



## WHISTLE BLOWING POLICY AND PROCEDURE

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Approved by: Cafcass CMT

Consultation through: Cafcass Partnership Committee

Implemented by: All Managers and Employees

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Issue Date: September 2013

Next Review Date: June 2018

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## WHISTLE BLOWING POLICY AND PROCEDURE

### 1. Policy statement

- 1.1 Cafcass is committed to achieving and maintaining the highest possible standards with regard to behaviour at work, services to the public and in all of our practices. Staff are expected to conduct themselves with integrity, impartiality and honesty.
- 1.2 Cafcass sees effective whistle blowing as a key component in our strategy to challenge inappropriate behaviour at all levels in the organisation. It is both an instrument in support of good governance and a manifestation of a more healthy and ethical organisational culture.
- 1.3 Employees are provided with statutory protection from victimisation or dismissal should they reasonably report concerns or 'blow the whistle'. The key pieces of legislation are the Public Interest Disclosure Act 1998, Section 43B of the Employment Rights Act 1996 (Amended) and the Enterprise and Regulatory Reform Acts 2013.
- 1.4 This policy makes it clear that you may come forward with concerns, without fear of victimisation, disciplinary action, subsequent discrimination or disadvantage. This whistle blowing policy is intended to encourage you to feel confident that serious concerns over matters in the public interest raised within Cafcass will be investigated and where necessary addressed, and also identifies alternative routes that are available to you, should you believe that the matter has to be raised outside of Cafcass.
- 1.5 This policy applies to all staff (including employees and Bank staff). It also applies to Self-Employed Contractors, agency workers and students/apprentices. It also applies to Board Members. The policy is readily available on our intranet and website and accessible to anyone upon request.
- 1.6 This policy will be reviewed on a regular basis.

### 2. Aim of this policy

- 2.1 Cafcass aims to develop an organisational culture, overseen by the Board and Corporate Management Team, which:
  - Encourages you to feel confident in raising serious concerns at an early stage and to question and act upon concerns about practice;

- Provides avenues for you to raise those concerns and receive feedback on any action taken;
- Ensures that you receive a response to your concerns and that you are aware of what to do in order to escalate your concerns, both within and outside of Cafcass as may be necessary;
- Reassures you that you will be protected from possible reprisals or victimisation if you have made a protected disclosure.

### **3. What is Whistle Blowing?**

3.1 Whistle blowing occurs when a member of staff raises concerns about a danger or illegality that affects others, for example service users or members of the public. A member of staff will blow the whistle when they inform Cafcass, a regulator, the police or the media about wrongdoing, risk or malpractice that they are aware of through their work.

### **4. What protection does the Act give?**

4.1 The legislation does not provide a general protection for whistle-blowers, but applies to staff and contractors who follow the procedures laid down in the legislation in disclosing specific categories of malpractice.

4.2 A disclosure will qualify for protection under the legislation if, in the reasonable belief of the individual, it relates to, but is not limited to the following action or likely actions:

- A criminal offence.
- A breach of legislation or failure to comply with a legal obligation.
- A miscarriage of justice.
- The endangering of an individual's health and safety.
- Damage or risk to the environment.
- Bribery.
- Negligence.
- Unauthorised disclosure of confidential information.
- Deliberate concealment of information relating to any of the above.

4.3 The legislation covers:

- Internal disclosures to Cafcass.
- Disclosures to prescribed persons such as regulatory bodies
- Wider disclosures e.g. to the police, the media or MPs.

4.4 The whistle blower is not usually directly affected by the danger or illegality. Whistle blowing is not therefore intended to cover matters relating to an individual's own employment, and Cafcass has other procedural routes that may be more relevant to other categories of malpractice or concern, namely the Grievance and Dignity at Work procedures, which are consolidated within

the Cafcass Employee Relations Policy. Also the Cafcass Complaints Procedure, which is held separately.

- 4.5 Protection under the legislation is only intended to cover the disclosure itself and does not extend to other conduct leading to or connected with the disclosure.
- 4.6 Following changes to legislation from June 2013 onwards, in order to qualify for the protection, any concerns raised must be in the public interest<sup>1</sup>. Within Cafcass matters of public interest would certainly include issues relating to major or systemic failures in child safeguarding, but could potentially relate to any of the issues listed at para 4.2 above.

## **5. Whistle Blowing Procedure**

### **5.1 How to raise a concern**

If you have a concern about malpractice, we hope you will feel able to raise it with your line manager at an early stage in order that it can be addressed promptly. However, dependent upon the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice, another person may be more appropriate such as your Assistant Director or Head of Practice/Head of Profession or other senior manager. Alternatively you may prefer to raise the matter with the designated Whistle Blowing Officer, who is the Head of Human Resources, or with the dedicated Board member linked to this policy, Stuart Smith, via email to [rcafstuartsmith@gmail.com](mailto:rcafstuartsmith@gmail.com). Consideration may be given to seeking independent external HR advice in certain exceptional circumstances.

- 5.2 If you believe that senior management is involved, you should raise your concern with the Chief Executive. If your concern is about the Chief Executive, you should raise it with the Chair of the Board. If it is about a Board member or the Chair, you should raise it with the Chief Executive.
- 5.3 Board Members wanting to whistle blow should raise their concern either with the Chair or with the Board as a whole, or alternatively with the Cafcass sponsor in the Ministry of Justice.
- 5.4 If you are unsure about the nature of your concern and would prefer to talk it through with someone internally before raising it with a senior manager, you may contact Human Resources and/or a trade union representative.
- 5.5 Concerns are best raised in writing. You are invited to set out the background, and history of the concern, giving names, dates, and places where possible, and the reasons why you are particularly concerned about the situation. Your statement should be signed to confirm that it is true and accurate to the best of your knowledge. If you do not feel able to put your

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<sup>1</sup> The Enterprise and Regulatory Reform Act 2013 does not provide any further definition of 'public interest'.

concerns in writing, you can telephone or meet with the appropriate officer. The earlier you express your concern, the easier it is to take action.

- 5.6 You may invite a companion, who may be from your trade union or professional association, or work colleague. You may also have such a companion to accompany you at any meeting that is held relating to your concern. Meetings may be held during or out of work hours and on or off the premises where this is agreed.
- 5.7 Further advice and guidance on how matters of concern may be pursued can be obtained from the Head of Human Resources upon request.

## **6. Confidentiality**

- 6.1 Cafcass will do its best to protect your identity when you raise a concern and will not disclose your identity without your consent. It must be appreciated that the investigation process may reveal the source of the information, and a statement by you may be required as part of the evidence, particularly if the police, courts or external auditors become involved. In order to take effective action, Cafcass will need proper evidence, which may be required to stand up to examination in courts or tribunals, but we will always discuss this with you first and provide support to you through the process.

## **7. Anonymous allegations**

- 7.1 This policy encourages you to put your name to your allegation and will support you to do so, unless there is a particular set of circumstances that make this especially difficult for you.
- 7.2 Anonymous concerns are harder to investigate and substantiate without the whistleblower's open evidence, but nevertheless you are encouraged to raise your concerns and be assured that they will be taken seriously. Factors we would take into account before investigating an anonymous allegation would include:
- The seriousness of the issues you have raised;
  - The credibility of your concern;
  - The probability of substantiating the allegation based on information from other attributable sources.

## **8. How Cafcass will respond**

- 8.1 An initial assessment will be undertaken before deciding on the appropriate action to be taken and this will depend on the nature of the concern. Matters raised may:
- Be investigated by management, internal audit or through the disciplinary process or appropriate channels.

- Be considered under Cafcass Child Protection Procedures if the matter falls within these.
- Be referred to a relevant external body.
- Be referred to the Police.
- Form the subject of an independent inquiry.

8.2 Some concerns may be resolved by agreed action without the need for an investigation. If urgent action is needed this will be taken before any investigation is conducted.

8.3 Within ten working days of a concern being received your immediate manager or appropriate person will write to you to:

- Tell you who is handling or has handled the matter.
- Indicate how it is proposed to deal with the matter.
- Give an estimate as to how long it will take to give a final response.
- Tell you whether any initial enquiries have been made and whether your further assistance will be required.
- Explain why no further action is proposed if that is the decision.

Cafcass accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcomes of any investigations.

## **9. Untrue allegations**

9.1 It is not the responsibility of the whistleblower to prove that their allegations are true, and if you make an allegation which you reasonably or genuinely believe to be true then you would not lose the protection set out in this policy if the allegation subsequently proves to be inaccurate or unfounded.

9.2 If however, you make an allegation which cannot be deemed to be an objectively reasonable belief or is either malicious or vexatious then an investigation will take place to determine whether disciplinary or other appropriate action should be taken against you.

## **10. Mistreatment of Whistle Blowers**

10.1 Cafcass is committed to protecting whistleblowers from mistreatment and this extends to ensuring the employee does not receive any adverse treatment from their colleagues because of their disclosure. Any cases of alleged mistreatment will be investigated and may be dealt with as misconduct.

10.2 If you believe you have been subjected to such treatment, you should inform your line manager or other senior line manager as soon as is reasonably practicable, in order that appropriate steps may be taken.

10.3 The Enterprise and Regulatory Reform Act 2013 allows individuals to be held personally liable for their actions should an employment tribunal decide that

they have deliberately mistreated an individual because of their actions in blowing the whistle.

## **11. Recording concerns**

11.1 The Head of Human Resources, with support from Human Resources Business Partners will maintain a Register of all concerns raised under the Whistle Blowing Policy, and monitor the progress and the outcomes. This register will form part of the periodic reports made to the Audit and Risk Assurance Committee (ARAC) regarding the use of the policy. All information contained within the report will be in strictest confidence, and the name of the complainant or location will not be disclosed. The Head of Human Resources will also periodically report to the Cafcass Audit and Risk Assurance Committee on the operation and effectiveness of the policy. Board Members will be particularly keen to see that there is demonstrable commitment from the most senior managers in Cafcass to uphold, support and appropriately respond to whistle blowing concerns.

## **12. Public interest disclosure**

12.1 Whilst we hope that this policy and procedures gives you the reassurance you need to raise concerns internally, we recognise that there may be circumstances where you may need to report a matter as a 'qualifying disclosure' under the Public Interest Disclosure Act to an outside body, if you have good reason to believe that, in raising a concern inside Cafcass, you will be victimised or evidence will be destroyed. In making such a disclosure, you are protected from unfair dismissal. Such a disclosure must be made within the meaning of the Act.

12.2 For example if, your concern has been dealt with through this policy and you are still dissatisfied with our response, and there is no higher level of management with whom the concern can be raised you may raise your concern to a prescribed regulator, relevant to the nature or circumstances of your specific concern(s), e.g. the Health and Safety Executive (HSE), Her Majesty's Revenue and Customs (HMRC), the National Audit Office (NAO) - which covers the proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services - or with a senior official in the Ministry of Justice (via the ALB Governance Team), the sponsor department for Cafcass.

12.3 It will be safe to make a wider disclosure e.g. to the Police, the media or an MP provided that one or more of the following conditions is/are met:

- You believe you would be victimised if you raised the matter internally or with a prescribed regulator.
- You reasonably believed that a cover-up was likely and there was no relevant prescribed regulator;
- You had already raised the matter internally or with a prescribed regulator.



### **13. Independent advice**

13.1 If you are unsure about whether to use this procedure or if you want independent advice at any stage, you may contact the independent charity Public Concern at Work tel: 0207 404 6609. Alternatively you may wish to seek advice from your trade union representative.

### **14. Additional support**

14.1 If at any stage of the process, or even before you have raised a concern, you may wish to contact the free and confidential information, support and counselling helpline on 0800 111 6387. This offers employees the opportunity to seek advice or speak to a trained counsellor on any issues of concern in the strictest confidence.

### **15. Review of policy**

15.1 This policy will be reviewed periodically by management and trade unions. The next review will take place by June 2018.