



BASW Whistleblowing Policy



THE BRITISH ASSOCIATION OF SOCIAL WORKERS

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Author: The Policy, Ethics and Human Rights Committee

Contact: Tracy Chopping, Policy Team Email: policy@basw.co.uk

The British Association of Social Workers produces a range of UK policy statements and documents to guide members and to support best practice, as well as the Association's campaigning and lobbying work. The statements aim to support social work professionals in developing a strong sense of identity and to help uphold the integrity of the profession by developing policies in line with BASW's Code of Ethics.

BASW have published policies on the following:

- Continuing Professional Development (CPD)
- Effective and Ethical Working Environments for Social Work:
The responsibilities of employers of social workers
- Human Rights
- Social Media
- Supervision
- Whistleblowing

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Purpose

The purpose of this policy is to clarify what BASW considers to be the rights, protections and responsibilities of social workers in relation to whistleblowing and the essential role that BASW has in supporting members. Being prepared to whistle blow is one of the practice principles in the BASW Code of Ethics.

This policy should work in accordance with the BASW Code of Ethics and the BASW/IFSW policy on effective and ethical working environments for social workers and the responsibility of employers of social workers.¹ This policy is for social workers, employers and education and training providers.

Social workers should be able to speak up in the public interest to protect vulnerable children and adults, without fear of victimisation. This includes situations where social workers observe poor practice in another organisation, or by another type of professional.

Social workers have a duty of care to service users, colleagues and themselves and to comply with statutory duties such as those related to health and safety, safeguarding, equality and human rights.² This involves working with and recognising risk both to themselves and others. The promotion of dignity and respect for all people through the

upholding of human rights is critical to empowering the people with whom we work.³ When people are at risk through bad practice or unacceptable behaviour, it is essential that social workers understand their responsibilities, the legal framework for taking action and the protection they should expect.

Both employers and employees may have a lot at stake when whistleblowing occurs. Whistleblowers may fear that management will be tempted to 'shoot the messenger'. A clear procedure for raising issues will help to reduce the risk of serious concerns being mishandled, whether by the worker or by the organisation. It is also important for workers to feel confident that there will be no adverse repercussions for raising cases/issues with their employer.

Although there is an increasing awareness amongst social workers of how to raise a concern, many have no confidence that action will be

BASW Code of Ethics Section 3:9 Being prepared to whistleblow.

Social workers should be prepared to report bad practice using all available channels including complaints procedures and if necessary use public interest disclosure legislation and whistleblowing guidelines.⁴

taken. Taking action quickly and comprehensively has to be a top priority. Employers have a responsibility to have in place appropriate policies and a culture of openness, so that social workers can act safe in the knowledge that they will be heard and protected. This will enable them to support vulnerable adults and children, help improve services, promote a culture of openness and strengthen safeguarding networks.⁵

Social workers and students should feel empowered and supported to raise concerns safely and confidently. It is also crucial that independent social workers are clear about what they should do if they witness bad practice and who to report this to. The term 'independent' covers a wide range of workers including those contracted to complete a specific piece of work, who are employed through an agency or have their own limited company.

This document has three further sections which include, the current context, definition of whistleblowing and BASW policy statements.



Definition of whistleblowing

Whistleblowing is when a worker reports suspected wrongdoing at work. Someone blows the whistle when they tell their employer, a regulator, customers, the police or the media about wrongdoing, risk or malpractice that they are aware of through their work. Officially this is called ‘making a disclosure in the public interest’. It means that if you believe there is wrongdoing in your workplace you can report this by following the correct processes, and your employment rights are protected⁶

Whistleblowing can inform those who need to know about health and safety risks, potential environmental problems, fraud, corruption, deficiencies in the care of vulnerable people, cover-ups and many other problems. Often it is only through whistleblowing that this information comes to light and can be addressed before real damage is done. Whistleblowing should be regarded as a valuable activity which can positively influence all of our lives.

The person blowing the whistle is usually not directly, personally affected by this although it may be preventing them carrying out their duty of care in line with their contract and professional ethics. The whistleblower is usually trying to alert others about the bad practice but should not be expected to prove the malpractice. He or she is a

messenger raising a concern so that others can address it.⁷

This is very different from a complaint. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case. For these reasons, it is not in anyone’s interests if an organisation’s whistleblowing policy is used to pursue a personal grievance. Most organisations have a grievance or complaints procedure and this will be more appropriate for making a complaint.

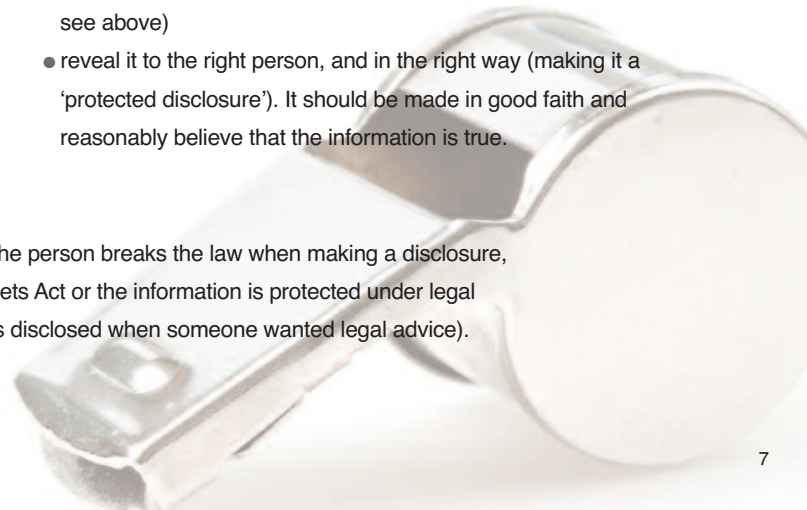
A worker can report things that aren't right, are illegal or if anyone at work is neglecting their duties. This is called a "qualifying disclosure" and includes:

- someone's health and safety is in danger
- damage to the environment
- a criminal offence
- the organisation is not obeying the law
- failure to comply with a legal obligation
- miscarriages of justice
- a deliberate attempt to cover up wrongdoing⁸

Workers who make a 'protected disclosure' are protected from being treated badly or being dismissed using PIDA⁹ if they:

- are a 'worker' as defined by the PIDA Act
- believe that malpractice in the workplace is happening, has happened in the past or will happen in the future
- are revealing information of the right type (a 'qualifying disclosure', see above)
- reveal it to the right person, and in the right way (making it a 'protected disclosure'). It should be made in good faith and reasonably believe that the information is true.

Workers are not protected for whistleblowing if the person breaks the law when making a disclosure, for example if they have signed the Official Secrets Act or the information is protected under legal professional privilege (e.g. if the information was disclosed when someone wanted legal advice).



Context

International

Whistleblowing is an international issue and in many countries blowing the whistle can carry high personal risk. International conventions like the UN Convention Against Corruption, the Council of Europe Civil Law Convention on Corruption, the Inter-American Convention Against Corruption, and others, commit the signatory countries to implementing appropriate legislation. An increasing number of governments have or are considering legislation. Over 50 countries have adopted specific whistleblower protections. However, there is no coherent European framework, and national legislation on whistleblower protection varies considerably in degree of effectiveness.¹⁰

There has been a substantial increase in the recognition of the importance of whistleblowing as a means of reducing corruption and dangerous situations by improving the disclosure of information about illegal, dangerous or unethical activities by government and organisations and individuals. It can also be a means of improving the internal culture of organisations in both the public and private sector to prevent or reveal mistakes and accidents and improve internal management and efficiency.¹¹

United Kingdom

In the UK, protection for whistleblowers was introduced by the Public Interest Disclosure Act 1998 (PIDA)¹², which amended the Employment Rights Act 1996¹³. PIDA protects employees and workers from victimisation if they raise concerns about malpractice in good faith, as defined by the law. It is unlawful for an employer to subject one of its workers to a detriment (including threats, disciplinary action, loss of work or pay, or damage to career prospects) on the ground that they have made a protected disclosure.

It also covers wider disclosures, e.g. to the police, the media and MPs, which are protected under certain circumstances. For example, if a social worker firmly believes they would be victimised if they raised the matter internally or with a regulator, they might be protected. Social workers are advised to seek advice from their union or professional body such as the Social Workers Union (SWU) or BASW before going to the media or MPs to ensure they have appropriate advice and support.

The Enterprise and Regulatory Reform Bill received Royal Assent on 25 April 2013¹⁴, which includes considerable amendments to PIDA

which should strengthen the protection for whistleblowers. The Government has introduced a test that will require whistleblowers to raise concerns which are in the public interest in order to gain legal protection. This applies where a qualifying disclosure has been made on or after 25 June 2013. The Government will extend whistleblowing protection to situations where workers are bullied and harassed by co-workers, which has been a gap in legal protection highlighted by recent cases.

PIDA has also been amended in Northern Ireland. The provisions introduced by the Order¹⁵ protect most workers from being subjected to a detriment by their employer. Detriment is not defined but may take a number of forms, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered. Employees who are protected by the provisions may make a claim for unfair dismissal if they are dismissed for making a protected disclosure. Workers who are not employees may not claim unfair dismissal; however, if the employer has terminated their contract because they made a protected disclosure, they may instead make a complaint that they have been subjected to a detriment.

In Scotland, both social service workers and their employers are obliged to meet the Scottish Social Services Council (SSSC) Codes of Practice for Social Service Workers and Employers. These set out workers' responsibilities to identify and report poor and unsafe practice and employers' responsibilities to address such concerns. The SSSC also publishes Conduct Rules that set down how they will investigate and hold hearings about allegations of misconduct against workers on the register. It is arguable that this effectively makes whistleblowing mandatory in the social services sector.

The new Regulation and Inspection Bill (due out in early 2015) in Wales is highly likely to legislate the regulation of employers in the social care sector – including those for social workers. This will add further support to anyone whistleblowing. Currently the Code of Practice for Employers of Social Care Workers is not regulated and therefore not enforced.

The 'Speaking Up' charter¹⁶ was developed by NHS Employers supported by professional bodies and unions as one of the outcomes following a whistleblowing summit held in May 2012. This charter outlines a commitment to work more effectively together to create a

just culture which is open and transparent. A just culture ensures individuals are fully supported to report concerns and safety issues, and are treated fairly, with empathy and consideration, when they have been involved in an incident or have raised a concern.

Findings from public inquiries show the catastrophic effects when whistleblowers are not listened to or concerns are not raised and dealt with effectively. For example the Winterbourne View Hospital¹⁷ inquiry said that it did not have a culture in which staff were encouraged to do the right thing. Such a culture is essential for good care, with a human rights based approach that balances patients' legal and therapeutic needs.

Events at Winterbourne View highlighted the importance of whistleblowing in identifying concerns and in taking action to address these concerns swiftly.¹⁸ Actions were recommended for all parts of the system. As a result, the Care Quality Commission (CQC) in England has strengthened its arrangements for responding to concerns that are raised with it by whistleblowers. These concerns are now monitored to ensure they are followed up and thoroughly investigated until completion and the information provided is included in regional risk registers, which list providers where 'major concerns'

have been identified.

Another public enquiry, The Francis Report, into Mid-Staffordshire NHS Foundation Trust¹⁹ found that morale at the Trust was low, and while many staff did their best in difficult circumstances, others showed a disturbing lack of compassion towards their patients. Staff who spoke out felt ignored and there is strong evidence that many were deterred from doing so through fear and bullying.

Recommendation 8 of The Francis Report says that the Board should give priority to ensuring that any member of staff who raises an honestly held concern about the standard or safety of the provision of services to patients is supported and protected from any adverse consequences, and should foster a culture of openness, honesty and insight.²⁰ The final report was published in 2013 with 290 recommendations.

A major step towards implementing a key recommendation from the Francis inquiry is the statutory Duty of Candour which is being introduced as part of the fundamental standard requirements for all providers in England. This places a requirement on providers of health and adult social care to be open with service users when things go wrong. It will apply to all NHS trusts, foundation trusts and special

health authorities from October 2014 and the government plans to implement the standards for all other providers by April 2015, subject to parliamentary approval.

The Berwick Review (2013)²¹ reinforced the need to change the culture from one of blame and vilification of staff to one of openness and learning from mistakes. This is not a new concept and has been promoted as a positive model of leadership and management for many years. For example Skills for Care/CWDC promoted a whole system model of leadership and management based on developing a learning organisation in 2004 (reprinted in 2006 and revised in 2008).²²

“There is now a wealth of research evidence that care outcomes and patient safety improve when an environment is created where staff are encouraged to question and challenge in the best interests of the patient.”²³ Although these reviews and recommendations are focused on the NHS, the same principles can be applied to social work and social care environments.



Support and resources

There is a range of resources and support available for people who have concerns. The Department of Health funds a free, confidential whistleblowing helpline for NHS and care staff and employers who need advice about raising concerns and for employers on best practice.²⁴ Mencap provide a helpline to encourage staff to speak up and this has been extended to staff and employers in the social care sector. BASW already have some guidelines written by MENCAP for members in England on the website.²⁵

Public Concern at Work,²⁶ is a whistleblowing charity, which has a range of background materials and an advice line across all sectors. It also has guidelines for employers on the key elements of good practice.

These can be summarised as follows:

- Ensure social workers are aware of and trust whistleblowing procedures, knowing that in certain circumstances they can go outside of line management or to inspectorates such as the Care Quality Commission and Ofsted to raise concerns
- Provide realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity

- Continual review of how procedures work in practice, taking into account whether confidentiality issues have been handled effectively and whether staff have been treated fairly as a result of raising concerns
- Regular communication to staff about the avenues open to them, with particular emphasis on creative approaches to this including the use of payslips, newsletters and management briefings.

In February 2013, Public Concern at Work established a Commission to examine the effectiveness of existing arrangements for workplace whistleblowing in the UK and to make recommendations for change. A report of these findings was published in November 2013.²⁷

Public World has published *The Duty of Care of Healthcare Professionals: Practical advice on the duty of care of healthcare professional and their employers and what we must do to protect patients and staff*.²⁸ This is also a useful tool for social workers as well with checklists for practice. It is designed to help workers uphold standards of ethical behaviour and professional accountability when they feel these may be in danger of being undermined by other pressures.

Policy

Whistleblowers are crucial in preventing and detecting wrongdoing and malpractice in the workplace. It is important that we recognise the difference between blowing the whistle and making a personal complaint. There have been several well-publicised scandals involving the cover-up of wrongdoing despite concerns being raised (as referenced above). Having a robust whistleblowing policy is imperative in encouraging employees to raise concern over wrongdoing and also support the whistleblower and management with the process that must follow. This section highlights the responsibilities for social workers, employers and BASW.



Social workers

Social workers should work to the BASW Code of Ethics and expect to have a responsibility to respect and uphold the values and principles of the profession and to act in a reliable, honest and trustworthy manner (2.3 and 2.3.2). They should be prepared to account for and justify their judgement and actions to people who use services, to employers and the general public (2.3.5).

- Social workers also have a duty to bring to the attention of their employers and possibly others such as policy makers, politicians and the general public, situations where distribution of resources, policies and practices are oppressive, unfair, harmful or illegal (2.2.4).
- Social workers should ensure that they are familiar with their organisation's whistleblowing policies and they follow procedures regarding the referral of their concern.
- Social workers should understand how the regulation system works. In Scotland, Northern Ireland and Wales they must comply with the Codes of Practice of their respective regulatory bodies.²⁹ The Code includes a duty to bring to the attention of your employer or the appropriate authority resource or operational difficulties that might get in the way of the delivery of safe care and not condone any unlawful

or unjustifiable discrimination by service users, carers or colleagues.

- Social workers in England must abide by the HCPC *Standards of conduct, performance and ethics*³⁰ which includes “You must not do anything, or allow anyone else to do anything that you have good reason to believe will put the health, well-being or safety of a service user in danger. This includes both your own actions and the actions of other people. As soon as you become aware of a situation that puts a service user in danger you should discuss the matter with a senior colleague.”
- In circumstances where employers do not act upon and recognise these concerns, social workers should be familiar with the relevant whistleblowing legislation and their employer's policy and procedures, which are sometimes called a 'Raising Concerns Policy'.
- Social workers should be familiar with the organisation policy on whistleblowing and challenge situations where policies are not in existence or have not been reviewed within the agreed timescales.
- Within the policy it should outline the process for reporting concerns. Your line manager is usually the first person to go to. If you believe that your manager may be involved or you feel unable to raise it with them, you may need to go to another manager or someone else that is listed in the whistleblowing policy. If you work for a small organisation where there are no more senior managers, then you

might need to go to the regulator of services such as the Care Quality Commission (England), Care and Social Services Inspectorate Wales (CSSIW), Social Care and Social Work Improvement Scotland (SCSWIS) or the Regulation and Quality Improvement Authority (RQIA)³¹ in Northern Ireland.

- Social workers should seek independent advice through their trade union such as SWU, professional body (BASW) or a HR manager before whistleblowing, but not to delay reporting in urgent cases such as safeguarding concerns. They will be able to talk you through your options with you confidentially and offer you some support. In some circumstances, you may wish to obtain independent legal advice.
- Social workers should, before formally raising concern, write down the facts about what happened, when and where, recording any events in chronological order. The strongest cases are those that have good evidence about the policy and/or practices and how they are harmful or abusive. Good records should be kept in a safe place and could include statements, photographs, documents which help provide corroboration to the truthfulness of the allegations, bearing in mind that these may be used into the future at hearings, inquiries etc.
- Social workers should follow the procedures as a means to maintain protection under PIDA. You also need to be mindful of any safeguarding issues which must be raised in line with your

organisation's safeguarding procedures.

- Students, independent social workers and others should ensure they know their position in relation to whistleblowing when they start their contract or placement and what support they can expect for example from university tutors, practice educators etc. Independents should seek to be included in the whistleblowing policy of the employer/ contractor prior to starting work to ensure that they are covered under existing organisational policies and procedures.
- Social workers should expect their employers to proactively promote best practice whistleblowing arrangements that encourage open workplaces, help staff know when to raise a concern, how, with whom and give access to independent advice.
- Social work managers should have training and guidance on how to handle and elicit concerns, with particular attention on how to handle confidentiality, how to respond to the concern by assessing how serious and urgent the risk is, maintaining good communication with the worker who raised the concern by providing regular feedback. They need to ensure a fair process of investigation and a zero tolerance attitude if a whistleblower is victimised for raising a concern. Finally it is crucial to keep clear and concise records of all discussions and examine how practice can be improved and preventative measures implemented.

Employers

- Employers should encourage social workers to speak up about poor practice and support whistleblowers.³²
- Employers need to ensure that they promote a positive message about whistleblowing by enabling employees to see the results of cases investigated. In addition, protocols should be in place to ensure there is no risk that a whistleblowers identity will be revealed when publishing information (*Making a whistleblowing policy work*, National Audit Office, March 2014).³³
- Employers should have clear, accessible pathways as to how and when to approach the local authority, the regulators or quality assurance bodies. (Changing Lives practice Governance Group *Practice Governance Framework: Responsibility and Accountability in Social Work Practice* (2011) Scottish Government).³⁴
- Employers should ensure that there are many opportunities within service delivery for social workers to raise concerns – such as supervision, appraisals, service reviews, performance improvement and training.
- Ensure that your organisation has an up-to-date whistleblowing policy and that you understand your role and responsibilities in reporting concerns. Where appropriate, seek advice from your HR department,

particularly in relation to insurance protection for all members of staff including contract social workers and students.

BASW

- BASW should work with the regulators to look at the complex issue of how social workers should respond where there are concerns about institutional abuse – where poor practice is institutionalised. The codes tend to focus on observation of poor practice by individuals, rather than organisations. It is questionable as to what the role of the social work regulator is when a social worker raises concerns about another profession. It is recommended that consideration should be given to guidance being produced regarding the issue of reporting poor practice when referring to other regulators, or regulation within another profession within the regulators.
- BASW should work with regulators to have as a requirement for all social work programmes that they should ensure students on placement are covered by whistleblowing policy and that appropriate support should be provided for students to raise concerns as part of normal practice.³⁵

References

- ¹ http://cdn.basw.co.uk/upload/basw_124655-10.pdf
- ² Roger Kline with Shazia Khan *The Duty of Care of Healthcare Professionals: Practical advice on the duty of healthcare professionals and their employers and what we must do to protect patients and staff* (2013) Public World: London
www.publicworld.org/files/Duty_of_Care_handbook_April_2013.pdf
- ³ Draft IFSW policy 2013 (unpublished)
- ⁴ BASW Code of Ethics 2012
- ⁵ The College of Social Work Policy statement on whistle-blowing following the Francis Report on the Mid Staffordshire NHS Trust. 6 February 2013.
- ⁶ www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821
- ⁷ www.pcaw.org.uk
- ⁸ www.gov.uk/whistleblowing/how-to-blow-the-whistle
- ⁹ <http://www.legislation.gov.uk/ukpga/1998/23/contents>
- ¹⁰ www.transparency.org/topic/detail/whistleblowing
See more at: http://archive.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/the_need_for_whistleblower_protection#sthash.DuEmSfor.dpuf
- ¹¹ David Banisar *Whistleblowing International Standards and Developments* (May 2006. Revised February 2009) EU Prevention of and fight against crime programme
- ¹² www.legislation.gov.uk/ukpga/1998/23/contents
- ¹³ *See Practice note* Whistleblower protection: www.practicallaw.com/8-200-3903
- ¹⁴ www.pcaw.org.uk/files/ERRB%20gets%20Royal%20Assent%20PDF.pdf



- ¹⁵ Guide to the Public Interest Disclosure (Northern Ireland) Order 1998 (Amended October 2012)
<http://www.legislation.gov.uk/nisi/1998/1763>
- ¹⁶ www.nhsemployers.org/~media/Employers/Documents/SiteCollectionDocuments/Speaking%20Up%20Charter.pdf
- ¹⁷ Department of Health: Winterbourne View Hospital: Department of Health review and response (26 June 2013)
Transforming care: a national response to Winterbourne View hospital
www.gov.uk/government/publications/winterbourne-view-hospital-department-of-health-review-and-response
- ¹⁸ Department of Health Review: Winterbourne View Hospital Interim Report 25 (June 2012)
- ¹⁹ The Mid Staffordshire NHS Foundation Trust Inquiry, Independent Inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005-March 2009 Volume I and 2. Chaired by Robert Francis QC 24 February 2010 printed on 24 February 2010
www.midstaffspublicinquiry.com/report
- ²⁰ The Mid Staffordshire NHS Foundation Trust Public Inquiry Chaired by Robert Francis QC (2013). Printed in the UK for The Stationery Office Limited www.midstaffspublicinquiry.com/report
- ²¹ Berwick Review *A promise to learn – a commitment to act: Improving the Safety of Patients in England* National Advisory Group on the Safety of Patients in England (August 2013)
www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf
- ²² Skills for Care Leadership and Management strategy (2004, 2006) written for Skills for Care by Fran McDonnell and Harry Zutshi
www.skillsforcare.org.uk/developing_skills/leadership_and_management/leadership_and_management_strategy.aspx
- ²³ Roger Kline with Shazia Khan *The Duty of Care of Healthcare Professionals: Practical advice on the duty of healthcare professionals and their employers and what we must do to protect patients and staff* (2013 p1) London: Public World
www.publicworld.org/files/Duty_of_Care_handbook_April_2013.pdf
- ²⁴ www.mencap.org.uk/organisations/whistleblowing-helpline
- ²⁵ Whistleblowing Guidance for BASW/SWU members: www.basw.co.uk/resource/?id=1969

- ²⁶ <http://www.pcaw.org.uk>
- ²⁷ <http://www.pcaw.org.uk/files/WBC%20Report%20Final.pdf>
- ²⁸ Roger Kline with Shazia Khan *The Duty of Care of Healthcare Professionals: Practical advice on the duty of healthcare professionals and their employers and what we must do to protect patients and staff* (2013) London: Public World
www.publicworld.org/files/Duty_of_Care_handbook_April_2013.pdf
- ²⁹ The Care Council for Wales: www.ccwales.org.uk, The Northern Ireland Social Care Council: www.niscc.info and the Scottish Social Services Council (SSSC): www.sssc.uk.com
- ³⁰ HCPC *Standards of conduct, performance and ethics*
www.hpc-uk.org/aboutregistration/standards/standardsofconductperformanceandethics
- ³¹ www.rqia.org.uk/home/index.cfm
- ³² http://cdn.basw.co.uk/upload/basw_124655-10.pdf
- ³³ www.nao.org.uk/wp-content/uploads/2015/03/Making-a-whistleblowing-policy-work.pdf
- ³⁴ www.scotland.gov.uk/Resource/Doc/347682/0115812.pdf
- ³⁵ The Guardian *Whistle-blowing cloud over students at scandal hospital* (2 November 2010)
www.theguardian.com/education/2010/nov/02/students-hospital-scandal





THE BRITISH ASSOCIATION OF SOCIAL WORKERS

The British Association of Social Workers

16 Kent Street, Birmingham B5 6RD

Tel: 0121 622 3911 Fax: 0121 622 4860

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