

Whistleblowing Policy and Procedure

Business Impact	Medium Impact Changes are important, but urgent implementation is not required, incorporate into your existing workflow
Summary	Policy amended in the purpose section and 6.10 added. References have been reviewed and updated.
Relevant Legislation	<ul style="list-style-type: none"> • The Criminal Justice and Courts Act 2015 • The Enterprise and Regulatory Reform Act 2013 • The Care Act 2014 • Public Interest Disclosure Act 1998 • The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012 •
Underpinning knowledge - What have we used to ensure that the policy is current	<ul style="list-style-type: none"> • Author: Public Concern at Work, (2016), <i>PAS 1998:2008 Whistleblowing Arrangements Code of Practice</i>. [Online] • Author: The Care Quality Commission, (2013), <i>Whistleblowing: Guidance for providers who are registered with The Care Quality Commission</i>. [Online] Available from: http://www.cqc.org.uk/sites/default/files/documents/20131107_100495_v5_00_whistleblowin • Author: NHS Improvement Service, (2016), <i>Freedom to speak up: raising concerns (whistleblowing) policy for the NHS</i>. [Online] Available from: https://nhsicorporatesite.blob.core.windows.net/green/uploads/documents/whistleblowing_p • Author: CQC, (2019), <i>Whistleblowing and why we can't protect you in disputes with your employer</i>. [Online] Available from: http://www.cqc.org.uk/contact-us/report-concern/report-concern-if-you-are-member-staff • Author: Nursing and Midwifery Council, (2019), <i>Whistleblowing to the NMC</i>. [Online] Available from: https://www.nmc.org.uk/standards/guidance/raising-concerns-guidance-for-nurses-and-midwives/whistleblowing/
Actions	<ul style="list-style-type: none"> • Encourage sharing the policy • Share 'Key Facts' with all staff • Develop training sessions for relevant staff • Ensure relevant staff are aware of the content of the whole policy
Equality Impact Assessment	Team Brain Injury Support have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.

1. Purpose

1.1 The purpose of this policy is to:

- Encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected
- To provide staff with guidance as to how to raise those concerns
- To reassure staff that they should be able to raise genuine concerns without fear of reprisals, even if they turn out to be mistaken

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

1.2 This policy covers all employees, officers, consultants, contractors, volunteers, interns, casual workers and agency workers.

This policy does not form part of any employee's contract of employment and Team Brain Injury Support may amend it at any time.

1.3 To support Team Brain Injury Support in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
SAFE	S6: Are lessons learned and improvements made when things go wrong?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.4 To meet the legal requirements of the regulated activities that {Team Brain Injury Support} is registered to provide:

- The Criminal Justice and Courts Act 2015
- The Enterprise and Regulatory Reform Act 2013
- The Care Act 2014
- Public Interest Disclosure Act 1998
- The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012

2. Scope

2.1 The following roles may be affected by this policy:

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

2.2 The following Clients may be affected by this policy:

- Clients

2.3 The following stakeholders may be affected by this policy:

- Commissioners
- Local Authority
- Care Quality Commission

3. Objectives

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

4. Policy

4.1 Team Brain Injury Support is committed to a high standard of care, to honesty, openness and decency in all its activities. It is recognised that Client safety must come first at all times and, whilst it can be difficult for staff to raise concerns about the practice of others, including managers, the implications of not raising those concerns are potentially very serious for Team Brain Injury Support, its employees and most importantly for those receiving its services.

4.2 Team Brain Injury Support encourages a free and open culture in its dealings with its employees and all people with whom it engages in business and legal relations. In particular, Team Brain Injury Support recognises that effective and honest communication is essential if any wrongdoing or malpractice is to be effectively dealt with and the organisation's success ensured.

4.3 Team Brain Injury Support recognises that staff members are likely to be the first to realise that there may be something seriously wrong within the organisation but may feel that speaking up would be disloyal to colleagues or their employer who may, under certain circumstances, face criminal charges. They may also fear harassment or victimisation and fear for a loss of job or a reduction in work hours.

4.4 Team Brain Injury Support will not tolerate the ill treatment, including any bullying or harassment, of anyone raising a concern. It will ensure that any individual who raises a concern, can do so confidentially in line with the Public Interest Disclosure Act 1998 (PIDA).

4.5 Team Brain Injury Support will ensure that any individual who raises a genuine concern under the Whistleblowing Policy and Procedure will not be at risk of termination of their employment or suffer any form or reprisal which includes, but is not limited to, loss or reduction of hours or changes to regular working patterns because of it.

4.6 Team Brain Injury Support will ensure that it follows not only the law on whistleblowing, but also best practice and guidance from regulatory bodies including the Care Quality Commission and the NHS.

5. Procedure

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

5.2 This procedure is intended to provide a safeguard to enable members of staff to raise concerns about one or more of the following that has occurred, is occurring, or is likely to occur. These qualifying disclosures (see definition) mean that staff can raise a concern about risk, malpractice or wrongdoing that they think is harming the services, might harm or has harmed in the past any aspect of the services that Team Brain Injury Support delivers. A few examples of this might include (but are by no means restricted to):

- Unsafe care
- Unsafe working conditions
- Inadequate induction or training for staff
- Lack of, or poor, response to a reported Client safety incident
- Suspicions of fraud (which can also be reported to the local counter-fraud team)
- Damaging the environment - e.g. disposing of materials or waste incorrectly, for example, flushing medicines or syringes down the toilet or sink
- A bullying culture (across a team or organisation rather than individual instances of bullying)
- Incidents of unsafe staffing, falsification of timesheets, Client visit logs or MARs or clinical or care records
- Failure to investigate claims of physical or sexual assault
- Physical, verbal or sexual abuse of any Client, colleague or other person on the premises of Team Brain Injury Support
- Breaching the Data Protection Act

5.3 How to Raise a Concern - Step 1

- If a member of staff has a concern about a risk, malpractice or wrongdoing at work, it is hoped that they feel they will be able to raise it first with their line manager
- This may be done verbally or in writing
- It is better to raise a concern as soon as it arises
- Where possible, unless, for example, where the concern relates to a safeguarding matter, the concerns raised will be treated confidentially
- The member of staff's line manager will inform them if they cannot keep the concern confidential
- The Registered Manager has overall responsibility for concerns raised and the member of staff's line manager may need to share the concern with the Registered Manager who will have access to Team Brain Injury Support

5.4 How to Raise a Concern - Step 2

- If a member of staff does not feel they can raise the concern with their line manager or the concern relates to or involves the line manager (or they have raised it with the line manager and no action has been taken) the member of staff should then escalate their concerns to the Registered Manager

5.5 How to Raise a Concern - Step 3

- If the member of staff does not feel that the Registered Manager or Team Brain Injury Support will appropriately handle their concerns, the member of staff may report their concerns directly to the Care Quality Commission on 03000 616161 or through its website
- The CQC will not disclose the member of staff's identity without their consent unless there are legal reasons requiring the CQC to do so, e.g. where the information is about a child or vulnerable adult who is at risk

5.6 Investigation

The Registered Manager, in consultation with Team Brain Injury Support, shall have discretion over the nature of the investigation into concerns raised, including, where it is considered appropriate, the involvement of others such as Adult Social Services or auditors. If there is evidence of criminal activity, the

Police will be informed.

5.7 Registered Manager and Team Brain Injury Support Responsibility

- Responsibility for dealing with any concerns reported will lie with the Registered Manager who will have access to Team Brain Injury Support
- If the concerns relate to the Registered Manager, concerns should be escalated to Team Brain Injury Support
- If the concerns involve both Mrs Anna Gregory and Team Brain Injury Support or an individual is fulfilling both roles, the member of staff can contact the CQC

5.8 Protected Disclosures and Safeguarding

- Where a safeguarding concern is received by a member of staff, specific to geographical area where client lives safeguarding policies and procedures will be followed
- Where a safeguarding concern is received by a member of staff and refers to the actions of the Manager or Deputy Manager, then the referral must in the first instance be made to the Social Services Adult Protection Team
- The Adult Protection Team will take the responsibility of informing other agencies. The contact details for the local Social Services for Team Brain Injury Support are as follows:

Email: SSAB@southampton.gov.uk

Telephone: 023 8083 2995

Twitter: [@SPSouthampton](https://twitter.com/SPSouthampton)

5.9 Raising a Concern - Timescales

The individual with whom the concern is raised will acknowledge the concern within locally agreed timescales and in line with best practice.

The investigating officer will be confirmed to the member of staff along with any further information required including contact information and an estimate of the likely timescales involved.

5.10 Where possible, the responsible manager will feed back to the member of staff who raised the concern on the outcome of any investigation, although this may not always be possible in full due to the nature of the disclosure.

5.11 A record of the information provided and details of the proceedings will be kept in line with best practice.

5.12 False Allegations

All whistleblowing concerns will be investigated. However, if a member of staff is found to have made allegations maliciously and/or not in good faith, disciplinary action may be taken. A member of staff will never be disciplined for raising a concern, so long as they follow the whistleblowing procedure or make disclosures in accordance with the Public Interest Disclosure Act 1998.

5.13 Bullying and Harassment of Whistleblowers

Unless an employer has taken reasonable steps to prevent this type of victimisation by co-workers, it will be deemed liable for the acts of its staff. It is therefore no longer enough to deal with incidents of bullying or harassment as and when they arise, on a case by case basis. The only basis upon which an employer will now be able to defend itself against liability for the actions of its staff will be by proactive steps. In order to demonstrate a "reasonable steps" defence, an employer will need to anticipate conduct such as bullying and harassment. To avoid incidents of bullying or harassment occurring, Team Brain Injury Support will take the following steps:

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

5.14 Employment Contracts, Whistleblowing and Confidentiality

Team Brain Injury Support will seek legal or Human Resource advice when drawing up any settlement agreements or employment contracts to avoid the risk of breaching the Public Interest Disclosure Act.

6. Definitions

6.1 Whistleblower

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

6.2 Qualifying Disclosure

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

6.3 Public Interest

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

6.4 Grievance or Private Complaint

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

6.5 PIDA

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

6.6 Employee/Staff

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

6.7 Criminal Justice and Courts Act 2015

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

6.8 Anonymously

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

6.9 Vicarious Liability

- Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment

6.10 Whistleblowing

- The disclosure of information which relates to suspected wrongdoing or dangers at work. This may include:
 - Criminal activity
 - Failure to comply with any legal (or professional) obligation or regulatory requirements
 - Miscarriages of justice
 - Danger to health and safety
 - Damage to the environment
 - Bribery
 - Facilitating tax evasion
 - Financial fraud or mismanagement

- Breach of our internal policies and procedures
- Conduct likely to damage our reputation or financial wellbeing
- Unauthorised disclosure of confidential information
- Negligence
- The deliberate concealment of any of the above matters

Key Facts - Professionals

Professionals providing this service should be aware of the following:

- All whistleblowers will be treated in a fair way and will not be victimised or prejudiced as a result of a genuine concern
- All staff have a duty to ensure standards of quality care by raising concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour and will be protected and supported to do so
- Team Brain Injury Support is committed to the Whistleblowing Policy and Procedure and will act on information given in line with it
- On induction, staff will be trained on the whistleblowing procedures of Team Brain Injury Support. Information on how to report concerns will be visible at Team Brain Injury Support
- Team Brain Injury Support will monitor the effectiveness of the whistleblowing procedures and will review every concern raised to identify and address any themes or trends

Key Facts – People affected by the service

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

- If you have concerns that you are at risk of harm or abuse you can contact Mrs Anna Gregory. Team Brain Injury Support has a safeguarding policy and your Service User Guide has information on who you can talk to
- If you want to complain or have a comment about your service you can use the procedure for complaints at Team Brain Injury Support

Further Reading

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

Care Quality Commission - Promoting sexual safety through empowerment:

https://www.cqc.org.uk/sites/default/files/20200225_sexual_safety_sexuality.pdf

ACAS- Whistleblowing Public Interest Disclosure

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

Policies:

- Safeguarding Policy and Procedure
- Grievances Policy and Procedure
- Duty of Candour Policy and Procedure
- Complaints, Suggestions and Compliments Policy and Procedure
- Anti-Bullying Policy and Procedure
- Confidentiality Policy and Procedure

Outstanding Practice

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

- Staff report that Team Brain Injury Support is extremely open, transparent and actively supports and encourages whistleblowing
- Team Brain Injury Support enables employees to raise concerns by providing support (such as a helpline) from an independent agency in regard to whistleblowing concerns
- Team Brain Injury Support has a designated Whistleblowing Champion and evidence of the proactive nature of this role and how it is a success
- Team Brain Injury Support uses lessons learnt from concerns, without breaching confidentiality, to ensure continuous improvement of the service

Forms

Currently there is no form attached to this policy.