

Northmoor Community Association



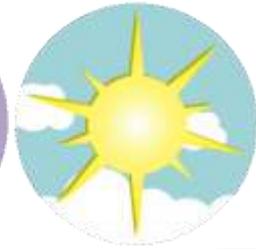
Advancing Skills
and Learning



Relieving Poverty



Promoting Health
and Wellbeing



Quality of Life

WHISTLEBLOWING POLICY AND PROCEDURE COMPLIANT WITH GDPR

1.0 INTRODUCTION

Northmoor Community Association (NCA) is committed to developing a culture of openness, honesty and accountability. Consequently, it is fundamental that any concerns staff, volunteers and trustees may have within the organisation are aired. It is clearly in all our interests to ensure that any malpractice does not occur. To this end this policy and related procedures have been created to cover the airing of genuine concerns within the organisation regarding malpractice or wrongdoing, without fear of reprisals for the whistle blower.

The Public Interest Disclosure Act 1998 was enacted to ensure a climate of greater frankness between employers and workers so that irregularities can be identified and addressed quickly and to strengthen employment rights by protecting responsible workers who blow the whistle about wrongdoing or failures in the workplace. A whistle blower usually also fears reprisals. There is legislation in place to protect employees including the Public Interest Disclosure Act 1998 (PIDA) and the Enterprise and Regulatory Reform Act 2013 (ERRA), whereby employers can be held liable for the harassment or victimisation of employee whistleblowers by their colleagues. Co-workers who victimise whistleblowers will also be personally liable, and may become parties to a claim along with the employer. This policy and procedure is intended to conform to the guidance in PIDA and the ERRA and provides a framework to enable this legislative requirement.

2.0 DEFINITION

Whistleblowing is the term used when a worker passes on information concerning perceived wrongdoing. This is usually called "making a disclosure" or "blowing the whistle". The wrongdoing will typically (although not necessarily) be something witnessed at work. Whistleblowing is reporting a serious concern about another member of staff or volunteer to a more senior member of staff.

A serious concern might be;

- A breach of a legal obligation.
- A miscarriage of justice.
- Mistreatment or abuse of a client or a member of the public for whom the Charity has a responsibility.
- Malpractice or ill treatment of any individual by a member of staff.
- A disregard of legislation governing health and safety at work.
- Seeking undue favour over a contractual matter or a job application.
- Non-compliance, or a breach, of the Charity on financial regulations.
- Improper conduct or unauthorised use of public funds.
- Leading to, or could lead to, damage to the environment.
- A deliberate cover up of information tending to show any of the above.
- Bullying or victimisation of staff, volunteers or children
- Breach of NCA policies

This list is for guidance only and is not intended to be comprehensive. There may be other serious concerns, which do not fit into these categories.

3.0 SCOPE AND AIMS OF THIS POLICY

This policy applies to all employees and volunteers of NCA wishing to raise a concern regarding malpractice or wrongdoing within the organisation; this includes permanent and short term employees as well as sessional workers, volunteers, trustees, external consultants, contractors and agency staff whilst at NCA.

This policy aims:

- To encourage staff and volunteers to feel confident in reporting serious concerns about any aspects of the NCA's work.
- To provide avenues for staff and volunteers to report concerns.
- To ensure that staff and volunteers get a response to their concerns and that they know what to do if they are not satisfied with this.
- To reassure staff and volunteers that they will not be penalised for coming forward with their concerns.

This policy is not a mechanism for employees or volunteers to raise private grievances about their personal work or volunteer situation; the Grievance Policy and Procedure is in place for that purpose. Should service users or members of the public have a concern about malpractice or a complaint, this should be pursued either through the complaints procedure or by alerting the police and or the Local Authority if someone is in danger or it is believed a crime has been committed.

Staff and volunteers who make a disclosure under this policy should believe they are acting in the public interest. This means, in particular, that personal grievances and complaints are not usually covered by whistleblowing law. Therefore, concerns raised under this Whistleblowing Policy should be about serious concerns as listed under point 2.

4.0 SAFEGUARDS

4.1 Harassment or Victimisation

NCA recognises that the decision to report a concern can be a difficult one to make, not least, because of the fear of reprisal from those responsible for the alleged malpractice. NCA will therefore take action to protect any person who raises a concern in good faith. It will not tolerate any resulting harassment or victimisation, including informal or indirect pressures, and will treat this as a serious disciplinary offence which will be dealt with under the proper procedures.

4.2 Confidentiality

Anonymous reports of concern are difficult to investigate therefore where possible its encouraged not to report concerns anonymously. Any concerns raised will be dealt with confidentially wherever this is possible. If other organisations need to be involved such as the Police, it may not be possible to conceal the source of the information.

NCA will do everything possible to protect the identity of the person reporting a concern and where the individual does not want their name disclosed. It should be appreciated that if an investigation is conducted as a result of whistleblowing, the investigation may reveal the source of the information and a statement by you may be required as part of the evidence and/or an individual may be a possible witness in any future proceedings.

4.3 Anonymous Reports

NCA encourages you to put your name to your serious report of concern. Concerns expressed anonymously are much less powerful but they may be considered at the discretion of the Chairperson. In exercising the discretion, the factors to be taken into account will include:

- the seriousness of the issues raised;
- the credibility of the concern; and the likelihood of confirming the allegation from attributable sources.

Reports of concern which do not appear to be motivated by personal animosity and which, if true, would have serious implications for NCA are more likely to be considered, even though made anonymously. Anonymous reports of concern if investigated are more difficult to provide feedback on the outcome of the investigation.

4.4 Untrue reports of concern

If a report of serious concern is made in good faith, but it is not confirmed by the investigation, no action will be taken against the person raising the concern. If, however, a malicious or vexatious allegation is made, disciplinary action may be taken. .

5.0 PRINCIPLES OF PROCESSING DATA UNDER GDPR

Whilst a large proportion of whistleblowing reports are made anonymously, many contain personal data that is divulged as part of the reporting process. The processing of personal data can greatly aid effective operation of a whistleblowing service because it allows a more detailed investigation to take place. It also enables the receiving party to provide feedback to the reporter on the outcome of an investigation.

The governing principles for processing personal data under GDPR articles 5-11 state that data should be:

- Processed lawfully, fairly and transparently
- Collected for specified, legitimate purpose
- Adequate, relevant and limited to what is necessary
- Accurate and up to date
- Kept in a form which permits identification for no longer than necessary for purpose
- Processed in a manner to ensure appropriate security of the data

5.1 Data Minimisation in a whistleblowing context

'Data minimisation' means data reporters and handlers only collecting data that is "adequate, relevant and limited to what is necessary" is processed. When capturing a whistleblowing report, detail is essential. More detail can greatly aid the investigation process – but it can be difficult to determine how much information is 'too much'. Both the reporter and the handler must avoid collecting and sharing unnecessary personal data (which is then subsequently stored and processed).

5.2 Storing whistleblowing report and subject data

Article 5(1)(e) requires that data is not kept for longer than is necessary for the purposes for which the personal data was processed. Whilst GDPR does not impose an exact timeframe, it may cause data processors and controllers to implement stricter requirements to delete and destroy data which is no longer deemed necessary.

This storage period may vary significantly for whistleblowing reports. In the event of a complex investigation, the data controller may need to retain the data for several months whilst that investigation takes place. Although a 'set retention period' is not always applicable, whistleblowers must be advised that their details will only be retained until the case is closed and the issue resolved.

5.3 Obtaining consent at outset

Under GDPR, Data Handlers must “demonstrate that the data subject has consented” at the outset to the processing of his or her data. The consent must be specific, informed and there must be some form of clear affirmative action. This means the whistle-blower will be more informed about how and where their data is stored and, in turn, can exercise their rights under GDPR should they wish to. See the Subject Access Request policy.

Only data relevant to the report must be processed, and that information will only be held until the report has been fully investigated and resolved.

5.4 Withdrawal of consent

Whilst employees can be asked to agree to the processing of their data for the whistleblowing report, they are also within their rights to withdraw such consent. Under Article 7(3), it must be as easy to withdraw as to give consent. For example, if consent is obtained by a signed letter, it must also be possible to withdraw consent with a signed letter.

5.5 Rights of the Data Subject

Articles 12-23 outline the rights afforded to Data Subjects under the GDPR, namely:

- The Right to access
- Right to data portability
- Right to rectification / Right to erasure
- Right to object
- Right to restriction of processing

They are set out in more detail in the NCA GDPR Policy incorporating data protection.

In a whistleblowing context, the rights of the data subject may be restricted. For example, it would not be productive to identify, under a subject access request, that they are the subject of a serious report regarding a criminal offence. There is provision under Article 23 for Member States to restrict the GDPR subject rights for the “prevention, investigation, detection or prosecution of criminal offences” or civil law claims.

Article 29 Working Party recommends that “under no circumstances can the person accused in a whistleblower’s report obtain information about the identity of the whistleblower”. As the data subject, GDPR does put the whistleblower in a much stronger position and affords them more authority over their own data.

6.0 WHISTLEBLOWING PROCEDURES

Disciplinary action will be taken against anyone that has deliberately raised false and malicious allegations.

6.1 How to report a concern

- If you have reasonable suspicions of malpractice or wrongdoing we encourage you to report your concerns internally before going to an outside body.
- If possible this should be done in writing or orally to your line manager. If you do not feel this is the appropriate person, you should directly approach the Centre Manager. If you feel this is not appropriate you can approach the Chairperson of the Board of Trustees.
- It is recognised that for some individuals, raising a concern under this procedure may be a daunting and a difficult experience; therefore you may choose to seek advice and support from ACAS or the Charity Commission at any point during the process.
- There may also be occasions where a disclosure is made anonymously and the information should be passed to the investigating officer.
- NCA is committed to investigating all incidents that are reported. The investigating officer will be the Centre Manager or the Chairperson of Board of Trustees if the disclosure is in connection with the Centre Manager. All reports will be dealt with in confidence, only staff and volunteers that need to know, will be informed.
- The investigating officer will need to establish and record the basis of the concerns that have been raised. As the person raising the malpractice concern you may be accompanied at any fact-finding meeting(s) by a fellow employee of your choice. You may confer with this person during the meeting but they must not answer questions on your behalf.
- You will be kept informed of the progress of the investigation and advised of the outcome of the investigation as soon as possible. The investigating officer will also communicate the findings of the investigation to the individual(s) under investigation and, if appropriate, external organisations who need to consider whether action should be taken on the basis of the findings.
- If you are not satisfied with the outcome of the investigation and any subsequent action taken, you could seek advice from an outside body such as ACAS or the Charity Commission.

6.2 How to investigate a concern

- NCA’s investigating officer will be the Centre Manager or the Chairperson of Board of Trustees if the concern was in connection with the Centre Manager.

- The individual may raise the concern in writing, orally or anonymously either way the information should be passed to the investigating officer. If an employee or volunteer raises a concern orally, the line manager will take detailed notes, and then pass this information to the investigating officer.
- The person hearing the concern is not required to adjudicate, but should:
- Remember there are two sides to every concern and make no comment at this stage as to the validity of the allegations.
 - Listen carefully to the concern, make full notes as appropriate.
 - Advise that the matter will be treated seriously and sensitively, that the information will be investigated and the outcome will be reported back as soon as possible.
- The investigating officer will then organise a meeting, in order to try to find out the facts of the concern. This meeting will take place at the earliest available opportunity as a matter of urgency.
 - The investigating officer will establish what further actions are required; the main objective will be to determine whether a malpractice has occurred and whether the matter should be dealt with by the police or internally. If the Police are to be involved this should be done at the earliest possible opportunity.
 - The length of time the investigation takes will depend upon the complexity of the concern being investigated; however, NCA will aim to conclude the investigation within two weeks of the date of disclosure being made.
 - The investigating officer will report the outcomes of the investigation back to the complainant. The outcome of any subsequent disciplinary proceedings will only be reported if, in doing so, any breaches of confidentiality are not made.

6.3 Further Information

Whistleblowers should refer to the Government's guidance for whistleblowers to verify the position that a personal grievance is not generally regarded as a protected disclosure. Workers can also contact the Advisory, Conciliation and Arbitration Service (ACAS) for guidance on whistleblowing and grievances. Useful information can be found at: <http://www.acas.org.uk/index.aspx?articleid=1919>

Public Concern at Work the independent whistleblowing charity can be contacted via their helpline on 0207 404 6609 or by email at whistle@pcaw.co.uk. Their website is available at <https://www.pcaw.co.uk/>

Further information on raising concerns with external bodies is also available at:

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

Free information and advice can also be obtained from the Advice, Conciliation and Arbitration Service (ACAS). Telephone 08457 47 47 47. <http://www.acas.org.uk/index.aspx?articleid=1461>

7.0 OTHER READING AND LINKED POLICES

- Disciplinary Procedure and Grievance Procedure
- Bullying & Harassment policy
- Confidentiality Policy
- GDPR Policy incorporating Data Protection
- Code of Conduct and Behaviour Policy

8.0 REVIEWED AND POLICY REVISIONS

This policy will be reviewed and amended every three years or as necessary, to reflect best practice and/or changes in legislation. All staff or volunteers should pass suggestions or recommendations for the revision of any aspect of the policy through normal channels to the Centre Manager or Chairperson of the Board of Trustees.

Policy Ref: GP 21	Approved: 12/12/2018
Last Revision: 06/12/2018	Next Review: December 2021
Signature:	(Chairperson of NCA Board)