

CLASSIFICATION

Whistle-blowing procedure

1. Definition of whistle-blowing

- 1.1 Whistle-blowing is a term used to describe a disclosure made to someone in authority alleging corruption or malpractice on the part of another person. In employment, whistle-blowing refers to an employee making a disclosure about another employee's conduct in the course of employment or about the employer's practices.
- 1.2 The Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 protect employees against dismissal and detriment where they raise a legitimate concern about a specified matter. These are known as 'qualifying' disclosures. A qualifying disclosure is one which is made in the public interest by an employee who has a reasonable belief that one of the following is being, has been, or is likely to be committed:
- a criminal offence;
 - a miscarriage of justice;
 - an act creating risk to health and safety
 - an act causing damage to the environment;
 - a breach of any other legal obligation; or
 - concealment of any of the above.
- 1.3 Concerns may be raised about the actions of another employee, suppliers, contractors or anyone else undertaking work on behalf of PHSO.

2. Raising a concern

- 2.1 Employees who wish to whistle-blow should initially seek advice and guidance from their line manager (unless their concern is about their line manager) or HR Operations, before proceeding. The line manager will discuss with the employee the way to proceed, involving HR Operations as necessary.
- 2.2 If an employee wishes to proceed with a whistle-blowing complaint they should set out the details of their concerns in writing and forward them to the Chief Operating Officer (COO). If the concerns raised by the whistle-blower relate directly to, or involve, the Chief Operating Officer, they should be sent to the Ombudsman.
- 2.3 On receipt of the complaint the Chief Operating Officer or Leadership Team member will make initial enquiries to identify whether an investigation is appropriate or if the concern can be resolved through alternative action. Concerns which fall within the scope of a specific PHSO policy or procedure will normally be dealt with through that procedure.
- 2.4 If it is necessary to carry out an investigation, the Chief Operating Officer (or other Leadership Team member) will appoint an Investigation Manager,

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who is not directly implicated in the whistle-blowing allegation. If urgent preventative action is required, this may take place before any investigation is conducted.

2.5 Possible investigative routes include:

- internal investigation by management;
- referral to the police; or
- referral to the external auditor.

2.6 In some cases it may be appropriate to approach an external body for specialist professional or legal advice.

2.7 If the outcome of the complaint is that disciplinary proceedings should be commenced against another person, the person who raised the complaint will not be advised of any penalty given.

2.8 Where it is decided that there is no case to answer, but the employee held a genuine concern, PHSO will take such steps as are deemed necessary to ensure the employee is not subject to any victimisation or reprisal.

2.9 If an employee feels it would be inappropriate to raise a concern within the Office, particularly with senior management, or that a concern has been raised but has not been satisfactorily dealt with at a senior level, a concern can be raised with:

- PHSO's Audit Committee Chair, Sir Jon Shortridge
- PHSO's external auditors, the NAO, who can be contacted regarding concerns about the misuse of public money, by calling the Whistle-blowers Hotline on 020 7798 7999 or by writing to:

The Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
London SW1W 9SP

- the Chair of the Public Administration Select Committee (via the Clerk to the Committee, who will discuss with the Chair whether further action is appropriate, and if so what it should be).

2.10 If an employee raises a concern outside PHSO, they should have proper regard to the legal obligations of confidentiality under which PHSO operates. While these can cover the confidentiality of an individual's personal information, under the Data Protection Act 1998 for example, it is particularly important that the statutory restrictions on disclosure of information in the Parliamentary Commissioners Act 1967 and the Health Service Commissioners Act 1993 are respected. Because these statutory restrictions set out the basis on which PHSO undertakes all its investigations, the Office may need to bring disciplinary or legal action in

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respect of any breach that is not protected by the Public Interest Disclosure Act. For this reason, employees should seek advice from Public Concern at Work (see 4.1) or a lawyer before they make an external disclosure.

3. Anonymous complaints

- 3.1 Anonymous reports are not encouraged. However, if an employee chooses to raise a concern anonymously or only wishes to raise a concern orally, PHSO will investigate. However, the employee raising the concern must be aware that it may not always be possible to investigate fully in such circumstances or to reach a satisfactory conclusion.

4. Confidential advice

- 4.1 If an employee is unsure whether to put their name to a complaint or whether they should talk to their line manager or HR Operations about their concern, they can get free, confidential advice from the independent charity, Public Concern at Work on 020 7404 6609 (e-mail: helpline@pcaw.co.uk)
- 4.2 Other possible contact points for advice are:
- relevant professional bodies or regulatory organisations;
 - a solicitor;
 - the police.
- 4.3 Employees can also contact the Employee Assistance Programme (EAP) providers, their Trade Union representative or a member of HR Operations for advice.
- ### **5. Raising a concern regarding an external organisation**
- 5.1 If an employee is concerned about serious wrong doing by an external organisation, (or an employee of an external organisation) for example a supplier, they should raise their concerns with their line manager, in accordance with any operational guidance. The line manager will escalate it to their Director/Head of Function.
- 5.2 Employees with concerns regarding a body in jurisdiction are advised to read the relevant Casework Policy and Guidance to determine the appropriate action. Further information is contained within:
- Governance Statement;
 - Clinical Adviser Guidance;
 - Disclosure of concerns about the health and safety of patients;
 - Releasing information about risk to a complainant or others;
 - PHSO's Fraud Policy.

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6. Right to be accompanied

6.1 All employees taking part in formal meetings (including investigation meetings) can be accompanied to a meeting by a PHSO colleague or Trade Union representative. This applies to an employee:

- who has raised the concern;
- who is the subject of the complaint;
- who is a witness during the investigation.

6.2 The colleague or Trade Union representative may:

- address the meeting but not answer questions on behalf of the employee;
- confer with the employee during the meeting, requesting an adjournment, if necessary.

6.3 Managers arranging formal meetings should advise employees that they may be accompanied. Every effort will be made to accommodate the availability of the colleague/Trade Union representative accompanying the employee. However, where this causes the process to be unduly delayed, the employee may be requested to seek an alternative.

7. External complaints

7.1 Former employees, agency workers and consultants can raise a concern by contacting the Director of HR, People and Talent or the Chief Operating Officer.

Current procedure

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WHISTLE-BLOWING POLICY

POLICY STATEMENT

1. PHSO is committed to the highest possible standards of professional conduct, including openness, honesty and accountability. This policy provides a process through which PHSO employees can raise concerns about serious wrong-doing if those standards are not met. PHSO recognises that most cases will have to proceed on a confidential basis.

PURPOSE AND SCOPE OF POLICY

2. This policy covers PHSO employees, agency workers, contractors, consultants and those on secondment from other organisations.
3. This policy provides a process by which concerns about serious wrong-doing can be raised and allows PHSO to deal with these quickly and effectively.
4. This policy follows the approach in the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 and will assist PHSO to promote high standards of governance and accountability.
5. This policy is not intended to be used for matters that are covered by other PHSO policies, for example the Grievance Policy, Equality & Diversity Policy and the Dignity at Work Policy, which should be used by employees to raise concerns or complaints about their own employment.

PRINCIPLES

6. The following principles apply:
 - PHSO's core values are Excellence, Leadership, Integrity and Diversity. Our commitment to maintaining our integrity requires us to be open, honest and straightforward in all our dealings and to use time, money and resources effectively, so that:
 - we are consistent and transparent in our actions and decisions;
 - we take responsibility for our actions and hold ourselves accountable for all that we do;
 - we treat people fairly.
 - PHSO will assume that all concerns raised under this policy are done in good faith. However, if an employee is found to have knowingly made a false allegation, in the unlikely event that a concern is found to be frivolous, malicious or vexatious, action under the Disciplinary policy will be considered;
 - employees who are responsible for any wrong-doing themselves and raise the issue under this policy will not be provided with immunity for the actual wrong-doing, although PHSO will take into account their raising of the matter;

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- every effort will be made not to reveal an employee's identity if this is their wish. However, in certain circumstances, it may not be possible to maintain confidentiality;
- an employee raising a qualifying disclosure (see definition of whistleblowing below) will not suffer from any detriment as a result of having raised the concern;
- PHSO will make every attempt to ensure that an employee raising a qualifying disclosure is not victimised as a result of having raised the concern. Such victimisation will be subject to disciplinary action; employees are not expected to prove, beyond reasonable doubt, the truth of an allegation. However, they do need to demonstrate that they have a reasonable belief that there are sufficient grounds for their concern.

OUTCOMES

7. The outcomes of this policy are that:
 - employees have a clear understanding of how to raise concerns regarding professional standards;
 - PHSO is able to comply with its obligations under the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013;
 - the integrity of PHSO is upheld and arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

MONITORING AND REVIEW

8. This policy will be reviewed regularly and in line with relevant legislation.

Current policy

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 - employees who are responsible for any wrong-doing themselves and raise the issue under this policy will not be provided with immunity for the actual wrong-doing, although PHSO will take into account their raising of the matter.

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- every effort will be made not to reveal an employee's identity if this is their wish. However, in certain circumstances, it may not be possible to maintain confidentiality.
- PHSO will make every attempt to ensure that the employee making the complaint is not victimised or suffers any detriment as a result of having complained.
- employees are not expected to prove, beyond reasonable doubt, the truth of an allegation. However, they do need to demonstrate that there are sufficient grounds for their concern.

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September 2012

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- 1.2 The Public Interest Disclosure Act 1998 protects employees against dismissal and detriment where they raise a legitimate concern about a specified matter. These are known as 'qualifying' disclosures. Qualifying disclosures are those which are made in good faith by an employee who has a reasonable belief that one of the following is being, has been, or is likely to be committed:
- a criminal offence;
 - a miscarriage of justice;
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 - an act causing damage to the environment;
 - a breach of any other legal obligation; or
 - concealment of any of the above.
- 1.3 Concerns may be raised about the actions of another employee, suppliers, contractors or anyone else undertaking work on behalf of PHSO.

2. Raising a concern

- 2.1 Employees who wish to whistle-blow should initially seek advice and guidance from their line manager (unless their concern is about their line manager) or HR Operations, before proceeding. The line manager will discuss with the employee the way to proceed, involving HR Operations as necessary.
- 2.2 If an employee wishes to proceed with a whistle-blowing complaint they should set out the details of their concerns in writing and forward them to the Deputy Chief Executive (DCE). If the concerns raised by the whistle-blower relate directly to, or involve, the Deputy Chief Executive, they should be sent to an alternative member of the Executive Board (EB) or to the Ombudsman.
- 2.3 On receipt of the complaint the DCE or EB member will make initial enquiries to identify whether an investigation is appropriate or if the concern can be resolved through alternative action. Concerns which fall within the scope of a specific PHSO policy or procedure will normally be dealt with through that procedure.

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- 2.4 If it is necessary to carry out an investigation, the DCE (or other EB member) will appoint an Investigation Manager, who is not directly implicated in the whistle-blowing allegation. If urgent preventative action is required, this may take place before any investigation is conducted.
- 2.5 Possible investigative routes include:
- internal investigation by management,
 - referral to the police; or
 - referral to the external auditor.
- 2.6 In some cases it may be appropriate to approach an external body for specialist professional or legal advice.
- 2.7 If the outcome of the complaint is that disciplinary proceedings should be commenced against another person, the person who raised the complaint will not be advised of any penalty given.
- 2.8 Where it is decided that there is no case to answer, but the employee held a genuine concern, PHSO will take such steps as are deemed necessary to ensure the employee is not subject to any victimisation or reprisal.
- 2.9 If an employee feels it would be inappropriate to raise a concern within the Office, particularly with senior management, or that a concern has been raised but has not been satisfactorily dealt with at a senior level, a concern can be raised with:
- PHSO's Audit Committee Chair, Sir Jon Shortridge
 - PHSO's external auditors, the NAO, who can be contacted regarding concerns about the misuse of public money, by calling the Whistle-blowers Hotline on 020 7798 7999 or by writing to:

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3. Anonymous complaints

- 3.1 Anonymous reports are not encouraged. However, if an employee chooses to raise a concern anonymously or only wishes to raise a concern orally, PHSO will investigate. However, the employee raising the concern must be aware that it may not always be possible to investigate fully in such circumstances or to reach a satisfactory conclusion.

4. Confidential advice

- 4.1 If an employee is unsure whether to put their name to a complaint or whether they should talk to their line manager or HR Operations about their concern, they can get free, confidential advice from the independent charity, Public Concern at Work on 020 7404 6609 (e-mail: helpline@pcaw.co.uk)

- 4.2 Other possible contact points for advice are:

- relevant professional bodies or regulatory organisations;
- a solicitor;
- the police.

- 4.3 Employees can also contact the Employee Assistance Programme (EAP) providers, their Trade Union representative or a member of HR Operations for advice.

5. Raising a concern regarding an external organisation

- 5.1 If an employee is concerned about serious wrong doing by an external organisation, for example a supplier, they should raise their concerns with their line manager, in accordance with any operational guidance. The line manager will escalate it to their Director/Head of Function.
- 5.2 Employees with concerns regarding a body in jurisdiction are advised to read the relevant Casework Policy and Guidance to determine the appropriate action. Further information is contained within:
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 - who is the subject of the complaint;
 - who is a witness during the investigation.
- 6.2 The colleague or Trade Union representative may:
- address the meeting but not answer questions on behalf of the employee;
 - confer with the employee during the meeting, requesting an adjournment, if necessary.
- 6.3 Managers arranging formal meetings should advise employees that they may be accompanied. Every effort will be made to accommodate the availability of the colleague/Trade Union representative accompanying the employee. However, where this causes the process to be unduly delayed, the employee may be requested to seek an alternative.
7. **External complaints**
- 7.1 Former employees, agency workers and consultants can raise a concern by contacting the Head of HR Operations or the Deputy Chief Executive.

April 2012

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WHISTLEBLOWING POLICY

Contents:

- Purpose and scope
- Principles
- Objectives
- Outcomes
- Monitoring and review

Annexes

- I Whistleblowing guidance - How to raise a concern
- II Examples of where an employee might blow the whistle in PHSO
- III Public Interest Disclosure Act 1998 (PIDA 1998)

Purpose of policy

1. 'Whistleblowing' is a process through which individuals can raise concerns about serious wrongdoing in or by their organisation. As PHSO is committed to being an open, honest and accountable organisation, the Office has introduced this whistleblowing policy.
2. Where something may be going seriously wrong within an organisation, members of staff will often be the first to know. However, they may decide not to say anything because they think this would be disloyal, or they might be worried that their suspicions may not turn out to be justified. Some may be worried that they may be victimised as a result of raising a concern, or that someone else may be disciplined. Some say nothing as they assume the organisation knows about the misconduct already.
3. This policy has been introduced to reassure everyone at PHSO that there is a safe alternative to silence and to help ensure we deal with any serious concern quickly and effectively. The policy follows the approach in the Public Interest Disclosure Act 1998 and will help PHSO promote high standards of governance across public services.
4. This policy sets out what PHSO will do, the assurances we offer and provide to staff, and sets out how we will monitor and evaluate the Policy. The Annexes provide guidance on how the Policy will work in practice, explaining how and with whom whistleblowing concerns can be raised.
5. If, as a result of an investigation into a complaint or from other dealings with another organisation, a member of staff is concerned about some serious wrongdoing outside of PHSO, they should follow the relevant operational guidance in the first instance - including ensuring that senior managers in PHSO are aware of the concerns before any action is taken. In such circumstances this policy should only be used where that guidance is being breached.

Principles

Who is covered by this Policy?

6. All PHSO employees, agency workers, contractors providing services, and trainees on work experience schemes may raise concerns under this Policy. This includes Associate Investigators, interim managers, secondees, External Complaint Reviewers and External Board Members at PHSO.

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What types of concerns are covered?

7. The Policy is intended to deal with concerns about serious wrongdoing, such as:

- a criminal offence
- fraud or corruption
- unauthorised use of public money
- any serious danger to health, safety or the environment
- abuse of position for any unauthorised use or for personal gain
- deliberate and knowing breach of an Office policy, an official code of practice or regulation
- clear failure to meet appropriate professional standards
- breach of a legal obligation
- deliberate concealment of information tending to show any of the above
- miscarriage of criminal justice
- unlawful discrimination on the grounds of race, colour, religion or belief, ethnic origin, disability, age, sex or sexual orientation

8. A concern may be about the actions of members of staff, people who work directly for the Office, suppliers, contractors or people undertaking work on behalf of the Office.

What is not covered?

9. This Policy is not intended to be used for matters that are covered by other Office policies. Such policies include:

- the Grievance Procedure, Equal Opportunities Policy or the Dealing with Harassment and Bullying Policy, these should be used by employees to raise concerns or complaints about their own employment or treatment
- the Office's procedure for complaints about PHSO - this should be used for complaints about the quality of the service we provide

Our assurances to staff

10. If you raise a concern under the terms of this Policy, we will not tolerate any victimisation, harassment or bullying against you. Equally if you raise a concern in good faith which does not prove to be well-founded we will not take any action against you. However, if you maliciously raise a concern which proves unfounded, we will consider taking disciplinary or legal action against you, as appropriate.

11. If you have done something seriously wrong yourself, raising the issue under this policy will not provide you with immunity for the actual wrongdoing, although we will take into account your help in coming forward. Please note that using this Policy will not influence, or be influenced by, any disciplinary action against you or any redundancy procedures that may affect you.

12. With these assurances, we hope that if you have a genuine concern you will raise it openly. However, we recognise that there may be some circumstances when you would prefer to speak to someone in confidence. If you ask us not to disclose your identity, we will not do so without your consent unless required by law. You should understand that there may be times when we are unable to resolve a concern without revealing your identity, for example where your personal evidence is essential. In such cases, we will discuss with you whether and how the matter can best proceed.

Anonymous reports

13. This Policy is not designed to encourage or address anonymous reports and we are unable to extend the assurances in it to people who make anonymous reports. This is because we will not

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know to whom to give the feedback or who to protect from reprisal. In addition to these reasons, it is much more difficult to investigate and address anonymous reports. We hope this Policy will give you the assurances to give your name when you raise a concern.

14. If you are unsure whether to identify yourself, or whether to ask to talk to a member of HR, a senior manager or the Audit Committee Chair in confidence, you can get free, confidential advice from the independent charity, Public Concern at Work on 020 7404 6609.

Managers' responsibilities

15. Managers notified of a concern:

- have a responsibility to ensure that concerns raised are taken seriously
- will, where appropriate, investigate properly and make an objective assessment of the concern
- will keep the person who raised the concern advised of progress
- have a responsibility to ensure that action necessary to address any serious wrongdoing is taken

Objectives and outcomes

16. The direct impact of this policy is to ensure that members of staff and others feel able and confident to raise any concern about serious wrongdoing. The specific and measurable objectives of this Policy are to:

- provide a clear mechanism for staff to raise concerns and provide guidance on how these concerns will be handled and what should be done if they are not taken seriously or fully investigated
- remind all staff of their ability to raise concerns about something they may have witnessed as a third party, safely and responsibly
- provide information on sources of support and further guidance for individuals who are considering using this policy
- facilitate the monitoring and evaluation of how 'whistleblowing' concerns are dealt with
- uphold the integrity of the Office and to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action

Monitoring and review

17. The effectiveness of the Whistleblowing Policy for individuals will be kept under review by HR in consultation with Senior Management on an on-going basis. If such monitoring shows that there are any concerns about the way the policy has been implemented it will be reviewed and amended as necessary.

18. As part of the quarterly HR Performance indicators report, the Executive Board will be provided with information about whether the Whistleblowing Policy has been expressly invoked or used and whether there have been instances when it would have been helpful to PHSO if it had been used earlier or at all.

19. The Executive Board will also review the operation of this policy in the light of best practice on whistleblowing and developments under the Public Interest Disclosure Act .See the Public Concern at Work website and the BIS website.

See Annexes

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Annex 1: Whistleblowing guidance - How to raise a concern

Raising a concern with PHSO

Below we set out the contacts with whom you can raise a whistleblowing concern at PHSO. Please note that you can raise your concerns either in writing or orally, and that if you do want to raise the matter in confidence (ie requesting that we do not disclose your identity without your consent), you should say so at the outset.

The earlier you raise a concern, the more likely it is that we can take effective action, so please remember that you do not need to have firm evidence of misconduct before raising a concern. When you do, it will be helpful for you to provide us with as much information as possible. It is also helpful for us to know, when you raise the concern, how you think the matter might be best resolved and if you have any personal interest in the matter please tell us at the outset.

If in doubt, please raise it.

If you work for the Office

Step 1

We hope you will feel able to raise your concern with your immediate line manager.

Step 2

Where this does not feel sensible or where you have tried this but your concern remains, please contact your Director or a senior member of the HR team. If, due to the seriousness and sensitivity of the matter, they cannot deal with it, they will refer the concern to an appropriate colleague.

Step 3

If you are not happy with their response, or you feel you cannot raise your concern at anything other than a very senior level, you should contact the Director of People and Organisational Development, a member of the Executive Board, or the Ombudsman.

If you are not happy with their response, or you feel that you cannot raise your concern with senior management, you can raise it directly with the Chair of the PHSO Audit Committee, whose contact details can be obtained from the PHSO Risk and Assurance Manager.

If you do not work for the Office

If want to raise a concern at a senior level in PHSO, you can contact in the first instance the Director of People and Organisational Development who can advise you on the action to take:

Jon Ward, Director of People and Organisational Development
Parliamentary and Health Service Ombudsman
14th Floor
Millbank Tower
Millbank
London SW1P 4QP
(Please mark it for his personal attention).

You can also raise a concern with the Chair of the PHSO Audit Committee at the above address.

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Confidential advice

Whether or not you work for the Office, you can get confidential advice from the independent charity Public Concern at Work (PCaW).

Their address is:

Suite 301
16 Baldwin Gardens
London EC1N 7RJ

email: helpline@pcaw.co.uk
Tel: 020 7404 6609

If you work for the Office, the Employee Assistance Programme (EAP) providers (currently Validium), Equality Support Officers, your trade union representative or a member of HR can give you general support and advice.

Further information about the Public Interest Disclosure Act is available from the [Department for Business Innovation and Skills website](#)

Raising a concern outside of PHSO

We hope and expect that anyone with a concern about the Office would normally raise it with managers here first. However, if circumstances were such that you felt unable to raise a concern about the Office, even with senior management or the Audit Committee Chair, or you felt that a concern you had raised had not been satisfactorily dealt with, you can raise your concern with:

- our external auditors (the National Audit Office)
- the Public Administration Select Committee (via Clerk to the Committee, who will discuss with the Chair whether further action is appropriate, and if so what it should be)

If you would like advice on whether you should take the matter outside the organisation (or in very serious cases to the police), you can speak to PCaW, or a professional body or regulatory organisation relevant to your concern, such as CIPD, BMA or accountancy bodies, or with your lawyer or citizens advice bureau.

If you raise a concern outside of PHSO, we expect you to have proper regard to the legal obligations of confidentiality under which the PHSO operates. While these can cover the confidentiality of an individual's personal information, it is particularly important that you respect the statutory restrictions on disclosure of information in the PCA 1967 and the HSCA 1993. Because these statutory restrictions set out the basis on which the PHSO undertakes all its investigations, we may need to bring disciplinary or legal action in respect of any breach that is not protected by the Public Interest Disclosure Act. For this reason, we encourage you to seek advice from PCaW or a lawyer before you make an external disclosure.

How PHSO will respond to your concerns

Once you have told us of your concern, we will assess it and consider what action may be appropriate. This may involve an informal review, an internal enquiry or a more formal investigation. The way your concern will be handled will depend on what it involves, such factors as nature of concern and most appropriate means of investigation will be relevant.

Your concern may be investigated by a senior manager, our internal auditors, or we may refer it to an external investigator or auditors, or the police.

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If it is more appropriate to handle your concern under another Office policy or procedure, we will advise you.

We aim to respond within 10 working days of you raising a concern. We will:

- acknowledge that we have received your concern and summarise it
- tell you who will be handling the matter and how you can contact them
- explain how we will handle the matter
- outline what further assistance we may need from you
- tell you what support is available to you

It is difficult to set further timescales as they will depend on the nature of the concern and the type of investigation required.

Feedback

We will give you as much feedback as we properly can on the progress and outcome of the investigation, providing this does not compromise the outcome, particularly if the matter involves the police. Please understand that we will not be able to tell you about disciplinary, or other action, when it would infringe a duty of confidence we owe to a third party.

Annex 2 - Examples of where an employee might blow the whistle in PHSO

In all cases you should carefully read the Whistleblowing Policy and ensure that you understand all aspects of it, seeking further guidance from HR as necessary.

Situation 1

You become aware that a manager is submitting fraudulent travel expense claims.

If the person in question is your line manager then you should raise it with your Director or a senior member of Human Resources. If the person is not your line manager then you should report it to their line manager directly, unless you feel this is inappropriate.

Situation 2

You become aware that the Office is contravening legislation on health and safety issues.

You should report the concern to your line manager. If you believe your line manager is involved in the breaches of H&S regulations then you should report it to their Director or a senior member of Human Resources. If you believe either of these to be involved you may raise the issue with the Director of People and Organisational Development, a member of the Executive Board or the Ombudsman.

Situation 3

You uncover serious concerns during the course of an investigation about a NHS professional's action (eg where there is a genuine risk to public health and safety).

You should in first instance follow the relevant operational guidance, including ensuring that the concern is raised with a senior manager as soon as possible and before any action is taken. If in any doubt about disclosure of personal or other information obtained by PHSO in the course of an investigation you can also contact the Ombudsman or Deputy Ombudsman, or seek advice from PCaW or a lawyer.

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Annex 3 - Public Interest Disclosure Act 1998 (PIDA 1998)

Summary (February 2006)

Malpractice

The Act applies to people at work raising genuine concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of criminal justice, dangers to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals covered

In addition to employees, it covers workers, contractors, trainees, agency staff, police officers, homeworkers, and every professional in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply to this Act. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services or the army.

Internal disclosures

A disclosure made in good faith to the employer (be it a manager or director) will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party or person is responsible for the malpractice, this same test applies to disclosures made to him. The same test also applies where someone in a public body subject to ministerial appointment (eg the NHS and many 'quangos') blows the whistle direct to the sponsoring Department.

Regulatory disclosures

The Act makes special provision for disclosures to prescribed persons. These are regulators such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority. Such disclosures are protected where the whistleblower meets the tests for internal disclosures and, additionally, reasonably believes that the information and any allegation in it are substantially true.

Wider disclosures

Wider disclosures (eg to the police, the media, MPs, consumers and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain.

A wider disclosure must, however, meet one of four preconditions to trigger protection. These are that either (a) the whistleblower reasonably believed he would be victimised if he had raised the matter internally or with a prescribed regulator; or (b) there was no prescribed regulator and he reasonably believed the evidence was likely to be concealed or destroyed; or (c) the concern had already been raised with the employer or a prescribed regulator; or (d) the concern was of an exceptionally serious nature.

If these provisions are met and the tribunal is satisfied that the disclosure was reasonable, the whistleblower will be protected. In deciding the reasonableness of the disclosure, the tribunal will consider all the circumstances, including the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence which the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the tribunal will also consider the reasonableness of their response. Finally, if the concern had been raised with the employer, the

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tribunal will consider whether any whistleblowing procedure in the organisation was or should have been used.

Full protection

Where a whistleblower is victimised or dismissed in breach of the Act he can bring a claim to an employment tribunal for compensation. Awards are uncapped and based on the losses suffered. An element of aggravated damages can also be awarded. Where the whistleblower is an employee and he is sacked, he may within seven days seek interim relief so that his employment continues or is deemed to continue until the full hearing.

Confidentiality clauses

'Gagging' clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Secrecy offences

Where the disclosure of the information is found to be in breach of the Official Secrets Act or another secrecy offence, the whistleblower will lose the protection of the Public Interest Disclosure Act if (a) he has been convicted of the offence or (b) an employment tribunal is satisfied, to a high standard of proof, that he committed the offence.

Whistleblowing policies

Though the Act does not require organisations to set up or promote any particular whistleblowing procedures, they are strongly recommended. The key elements of such procedures, as endorsed by the Committee on Standards in Public Life, are:

- a clear statement that malpractice is taken seriously in the organisation
- an indication of the sorts of matters regarded as malpractice
- respect for the confidentiality of staff raising concerns, if they wish it
- the opportunity to raise concerns outside the line management structure
- access to confidential advice from an independent charity
- an indication of the proper way in which concerns may be raised outside the organisation if necessary
- giving staff of contracting firms access to the organisation's whistleblowing policy
- penalties for making false allegations maliciously
- effective promotion

Public bodies

In December 2005, the Cabinet Office reiterated that the Government accepts

- the importance of ensuring that staff are aware of and trust the whistleblowing process
- the need for the boards of public bodies to demonstrate leadership on this issue
- the need for regular communication to staff about the avenues open to them to raise issues of concern.

Cabinet Office Guidance on whistleblowing arrangements in public bodies will be revised and reissued in the light of this clarification and also to ensure that employees and members of public bodies are aware of the requirements of the Public Interest Disclosure Act.

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Where can I see further guidance on PIDA 1998?

You can access further information on the Act on the [Public Concern at Work website](#) and the [Department for Business Innovation & Skills website](#).

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Whistle-blowing procedure

1. Definition of whistle-blowing

- 1.1 Whistle-blowing is a term used to describe a disclosure made to someone in authority alleging corruption or malpractice on the part of another person. In employment, whistle-blowing refers to an employee making a disclosure about another employee's conduct in the course of employment or about the employer's practices.
- 1.2 The Public Interest Disclosure Act 1998 protects employees against dismissal and detriment where they raise a legitimate concern about a specified matter. These are known as 'qualifying' disclosures. Qualifying disclosures are those which are made in good faith by an employee who has a reasonable belief that one of the following is being, has been, or is likely to be committed:
- a criminal offence;
 - a miscarriage of justice;
 - an act creating risk to health and safety
 - an act causing damage to the environment;
 - a breach of any other legal obligation; or
 - concealment of any of the above.
- 1.3 Concerns may be raised about the actions of another employee, suppliers, contractors or anyone else undertaking work on behalf of PHSO.

2. Raising a concern

- 2.1 Employees who wish to whistle-blow should initially seek advice and guidance from their line manager (unless their concern is about their line manager) or HR Operations, before proceeding. The line manager will discuss with the employee the way to proceed, involving HR Operations as necessary.
- 2.2 If an employee wishes to proceed with a whistle-blowing complaint they should set out the details of their concerns in writing and forward them to the Chief Operating Officer (COO). If the concerns raised by the whistle-blower relate directly to, or involve, the Chief Operating Officer, they should be sent to the Ombudsman.
- 2.3 On receipt of the complaint the Chief Operating Officer or EB member will make initial enquiries to identify whether an investigation is appropriate or if the concern can be resolved through alternative action. Concerns which fall within the scope of a specific PHSO policy or procedure will normally be dealt with through that procedure.
- 2.4 If it is necessary to carry out an investigation, the Chief Operating Officer (or other EB member) will appoint an Investigation Manager, who is not

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directly implicated in the whistle-blowing allegation. If urgent preventative action is required, this may take place before any investigation is conducted.

- 2.5 Possible investigative routes include:
- internal investigation by management,
 - referral to the police; or
 - referral to the external auditor.
- 2.6 In some cases it may be appropriate to approach an external body for specialist professional or legal advice.
- 2.7 If the outcome of the complaint is that disciplinary proceedings should be commenced against another person, the person who raised the complaint will not be advised of any penalty given.
- 2.8 Where it is decided that there is no case to answer, but the employee held a genuine concern, PHSO will take such steps as are deemed necessary to ensure the employee is not subject to any victimisation or reprisal.
- 2.9 If an employee feels it would be inappropriate to raise a concern within the Office, particularly with senior management, or that a concern has been raised but has not been satisfactorily dealt with at a senior level, a concern can be raised with:
- PHSO's Audit Committee Chair, Sir Jon Shortridge, who can be contacted at jon.shortridge@btinternet.com;
 - PHSO's external auditors, the NAO, who can be contacted regarding concerns about the misuse of public money, by calling the Whistle-blowers Hotline on 020 7798 7999 or by writing to:
- The Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
London SW1W 9SP
- the Chair of the Public Administration Select Committee (via the Clerk to the Committee, who will discuss with the Chair whether further action is appropriate, and if so what it should be).
- 2.10 If an employee raises a concern outside PHSO, they should have proper regard to the legal obligations of confidentiality under which PHSO operates. While these can cover the confidentiality of an individual's personal information, under the Data Protection Act 1998 for example, it is particularly important that the statutory restrictions on disclosure of information in the Parliamentary Commissioners Act 1967 and the Health Service Commissioners Act 1993 are respected. Because these statutory restrictions set out the basis on which PHSO undertakes all its investigations, the Office may need to bring disciplinary or legal action in respect of any breach that is not protected by the Public Interest Disclosure

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Act. For this reason, employees should seek advice from Public Concern at Work (see 4.1) or a lawyer before they make an external disclosure.

3. Anonymous complaints

- 3.1 Anonymous reports are not encouraged. However, if an employee chooses to raise a concern anonymously or only wishes to raise a concern orally, PHSO will investigate. However, the employee raising the concern must be aware that it may not always be possible to investigate fully in such circumstances or to reach a satisfactory conclusion.

4. Confidential advice

- 4.1 If an employee is unsure whether to put their name to a complaint or whether they should talk to their line manager or HR Operations about their concern, they can get free, confidential advice from the independent charity, Public Concern at Work on 020 7404 6609 (e-mail: helpline@pcaw.co.uk)

- 4.2 Other possible contact points for advice are:

- relevant professional bodies or regulatory organisations;
- a solicitor;
- the police.

- 4.3 Employees can also contact the Employee Assistance Programme (EAP) providers, their Trade Union representative or a member of HR Operations for advice.

5. Raising a concern regarding an external organisation

- 5.1 If an employee is concerned about serious wrong doing by an external organisation, (or an employee of an external organisation) for example a supplier, they should raise their concerns with their line manager, in accordance with any operational guidance. The line manager will escalate it to their Director/Head of Function.

- 5.2 Employees with concerns regarding a body in jurisdiction are advised to read the relevant Casework Policy and Guidance to determine the appropriate action. Further information is contained within:

- Governance Statement;
- Clinical Adviser Guidance;
- Disclosure of concerns about the health and safety of patients;
- Releasing information about risk to a complainant or others;
- PHSO's Fraud Policy.

6. Right to be accompanied

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- 6.1 All employees taking part in formal meetings (including investigation meetings) can be accompanied to a meeting by a PHSO colleague or Trade Union representative. This applies to an employee:
- who has raised the concern;
 - who is the subject of the complaint;
 - who is a witness during the investigation.
- 6.2 The colleague or Trade Union representative may:
- address the meeting but not answer questions on behalf of the employee;
 - confer with the employee during the meeting, requesting an adjournment, if necessary.
- 6.3 Managers arranging formal meetings should advise employees that they may be accompanied. Every effort will be made to accommodate the availability of the colleague/Trade Union representative accompanying the employee. However, where this causes the process to be unduly delayed, the employee may be requested to seek an alternative.
7. **External complaints**
- 7.1 Former employees, agency workers and consultants can raise a concern by contacting the Head of HR Operations or the Chief Operating Officer.

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DRAFT WHISTLE-BLOWING POLICY

POLICY STATEMENT

1. PHSO is committed to the highest possible standards of professional conduct, including openness, honesty and accountability. This policy provides a process through which PHSO employees can raise concerns about serious wrong-doing if those standards are not met. PHSO recognises that most cases will have to proceed on a confidential basis.

PURPOSE AND SCOPE OF POLICY

2. This policy covers PHSO employees, agency workers, contractors, consultants and those on secondment from other organisations.
3. This policy provides a process by which concerns about serious wrong-doing can be raised and allows PHSO to deal with these quickly and effectively.
4. This policy follows the approach in the Public Interest Disclosure Act 1998 and will assist PHSO to promote high standards of governance and accountability.
5. This policy is not intended to be used for matters that are covered by other PHSO policies, for example the Grievance Policy, Equality & Diversity Policy and the Dignity at Work Policy, which should be used by employees to raise concerns or complaints about their own employment.

PRINCIPLES

6. The following principles apply:
 - PHSO's core values are Excellence, Leadership, Integrity and Diversity. Our commitment to maintaining our integrity requires us to be open, honest and straightforward in all our dealings and to use time, money and resources effectively, so that:
 - we are consistent and transparent in our actions and decisions;
 - we take responsibility for our actions and hold ourselves accountable for all that we do;
 - we treat people fairly.
 - PHSO will assume that all concerns raised under this policy are done in good faith. However, in the unlikely event that a concern is found to be frivolous, malicious or vexatious, action under the Disciplinary policy will be considered.
 - employees who are responsible for any wrong-doing themselves and raise the issue under this policy will not be provided with immunity for the actual wrong-doing, although PHSO will take into account their raising of the matter.

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- every effort will be made not to reveal an employee's identity if this is their wish. However, in certain circumstances, it may not be possible to maintain confidentiality.
- PHSO will make every attempt to ensure that the employee making the complaint is not victimised or suffers any detriment as a result of having complained.
- employees are not expected to prove, beyond reasonable doubt, the truth of an allegation. However, they do need to demonstrate that there are sufficient grounds for their concern.

OUTCOMES

7. The outcomes of this policy are that:
 - employees have a clear understanding of how to raise concerns regarding professional standards;
 - PHSO is able to comply with its obligations under the Public Interest Disclosure Act 1998;
 - the integrity of PHSO is upheld and arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

MONITORING AND REVIEW

8. This policy will be reviewed regularly and in line with relevant legislation.

April 2012