MP.

Trade union representatives are not ‘prescribed persons’. Unless the employer’s whistleblowing policy specifically allows employees to report concerns to a trade union rep as an authorised person, a disclosure to a union is unlikely to be a qualifying protected disclosure.

It is important that workers check who is included in the government’s list of prescribed people and bodies, and do not assume that they will be protected if they disclose to a particular external body. The worker making the disclosure must reasonably believe that the information disclosed is true, and also that they are disclosing to the correct regulator.

UK government’s, ‘Whistleblowing: list of prescribed people and bodies’

www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies

However, the whistleblower should only take their concern to an external regulator if they feel unable to approach their employer first. This may perhaps be because they are afraid of retaliation or of a potential cover up, or if they had already approached their employer but they took no action.

In February 2020, a [high-profile whistleblowing case](#) was widely reported in the media when the holiday firm, Pontins was found to operate a discriminatory booking policy which excluded Gypsies and Travellers.

The whistleblower, an employee of Pontins, disclosed to the Equality and Human Rights Commission (EHRC). The EHRC are a prescribed body for whistleblowing about breaches of equality or human rights law.

The whistleblower’s evidence showed that Pontins was breaking equality law. The EHRC was preparing to launch a full investigation of Pontin’s practices, but instead the holiday firm offered to work with the EHRC to review and amend their practices under a legally-binding agreement.

The [UK government’s guidance for employers](#) published alongside the Whistleblowing Code of Practice stresses that “if a worker goes to the media, they can expect in most cases to lose their whistleblowing law rights.” **Making the disclosure to the media** or other outside organisations is strongly discouraged by the current legislation.

Only in some limited circumstances can such wider disclosures be made. The identity of the recipient is often a key consideration on whether disclosure was

reasonable. It goes without saying that the worker must reasonably believe that the information was true. The worker must not make the disclosure for personal gain and must have either:

- previously disclosed substantially the same information to the employer (or a prescribed person); or
- reasonably believed, at the time of disclosure, that they will be subjected to a detriment by their employer if they make the disclosure to the employer (or a prescribed person); or
- where there is no prescribed person, reasonably believed that material evidence will be concealed or destroyed if the disclosure is made to the employer.

These conditions are adjusted in cases where the alleged failure is of ‘an exceptionally serious’ nature, where there is no need for the worker to have raised their concern internally first or show reasonable belief of being subject to a detriment or that evidence will be destroyed.

Non-disclosure or ‘gagging’ agreements

Non-disclosure agreements or NDAs are also sometimes called ‘gagging’ or confidentiality clauses. They are used by an employer to stop the worker sharing information to protect company secrets. They might be included in contracts of employment, in settlement agreements (whereby a worker agrees not to pursue a legal claim against the employer in return for compensation) or as stand-alone agreements.

However, they cannot be used by an employer to stop whistleblowers from making a qualifying protected disclosure or anyone reporting a crime to the police.

It is unlawful for employers to bar workers from making protected disclosures. Any NDA cannot be enforced to stop the worker using their rights to make a qualifying protected disclosure. So even if an agreement has been signed and agreed by the worker and it includes a term that purports to stop whistleblowing, the employer cannot rely on it.

The legal basis for this is found in section 43J ERA 96, which states:

“Any provision in an agreement to which this section applies is void insofar as it purports to preclude the worker from making a protected disclosure.”

Acas provides some examples where a confidentiality clause or NDA would be void:

“Examples of this include that a confidentiality clause:

- cannot prevent a care worker reporting danger to the health and safety of the vulnerable people they work with to a prescribed body
- cannot be used to stop a worker from reporting the deliberate cover-up of financial wrongdoing to a prescribed body
- cannot prevent a worker seeking legal advice about the subject of the protected disclosure
- cannot prevent a worker from seeking medical advice.”

More information on non-disclosure agreements from Acas [/www.acas.org.uk/non-disclosure-agreements-guidance](https://www.acas.org.uk/non-disclosure-agreements-guidance)

In recent years, the general public has been made more aware of how NDAs have been misused, particularly to stop someone reporting discrimination, harassment or sexual harassment.

In the government’s July 2019 response to a consultation on the misuse of NDAs, they promised to change the law:

- to ensure that a confidentiality clause cannot prevent someone disclosing information to the police, regulated health and care professionals, or legal

professionals

- so that the limitations of any confidentiality clause are clear to anyone signing a document containing the clause
- to improve the independent legal advice that is available to an individual when signing a settlement agreement.

They have also said they will produce guidance for solicitors and legal professionals on drafting requirements for confidentiality clauses, and introduce measures to enforce a ban on confidentiality clauses that do not meet with these legal requirements.

However there is still no set timeframe for this law change to be introduced.

Whistleblowing policies and procedures

Having whistleblowing policies and procedures in place is as important and relevant in the private and voluntary sectors as it is in the public sector, especially as increasing numbers of these employers are providing services to the public.

It is not a legal requirement for an employer to have a whistleblowing policy except in certain sectors such as financial services. But most large workplaces will have internal whistleblowing procedures in place.

Although there is no set procedure that the employer must follow when investigating a disclosure, the employer should at least respect a whistleblower's wish for confidentiality. They should also give feedback about any action to be taken, as far as they are able.

It is important for anyone who is thinking about disclosing suspected malpractice at work to check if their employer has a whistleblowing policy and to follow it carefully. Also, by making the disclosure in writing, the whistleblower will have a 'paper trail' showing when and what they disclosed.

Sometimes whistleblowing procedures will list specific named individuals who can receive reports of concerns. These named individuals should be appropriately trained.

The government's [Whistleblowing: guidance and code of practice for employers](#) states that "larger organisations may have a designated team who can be approached when workers make a disclosure. Although this may not be possible for smaller organisations, it is considered best practice that there is at least one senior member of staff as a point of contact for individuals who wish to blow the whistle. This is particularly helpful in cases where the immediate line management relationship is damaged or where the disclosure involves the manager.

Alternatively, there are commercial providers who will manage a whistleblowing process on the employer's behalf."

Freedom to speak up: raising concerns (whistleblowing) policy for NHS England

As recommended by Sir Robert Francis in his [Freedom to Speak Up review](#), NHS organisations in England are expected to adopt the [national whistleblowing policy](#).

The aim of the policy is that:

- NHS organisations encourage staff to speak up and sets out the steps to take when raising concerns
- organisations will appoint their own Freedom to Speak Up Guardian
- any concerns not resolved quickly, will be investigated

- investigations will be evidence based and led by someone independent in the organisation
- whistleblowers will be kept informed of the progress of the investigation
- the national policy will be annually reviewed and improved.

NHS organisations will still have to implement and review their own local policies which will sit beneath or be integrated into this national policy.

There is also a [whistleblower's support scheme](#) to help current and former NHS workers who are having difficulty finding suitable employment in the NHS as a result of raising a concern in the public interest.

The [NHS Whistleblowing Helpline](#) is a free-phone service for employees, and organisations working within the NHS and social care sector if individuals are unsure about whether their concern is genuine.

Telephone: 08000 724 725 | Web: www.wbhelpline.org.uk | Email: enquiries@wbhelpline.org.uk

The role of the trade union

The workplace culture

UNISON has a vital role to play in creating an open and transparent workplace culture where concerns can be raised with management, employer's policies and practices are fair and members who make the decision to blow the whistle are supported. Branch officers and stewards have a key role to play in raising concerns about wrongdoing and supporting members who speak out.

Developing a whistleblowing policy

Whilst the legal protections do not actively encourage workers to make disclosures of malpractice, with its limited protections for those who do so, it is crucial for workplace reps and branches to negotiate a whistleblowing policy with their employer.

To be fully effective and trusted by staff, any policy or procedure should be developed in consultation with the trade union and the workforce. However, ultimate responsibility for ensuring the procedure is followed fairly sits with senior management, so that the importance of the policy and the need for an open workplace culture is clearly recognised by all.

Trade union representatives are not 'prescribed persons' under the legislation. Unless the employer's whistleblowing policy specifically allows employees to report concerns to a trade union rep as an authorised person, a disclosure to a union is unlikely to be protected under the law. This means the worker will need to make a qualifying protected disclosure to the employer.

However, the government's [Whistleblowing Code of Practice](#) does recommend including the recognised trade union in the policy as an appropriate contact for a worker to approach with their concern. Trade union reps will often be the 'first port of call' for members who are concerned about wrongdoing in the workplace.

A whistleblower has no statutory right to be accompanied to a meeting with their employer to discuss their concerns, as they do with grievance meetings. But ideally, any whistleblowing policy will allow trade union reps to advise and represent members throughout the procedure including during any investigations and any interviews, particularly as this should help workers to feel more confident about speaking out.

Most organisations in the public service including NHS organisations will already have whistleblowing policies and procedures in place. But these arrangements should be reviewed annually, in collaboration with branch officers and workplace

reps, to make sure they continue to be effective where they have been put into practice, and appropriately encourage staff to speak up about wrongdoing.

Alongside a whistleblowing policy and procedure, it will be important for the union to negotiate and be involved in the development of a procedure evaluating standards of service delivery in the workplace.

Supporting the whistleblower

Branch officers and reps should encourage members to raise concerns internally unless they are serious enough to make an external disclosure to a 'prescribed person' or their MP.

In these cases, branch officers and reps should check if the whistleblower has a reasonable belief that the concerns they are raising are true and whether they have any evidence.

If a member is being victimised or suffering from unfair treatment because of blowing the whistle, branch officers and reps will need to decide what action to take swiftly. This may involve bringing a claim in the employment tribunal where strict time limits apply. They should contact their [regional officer](#) to get advice and in some cases legal assistance.

Remember, it may take great courage to 'blow the whistle'. A worker may be afraid that they will not be believed, or that they will be victimised or dismissed. They may worry that even if they do tell someone it will not make a difference.

Branch officers and reps may be able to support the whistleblower through the process if they are anxious. Ensure the worker knows about any information available via the [regional officer](#). Remind them about [There for You](#), as well as any counselling that might be available through the workplace employee assistance programme. Let them know about external organisations such as the [Samaritans](#) or [Mind](#) that can provide mental health support. (More information on support available in [UNISON's bargaining on mental health policies](#).)

Members should take advice from your UNISON rep and if you cannot find any, alert your branch secretary or UNISON regional organiser. If necessary, legal advice will be accessed via your UNISON branch or regional office.

[How to contact UNISON](#)

[UNISON branch finder](#)

Quick checklist for supporting a whistleblower

- Is the whistleblower a 'worker' (see section headed 'Who is protected under the law' above)?
- What was the 'public interest' that motivated them to make the disclosure and was this made clear in their disclosure?
- Was the reported wrongdoing clearly covered by one of the statutory categories (criminal offence; breach of legal obligation; miscarriage of justice; endangering health and safety; damage to the environment; or covering up any of these)?
- Can they prove when and how they made the disclosure?
- Was the disclosure sufficiently detailed and specific and factual, and did it highlight the basis for the alleged legal breach if relevant?
- Who did they make the disclosure to and what was the response?
- Was the disclosure made in writing, so that there is evidence of it having been made, to whom and when?
- Did they follow the employer's whistleblowing policy, if one exists?
- Have they got a paper trail of what has happened subsequently, including the dates and details of any detrimental acts they have suffered?
- If the disclosure was made to an external body, was this the correct body in the list of statutory 'prescribed persons'?
- Does the whistleblower need mental health support through this understandably stressful process? Is there support available from the employee assistance programme at the workplace? Or have they been made aware of other sources of mental health support?

If a member has made or intends to make a protected disclosure and has asked for support and guidance from UNISON, the branch should contact their regional organiser (www.unison.org.uk/regions) and seek legal advice if appropriate.

Advice for individuals who want to ‘blow the whistle’

The laws providing some protection to whistleblowers are very complicated and individuals are always advised to gain expert legal advice before acting. This includes if they are not the only person who has witnessed the wrongdoing, or they want to report something anonymously.

The important thing is to get advice first.

Members should take advice from your UNISON rep and if you cannot find any, alert your branch secretary or UNISON regional organiser. If necessary, legal advice will be accessed via your UNISON branch or regional office.

[How to contact UNISON](#)

[UNISON branch finder](#)

Normally individuals would be expected to first report the issue internally to their employers before making any disclosure externally. Follow the organisation’s whistleblowing policy if it has one (it may be called a different name such as a ‘Speak Up Policy’ or ‘Raising Concerns Policy’ or similar).

It is not appropriate to use the grievance procedure to make a qualifying protected disclosure, as this is for issues that affect your personal employment rights or are about your own treatment in the workplace. However, the grievance procedure should be used for raising concerns about suffering detriment because of making a qualifying protected disclosure.

External disclosure is only protected in very limited circumstances such as to a ‘[prescribed person](#)’ or your MP – members are encouraged to consult their UNISON rep before making any such disclosure so that they can get appropriate advice.

Raising concerns anonymously may mean it is difficult later to show that there is a link between the disclosure and any detriment or dismissal that follows.

Whistleblowing concerns should be dealt with differently to grievances by the employer, in particular to respect confidentiality. Unlike for grievances there is no general right to appeal if the employee is unhappy with how the employer has dealt with a whistleblowing concern (but check your employer's policy if they have one).

Although feedback from the employer to the whistleblower is encouraged, an individual may never know the outcome of a whistleblowing concern (such as if the employer has investigated the behaviour of another individual and disciplined them as a result - that would be confidential information between the employer and that other individual).

If an employee is going to blow the whistle, it is vital that they consider the following points carefully:

- What hard evidence do you have to support any claim? You do not need to be totally accurate to be protected. However, are you relying on hearsay or are you raising a concern about what you have seen, or personally aware of?
- Does your concern affect others or is it just a personal matter? Are you sure that your concerns could not be raised informally or through the usual grievance procedure? [Find out more about grievance procedures.](#)
- Are you following the workplace whistleblowing policy and procedure? Is the disclosure being made to someone more senior and is the wrongdoing investigated?
- Take advice from your UNISON rep and if you cannot find any, alert your branch secretary or UNISON regional organiser. [How to contact UNISON.](#)
- If none of this works within a reasonable time, you may then consider raising the issues publicly. **In this case, it is crucial you take advice from your UNISON rep.**

However, it should be noted that it would be unusual to raise the issue publicly before raising them with your employer and it is only in certain very limited circumstances that you will be protected if you raise the issue publicly.

Support for NHS workers

The [NHS Whistleblowers' Support Scheme](#) provides confidential, practical support and advice for **NHS workers in England** – current and former – who can demonstrate they are having difficulty finding suitable employment in the NHS as a result of raising a concern in the public interest.

www.england.nhs.uk/ourwork/whistleblowing/whistleblowers-support-scheme

In Scotland, the National Whistleblowing Standards and the full Independent National Whistleblowing Officer (INWO) provides information and options for staff who have concerns about patient safety in the **NHS in Scotland**.

<https://inwo.spsso.org.uk/whistleblowers>

Additional guidance for staff outside England

For NHS staff in Scotland, Wales or Northern Ireland, you may find it helpful to refer to the following websites:

Wales

[Health Inspectorate Wales](#), [Department for Health and Social Services](#) and the [Care Council for Wales](#).

Scotland

[Care Inspectorate](#), [Health Improvement Scotland](#) and the [Scotland Services Council](#).

Northern Ireland

Regulation and Quality Improvement Authority Northern Ireland, Department of Health, Social Services and Public Safety and Northern Ireland Social Care Council.

Benefits of having a whistleblowing policy for employers

The main benefit to an employer of having a good whistleblowing policy and procedure in place will be its contribution to creating a workplace culture of transparency and openness. It will help to encourage employees to raise any concerns internally as soon as possible as they will feel more confident that they will be listened to, and that any wrongdoing will be investigated and appropriately dealt with.

The government's [Whistleblowing: guidance and code of practice for employers](#) states "although the law does not require employers to have a whistleblowing policy in place, the existence of a whistleblowing policy shows an employer's commitment to listen to the concerns of workers. By having clear policies and procedures for dealing with whistleblowing, an organisation demonstrates that it welcomes information being brought to the attention of management."

Having a policy encourages staff to speak out when they witness wrongdoing

Workers may be the first to spot wrongdoing or potential wrongdoing that could ultimately damage the employer's reputation and public standing. The wrongdoing may even lead to the harm or death of individuals, so anything to avoid this should be welcomed.

Having a policy reduces fear of negative consequences for doing the right thing

If there is a policy in place that all are aware of and endorse, workers will feel more confident that they are being encouraged to report wrongdoing and that such reporting is welcomed.

Having a policy highlights that the employer is responsible and suggests that they will act on disclosures

The policy will outline the procedure to be followed so that all staff and management should know exactly what to do in the event of a reported concern, and enable the matter to be dealt with swiftly without involving a third party (such as a prescribed person, the media, an MP or the police) and possibly attracting considerable bad publicity for the employer.

Having a policy will provide some legal protection for the employer

If a whistleblowing detriment claim is made by a worker because of victimisation by a work colleague, the employer's only defence would be to show they took every reasonable step to prevent it happening. As a minimum first step to prevent such victimisation, it is likely that the employer would be expected to have a good policy in place.

Having a policy will signal the sort of employer they are

As [Acas](#) have stated: “There's a strong business case for ensuring that staff at your organisation are aware and understand your whistle-blowing policy. Firstly, it helps to define the boundaries of unacceptable conduct and makes it easier for employers to find out when something has gone wrong.

An effective policy will also make it more likely that whistle-blowers make disclosures within organisations and find appropriate recourse without the need for damaging revelations being made to the media or other outside bodies. This in itself should reduce the risk that whistle-blowers bring employment tribunal claims.”

As recommended by the government, having a whistleblowing policy in place is clearly seen as good employment practice for a responsible employer and business. It highlights how wrongdoing is not tolerated within the organisation and it can enhance the organisation's reputation and standing with the public.

And sadly, the need for reporting malpractice is clearly still with us.

Creating a culture in the NHS where concerns can be raised and reported.

The [Francis Inquiry report](#) was published on 6 February 2013 and examined the causes of the failings in care at Mid Staffordshire NHS Foundation Trust between 2005 and 2009. In 2015, Sir Robert Francis published the report of the [Freedom to Speak Up Review](#), recommending a package of measures to ensure in future NHS staff are free to speak up about patient safety concerns.

He recommended that,

“Where a concern involves a serious issue or incident or where there is disagreement about the seriousness of the concern, there needs to be a more formal mechanism for logging it, processing it and monitoring how it is being handled. This will provide a clear trail for future reference and avoidance of dispute, and also helps to identify trends, common issues and patterns to enhance organisational learning.

Any system needs to be as simple and free from bureaucracy as possible. However it needs to provide clarity to the person who has raised a concern about what will happen next and how they will be kept informed of progress...

To ensure it is taken seriously, the Chief Executive Officer (CEO) or a designated board member needs to be involved and should regularly review all concerns that have been logged formally to ensure they are being dealt with appropriately and swiftly.”

Raising awareness of the policy and acting on it

Of course, having a good whistleblowing policy and procedure is not enough in itself.

Once a policy is in place, it is crucial that there is appropriate regular training and guidance for all staff, managers and trade union reps. Everyone in the workplace should be aware of the importance of the policy and procedure and the need to speak out if there is a concern about wrongdoing.

As the government's [Whistleblowing: guidance and code of practice for employers](#) states "having a policy is a good first step to encourage workers to blow the whistle but each organisation needs to let its workers know about the policy and make sure they know how to make a disclosure."

The government's guidance suggests that this can be done by:

- developing the policy in consultation with the recognised trade union
- publicising it in the staff newsletter or intranet or through staff meetings and on posters
- including it in all induction packs for new staff
- including it in staff handbooks and referring to it in employment contracts
- providing training at all levels of the organisation
- providing additional training to those who have whistleblowing responsibilities
- providing regular refresher training to all
- appointing a whistleblowers' champion to drive the commitment to valuing whistleblowing and protecting whistleblowers within the organisation.

The NHS in England has set up a network of voluntary [Freedom to Speak Up Guardians](#). They support workers to speak up when they feel that they are unable to do so by other routes (such as via their line manager). They ensure that people who speak up are thanked, that the issues they raise are responded to, and make sure that the person speaking up receives feedback on the actions taken. Guardians also work proactively to support their organisation to tackle barriers to speaking up.

The policy will be meaningless unless appropriate action is taken promptly, communications with the whistleblower are clear and feedback given on how their concerns are being dealt with.

As the government's [Whistleblowing: guidance and code of practice for employers](#) states "if a whistleblower is unhappy with the process or the outcome it will make them more likely to approach other individuals and organisations to 'blow the whistle', such as a 'prescribed person.' "

The [guidance](#) also states that a policy should include:

- An explanation of what whistleblowing is, particularly in relation to the organisation
- A clear explanation of the organisation's procedures for handling whistleblowing, which can be communicated through training
- A commitment to training workers at all levels of the organisation in relation to whistleblowing law and the organisation's policy
- A commitment to treat all disclosures consistently and fairly
- A commitment to take all reasonable steps to maintain the confidentiality of the whistleblower where it is requested (unless required by law to break that confidentiality)
- Clarification that any so-called 'gagging clauses' in settlement agreements do not prevent workers from making disclosures in the public interest
- An idea about what feedback a whistleblower might receive
- An explanation that anonymous whistleblowers will not ordinarily be able to receive feedback and that any action taken to look into a disclosure could be limited – anonymous whistleblowers may seek feedback through a telephone appointment or by using an anonymised email address
- A commitment to emphasise in a whistleblowing policy that victimisation of a whistleblower is not acceptable. Any instances of victimisation will be taken seriously and managed appropriately
- An idea of the time frame for handling any disclosures raised
- Clarification that the whistleblower does not need to provide evidence for the employer to look into the concerns raised
- Signpost to information and advice to those thinking of blowing the whistle, for example the guidance from the government, Acas, Protect or trade unions
- Information about blowing the whistle to the relevant prescribed person(s).

Quick checklist for developing a whistleblowing policy

- Is the employer committed to developing an open workplace culture where staff are encouraged to raise concerns at the earliest opportunity?
- Does the employer recognise how valuable staff are in acting as an early warning system on safety issues, as well as helping to uncover fraud and other wrongdoing in the workplace?
- Is the employer willing to develop a whistleblowing policy with the trade union representatives?
- Will the policy be endorsed by senior management within the organisation?
- Are all workers, regardless of their status, included in the policy and encouraged to report concerns about wrongdoing to management and assured that there will be no retaliation?
- Whilst staff are encouraged to raise concerns internally, does it also not deter staff from making disclosures externally to a 'prescribed person' if they feel this is necessary and in the public interest?
- Does the policy clearly identify the different paths for reporting concerns i.e. what is a personal grievance and what is whistleblowing, and does it give examples?
- Is the policy clear as to whom the employer can make their disclosure within the organisation, or appropriate 'prescribed persons' externally?
- Does the policy encourage workers to report concerns in writing so that there is a clear 'paper trail' of evidence?
- Similarly are concerns and responses properly recorded in writing by the employer and investigator?
- Does the policy highlight the employer's commitment to tackle malpractice and wrongdoing, and does it reiterate that if any cases of wrongdoing are upheld that they will be dealt with seriously?
- Does the policy specifically state that it is a serious disciplinary offence potentially leading to dismissal to disadvantage or treat detrimentally a worker who reports a concern?
- Does the policy set clear time-lines for dealing with concerns, and ensure that feedback is given to the whistleblower along with any outcome of the investigation?
- Does the policy encourage workers who have concerns that are potentially of public interest to get legal advice where appropriate, and does it identify sources of advice?

- Does the policy clearly state that employees wanting to raise concerns can seek the help of their trade union representative? That they will have the right to be accompanied by their trade union representative during any investigation and at any meetings with the employer about their concern?
- Does the policy ensure confidentiality for the whistleblower, whilst making it clear that if legal proceedings commence as a result of the investigation, then it may not be possible to keep the whistleblower's identity undisclosed?
- Does the policy encourage workers to raise concerns openly? Whilst anonymous reporting should be allowed, does the policy explain that it could limit the ability to protect the whistleblower from potential retaliation, or to provide feedback?
- Will training on the policy and procedure and the need for an open workplace culture be included in the induction of all new staff?
- Will training, guidance and updates be available for all staff including managers and HR?
- Will the employer actively raise awareness of the policy and procedure as well as the need to speak out if there is any concern about wrongdoing?
- If concerns raised are so serious that there has to be an inquiry, is this possibility included in the procedure? Will the trade union be involved in drawing up terms of reference for any inquiry panel, as well as being involved in the implementation of any inquiry recommendations?
- Do the disciplinary, grievance, bullying and harassment policies make appropriate reference to the whistleblowing policy and procedure? It should be made clear that there is zero tolerance of any victimisation of a co-worker who has raised concerns, stressing that it is a serious disciplinary offence and will be dealt with under the disciplinary policy.

Further information

UK government advice on 'Whistleblowing for employees'

www.gov.uk/whistleblowing

UK government whistleblowing guidance for employers and code of practice

www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers

UK government list of prescribed people and bodies

www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies

Northern Ireland government advice on 'Blowing the whistle on workplace wrongdoing'

www.nidirect.gov.uk/articles/blowing-whistle-workplace-wrongdoing

Protect

The UK's whistleblowing charity that aims to stop harm by encouraging safe whistleblowing.

<https://protect-advice.org.uk>

Protect Advice Line: whistle@protect-advice.org.uk

Protect Advice Line: 020 3117 2520 (* option 1)

Acas guidance on 'Whistle-blowing – Public Interest Disclosure'

<https://archive.acas.org.uk/index.aspx?articleid=1919>

Equality and Human Rights Commission guidance on 'Whistleblowing'

www.equalityhumanrights.com/en/whistleblowing

WhistleblowersUK

A not-for-profit support and campaigning organisation for whistleblowers

www.wbuk.org

All Party Parliamentary Group on Whistleblowing

www.appgwhistleblowing.co.uk

Model whistleblowing policy

The government's [Whistleblowing: guidance and code of practice for employers](#) states "there is no one-size-fits-all whistleblowing policy as policies will vary depending on the size and nature of the organisation. Some organisations may choose to have a standalone policy whereas others may look to implement their policy into a code of ethics or may have 'local' whistleblowing procedures relevant to their specific business units. A large organisation may have a policy where employees can contact their immediate manager or a specific team of individuals who are trained to handle whistleblowing disclosures. Smaller organisations may not have sufficient resources to do this...

...Any whistleblowing policies or procedures should be clear, simple and easily understood."

However, as identified by researchers for [the Freedom to Speak Up Review](#), problems in whistleblowing policies that should be avoided, can include:

- very legalistic language
- vagueness or contradiction as to whom the policy was directed
- wrong or incomplete information, for example about regulators and advisory organisations
- mistaken or incomplete descriptions about confidentiality and anonymity.

The following model policy and procedure can be used in the workplace to help support workers who wish to raise concerns about malpractice that is of public interest.

Please note that the text in square brackets [...] indicates where branches and workplace reps need to complete information specific to their workplace, or else are notes for them to consider in relation to their negotiations.

1. Policy statement

[It may be reassuring to start with an agreed statement that reflects the employer's commitment to creating an open and transparent workplace culture where concerns can be raised with management, and where staff who raise concerns are supported and treated fairly.]

1.1 This policy aims to enable and encourage staff to raise concerns within **[name of employer]**. It recognises a worker's legal rights to make a protected disclosure to certain prescribed persons or bodies under the Public Interest

Disclosure Act 1998 and any subsequent legislation, as incorporated into the Employment Rights Act 1996².

- 1.2 **[Name of employer]** is committed to creating a safe, open and transparent workplace culture, where employees are encouraged to raise concerns at the earliest opportunity. **[Name of employer]** recognises that employees are often the first to realise that there may be something seriously wrong within an organisation.
- 1.3 It is important to **[name of employer]** that any fraud, misconduct or wrongdoing by workers or officers of the organisation is reported and properly dealt with. **[Name of employer]** is committed to tackle malpractice and wrongdoing. Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. If any cases of wrongdoing are upheld they will be seriously dealt with.
- 1.4 **[Name of employer]** encourages staff to use internal mechanisms for reporting malpractice or illegal acts or omissions by employees or ex-employees. Employees will be listened to and serious concerns will be investigated.
- 1.5 **[Name of employer]** will provide regular refresher training to all managers enabling them to deal with concerns that are raised and is committed to treating all disclosures consistently and fairly.
- 1.6 **[Name of employer]** will ensure that all new employees, supervisors and managers will receive induction on the policy and will provide refresher training to all members of staff so that they are aware of whistleblowing law and know how to use this policy.
- 1.7 Adequate resources will be made available to fulfil the aims of this policy. The policy will be widely promoted, and copies will be freely available and displayed in **[name of employer]'s** offices and through the staff intranet **[amend as appropriate to your workplace]**.
- 1.8 This policy allows staff to take the matter further if they are dissatisfied with the management response and aims to reassure staff that they will be protected from harassment or victimisation from co-workers or from **[name of employer]** for raising concerns.

2. Definitions and scope

- 2.1 This policy applies to all staff including temporary, casual and agency staff, work experience, trainees and apprentices. Other individuals who work or have

²In Northern Ireland, the Public Interest Disclosure (Northern Ireland) Order 1998 incorporated into the Employment Rights (NI) Order 1996 in Northern Ireland.

worked within the organisation, such as former staff, volunteers, the self-employed and contractors, are also encouraged to use it.

2.2 For the purpose of this policy, **[name of employer]** recognises that whistleblowing is the passing on of information about wrongdoing at work. The whistleblower must reasonably believe that they are acting in the public interest.

2.3 The statutory categories for wrongdoing are:

- a criminal offence (such as insurance fraud or illegal tax evasion)
- a breach of any legal obligation
- a miscarriage of justice
- endangering an individual's health and safety
- damage to the environment
- deliberate concealment of information about any of the above.

2.4 Examples of wrongdoing might include (but are not restricted to) :

- unsafe working conditions
- lack of, or poor, response to a reported safety incident
- inadequate induction or training for staff
- suspicions of fraud
- a bullying culture (across a team or organisation rather than individual instances of bullying).

[you may wish to expand this list as appropriate to the particular workplace, such as including safeguarding issues]

2.5 It is not necessary for the member of staff to have proof that wrongdoing is being, has been, or is likely to be committed. A reasonable belief is sufficient to disclose the concern. The member of staff has no responsibility for investigating the wrongdoing. It is the organisation's responsibility to ensure that an investigation takes place.

2.6 A member of staff who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because they have made a disclosure.

2.7 **[Name of employer]** recognises that any so-called 'gagging' or confidentiality clauses in settlement agreements or non-disclosure agreements with individuals do not prevent members of staff from making disclosures in the public interest and are void in such circumstances.

- 2.8 If the wrongdoing that the staff member wants to disclose is not included in the list above, advice may be sought from the designated officers (see section 4 below) or from a trade union representative on the use of the appropriate policy.
- 2.9 This policy is not for staff with concerns about their employment that affect only them – that type of concern is better suited to the grievance policy or dignity at work policy which can be found [\[provide links\]](#).
- 2.10 [\[Name of employer\]](#) recognises employees may wish to seek advice and be represented by their trade union(s) officers when using the provisions in this policy.
- 2.11 This policy is supported by and developed with the trade unions representing the employees.
- 2.12 This policy will be reviewed annually from date of issue by the designated officer/s (see section 4 below) in conjunction with the senior management team and trade union representatives. Where review is necessary due to legislative change, this will happen immediately.

3. Roles and Responsibilities

- 3.1 The senior management team [\[and/or Board or Trustees etc as appropriate\]](#) are responsible and accountable for this Whistleblowing Policy and Procedure. They will:
- demonstrate commitment to developing an open culture within the organisation, through actions and strategy
 - receive and review annual reports on whistleblowing activity
 - appoint designated officer/s.
- 3.2 All staff have a duty to report wrongdoing (whistleblow) under the circumstances set out in section 2 of this policy.
- 3.3 Line managers are responsible for:
- ensuring all staff are aware of this policy and procedure and their responsibilities
 - investigating issues raised promptly and thoroughly
 - fostering an open culture within their teams
 - ensuring any whistleblower is not subject to detriment
 - escalating issues and engaging the support of designated officer/s where required.

3.4 Designated officer/s (see below) have lead responsibility for the whistleblowing procedure and for dealing with issues raised. They will:

- oversee and review the whistleblowing policy and procedure
- providing advice and support to managers and employees
- ensure learning from whistleblowing cases is fed back to the wider organisation
- ensure managers are trained in dealing with issues
- investigating issues raised with them directly promptly and thoroughly
- informing all reported disclosures to the senior management team **[or it may be more appropriate for this information to go to the chief officer or equivalent in the organisation]** and the actions being taken
- ensure the process is monitored and improved where required
- provide reports on whistleblowing activity on an annual basis to the senior management team.

3.5 Trade union representatives will

- support employees through the procedure
- help ensure all staff are aware of this policy and procedure and their responsibilities
- be consulted on the review, monitoring and improvement of the policy and procedure where required.

4. Designated officers [the organisation may wish to call them Whistleblowing Champions or Guardians etc.]

4.1 The following people have been nominated and agreed by **[name of employer]** as designated officers for concerns under this procedure **[list designated officers below with contact details. Ideally these officers should be of senior status within the organisation to highlight how important the matter is for the employer.]**

4.2 These designated officers will act as an independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation.

4.3 All these people have been given special responsibility and training in dealing with whistleblowing concerns and will give you information about where you can go for more support. They will:

- treat the concern confidentially unless otherwise agreed

- ensure the staff member receives timely support to progress their concern
- escalate to senior management any indications that the staff member is being subjected to detriment for raising their concern
- remind the organisation of the need to give the staff member timely feedback on how their concern is being dealt with
- ensure the staff member has access to personal support as it is recognised that raising such a concern may be stressful.

5. How to raise a concern

- 5.1 In many circumstances, the easiest way a member of staff can get their concern resolved will be to raise it formally or informally with their line manager who should report it to the designated officer.
- 5.2 If this is not appropriate as the concern relates to the line manager, or if the member of staff does not feel able to raise it with them or if raising it with their line manager does not resolve matters, the member of staff can approach a designated officer directly. The designated officer will then confirm how the matter will be investigated.
- 5.3 Any member of staff who wants to raise a concern that is potentially of public interest, is encouraged to get legal advice where appropriate such as through their trade union or through the charity Protect (see section 9. 'More information and support' below). **[You may want to expand this list of sources of legal advice to perhaps include the Employee Assistance Programme if it is available and provides the right type of legal advice.]**
- 5.4 If, for any reason, the member of staff does not feel comfortable raising their concern internally, they can raise concerns externally with 'prescribed bodies' (see section 8 below) if they feel this is necessary and in the public interest.
- 5.5 Concerns should be raised in writing (including email). The letter should set out the background and history of the concerns, giving names, dates and places where possible, and the reason why the member of staff is making the disclosure. If the individual does not feel able to make the disclosure in writing, an interview will be arranged.
- 5.6 When any meetings are arranged with an individual who is making or has made a protected disclosure, they have a right to be accompanied by a trade union representative. The meeting can be off site if requested.
- 5.7 The employee raising concerns does not have to prove the allegation but they must demonstrate that there are sufficient grounds for concern.
- 5.8 If the member of staff wants to raise the matter in confidence, they should please say at the outset so that appropriate arrangements can be made.

- 5.9 Confidentiality will be maintained as far as is possible. It is guaranteed at the point of making a protected disclosure and will be maintained throughout the investigation and hearings, other than when a disclosure of identity is needed due to cross examination of the staff member as a witness to any subsequent procedure, or is required by law.
- 5.10 It is best to raise a concern openly, because that makes it easier for **[name of employer]** to follow it up. **[Name of employer]** will not disclose the whistleblower's identity without their consent unless there are legal reasons that require them to do so. This might be, for example, where their information is about a child or vulnerable adult who is at risk, or where there is a possible criminal offence. If this is the case, **[name of employer]** may have to tell the police or another official body, or if required to do so by a court. **[Name of employer]** will let the individual know if it has to do this and that this will identify them to another body.
- 5.11 Staff may, if they wish, disclose information anonymously. However, it should be noted that in such circumstances, **[name of employer]** will not be able to contact staff to discuss their concern or ask them for further information, nor will they normally be able to give any feedback about any action it takes, although anonymous whistleblowers may seek feedback through a telephone appointment or by using an anonymised email address.

6. How **[name of employer] will respond**

- 6.1 Any concern raised under this policy will be investigated thoroughly, promptly and confidentially.
- 6.2 Any approach to line managers and designated officers will be treated with the strictest confidence and the member of staff's identity will not be disclosed without their prior consent. All members of staff will be treated with respect at all times and the person raising the concern will be thanked.
- 6.3 There may be a meeting with the member of staff raising the concern to ensure **[name of employer]** understands exactly the particular worry.
- 6.4 When any meetings are arranged with an employee who has made a protected disclosure, they have a right to be accompanied by a trade union representative. The meeting can be off site if requested.
- 6.5 When an individual makes a disclosure, the organisation will process any personal data collected as part of the investigation in line with **[name of employer]'s** data protection policy which can be found **[provide link]** ensuring the data is stored securely and only accessed by those individuals essential for dealing with the disclosure.

- 6.6 Within five working days of a concern being raised, the line manager or designated officer who received the disclosure will write to the member of staff setting out the following:
- Acknowledgement that the concern has been received, the date it has been received, whether the person who raised the concern has requested confidentiality, and a summary of the concern
 - Indicating how the matter will be dealt with and by whom and how they can be contacted
 - Telling the member of staff when an investigation has or is to be started and if further assistance will be needed from them.
- 6.7 The member of staff who raises the concern will be told how long to expect the investigation to take and will be kept up to date with its progress.
- 6.8 The matters raised may be investigated internally. Where it has not been possible to resolve the matter quickly (usually within a few days) with the line manager, someone suitably independent (such as a designated officer) and properly trained will carry out an investigation.
- 6.9 The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring. The investigator may decide that the concern would be better looked at under another process, such as the grievance procedure or dignity at work procedure. If so, this will be discussed with the member of staff.
- 6.10 In the event that misconduct is discovered as a result of any investigation under this policy, the disciplinary policy and procedure will be invoked in addition to any external measures.
- 6.11 On conclusion of any investigation, the member of staff will be told the outcome of the investigation and what **[name of employer]** has done, or proposes to do, about it. Wherever possible, **[name of employer]** will share the full investigation report with the member of staff who raised the concern (while respecting the confidentiality of others). If no action is to be taken, the reason for this will be explained.
- 6.12 If an individual is not satisfied with the response received and any subsequent action taken, they should put their concerns in writing to **[complete as applicable to your organisation. This should be the most senior person within the organisation such as the Chair of the board or trustees]** who will arrange any further investigation as he/she thinks appropriate. **[Complete as applicable to your organisation – it will be the most senior person within the organisation]** will send a written response to the individual concerned.

- 6.13 More serious disclosures may be referred to an external prescribed person or body and may form the subject of an independent inquiry.
- 6.14 In the event of an inquiry, where possible the trade union representatives will be consulted on the drawing up of terms of reference for any inquiry panel, as well as being involved in the implementation of any inquiry recommendations.

7 Harassment and victimisation

- 7.1 **[Name of employer]** understands that raising a concern can be difficult for staff, especially if they fear reprisal from those responsible for the malpractice. **[Name of employer]** will not tolerate harassment and victimisation of anyone raising a concern, and there should be no impact on the continued employment and opportunities for future promotion or training of anyone raising a concern. Any such behaviour is a serious breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action potentially leading to dismissal.
- 7.2 Nor will **[name of employer]** tolerate any attempt to bully anyone into not raising any such concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action potentially leading to dismissal.
- 7.3 This policy encourages members of staff to put their name to their concerns. Concerns expressed anonymously are harder to follow up and have an effective outcome.
- 7.4 If a member of staff makes an allegation in good faith, but the allegation is not confirmed by the investigation, no action will be taken against that member of staff. They will not be at risk of losing their job or suffering any form of reprisal as a result. Provided the member of staff is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.

8. Reporting a concern to an external body

- 8.1 This policy is intended to provide a route by which members of staff can raise concerns internally. However, if an employee is unhappy with the outcome of an investigation or if, for any reason they do not feel comfortable raising their concern internally, they are free to take the matter outside of the organisation to a prescribed person or body or to their Member of Parliament (MP).
- 8.2 The full list of prescribed persons and bodies can be found on the UK government website at www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies. They include
- HM Revenue & Customs

- the Comptroller and Auditor General
- the Director of the Serious Fraud Office
- the Charity Commission for England and Wales
- the Information Commissioner
- the Equality and Human Rights Commission
- the Health and Safety Executive
- the Care Quality Commission
- the Environment Agency.

9. More information and support

9.1 Protect is the UK’s whistleblowing charity that aims to stop harm by encouraging safe whistleblowing. They provide a legal advice service we offering free expert and confidential advice on how best to raise a concern and protection as whistleblower.

<https://protect-advice.org.uk>

Protect Advice Line: whistle@protect-advice.org.uk

Protect Advice Line: 020 3117 2520 (* option 1)

9.2 UK government advice on ‘Whistleblowing for employees’

www.gov.uk/whistleblowing

9.3 Acas guidance on ‘Whistle-blowing – Public Interest Disclosure’

<https://archive.acas.org.uk/index.aspx?articleid=1919>

9.4 Confidential support is available for individual employees from the employee assistance programme and this may include counselling if appropriate, in addition to practical information and advice **[include a link or signpost to further information.]**

10. Signatories

This agreement is made between **[name of the employer]** and UNISON, a registered trade union.

This agreement comes into force on:

Date:.....

This agreement will be reviewed on:

Date:.....

SIGNED for **[name of the employer]**

DATE

SIGNED for UNISON

DATE