

## Whistleblowing 014 Policy & Procedure

<b>Author</b>	ELAS
<b>Date</b>	May 2020
<b>Person Responsible</b>	Carmine Bianco
<b>Approval/Review Body</b>	ELAS
<b>Frequency of Review*</b>	12 months

\*Policies will be reviewed more frequently if legal changes or good practice require

### Purpose

The purpose of this policy and procedure is to encourage any worker who has a concern that practices in any part of Oracle Care do not meet the required standards of probity to raise that concern at an appropriate level and in an appropriate manner.

The procedure is intended to guide any worker who has a disclosure to make about malpractice at Oracle Care in making that disclosure. It sets out to whom malpractice (or suspected malpractice) should be reported, and how it should be reported.

The procedure also sets out the safeguards that Oracle Care will offer to any worker who makes a disclosure in the recommended way.

### Scope

#### Who do the protections apply to?

Whistle-blowers do not need a qualifying period of service to bring a claim of unfair dismissal: in other words, staff are protected as soon as they join Oracle.

Protection is afforded to workers as well as employees; this includes bank / zero hours workers, trainees and agency workers.

Protection from detriment also applies to ex-employees making disclosures after the termination of their employment.

### Principles

Clear policies, standards and procedures for making decisions, are essential elements in creating and sustaining an atmosphere of openness and trust in Oracle's management. Such an atmosphere is the best way of forestalling suspicion or complaint.

Staff who raise concerns about malpractice within their place of work have statutory protection against victimisation for making such a disclosure, under the Public Interest Disclosure Act 1998, and the subsequent Enterprise and Regulatory Reform Act 2013. The worker must reasonably believe the disclosure to be in the public interest, and it must otherwise qualify as a protected act.

## Whistleblowing 014

### Policy & Procedure

---

All managers are responsible for ensuring that their staff are aware of this policy and have access to it. Managers must respond to concerns quickly and in confidence, wherever possible, and take all concerns seriously. Managers should be supportive and reassure those raising concerns, not sceptical or dismissive. Managers must register the concern with their Head of Department or Director.

#### **What should a concern be about, in terms of the criteria for qualifying disclosures?**

The term 'malpractice' may cover a broad range of acts, omissions, or practices. Workers will usually report specific instance(s) of wrongdoing by individual(s). In certain circumstances, workers may report bad practice which, if it were to continue, would be likely to lead to wrongdoing.

The Public Interest Disclosure Act 1998 and Enterprise and Regulatory Reform Act 2013 protect workers who make qualifying disclosures from any detriment as a result of making a disclosure.

A qualifying disclosure must relate to any one or combination of the following events:

- a criminal offence;
- a failure to comply with any legal obligation;
- a miscarriage of justice
- danger to health and safety of any individual;
- damage to the environment;
- an attempt to cover up any of these.

To be afforded protection, workers must raise their concerns in the proper way (see procedure below). Usually, in the first instance, this should be via internal processes.

The Act only protects wider disclosure (e.g., to the media, an M.P. etc.) if all of the following conditions apply:

- the worker reasonably believed they would be victimised if they had raised the matter internally or with a prescribed regulator;
- there was no prescribed regulator and they reasonably believed the evidence would be concealed;
- the concern had already been raised with the employer or prescribed regulator;
- the concern was exceptionally serious;
- and no payment was accepted for the story.

#### **What kinds of detriment are workers protected from?**

## Whistleblowing 014 Policy & Procedure

---

The kinds of detriment that could be suffered by whistle-blowers will depend on whether they are job applicants, existing members of staff, or ex-employees. Some examples of detriment linked to a protected disclosure are:

- harassment and bullying,
- inappropriate disciplinary action,
- loss of work or pay,
- damage to career prospects,
- providing poor references,
- defamation,
- inappropriately referring them to external organisations for audit or scrutiny,
- not considering them for a role if they re-apply,
- dismissal or selection for redundancy because of making a qualifying disclosure.

### Concerns outside the scope of this policy

This procedure is not intended to substitute for other procedures. Complaints by workers about their personal treatment or the way in which employment policies and practices have been applied to them should be raised via the grievance procedure or other appropriate procedures.

### Improper disclosures

No action will be taken against a whistleblower if a concern is raised in the proper way, which the whistleblower reasonably believes to be in the public interest. However, if allegations are not raised in the proper way, and / or the whistleblower cannot show that they reasonably believe it to be in the public interest, disciplinary sanctions may occur. This is particularly likely if it is believed that the disclosure was also malicious, vexatious, or made for personal gain.

### Procedure

#### General principles

- Oracle encourages workers to raise the matter when it is a concern, as long as they have a reasonable belief in the wrongdoing, rather than have them wait for proof or investigate the matter themselves. Acting sooner rather than later, can avoid any further potential damage.
- It is recognised that in some circumstances it may be inappropriate to go through the stages below either because of the nature of the employment relationship, e.g. the complaint relates to the worker's immediate

## Whistleblowing 014

### Policy & Procedure

---

supervisor, or where the matter is of sufficient gravity or urgency. In these circumstances, a worker may start the process at Stage 2.

- Oracle recognises that setting out a concern in writing is not easy especially for those workers whose first language is not English or have difficulty expressing themselves on paper. In these circumstances the employee should seek help from a work colleague.
- Individuals are encouraged to put their name to their allegation. Concerns expressed anonymously are much less powerful but will be considered by Oracle in the context of:
  - the seriousness of the issues raised;
  - the credibility of the concern; and
  - the likelihood of confirming the allegation from the attributable source(s).
- If there are likely to be any language difficulties (e.g. a non-English speaking or a deaf employee) at a meeting, Oracle will arrange for an interpreter so that the employee is not disadvantaged.
- A worker making a complaint will be allowed reasonable time, with pay, to seek advice for any meeting which forms part of the process and to be accompanied by a work colleague or trade union representative.
- In some instances it might be necessary to refer the matter to an external authority for further investigation, such as the police.

#### Stage One

Workers should, wherever possible and appropriate, seek to resolve the concern informally with the appropriate person(s) responsible for the matter. However, if the concern cannot be resolved by this approach or if such an approach is not appropriate because of the nature of the concern, then the worker has the right to use the procedure described below.

#### Stage Two

- The concern should be raised formally in writing with your line manager or a member of the Safeguarding Committee by emailing them via the [whistleblowing@oraclecare.com](mailto:whistleblowing@oraclecare.com)

If there are any concerns relating to members of the Safeguarding Committee then please email the CEO [stevebromley@oraclecare.com](mailto:stevebromley@oraclecare.com)

If your concerns are in reference to the CEO and members of the

## Whistleblowing 014

### Policy & Procedure

---

Safeguarding Committee then please email Chris Spanoudakis, Chairman of Oracle Care, on [chairman@oraclecare.com](mailto:chairman@oraclecare.com)

- Each step will be taken without any reasonable delay, however, given the nature of malpractice investigations, timescales may be prolonged, but the worker will be kept up to date with progress.
- The Head of Department will determine whether the Executive should be informed of the concern.
- The worker will be invited to a preliminary meeting and will be advised of their right to be accompanied by a work colleague or trade union representative.
- At the preliminary meeting, the concern will be discussed and the worker will be expected to produce further evidence in relation to the matter, such as documents and / or names or witnesses.
- The concern will then be investigated as quickly as possible by an independent investigator.
- The Head of Department will consider the investigator's report and decide if there is a prima facie case to answer.
- If, on the balance of probabilities, there is evidence of malpractice or other wrongdoings as listed above, a director will be responsible for taking appropriate action to remedy the situation.
- The Head of Department will meet with the worker, explain the outcome of the investigations and, if there is evidence of malpractice, the actions taken or to be taken. The details will be confirmed in writing, together with a copy of the minutes taken of the meeting.
- If you are not satisfied with the outcome, you have the right of appeal at stage 3.

#### Stage Three

- If action taken at stage two does not resolve the concern from the worker's point of view, they should lodge an appeal in writing to the CEO within **five working days** of receipt of the original decision.
- The worker will be invited to an appeal hearing to discuss the matter, confirming their right to be accompanied.

## Whistleblowing 014

### Policy & Procedure

---

- At the appeal hearing the decision taken at stage two will be considered against the basis of the appeal. The CEO will notify the worker in writing of the outcome with reasons, normally within **10 working days** of the appeal hearing. A copy of the minutes of the meeting will be sent with the appeal outcome.
- This decision will be final and there will be no further right of appeal.

#### Raising concerns externally

Oracle expects that, in all cases, with the opportunity and protection provided, raising concerns internally is the most appropriate and reasonable action for workers to take. However, if any worker feels that they cannot raise concerns this way and that they honestly and reasonably believe the information and allegations are true, they should consider raising the matter with the appropriate regulator who is listed in the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2013. With regard to Oracle, the appropriate regulator is the Office for Standards in Education, Children's Services and Skills and for Oracle School it is the Department of Education.

#### Independent confidential advice

If you are unsure whether, or how to raise a concern, free confidential independent advice is available from Public Concern at Work (020 7404 6609).

#### Keeping records

- Oracle recognises that it is important, and in the interests of both employer and worker, to keep written records during the concern-raising process. Records, which will be treated as confidential and kept in accordance with the DPR Act 2018 include:
  - the nature of the concern raised;
  - a copy of the worker's letter setting out the nature of the concern;
  - the independent investigator's report;
  - Oracle's written response, including any action taken and the reasons for action taken;
  - Details of any appeal and any outcome;
  - Minutes of meetings; and
  - Subsequent developments.
- Minutes of meetings will be given to the worker who has raised a concern although in certain circumstances (for example to protect a witness) Oracle reserves the right to withhold information to protect confidentiality in respect of a third party who has been involved in the case.

## *Whistleblowing 014* Policy & Procedure

---

### Monitoring and review

The Head of Department will be responsible for monitoring the effectiveness of this policy and taking remedial action where it is apparent that the policy and procedures may not be achieving Oracle's overall aim.

### References

Disclosures in the public interest: protections for workers who 'blow the whistle': guidance - BERR

Public Concern at Work - Making Whistle blowing Work

### Questions

Any questions relating to this policy should be directed to the Head of Department