

New ACAS guidance on 'Whistleblowing at work'

21 June 2023  Jacqui Atkinson

Speaking up is an important topic for all healthcare employers. Promoting ways in which staff feel empowered to raise concerns about matters of concern and ensure that they are supported when they do so is crucial to fostering a positive workplace culture, staff retention and for regulatory compliance.

ACAS have recently published new guidance for employers and employees on speaking up at work. 'Whistleblowing in the workplace' which is an easy to understand and digestible read and covers:

- who can claim whistleblowing protection, and the circumstances in which it applies;
- legal protections from detriment and unfair dismissal;
- what disclosures are protected as whistleblowing;
- how employees can make a whistleblowing disclosure and how employers should respond; and
- whistleblowing policies, including best practice on what a policy should cover.

The guidance also covers useful practical examples and is keen to point out that whistleblowing concerns are matters that are in the public interest rather than personal concerns and therefore it is usually not good practice to Speak Up through a grievance to the employer. However, the Guidance does make the point that grievances can also amount to whistleblowing if the grievance contains an appropriate disclosure of information and so should be dealt with as such.

The guidance also recommends that employers ensure concerns are taken seriously and whistleblowers are given appropriate protections and not subject to any detriment. This is also echoed in the recent messages coming from the National Guardian's Office and is a point of feature in the new national Freedom to Speak Up policy for the NHS which NHSE has issued and which all NHS organisations in England must implement by 31 January 2024.

Whilst healthcare employers will already have Speak Up policies in place and therefore nothing in the guidance should come as a surprise, it provides a useful refresh on the importance of effectively dealing with Speak Up concerns in the workplace and the steps that should be taken when such concerns are raised. It's important for NHS employers to remember that the Sir Robert Francis Report into Speak Up strongly encouraged a non-legalistic approach to how NHS organisations deal with staff speaking up in the workplace. This includes ensuring that the person raising concerns is able to raise concerns, that their concerns are acknowledged and that they are thanked for raising the concerns; appropriate investigation of the concerns and finally that staff receive feedback whilst respecting confidentiality to other individuals.

Whether a raised concerns meets the legal criterion set out in the Public Interest Disclosure Act is something which an Employment Tribunal will determine should a claim be brought. It's important not to lose sight of the spirit of the Speak Up regime when dealing with concerns raised at the initial point of contact and to follow your policies.

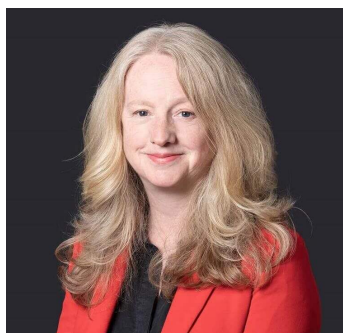
Grievance Procedures can be adversarial and more cumbersome and do not always offer a quick win for employees. Time should be taken when concerns are raised and received through other policies and procedures (Grievance or Dignity at Work Policies) to ensure that the policies and what they offer are discussed with staff, and where possible agree the appropriate policy or way forward to look at the concerns raised. In particular, the ACAS Guidance highlights a pitfall frequently associated with raising concerns under a Grievance Procedure which is that Raising Concerns or Speak Up procedures enable individuals to raise concerns confidentially or anonymously, whereas it can be difficult to do so under Grievance or Dignity at Work procedures.

When reviewing your own Speak Up policies in readiness for the NHSE January 2024 implementation date for the new Freedom to Speak Up policy for the NHS we'd suggest you also ensure that the Acas guidance is also embedded into your policies. As with other ACAS Guidance, Employment Tribunals may take the guidance into account when determining best practise when determining whistleblowing claims brought.

A copy of the guidance can be found here - [HERE](#)

If you'd like to discuss further, then please do get in touch.

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