

WHISTLEBLOWING TO THE CHILDREN'S COMMISSIONER FOR WALES



1. What does the Children's Commissioner for Wales do?

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. Her principal aim is to safeguard and promote the rights and welfare of children.

The Children's Commissioner for Wales' statutory powers derive from the Care Standards Act 2000 (as amended by the Children's Commissioner for Wales Act 2001) and Children's Commissioner for Wales Regulations 2001. The legislation sets out the role and responsibilities of the Children's Commissioner for Wales.

2. What is whistleblowing?

Whistleblowing is the disclosure of information which relates to suspected wrongdoing, dangers or risk at work. This may include:

- Criminal activity
- Miscarriages of justice
- Danger or risk to health and safety
- Damage to the environment
- Failure to comply with any legal or professional obligation or regulatory requirements
- Bribery
- Financial fraud or mismanagement
- Negligence
- The deliberate concealment of any of the above matters

The list is not exhaustive.

3. Who is a whistleblower?

A whistleblower is a person who raises a genuine concern relating to any of the above.

4. What protection is there for whistleblowers?

The Public Interest Disclosure Act 1998 (the "Act") is there to protect whistleblowers.

In this paragraph you will note that some words are in italics. These words have a specified meaning defined in legislation.

The Act creates two levels of protection:

- the dismissal of an ‘employee’ will be automatically unfair if the reason, or principal reason for their dismissal is that they have made a ‘protected disclosure’
- ‘workers’ will be protected from any detriment if they have made a ‘protected disclosure’.

The Act encourages disclosures to the worker’s employers as the primary method of whistleblowing.

Disclosure to a third party, such as the Children’s Commissioner for Wales (who is a ‘prescribed person’ for the purposes of the Act) may be protected if certain conditions are met.

We are not authorised to provide legal advice. Therefore, we are unable to advise you on whether your disclosure will be protected under the Act (a disclosure which is protected under the Act is called a ‘protected disclosure’).

We have however set out at paragraph 13 below organisations who may assist you if you require further details or advice.

5. Why would you contact the Children’s Commissioner for Wales?

If you are concerned about suspected wrongdoing, danger or risk in your workplace (or your previous workplace) which affect the rights and interest of the children in Wales there are a number of reasons why you may wish to contact the Children’s Commissioner for Wales such as:

- You feel your concern was not dealt with properly through your employer’s internal whistleblowing policy or by a prescribed regulator
- You have a fear of victimisation at your workplace
- You feel that if you were to raise your concerns there would be a cover up
- You feel that the concern is of an exceptionally serious nature.

6. How can the Children’s Commissioner for Wales assist?

Our Investigation and Advice Team is able to:

- discuss with you the concerns you may have; and

- consider whether the Children’s Commissioner for Wales can take action by using her statutory powers.

The Children’s Commissioner for Wales can:

- investigate whether certain public bodies are properly performing their obligations and responsibilities
- review the complaints, advocacy, whistleblowing policies that certain public bodies have in place and making sure that such policies are effective
- speak to the Welsh Government on matters which affect the rights and welfare of children in Wales

In certain circumstances the Children’s Commissioner for Wales may also take informal steps to attempt to resolve the concern which has been disclosed.

We will discuss further with you what steps the Children’s Commissioner for Wales may be able to take and what support you may be provided in such circumstances.

7. What you can expect from us

If you call us to make a disclosure we will let you know:

- if we can take any action and if so, what that action will be and how we can support you
- if we cannot take any action but will, where possible, advise you who else you may wish to contact who may be able to assist.

8. What the Children’s Commissioner for Wales can’t do

We are not able to:

- provide any legal advice
- get involved in any grievance or complaint you may have against your employer
- bring any criminal prosecutions
- take any action which is beyond the Children’s Commissioner for Wales’ statutory powers

9. What will the Children’s Commissioner for Wales want to know?

- To be able to determine how the Children’s Commissioner for Wales is best able to address the concerns that you raise, the following questions are likely to be asked:
- What have you witnessed?
- What is the risk involved?
- Who do you work for (or used to work for when the concerns you wish to report arose)
- Have you followed your own whistleblowing policy?
- Why do you want to blow the whistle now?
- Is there a colleague, supervisor or senior manager you can approach with your concerns?
- Are there others who are willing to speak up with you?
- Have you sought advice from any other source (a union, an advisory body or solicitor)?
- Have you made the same or similar disclosures to anyone else?

10. Confidentiality

We understand that you may be concerned about how the disclosure you wish to make will affect you.

You may call us on an anonymous basis. Any information provided will be dealt with confidentially and we will only share information if either one of the following circumstances applies:

- where cases are of a child safeguarding concern we will follow the All Wales Child Protection Procedures
- where you consent to us sharing the information.

11. Points to Note

As a whistleblower you are a witness and not a complainant and only need to have reasonable suspicion in respect of your concerns. You should not seek to investigate the matter yourself.

There is no time limitation in respect of whistleblowing (although it may be more difficult to obtain evidence as time elapses).

We recommend that you seek further legal advice in relation to the following:

- What protections are available to you as a whistleblower under the Act

- Whether your disclosure is protected under the Act if it is used to engineer a claim to protect yourself or to obtain or improve a settlement
- What protection is available under the Act if you make a disclosure to the media.

We have provided details at paragraph 13 below as to how you may find a solicitor that is local to you.

12. Contacting the Children's Commissioner for Wales

Should you wish to raise a concern then please contact us and ask to speak to a member of the Investigation and Advice team. Our details are set out below:

Children's Commissioner for Wales
Oystermouth House
Phoenix Way
Llansamlet
Swansea
SA7 9FS
01792 765600
FAX: 01792 765601
post@childcomwales.org.uk

13. Further Information and Advice

You may also wish to contact the following organisations for further advice and assistance:

- (i) Public Concern at Work

For free and independent advice about making a disclosure you can contact:

Public Concern at Work;
Advice Line: 020 7404 6609,
whistle@pcaw.org.uk
<http://www.pcaw.org.uk>

Public Concern at Work is a whistleblowing charity which can give confidential advice. PCAW advisers are legally trained and their advice is overseen by qualified lawyers. They aim to help identify the best way to raise a concern while minimising any risk and maximising the opportunity for any wrongdoing to be addressed. They do not investigate cases. They can, however direct you to other agencies who may be able to help.

(ii) Legal Advice

In cases where PCAW cannot help you may wish to obtain independent legal advice in relation to employment issues. You can contact the Law Society to find a solicitor who specialises in employment law in your area. This can be done online www.lawsociety.org.uk/find-a-solicitor/ or by telephone: 020 7320 5650 or by submitting a contact form: <http://www.lawsociety.org.uk/get-in-touch>. It is likely that you will have to pay for this legal advice although some firms may undertake work on a pro-bono basis in certain limited circumstances.

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