



Herts Vision Loss

## Policy on Public Interest Disclosure ('Whistleblowing')

### 1. Introduction

The law on whistleblowing is contained in the Public Interest Disclosure Act 1998 which came into force on 2 July 1999 and offers a framework of protection against victimisation or dismissal for workers who blow the whistle on criminal behaviour or other wrongdoing.

The Act applies to 'workers' who ordinarily work in Great Britain. This includes not only employees but also contractors providing services, most agency workers, home workers and trainees on vocational and work experience schemes. It gives protection to those who follow the procedures laid down in the legislation in disclosing specific categories of malpractice.

The Charity fully accepts that the kinds of actions targeted by the legislation are unacceptable and that it attaches importance to identifying and remedying malpractice.

### 2. Conditions for making a Disclosure

To be protected, the Public Interest Disclosure Act must cover the disclosure.

A qualifying disclosure must be made in good faith, in the reasonable belief that the allegations are substantially true, not for personal gain and reasonable in all the circumstances for the disclosure to be made. If this is found not to be the case, disclosure will not be protected and may lead to disciplinary action for an employee, up to and including dismissal. Actions for non employees to be considered and decided by the Board of Directors.

In order to benefit from the protection of the legislation, the person raising the issue has to satisfy certain conditions.

- disclosure to the **employer** will be protected, provided that it is made in good faith and the person has a reasonable suspicion that the alleged malpractice has occurred, is occurring, or is likely to occur.

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- disclosure to a **regulator** (eg Health and Safety Executive, Environment Agency, Charities Commission, etc) will be protected where, in addition, the person honestly and reasonably believes that the information and any allegation in it are substantially true.
- disclosure to **other bodies** is protected if, in addition to the tests for regulatory disclosures, it is reasonable in all the circumstances and is not made for personal gain.

In addition, the disclosure itself must be 'reasonable'. In deciding the reasonableness of the disclosure, a tribunal will consider all the circumstances. This will include the identity of the person to whom the disclosure was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence which the employer owed a third party.

A disclosure will qualify for protection if, in the reasonable belief of the individual, it relates to one or more of the following actions:

- A criminal offence has been, is being or is likely to be committed
- Someone has failed, is failing or is likely to fail to comply with their legal obligations
- A miscarriage of justice has, is or is likely to occur
- The health and safety of someone has been, is or is likely to be endangered
- The environment has been, is or is likely to be damaged
- The deliberate concealment of information relating to any of the above.

### 3. Procedures

#### 3.1 Types of Disclosure

A protected disclosure is made in one of the following ways:

- internal disclosures to the Company
- disclosures to prescribed persons such as regulatory bodies

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Failure to do this means the person raising the issue will only retain protection if this is due to a reasonable belief that they will be victimised or evidence being concealed or destroyed or they have already made the disclosure.

In these circumstances a disclosure would be made in one of the following ways:

- Disclosure to a legal advisor
- A disclosure to an individual unconnected with the organisation (external disclosures), e.g. police or media
- Disclosure in exceptionally serious cases

### 3.2 Making an Internal Disclosure

The Charity encourages anyone feeling that any malpractice or wrongdoing is occurring to raise it with the Chief Executive Officer at an early stage rather than risk the matter escalating to a potentially serious issue.

Where the person making the disclosure feels that the matter is such that an informal approach is inappropriate, they must use the formal process. Owing to the fact that the Charity is a very small organisation, it is inappropriate that disclosures are made internally through the management structure. Therefore, such disclosures should be made to the Charity's external auditors, Mc Combie & Son.

The external auditor has:

- a responsibility to ensure that concerns raised are taken seriously
- where appropriate, will investigate properly and make an objective assessment of the concern
- will keep the person advised of progress
- a responsibility to ensure that the action necessary to resolve a concern is taken.

### 3.3 Dealing with an Internal Disclosure

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The external auditor will investigate the issue and consult, if necessary, with Directors or officers of the Charity not implicated in the disclosure. Wherever possible, consultation will take place with the Chairman of the Board. The external auditor may decide to refer the issue to the appropriate regulatory body without reference to any Director or officer of the Charity.

Where the matter is of a serious nature but is able to be dealt with internally, the external auditor will consult with the Chairman of the Board and/or Directors or officers not implicated in the disclosure. A lead Director may call a sub-group of the Board to comprise three Directors and the external auditor to consider and deal with the issue.

#### **4. Protection for the Person making the Disclosure**

Dismissing a person who is protected by the legislation will be automatically unfair. Employees who are subjected to any detriment for having made a protected disclosure are entitled to complain to an employment tribunal. There are no service qualifications for bringing a claim.

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