

Handling concerns raised by workers of providers registered with CQC

Updated: 6/11/2018

How we should handle concerns

People who work for registered providers must be reassured that they can speak to us about any issues that cause them concern and that our response will be prompt and appropriate. It is particularly important for us to act swiftly where their concern is about poor quality or unsafe care, where people may be at risk of harm.

The dedicated Concerns Team in our National Customer Service Centre receives all information about concerns, which includes safeguarding information. However, **any** member of CQC staff in a different directorate or team might receive information from a worker in a provider registered with the CQC, which is why all CQC staff need to know what to do with it, and why it's important to follow the procedure so you can send the information directly to the right place.

Defining speaking up/whistleblowing

1. What is speaking up/whistleblowing?

Speaking Up is the term we use when an individual in the work place passes on information about a concern. We call this 'making a disclosure', although it is also sometimes referred to as 'raising concerns', or 'whistleblowing'. Whatever term is used, the issue reported will typically (although not necessarily) be something they have witnessed at work. However, 'whistleblowing' has a very particular meaning in law, as workers making a disclosure about care can have legal protection when they do so.

To be covered by whistleblowing law, the disclosure must be a 'qualified disclosure'. This is when the worker reasonably believes that disclosing the information is in the public interest and the information tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- a criminal offence (this may include, for example, types of financial impropriety such as fraud)
- a breach of a legal obligation
- a miscarriage of justice
- danger to the health or safety of any individual
- damage to the environment; or
- deliberately covering up a wrongdoing in the above categories.

The Public Interest Disclosure Act 1998 (PIDA) protects workers who suffer workplace reprisal for raising a genuine concern, whether it is about patient safety, the national standards of quality and safety set down by the law, financial malpractice, danger or illegality.

Workers are protected in this way for the public interest, to encourage people to speak out if they find wrongdoing in their place of work, without fear of victimisation, discrimination or losing their job.

A worker might want to speak to the CQC if they don't feel confident that their organisation will deal with their concern properly when they have spoken up, or where they have raised the issue already, but there is still a problem that the provider has not resolved.

The Prescribed Persons Order 2014 sets out a list of over 60 organisations and individuals that a worker may approach outside their workplace to report suspected or known wrongdoing. The organisations and individuals on the list have usually been designated as prescribed persons because they have an authoritative or oversight relationship with the sector, often as a regulatory body. CQC is a prescribed person, as are the National Guardian's Office (NGO) and Healthwatch England.

An up-to-date list can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf

2. Who is defined as a whistleblower?

In CQC, the term 'whistle-blower' refers to when someone who is directly employed by, or provides services for, a provider who is registered with CQC, discloses information about an issue of concern.

Section 230(3) of the Employment Rights Act 1996 defines a 'worker' as: "an individual who has entered into or works under (or, where the employment has ceased, worked under):

- a contract of employment; or
- any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work

or services **for** another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

Some examples of a worker who provides services to a registered provider include agency staff, visiting community health staff, GPs, independent activities organisers and contractors, among others.

The [handbook to the NHS Constitution](#) says: "The whistleblowing provisions in the Employment Rights Act 1996 cover temporary workers including temporary agency staff and self-employed staff who are working for and supervised by the NHS or local authorities, and some students on work experience placements. It does not cover volunteers, but the Department of Health regards it as good practice for NHS organisations *to include all workers including volunteers and all students on placements* within the scope of their whistleblowing policies".

An individual who has spoken up about an issue whilst working for a particular organisation may raise it again once they have left that job, perhaps because they remain concerned about vulnerable people or wrongdoing, and are not confident that the organisation has dealt with it, or because they felt that speaking up at the time may have jeopardised their position or put them at risk.

A whistleblower is not a member of the public, a person who uses services, or their representatives. If such people raise concerns about a provider who is registered with CQC, this is not classed as whistleblowing, as PIDA relates exclusively to worker/employer relations.

3. Is whistleblowing the same as making a complaint?

Whistleblowing can be about anything. The issue involved may be a complaint, a grievance, or a work situation where a worker raises an issue about something they have witnessed, and may often be a combination of some or all of these things.

People who use services, their relatives or representatives or others, can make complaints about a service by using the service's complaints procedure. This is not usually referred to as whistleblowing.

Our website tells people how to [complain about a service](#) and how we deal with any concerns or complaints that are made to us. This information also includes guidance on how to complain about CQC.

Our policy for handling disclosures

4. How we act on information provided to us

How we act depends on what we are told, and how serious the matter is. In the first

place, we need to decide whether:

- The issue is within the scope of our regulatory duties; and
- Whether another organisation is best placed to deal with the issue instead of, or as well as us. For example, the General Medical Council will look at a doctor's fitness to practice and we will consider the impact on the people who use the service where that doctor works, if we regulate the service.

CQC welcomes information from people speaking up and from whistleblowers, but we do not have powers to protect them. This is because although people can make 'protected disclosures' to us as a prescribed body under the Public Interest Disclosure Act 1988 (PIDA), PIDA does not give CQC any powers or any special status in relation to individual whistleblowers. PIDA relates exclusively to worker/employer relations.

Currently, people making a protected disclosure about a concern in a service they work in are protected under employment law. If a person who had raised a concern was involved in an employment tribunal in the future, the fact that they had told CQC about their concern might help any claim for unfair dismissal. However, CQC cannot intervene or be involved in any advice or any dispute with employers as a result of the concern or any other issue.

National Guardian's Office and Healthwatch England

CQC hosts the [National Guardian's Office \(NGO\)](#), which opened in April 2016. The National Guardian is leading a cultural change within health, so that healthcare staff feel confident and supported to speak up at all times. This includes leading, advising and supporting the growing network of Freedom to Speak Up Guardians who are responsible for helping to develop a culture of openness within their organisations. The National Guardian also shares and advises on good practice in responding to concerns from staff, and provides challenge and support for the system so that it has a truly safe and open culture.

CQC has appointed our own [Freedom to Speak up Guardian](#) to handle concerns raised within CQC.

CQC also hosts [Healthwatch England](#), which exists to ensure that people's needs are at the heart of health and social care. There is a local Healthwatch in every area of England. When a worker speaks up to Healthwatch England, they follow CQC's procedure and their own procedure detailed in section 8.

5. What we do with information

We assess, prioritise and act appropriately on all information we receive when people speak up. This always involves thanking the person who tells us about their concern, ensuring they receive feedback on the actions taken where this is possible, and asking for feedback from them about how the matter was handled. It may also involve:

- Using the information to help us to decide whether to urgently inspect the service or bring forward a planned inspection.
- Raising the issue directly with the provider. We will make every effort to protect the worker's confidentiality when we do so. In some exceptional cases, we may need to progress without consent when we are concerned about the potential risk to people using services. Particular care must be taken when a worker is in a very small team or provider as it may be possible for them to be identified from the nature of the concern and subsequent action taken.
- Making a safeguarding alert to a local authority. We will always let the person know if we believe it is necessary to disclose their identity, for example if making a safeguarding alert to the local authority if the disclosure is about possible harm or abuse. We will follow our safeguarding procedure and actively follow up the alert. The inspector for the service will monitor the progress and outcome of the local authority's investigation. To support that investigation, we might carry out an inspection to ensure the provider is meeting the regulations.
- Notifying another regulator or official body if it is appropriate for them to look into the disclosure instead of, or as well as us. This must be done in a way which would not breach the confidentiality of the individual unless they have given their consent for their identity to be revealed.
- Notifying the police if the issue is about possible illegal activity. We can do this as well as any of the above actions.

If we believe the disclosure is about possible abuse, it is essential that the inspector records the action taken in the safeguarding record and in the Activity Plan on Customer Relationship Management (CRM) database.

6. Who we share information with

To fulfil our regulatory role, we rely on sharing information and intelligence across statutory and other regulatory bodies such as NHS Improvement, the National Guardian, the Nursing and Midwifery Council, the General Medical Council, the General Dental Council and HM Inspectorate of Prisons.

We may need to share information with these bodies either because it is more appropriate for them to look into the issue instead of, or as well as us, or because they need to be aware of the information to fulfil their own statutory or regulatory role. We will do this in a way which will not breach the confidentiality of the individual unless they have given their consent for their identity to be revealed.

We share information through formal Memorandums of Understanding (MoUs) and joint working agreements (see our [website](#)). We may also need to share information with other bodies with which we don't have a formal MoU but with whom we have a liaison agreement.

7. How Healthwatch England handle disclosures

If health and care staff contact local Healthwatch or Healthwatch England to share concerns about a registered provider, local Healthwatch are required to share this information with CQC. We will deal with the disclosure as set out in section 6, including ensuring a worker's confidentiality is maintained unless consent has been given for their identity to be shared. Local Healthwatch/Healthwatch England can advise the worker to contact CQC directly, but if they still want to share concerns with local Healthwatch, they must be informed that their information will be shared with CQC in line with this policy.

If local Healthwatch receive information from a worker retrospectively (such as through their website) it must be dealt with as outlined above. Local Healthwatch/Healthwatch England will then process this information using their own local policies and procedures.

Procedure for handling information

8. NCSC and disclosures

The Concerns Team in NCSC assesses, categorises and prioritises disclosures. They then enter the information onto CRM and pass it to the appropriate inspector within 24 hours. The inspector reviews the information, determines what regulatory action to take and records the action on CRM. We monitor the progress of the action using management information reporting tools and line manager discussions. This enables us to quickly assess all relevant information, and to fully investigate reports of poor quality or unsafe care.

The procedure ensures that the appropriate inspector for the provider or location is notified promptly when we receive information so that they can ensure the provider takes appropriate action to prevent poor care happening to others in the future.

The Concerns Team uses a Decision Making Tool to accurately and consistently identify, assess and prioritise all concerning information, including information from workers in providers making a disclosure. The tool uses a set of rules-based questions to reach a set of pre-determined outcomes (using existing CRM category types) and accurately distinguishes between information shared by workers and members of the public.

9. What to do if someone raises a concern with you

Most people contact us to speak up or raise whistleblowing concerns through the National Customer Service Centre (NCSC). However, if you receive information from a worker in the course of your work (for example, during an inspection), it is important to know what to do with it.

People may visit or call one of our offices and ask to speak to a member of staff about a concern. If this happens, please thank them, take notes of the person's concerns and ask them to confirm that what you have recorded is an accurate reflection of the issue they have raised.

Ask whether they wish their identity to be kept confidential and explain to them under what circumstances that might not be possible. You should explain to them what you will do with the information they provide. You should offer to provide them with feedback about the action being taken and let them know that they will be given the opportunity to provide feedback to CQC about how the matter is handled. You should forward all information directly to Concerns@CQC.org.uk. However a concern is raised, and through whatever route, NCSC should log this and undertake a triage of it before a decision is made on how it will be dealt with.

If you believe the issue to be very serious, such that the regional team may need to know of safeguarding issues that need immediate attention, you should immediately call our contact centre on 03000 616161. Select option 1 for the Concerns team. You will then be advised to select option 2 if the matter relates to safeguarding.

Our intranet provides guidance for staff on [safeguarding and handling concerns](#).

As a member of staff, if you want to raise concerns about CQC itself, there is [separate guidance](#) on our intranet. However, the principles for speaking up and whistleblowing are the same for CQC staff as for employees of registered providers.

10. Information from a worker about possible abuse

Inspectors need to follow our [safeguarding guidance](#) when considering what action to take.

The safeguarding process is CRM-based and it is important to use the separate detailed guidance on using CRM. See our Safeguarding Handbook on the [safeguarding page](#) of the intranet.

11. Monitoring

We use Management Information Reports from the service analytics team to monitor the volume and status of disclosures.

It is important that Inspectors record the action that they have taken in the Activity Plan of the enquiry and, if the issue relates to a safeguarding matter, within the Safeguarding Record,

From April 2017, CQC are required Under PIDA to report on whistleblowing information every year. We will do this in our Annual Report. This will also

apply to Healthwatch England and the National Guardian. See [Appendix B](#) for full details on what we will report.

12: How to make a disclosure to CQC

People need to tell us that they are raising a concern and that they are a worker who is either employed by, or providing services to, a registered provider.

They need to contact us by calling 03000 616161 or by emailing concerns@cqc.org.uk. Our opening hours are Monday to Friday: 8.30am to 5:30pm.

People can also write to us at:

Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

You can direct people to [guidance on our website](#).

Questions about whistleblowing

14. How are workers protected?

The Public Interest Disclosure Act 1998 is the piece of legislation which sits within UK employment law that aims to protect workers when they speak up and suffer as a consequence. A worker may be able to bring a claim for unfair dismissal and/or detriment (e.g. being denied a promotion), in the employment tribunal. A judge will determine whether by speaking up, a worker has made a 'protected disclosure' and if doing so caused the treatment that they suffered. The law is complex and there are very specific criteria that need to be met in order for a worker to be protected.

A person is protected as a whistleblower if:

- they are a worker – someone who is directly employed by, or provides services for, a provider whose service is registered with CQC, or is someone who has left their job with a registered provider after they have made a disclosure, and
- they believe that poor, unsafe or illegal practice is happening in their workplace, has happened in the past or will happen in the future, and
- they are disclosing information of the right type – known as a 'qualifying disclosure', and
- they are disclosing it to the right person and in the right way – making it a 'protected disclosure'.

PIDA forms part of employment legislation, and an employer cannot prevent someone from making a protected disclosure as part of their employment contract or other agreement.

From April 2018, workers who appear to a prospective NHS employer to have previously made a protected disclosure are specifically protected under PIDA. Applicants will have a legal recourse should they feel they have been discriminated against, with appropriate remedies should their complaint be upheld.

15. How is the qualifying disclosure protected?

For a qualifying disclosure to be protected, it must be made by a worker by one of the following permitted methods of disclosure:

- disclosure to the employer or other person responsible for the matter
- disclosure to a Minister of the Crown, in relation to certain public bodies
- disclosure to a regulatory body designated for the purpose by order and for the purpose of seeking legal advice

Other disclosures may be protected where in the particular circumstances they are reasonable, and special provision is made for disclosures relating to exceptionally serious problems.

Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998 (PIDA) and the NHS Recruitment Protected Disclosure Regulations 2018).

16. Who should a worker disclose their concern to?

The worker should consider talking to the manager or someone else in authority at the service. Many employers have their own speaking up, raising concerns and/or whistleblowing policies and procedures, which workers should follow in the first place. In some organisations, the worker can also approach the Freedom to Speak up Guardian. They should also follow any of the service's internal policies about speaking up, reporting concerns or making statutory notifications to regulators, such as CQC, if appropriate.

Managers should deal quickly and effectively with concerns from staff about their service. However, if the worker has tried this, and does not think the organisation has dealt with their concern properly, they can take the matter further. In some organisations, they can approach the Freedom to Speak up Guardian.

In any case, a worker may raise their concern directly to CQC or another body, for example, the National Guardian, if appropriate.

If a worker is unsure about making a disclosure, they should seek advice, whether from a legal professional, a Trade Union representative or advocacy service, etc. CQC cannot give legal advice to workers or employers.

17: Do NHS or social care workers have other options?

There are a number of organisations which provide relevant support and advice. The [Speak Up Direct Helpline](#) is an independent, confidential, free phone service for staff and organisations working within the NHS and social care sector. This is a free, independent, confidential advice on whistleblowing/raising concerns/speaking up.

The charity Public Concern at Work (PCAW) provides advice to workers and employers: www.pcaw.co.uk/index.htm

18: If a worker is not directly employed by the registered provider, who should they report their concern to?

In addition to following the guidance in the paragraph above, the worker might also wish to discuss their concerns with their own line manager so that they can consider what action to take. For example, a community physiotherapist may have concerns about a care home they visit and report these to their line manager in their NHS trust.

If they are not confident that the management of the service or their own management will deal with their concerns properly, they can share concerns directly with CQC or another body.

19: What if the concern is urgent?

If a worker is concerned that people using the service are not being protected, they can raise their concern with the local authority (local council) under their safeguarding procedures. They can do this as well as raising concerns with their employer, CQC or another body.

20: What is a prescribed body?

A prescribed body is one that is identified under PIDA as able to receive concerns about organisations. Most regulators, including CQC, are prescribed bodies. Healthwatch England and the National Guardian's Office are also prescribed bodies.

A worker can raise their concern with a prescribed body if it is relevant to that body. Such disclosures are protected under PIDA, where the whistleblower meets the criteria for disclosure.

They must also reasonably believe that the matter is substantially true and relevant to the regulator.

There is more information about this from [Public Concern at Work](#).

21. Can a worker make a disclosure anonymously to CQC?

Yes. However, if we receive information anonymously it will be difficult (if not impossible) to provide feedback about what action we took and to contact the individual to discuss the concern or gather further useful information. We will always encourage someone raising concerns with us to provide us with a means of contacting them even if they do not wish to give us their name.

If we receive information in confidence we will always make every effort to avoid disclosing the person's identity. However, in some circumstances, we might have to disclose information that could identify them. For example, we might have to make this disclosure in order to protect people from harm, to ensure that national standards of care are met, or if we suspect that a serious criminal offence may have been committed. We may make this disclosure to the police or another official body, or if required to do so by a court.

22. Will we give someone's name to a provider?

We will make every effort to avoid disclosing the identity of someone who has raised a concern with us, for example, if the concern subsequently triggers an inspection. As already noted, however, there are some circumstances where we might have to do so, including if required to by a court.

What we expect of registered providers

23: How should providers help workers to report concerns?

Registered providers should ensure that the people who use their services receive care, treatment and support from workers who are confident about reporting any concerns, without worrying about the consequences. A good service provider will create an atmosphere where workers feel able to report concerns and will thoroughly investigate and address such concerns within their service.

Having an open culture will help staff to be more confident about raising concerns, and feel supported in doing that, both inside and outside of the service, without fear of recrimination. It is also easier for providers to deal with concerns if they are raised at an early stage. A good whistleblowing/speak up policy that is available for all workers is an important tool in creating this culture.

NHSI recently published [guidance for trust boards](#) on Freedom to Speak Up. This is intended to inform board members and to be used as a guide for making improvements in the speaking up culture in hospital trusts. This guidance links to our Well Led framework.

The provider's policy and procedure should make it clear to workers that they can go outside their normal line management or accountability arrangements to raise concerns. Workers who are not directly employed by the provider should also be included in the policy.

We publish [guidance for providers](#) about whistleblowing on our website.

24. Can a provider ask CQC for the name of person making a disclosure?

Providers do not have the right to know this information. We will make every effort to avoid disclosing the identity of a worker, for example, if the concern subsequently triggers an inspection.

If a provider believes that a worker has given information to us, or another prescribed body, they should not try to work out the identity of the worker. CQC staff should take care to ensure they do not reveal any information that might lead providers to speculate or identify those making a disclosure.

It may well be possible for a provider to fairly easily identify the worker, particularly if the issue reported is very specific or only a small number of staff work for the provider. However, if a provider does identify a worker and their subsequent actions cause them any detriment, the provider could face a claim in an employment tribunal. Further, providers mis-identifying a worker could face a similar claim.

25. What if the provider doesn't have a /speaking up policy?

Although it is good practice, providers are not legally required to have a /speaking up policy. However, if they don't, workers may be less confident about speaking up and reporting concerns promptly to relevant people in their workplace, or may be more likely to go to an outside body in order to protect people in vulnerable circumstances.

This could mean that:

- bad practice could continue for longer than necessary
- there will be more complaints from people who use the service or their representatives
- staff may leave or perform less well
- the service may receive more negative report
- public reporting could result in avoidable damage to the provider's reputation.

The recent NHSI guidance aims to encourage providers to increase their emphasis on organisation culture, improvement and system working – it focuses on improving leadership and governance to improve outcomes. We use the well-led framework,

developed in partnership with NHSI to structure our assessments as part of our [next phase of regulation](#) and ensure we collect information on how providers encourage and respond to people speaking up and raising concerns. Providers will be aware that we will ask about this when we inspect their services.

Appendix A: Public Interest Disclosure Act

<https://www.legislation.gov.uk/ukpga/1998/23/contents>

[Employment Rights Act 1996 \(NHS Recruitment Protected Disclosure Regulations 2018\)](#)

Appendix B: Duty to report activity from April 2017

Prescribed Persons (either organisations or individuals) are required to report annually in writing on qualifying disclosures made to them.

The reporting period runs from 1 April to 31 March each year with the first reporting period beginning on 1 April 2017.

For auditors appointed to audit the accounts of large authorities the reporting period begins on 1 April 2018.

The relevant prescribed person must publish the report on their website, or wherever they think is appropriate to highlight it to the public.

CQC will do this through our annual report.

What is included in the report

The report should cover the following:

- The number of qualifying disclosures made by a worker to the relevant prescribed person in a 12-month period. The prescribed person must reasonably believe the disclosure of information is a qualified disclosure.
- Of the total number of qualifying disclosures, the number where the prescribed person decided to take further action in that period (whether or not that action was actually undertaken).
- An explanation of the prescribed person's functions, objectives and statutory powers (if it has any).
- A summary of the type of action taken by the prescribed person in respect of qualified disclosures of information.
- A summary of how the information disclosed has impacted on the prescribed person's ability to perform its functions and meet its objectives.

Reporting on further action taken

A prescribed person's report on the number of disclosures that resulted in further action could include information such as:

- the number of disclosures that were referred to an alternative body
- the number of disclosures that required further investigation
- the number of investigations that led to action being taken
- the number of disclosures where they made recommendations to employers on how they could rectify the problems, either in relation to the employer's /speaking up policies and procedures or the issues that form the substance of the disclosure
- the number of organisations investigated that had a whistleblowing /speaking up policy
- the number of enforcement actions taken where they have found evidence of wrongdoing.

Prescribed Persons also need to include a general summary of the action taken in response to qualified disclosures. This could include information such as:

- the number of cases where the issue was resolved after first contact with the employer
- where disclosures that required further investigation, a summary of the investigations carried out and the outcomes
- the outcomes where enforcement actions were taken as a result of disclosures.

To ensure the confidentiality of investigations and protect the identity of workers, case-specific information is not required. However, the purpose of this report is for prescribed persons to demonstrate that every disclosure they receive from a worker is given reasonable consideration and they are dealt with on a case-by-case basis and to a defined set of policies and procedures, ensuring a consistent approach.

Protecting the confidentiality of workers

To protect the confidentiality of workers reporting concerns and other parties involved, prescribed persons are not required to include any information in the report that would identify a worker who has made the disclosure or the employer or person about whom a disclosure has been made.

Appendix C: Further contacts

Staff intranet:

[Guidance on safeguarding and handling concerns](#)

[Policy for all CQC staff who want to whistleblow about CQC](#)

CQC website:

- ***Raising concerns or complaints***

<http://www.cqc.org.uk/contactus/howtoraiseaconcernorcomplaint.cfm>

- ***Whistleblowing – guidance for workers***

http://www.cqc.org.uk/publications.cfm?fde_id=18489

- ***Whistleblowing – guidance for providers***

http://www.cqc.org.uk/publications.cfm?fde_id=18488

- ***How we deal with confidential personal information***

<http://www.cqc.org.uk/contactus/howtoraiseaconcernorcomplaint.cfm>

Public Concern At Work

<http://www.pcaw.org.uk/>

/GOV.UK

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

- ***Memorandums of Understanding and joint working agreements***

<http://www.cqc.org.uk/public/about-us/partnerships-other-organisations/joint-working-agreements>

- ***Whistleblowing Helpline*** Helpline: 08000 724 725