

## External Whistleblowing (Protected Disclosures) Policy

### 1. Introduction

Monitor is the sector regulator for health care. Our main duty is to protect and promote the interests of patients by regulating the provision of health care services to ensure it is effective, efficient and economic and maintains or improves the quality of services.

The whistleblowing legislation<sup>1</sup> provides protection for whistleblowers from detrimental treatment by their employer when they make disclosures which are protected under the legislation. Monitor is listed as an organisation to which a protected disclosure can be made under the whistleblowing legislation.

We take whistleblowing very seriously. This policy describes what we can look at as part of our role. It describes whistleblowing and how it differs from grievances and complaints. It explains how you can raise your concern with us under this policy and how we will handle that concern. It also outlines the protection the whistleblowing legislation can give to whistleblowers.

Monitor's Chief Executive is responsible for this policy and will review it annually.

### 2. Does this policy apply to me?

This policy sets out how Monitor will deal with whistleblowing by anyone who could be covered by the whistleblowing legislation. This includes those who work within, or have worked within, an organisation involved in the provision or commissioning of NHS health care services (including NHS foundation trusts and clinical commissioning groups) and other kinds of organisations relevant to Monitor's role (see section 4 below for more details on this). It describes the kinds of concerns that can be raised under the whistleblowing legislation that are relevant to our role (see section 4 below) and how we will respond.

Following the approach in the whistleblowing legislation, we encourage staff to consider blowing the whistle internally within their own organisations in the first instance. However, if you have raised your concerns within your organisation and are not satisfied with the response, or if you feel unable to raise your concerns within your organisation, you are able to contact us under this policy.

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<sup>1</sup> The Public Interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013)

### 3. What is Whistleblowing?

Whistleblowing is the term used when someone who works within, or has worked within, an organisation discloses information that they reasonably believe is in the public interest to disclose and that they reasonably believe could demonstrate the commission of crimes, breaches of legal obligations, miscarriages of justice and dangers to health and safety and the environment (or the concealment of information showing any of the above).

Whistleblowing is different from raising a grievance. Its aim is to prevent harm to others or to an organisation as a whole; it is not to provide redress to you for a complaint you may have against your employer. This is reflected in the need for whistleblowers to have a reasonable belief that their disclosure of information is in the public interest in order to attract protection under the whistleblowing legislation.

If you wish to make a complaint relating to your employment, you will need to raise this with your employer as we are unable to become involved in the resolution of personal employment matters; these are matters of private law between the employee and the employer and are not regulatory matters for Monitor.

### 4. What type of concerns can I raise?

- 4.1. You must reasonably believe that the disclosure of information is in the public interest: a disclosure made for your own personal interest will not be protected. Further, the concerns you allege must relate to Monitor's activities in regulating the health care sector.

We exercise a range of legal powers, which include setting and enforcing a framework of rules for providers and commissioners, implemented in part through licences we issue to NHS-funded providers. We also set prices for NHS-funded services, tackle anti-competitive practices that are against the interests of patients, help commissioners ensure essential local services continue if providers get into serious difficulty and enable better integration of care so services are less fragmented and easier to access. Further information about Monitor's role can be found on the following section of our website: <http://www.monitor.gov.uk/about-monitor/what-we-do-0>

- 4.2. In addition, you must reasonably believe that your disclosure tends to show one or more of the following:
  - the past, present or future commission of a criminal offence;
  - past, present or future failure to comply with a legal obligation;
  - the past, present or future occurrence of a miscarriage of justice;
  - past, present or future danger to the health or safety of any individual;
  - past, present or future damage to the environment; and/or
  - past or future deliberate concealment of any of the above.
- 4.3. If you wish to raise concerns about the standards of quality and safety of healthcare at a provider, it is more appropriate for you to contact the Care

Quality Commission. The Care Quality Commission is responsible for safeguarding appropriate standards of quality and safety within health and social care in England. The CQC can be contacted at:

Address: Care Quality Commission National Correspondence  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA  
Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)  
Telephone: 0300 061 61 61  
Website: [www.cqc.org.uk](http://www.cqc.org.uk)

## 5. How should I raise my concerns under this policy?

If you do decide to make a disclosure under this policy, please provide the information in writing to us using the details below, even if you initially contact us by telephone so that we can properly consider your concerns. If you are unable, for whatever reason, to provide information to us in writing, please let us know and we will consider what, if any, alternative arrangements may be appropriate. We can be contacted at:

Address: Monitor  
Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG  
Email: [enquiries@monitor.gov.uk](mailto:enquiries@monitor.gov.uk)  
Telephone: 020 3747 0000  
Website: [www.monitor.gov.uk](http://www.monitor.gov.uk)

Please set out your concerns about the organisation as fully and as clearly as possible, stating:

- the issue(s) you reasonably believe have arisen, with your view on which of our activities your concerns relate to (see 4.1 above); and
- to which part or parts of the whistleblowing legislation (see section 4.2 above) you reasonably believe your concerns relate.

If you have raised your concerns with your employer already, for example under its whistleblowing policy, please tell us and describe what happened as a result.

## 6. Will you always act on anything I tell you?

Our response to the disclosure you make will depend on whether it comes within this policy and, if so, our assessment of the seriousness of the concerns you raise. We will need to decide if:

- the concern is within the scope of our regulatory role;
- we are the right organisation to investigate the concerns; and/or
- another organisation is better placed to deal with the concerns instead of, or as well as, us. For example, the Care Quality Commission is responsible for regulating the safety of services of providers of health care in England (such as applicant NHS trusts and existing NHS foundation trusts) and the General Medical Council is responsible for regulating professional care staff as individual practitioners (for example assessing the fitness to practise of a doctor).

## **7. What kind of action can you take?**

We can generally do one or more of the following:

- make a record of your concerns to add to our database of information about organisations covered by our regulatory duties;
- raise the issue directly with the organisation if we consider this appropriate; and/or
- notify another regulator or official body if it is appropriate for it to look into the concern instead of, or as well as, us.

We will make an assessment on what is appropriate in each whistleblowing matter. Monitor's Chief Executive has ultimate responsibility for this policy and will become involved in individual matters with other senior colleagues when appropriate.

## **8. Will you contact me after I have made a whistleblowing disclosure to you?**

Yes:

- We will provide you with written confirmation of receipt of your disclosure within five working days.
- At that stage or later, we will inform you if we decide that it is appropriate for another regulator or official body to look into your concerns as well as, or instead of, us.
- We can provide limited information about our action in relation to individual organisations unless we have taken formal regulatory action that is made public. So we will write to you outlining any action taken following consideration of the information provided by you in due course.
- The length of time it will take for us to be able to reach the stage when we can write to you outlining what we have done, will depend upon the nature of the concern you have raised and the type of action, if any, we take.

## **9. Will you keep my identity confidential?**

If you ask us to conceal your identity, we will endeavour to do so unless disclosure of your identity is required by law, for example, under our duty to share certain information with the Care Quality Commission. In such situations, whilst we cannot guarantee that others may not be able to identify you from the information disclosed if

we look further into the concerns raised, we aim to exercise discretion when doing this. There may be times when we are unable to look into a concern without revealing your identity, for example, where your personal evidence is essential. In such cases, we will aim to discuss with you whether and how the matter can best proceed.

You may wish to remain anonymous. However, please remember that if you do not tell us who you are, it is likely to be more difficult for us to look into the concerns raised. Also, we will not be able to contact you to ask for further information that we may need or provide you with feedback on any action we may take.

#### **10. How does the law protect me if I whistleblow?**

Your protection from detriment as a result of whistleblowing is a matter between you and your employer under the whistleblowing legislation. Under this legislation, you will have appropriate means of redress, for example at an employment tribunal, if you have been subject to detriment by your employer, colleagues or your employer's agents (for example, contractors) as a result of your whistleblowing disclosure. In brief this means that you will be protected if:

- you have made the disclosure in line with section 4 above;
- you reasonably believe that the disclosure is in the public interest;
- you reasonably believe that the information, and any allegations contained in it, are substantially true; and
- making the disclosure does not involve you committing a criminal offence.

Monitor is not able to intervene to resolve any disputes you may have with your employer regarding your employment or provide you with advice on any matter, including advice on any protection you may have under the whistleblowing legislation. Sources of advice that you may wish to consider could include a lawyer, a representative of your professional body/regulatory body/trade union, or the independent whistleblowing charity Public Concern at Work (tel: 020 7404 6609, email: [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk) or website: [www.pcaw.co.uk](http://www.pcaw.co.uk))

#### **11. Oversight of this policy**

Monitor's Chief Executive is responsible for this policy and will review it annually.