



## Whistleblowing policy

### Aim

- To provide trustees staff and volunteers with an appropriate mechanism for raising concerns in relation to malpractice or criminal acts.
- To ensure Sutton Mencap meets its legal responsibilities in relation to whistleblowing.

### Scope

This policy applies to all trustees, staff and volunteers at Sutton Mencap.

### 1. Introduction

Sutton Mencap encourages a culture of openness within the organisation and believes that prevention is better than cure. Sutton Mencap wants to prevent malpractice from occurring and to remedy it where it does occur.

Malpractice is taken very seriously and Sutton Mencap is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect all employees and others we deal with who have serious concerns about malpractice in Sutton Mencap, to come forward and voice those concerns. We encourage employees to raise the matter when it is just a concern, rather than have them wait for proof or the investigation of the matter. We aim to treat whistleblowers as witnesses, rather than as complainants.

This policy exists to help employees raise their concerns at an early stage and in the appropriate way in relation to concerns regarding malpractice or illegal acts by a trustee, employee or volunteer of Sutton Mencap. The policy describes how any concerns raised under this procedure must be dealt with and the responsibilities of those involved.

Any person who uses this policy to make malicious accusations, which they know to be untrue, will be open to the full disciplinary process.

### 2. Context

Under the Public Interest Disclosure Act 1998 (PIDA), and where appropriate, the Department of Health guidance "No Secrets" a worker will have the right not to suffer detriment or be unfairly dismissed as the result of speaking out about crime, fraud, miscarriages of justice, dangers to health and safety, breaches of civil service code or risks to the environment.

This policy is designed to afford protection to any employee who discloses information of a specified category to a specified individual in a specified circumstance. This policy has been introduced in line with the best practice advised by the PIDA 1998. It enables employee(s) to raise, at an early stage and in the right way, concerns about malpractices or illegal act.

The whistleblower must reasonably believe that one of the conditions that constitutes a qualifying disclosure is occurring, and must make the disclosure in good faith and not for personal gain.

### **3. Definitions**

The word whistleblower, in this policy, refers to someone who makes a disclosure of malpractice. A qualifying disclosure means any disclosure of information, which in the reasonable belief of the worker making the disclosure tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject
- that a miscarriage of justice has occurred, is occurring or is likely to occur
- that the health and safety of any individual has been, is being or is likely to be endangered

Section 43A of the Employment Rights Act (ERA) 1996 defines a “protected disclosure” as a qualifying disclosure which is made to:

- the worker’s employer or to another responsible person
- a legal adviser in the course of obtaining legal advice;
- a minister of the crown
- a person prescribed by the Secretary of State (for example the bodies listed appendix 1 and others)
- any other person, where under all the circumstances it is reasonable to do so

In addition, if a disclosure is to be protected, it must be made in good faith and without malice. Protection will not extend to disclosures made by an individual that are known to be untrue to that individual at the time such disclosure is made, or any disclosure made for personal gain.

Section 43B(1) of the ERA 1996 defines a “qualifying disclosure” as one which a worker reasonably believes tends to show a matter falling into one or more of the following:

- a criminal offence
- a failure to comply with any legal obligation (this includes breaches of contract as well as breaches of statutory duty)
- a miscarriage of justice
- danger to the health and safety of any individual
- damage to the environment
- the deliberate concealment of information tending to show any of the matters listed above.

### **4. Raising a concern**

The aim of the PIDA is to encourage the disclosure of information through the appropriate internal channels first, or through appropriate external bodies. As a result, it should be relatively easy to disclose information to an employer or appropriate external bodies and gain protection against dismissal or detriment.

Sutton Mencap recognises that the independent charity Public Concern at Work (020 7404 6609) can offer help throughout this process. This organisation will give independent advice if a person is unsure how, or whether, to raise a concern under this policy.

In relation to concerns regarding safeguarding children and young people, staff can also seek advice from the NSPCC whistleblowing advice line: telephone 0800 028 0285 or Email [help@nspcc.org.uk](mailto:help@nspcc.org.uk)

### **Raising concerns internally**

Staff, trustees or volunteers who have concerns about malpractices should raise them as follows:

- with their line manager
- where concerns are about the conduct of the line manager, to the next person in the line management chain (likely to be the Chief Executive Officer or a service manager), or
- with the Office Manager where Health & Safety infringement is suspected, or
- with the Trustee Board.

### **Raising a concern externally**

Sutton Mencap staff may also use their lawful rights to report concerns directly to an outside agency in certain circumstances. If workers wish to raise a matter externally rather than internally, they will be protected only if they can show that they are not motivated by personal gain and that they reasonably believe the information they are giving is true.

A list of suggested relevant bodies is provided in Appendix 1.

### **Raising a concern elsewhere (e.g. via the media)**

We expect that disclosure will normally be made to either the employer or an appropriate external body. If disclosure is made through another route, e.g. to the media, a staff member will have to show that all the circumstances indicate this to be a reasonable course of action. If this cannot be shown, the staff member will not be protected from dismissal or other detriment.

## **5. Sutton Mencap response to a whistleblowing disclosure**

If the concern of the whistleblower is a matter for the Whistleblowing Policy, then a decision must be taken on an appropriate course of action, and a written response made to the person raising the concern(s) within **two weeks** of the date of notification of concern. This must include information on:

- who is handling the concern.
- how they can be contacted.
- what further assistance may be required from the employee.
- whether the whistleblower has any personal interest in the concern raised.
- an offer of a written record outlining the concern(s).
- a description of what action, if any, will be taken and the time scale to be followed.
- how the employee will be kept informed about the investigation and its outcome.

The response to a concern being raised could include any or all of the following:

- investigation by management or internal audit (which could involve the Chief Executive Officer appointing appropriate staff internally to investigate)
- referral to the Trustee Board

- referral to the Police
- establishing an independent inquiry

## **6. Confidentiality**

All employees have the right to raise a concern in confidence under this policy. If an employee asks for their identity to be protected this must be respected wherever possible. If it is not possible to resolve the matter without revealing the identity of the whistleblower (for example, where evidence is needed in court) the appropriate line manager or the Chief Executive Officer will discuss with the employee in question whether and how the matter can go forward.

Anonymity cannot be maintained if this would have an adverse effect on any serious criminal proceedings. All concerns will be treated in confidence and every effort will be made to protect the whistleblower's identity.

## **7. Harassment or victimisation**

Sutton Mencap will support concerned employees and protect them from reprisals or victimisation, which if proven would result in disciplinary action being taken against the perpetrator(s). An employee who is victimised in breach of the guidance laid down by the PIDA can bring a claim at an Employment Tribunal (ET).

It is not necessary that the employee proves the malpractice or misconduct that he/ she is alleging. Simply raising a reasonable suspicion would suffice.

If victimised by their employers, whistleblowers can bring a claim to an employment tribunal for compensation.

## **8. Responsibilities**

Trustees

- To approve and review the policy on a regular basis.
- To act in accordance with the policy
- To take reasonable steps to satisfy themselves that the policy is being implemented.

Senior staff

- To act in accordance with the policy
- To communicate the policy to other staff and volunteers and to ensure it is being implemented correctly.

All staff and volunteers

- To act in accordance with the policy.

## **9. Related documents**

- Safeguarding
- Code of conduct
- Complaints procedure
- Grievance and disciplinary
- Confidentiality
- Financial regulations

- Health and Safety
- Professional boundaries
- Training development and supervision

**Signed on behalf of the Trustee Board of Sutton Mencap**

Chairman: 

**Date: February 2018**

**Mavis Peart**

**Next review: February 2021**

## **APPENDIX 1 - List of Relevant Outside Bodies**

### **1. The Charity Commissioners for England and Wales**

Areas dealt with: The proper administration of charities and of funds given or held for charitable purposes

e-mail: [whistleblowing@charitycommission.gsi.gov.uk](mailto:whistleblowing@charitycommission.gsi.gov.uk)

See <https://www.gov.uk/guidance/whistleblowing-guidance-for-charity-employees>

### **2. Information Commissioner's Office**

Areas dealt with: Compliance with the requirements of legislation relating to data protection

Telephone: 0303 123 1113.

See <https://ico.org.uk/concerns/>

### **3. The Health and Safety Executive**

Areas dealt with: Matters which affect the health and safety of any individual at work; matters which may affect the health and safety of any member of the public arising out of, or in connection with, the activities of persons at work.

Telephone: 0300 003 1647

See <http://www.hse.gov.uk/contact/concerns.htm>

### **4. HM Revenue and Customs**

Areas dealt with: Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay.

HMRC fraud hotline: 0800 788 887

See <https://www.gov.uk/report-an-unregistered-trader-or-business>

### **5. The Pensions Regulator**

Areas dealt with: Matter relating to occupational pension schemes and other private pension arrangements.

Telephone: 0345 600 7060.

<http://www.thepensionsregulator.gov.uk/whistleblowing-contact-details.aspx>

Telephone: 01273 627 600

Fax: 01273 627 688

E-mail: [helpdesk@opra.gov.uk](mailto:helpdesk@opra.gov.uk)

\*Please note this list is not exhaustive, for further information, speak to the Chief Executive Officer