Dear Sir/ Madam,

**Further submission of information to the Mid Staffordshire NHS Foundation Inquiry**

We set out below our response to the request for further information by the Inquiry in the email received from the Inquiry team attached at Annex A. For ease of reference, each question is italicised, and is followed by our response below. These questions follow our response to the original Francis Inquiry a copy of which we have attached at Annex B.

1. You mention that you reviewed the Mid Staffs Whistleblowing Policy that was in place at the time, and offer your views as to its weaknesses. You also say that you were invited by the Trust to review the new policy. We would be grateful if you could provide some more detail in relation to your views on the existing policy at the time, as well as providing further detail and an update on the work you did with the Trust in relation to the new policy in place (and indeed any other work that you have done since with the Trust).

We were contacted by the office of Mr David Kidney MP for Stafford in May 2009 and asked to consider the whistleblowing policy that was in place at the Trust during the period being considered by the Inquiry. We set out our comments in full in our previous submission and also for ease of reference have attached the email detailing our comments that we sent to Mr David Kidney MP at Annex C. By way of reminder we found the policy was overly legalistic, placed a duty of fidelity on workers which went beyond the scope of confidentiality, wrongly quoted the Public Interest Disclosure Act 1998 (PIDA), did not provide alternatives
for raising a concern and failed to include key regulators, such as the Care Quality Commission. The policy was not reassuring in tone, nor did it emphasise what safeguards exist for staff to raise a concern.

In August 2009 we were asked by Lesley Shelley-Davies of Mid-Staffordshire NHS Trust Human Resources Department to review the revised whistleblowing policy. We sent her an email outlining our comments with a copy of the revised policy with track changes and detailed comments. A copy of this email and policy are attached at Annex D. In summary, our comments were as follows:

- The tone of the policy was too adversarial. The purpose of a whistleblowing policy is to speak to staff and encourage them to raise their concern as early as possible.

- It is important to provide assurances to staff that the Board and Chief Executive are committed to the policy. We suggested that the Trust look at the wording of the PCaW model which clearly states the commitment of the Board and the Chief Executive. Leadership and the tone from the top are key in building confidence in whistleblowing arrangements.

- The policy was still overly legalistic. Again, looking at our model policy, this has been drafted by lawyers but barely mentions the law as the policy is aimed at the concerned member of staff rather than the individual who wants to sue the Trust. The law is there as a failsafe for workers who have been victimised or dismissed for having raised a concern and is relevant at that stage rather than the time the concerned member of staff has a concern. The purpose of a policy is to encourage individuals to raise a concern and offer the concerned staff member assurances about safeguards for their position. Nevertheless the PCaW model policy has been designed so that if an individual follows the policy they should be protected by the law.

- There was no discussion or explanation in the policy of the issue of raising a concern openly, confidentially or anonymously.

- The policy was too procedural in that the whistleblowing contact had to respond to the concern within 3 working days. Putting definite time limits into a policy may make it too inflexible, particularly if outside bodies need to become involved to help deal with the concern. Additionally, a number of different types of concerns could be potentially raised through the

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whistleblowing policy and it is important the Trust is able to respond appropriately to each of them.

- We suggested that the Trust include the Medical Director and Nursing Director as contacts at step 2 of the policy and that specific contact names should also be used.

- When listing external routes, we suggested that those appropriate to the Trust should be listed with contact details.

We sent the email with our comments and offered to discuss the above in further detail but heard nothing further from the Trust. We understand that they may have engaged a third party hotline as part of the new whistleblowing arrangements and this may explain why the Trust did not come back to us with the final version of the policy.

2. *You also mention that the policy revealed "clear warning signs about the culture within Mid Staffs". Please could you expand upon this - why did PCaW consider this to be the case, and was there any other evidence you found to support this? What kind of "culture" is being referred to?*

We found the original policy revealed clear warning signs about the culture within Mid Staffs because of the language used, over-emphasis on legal issues, the inclusion of a duty of fidelity, and the lack of assurances about the safeguards for whistleblowing. The approach of the policy did little to reassure a concerned member of staff that it is safe to speak up and that the Trust wanted to hear from staff about malpractice wrongdoing or serious risk. This was indicative of the attitude of the Trust on whistleblowing at the time. We were of the view that if a member of staff picked up this policy it is unlikely they would feel safe raising a concern, and were suggesting that the problems in the policy may have been mirrored in the attitude of management.

3. *Did PCaW receive any specific calls in relation to Mid Staffs during the period mentioned in the Terms of Reference? If so, how many? Have any calls been received since?*

Public Concern is a designated legal advice centre and is regulated by the Solicitors Regulation Authority and the Bar Council of England and Wales. All advisors have legal training (2 solicitors, 1 barrister and 5 paralegals) and the advice given is covered by legal professional privilege. This means that individuals have a safe haven to get independent advice and any discussions are not revealed without their express consent.
For this reason we cannot comment whether or not we have received calls from staff at Mid Staffs. Even if we did, we would not necessarily have known where the caller worked, as the name of the organisation is not vital information at the outset when calls come through to our helpline. The first thing we do is to focus on the risk and what is stopping the individual from raising their concern. We advise the individual on their options, and where necessary can act as a conduit for raising a concern. Due to the sensitivity of discussions and the nature of the advice given, clients can be reluctant to leave details about their name and where they are calling from.

We do however, look at the statistics arising from our health related calls on a six monthly basis and report this to the Department of Health in line with our contract with them which commenced in April 2008. We set out below statistics that we provided in our last annual report which provides a snap shot of numbers.

As part of this annual report, we compared the breakdown of calls for the same twelve month period in year one (1 April 2008 to 30 March 2009) and year two (1 April 2009 to 30 March 2010) of the contract and we found the numbers of calls increased from 366 to 402 calls, amounting to a 10% increase. This increase may be due to some promotional work that took place in the second year of the contract about the service. This promotional work included mention in bulletins for staff and managers and a presence at the NHS Employers conference. The proportion of public or whistleblowing calls (where there is a public interest issue at the heart of the call) and private calls (where there is an employment issue) had remained more or less the same, with 72% of calls in year 1 and 76% of calls in year 2 being classified as public calls.

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2 The cost of contract is as follows: £152,850 in year 1, £156,368.28 in year 2 and £159,967.54 in year 3.
Breakdown of public (whistleblowing) calls from the Health & Care Sectors for Year 1 and Year 2

<table>
<thead>
<tr>
<th>Type of concern</th>
<th>Year 1 (1 April 2008 to 31 March 2009)</th>
<th>Year 2 (1 April 2009 to 31 March 2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse in care</td>
<td>71 (26.9%)</td>
<td>75 (24.4%)</td>
</tr>
<tr>
<td>Public Safety (including patient safety)</td>
<td>62 (23.5%)</td>
<td>96 (31.3%)</td>
</tr>
<tr>
<td>Ethical</td>
<td>45 (17.0%)</td>
<td>24 (7.8%)</td>
</tr>
<tr>
<td>Financial Malpractice</td>
<td>33 (12.5%)</td>
<td>24 (7.8%)</td>
</tr>
<tr>
<td>Other/unknown</td>
<td>15 (5.7%)</td>
<td>23 (7.5%)</td>
</tr>
<tr>
<td>Consumer Competition Regulation</td>
<td>13 (4.9%)</td>
<td>17 (5.5%)</td>
</tr>
<tr>
<td>Work Safety</td>
<td>13 (4.9%)</td>
<td>22 (7.2%)</td>
</tr>
<tr>
<td>Multiple</td>
<td>7 (2.7%)</td>
<td>15 (4.9%)</td>
</tr>
<tr>
<td>Discrimination/Harassment</td>
<td>5 (1.9%)</td>
<td>11 (3.6%)</td>
</tr>
<tr>
<td>Total</td>
<td>264</td>
<td>307</td>
</tr>
</tbody>
</table>

Breakdown of total number of calls (public and private) by type of organisation from Health & Care Sectors for Year 1 and Year 2

<table>
<thead>
<tr>
<th>Organisation type</th>
<th>Year 1 (1 April 2008 to 31 March 2009)</th>
<th>Year 2 (1 April 2009 to 31 March 2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Sector</td>
<td>149 (40.7%)</td>
<td>160 (39.8%)</td>
</tr>
<tr>
<td>NHS trusts</td>
<td>149 (40.7%)</td>
<td>187 (46.5%)</td>
</tr>
<tr>
<td>PCT</td>
<td>28 (7.7%)</td>
<td>21 (5.2%)</td>
</tr>
<tr>
<td>Contractors</td>
<td>5 (1.4%)</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>Mental Health Trusts</td>
<td>10 (2.7%)</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>GP Practice</td>
<td>13 (3.6%)</td>
<td>8 (2.0%)</td>
</tr>
<tr>
<td>Dental</td>
<td>9 (2.5%)</td>
<td>6 (1.5%)</td>
</tr>
<tr>
<td>Hospice</td>
<td>3 (1.0%)</td>
<td>1 (0.0%)</td>
</tr>
<tr>
<td>Regulator</td>
<td>0</td>
<td>4 (1.0%)</td>
</tr>
<tr>
<td>NHS Foundation Trust</td>
<td>0</td>
<td>3 (1.0%)</td>
</tr>
<tr>
<td>Alternative Medicine</td>
<td>0</td>
<td>1 (0.0%)</td>
</tr>
<tr>
<td>Unknown</td>
<td>0</td>
<td>3 (1.0%)</td>
</tr>
<tr>
<td>Total</td>
<td>366</td>
<td>402</td>
</tr>
</tbody>
</table>

We have not included a breakdown by region as the majority of callers do not specify where they are calling from. This could be due to two reasons: firstly, that the focus of the call is the public interest concern and secondly, callers may not wish to reveal where they are calling from.
3. Some more detail in relation to the statistics quoted re: receiving your highest proportion of calls from healthcare sector - how many relate to concerns about quality and safety of patient care/competence of clinicians/nurses; are there any trends in the nature of the concerns? Did PCaW feel there were any warning signs in relation to Mid Staffs?

See above comment. It can be seen that we provide a breakdown of the public calls from the healthcare sector. The public safety category includes patient safety issues. Public safety in the last full reporting year for the Department of Health accounted for 31.3% of public calls from the health and care sectors. As explained above we did not gather information about the location of the caller in every case.

When you mention bullying, does PCaW view persons being pressurised or prevented from raising concerns as falling within that category?

If someone has been or is being pressurised or prevented from raising a public interest concern that would be classified as a public concern. Bullying someone who has raised a concern would be classified as detriment under PIDA.

4. Details as to what PCaW does in circumstances where it receives a high proportion of calls that potentially raise concerns about an unsafe state of affairs. Does PCaW report this to anybody, or engage with the organisation itself?

As explained above, Public Concern at Work is a legal advice centre with all advice being subject to legal professional privilege. We are unable to disclose information to another organisation without the express consent of the individual. If we found that there was serious and imminent danger to the public, we would seek advice on whether we could breach legal professional privilege and raise a concern with a relevant authority. We encourage and support individuals who are aware of a widespread problem to engage with either the organisation they work for or other appropriate (usually regulatory) body. This could be through advising the individual how to do this directly, acting as a conduit for information or facilitating contact with the appropriate person.

5. Information in relation to other organisations PCaW works together with - such as any of the Unions, the NHS Confederation or the NHS Social Partnership Forum etc. Equally any views PCaW has as to the efficacy of those or any other organisations in the healthcare sector in terms of support for whistleblowing.
We work with a number of organisations including unions and employer organisations. In 2003 we worked in partnership with Unison to survey its members on whistleblowing attitudes in the workplace\(^3\). There has been a great deal of focus on whistleblowing by all healthcare unions in recent times such as the BMA guidance and the RCN whistleblowing line. These are significant achievements for unions with strong messages from union leadership on the need for whistleblowers in safeguarding the public interest. There are however, a few myths that exist among some union representatives that protection for individuals is unclear if they come to a union representative for advice and there may be times where conflict arises between representation for the potential accused and the whistleblower. In order to overcome such problems, we would suggest more training and resources on whistleblowing in the unions generally. As an organisation, we often talk directly to union representatives where they have questions about whistleblowing and the Public Interest Disclosure Act. Perhaps, one solution would be repeating to all union representatives that we are an additional and complementary source of advice for their members.

We worked with the SPF in 2009 and 2010 and produced the guidance ‘Speak up for a Healthy NHS’ in conjunction with a working party of the Social Partnership Forum (see below answer to question 9).

6. An explanation of how (if at all) PCaW worked/liaised with the HCC, and now with CQC - whether whistleblowing was something they dealt with/ encouraged; what expectations PCaW had of them as an organisation when dealing with whistleblowing. The same questions would also apply in relation to the GMC/ NMC; the BMA, Unite and Unison; and the Department of Health.

Prior to the setting up of the CQC we had very little involvement with the HCC. We worked more closely with CSCI (the Commission for Social Care Inspectorate) and developed their whistleblowing guidance for regulated entities.

Since the establishment of the CQC, the emphasis has been on registration and the following regulations have been identified by CQC as sufficiently ensuring that organisations have a whistleblowing systems in place:

**Regulation 10**– Assessing and monitoring the quality of services Guidance about Compliance (GaC) – confidential way for staff to report concerns

\(^3\) A summary of the survey and its findings can be found at: [http://www.pcaaw.org.uk/policy/wbworkinginnhs.htm](http://www.pcaaw.org.uk/policy/wbworkinginnhs.htm)
Regulation 11 – Safeguarding vulnerable people who use services GaC – ensuring staff understand about abuse and know when and how to report it – having effective mechanisms for dealing with this

Regulation 23 – Supporting staff GaC – appropriate support in relation to staff responsibility; there is an open culture which allows staff to feel supported to raise concerns without any fear of recrimination

In our view, this is not far reaching enough. Despite being a prescribed regulator under PIDA, the CQC does not readily provide information on their website or guidance on whistleblowing for individuals or organisations in the health sector. For example if an individual had a concern, there is little information about how they can blow the whistle, where they can get independent advice, when the CQC would recommend they are contacted or reassurance on how their concern will be dealt with. We would recommend the CQC develops specific guidance for whistleblowers (as other regulators have – see Ofsted’s website\(^4\) ) and also sets up a pilot hotline with individuals trained on handling whistleblowing issues and concerns. A comparison can be made with the FSA who have a specific whistleblowing line and guidance and the SFO who have trained their call handlers on whistleblowing issues.

In addition we would encourage the CQC to endorse the new policy pack (see below) as a means for regulated entities to improve their whistleblowing arrangements. We would also recommend that the CQC in its inspection arrangements examine more closely an organisation’s whistleblowing arrangements. The Audit Commission when examining local authorities as part of their key lines of enquiry arrangements uses the following broad principles:

**Minimal** – Policy has been communicated to staff and parties contracting with the body

**Good** – Policy is publicised within the body and demonstrates the body’s commitment to providing support to whistleblowers

**Excellent** – Track record of effective action in response to whistleblowing disclosures. Periodic reviews of the effectiveness of the arrangements and also effective arrangements for receiving and acting upon information from members of the public

While there is some confusion between whistleblowing and public complaints, the approach taken by the Audit Commission provides a useful framework for assessing the efficacy of an organisation’s whistleblowing arrangements.

7. As regards GMC/ NMC and the Royal Colleges - PCaW's view on the role of those organisations in relation to whistleblowing and the suggestion that they do not adequately support their members.

The GMC and NMC as professional regulators have a different role from the system regulators such as the CQC. The GMC has clear guidance on the rights and duties involved in raising a patient safety concern. This October, the NMC produced new guidance for Nurses and Midwives. The catalyst for the development of the guidance had been the case of Margaret Haywood, the nurse struck off for secretly filming poor care on behalf of Panorama. It is our view that when professional regulators are considering cases where individuals have blown the whistle outside of the organisation, they should consider and apply the balancing act contained in the Public Interest Disclosure Act between confidentiality and wider disclosures.

8. PCaW's experience of, and views in relation to the use of gagging clauses for individuals making disclosures.

Section 43J of PIDA specifically states that any confidentiality agreements that seek to prevent individuals from raising a concern that would otherwise be protected in law are void. This section of PIDA acts as a defence and has never been tested (as far as we are aware) by the Courts. Despite this specific statement in the law, very few people realise it exists. In the NHS arena it was mentioned in the 1998 Circular, but has not been publicised more widely. More recently the new policy pack mentioned below clearly states that gagging clauses are void in law.

We have not come across many gagging clauses which contravene PIDA being used in the NHS. However, we have heard anecdotally of instances where individuals have the impression that the document they are about to sign (in a compromise agreement for example) operates as a gagging clause, even if technically the language does not attempt to circumvent S43J. We are also aware of organisations asking individuals to sign agreements that state all their concerns have been resolved, whether or not they agree, presumably to undermine the individual if they go on to raise their concern with an appropriate body. Often the heavy-handedness of the lawyers representing the employer leads the individual to believe they have either signed a gagging clause or have been effectively gagged and they are too scared to subsequently speak up and take their concern outside of the organisation even to an appropriate regulator. We are firmly of the view that more should be done to publicise the very good provision in the law in this regard. The best protection for an organisation here would be for them to deal with any concern raised promptly, fairly and efficiently and to protect the person raising the concern from reprisal thus minimising the risk of unwarranted external disclosure, which is protected in law if made in a reasonable manner.
9. An update upon the current focus of PCaW's work and avenues being pursued to improve the system surrounding whistleblowing - including any past or ongoing dialogue with MPs or other government representatives/organisations. This would also include an update on the work being done with the Department of Health on guidance for whistleblowers, as mentioned in the final paragraph of the submission to the first Inquiry.

Since our last submission to the Inquiry, there has been a great deal of activity in producing guidance for NHS organisations. Last year we worked closely with the Social Partnership Forum which included representatives from the unions, NHS employers and the Department of Health, to produce a revised whistleblowing policy pack entitled Speak Up for a Healthy NHS. This policy pack focussed on how organisations can send clear messages about whistleblowing and that it is safe for staff to speak up. The pack itself was launched in June 2010. The pack can be downloaded from: http://www.pcaw.org.uk/policy/policy_pdfs/SpeakupNHS.pdf.

More generally the NHS employing organisations and trade unions through the staff council have sought to create a duty on staff to blow the whistle. As an organisation that wants to empower individuals to speak up early and effectively without fear of reprisal, we are concerned that the imposition of a duty to raise concerns will result in either individuals feeling they must report everything or even worse individuals waiting until the situation becomes serious. We find that in order to create an open culture, it is better to encourage individuals to speak up early even if they only have a suspicion. We are also concerned that a member of staff who hesitates in blowing the whistle will be permanently deterred or worse, no corroborating witnesses will speak up when another member of staff does blow the whistle, for the fear of being disciplined for not having spoken up earlier. Further we are concerned that on discovering a problem where staff may have known of it at an earlier stage, an organisation may embark on a “witch hunt” rather than focussing on the issue and why no-one felt able to speak up earlier. We are in favour of the proposed changes to the NHS Constitution which creates an expectation as opposed to a strict duty for individuals to raise their concern, and a duty for organisations to investigate a concern. Our response to the consultation can be downloaded here: http://www.pcaw.org.uk/news_attachments/NHSConstWhistleblowingPCaW%20response%20FINAL11%201%2011.pdf.

Additionally last summer, we worked with DH in improving the questions about speak up policies in the NHS staff survey and our suggested amendments to the survey were incorporated, which will likely mean
more meaningful statistics being collected on whether or not whistleblowing is considered as a safe activity within NHS organisations. The new questions posed are as follows:

a) If you were concerned about fraud, malpractice, wrongdoing or safety would you know how to report it? Y N DK
b) Would you feel safe raising such a concern? Y N DK
c) Would you feel confident your trust would address such a concern? Y N DK

Further comments

We are following the Inquiry evidence closely and would appreciate the opportunity to respond to some of the evidence from staff and professional representatives from the unions and regulators, in particular comments on PIDA and proposals for changing the law.

Please do let us know when would be the best time to submit this further evidence. For the moment we have limited this response to the questions raised and we would be very pleased to provide a witness for the inquiry if this would be of assistance.

Yours sincerely

Cathy James
Acting Director
cj@pcaw.org.uk
Good morning Cathy

It seems we keep missing each other over the phone so I thought I would drop you an email instead.

We have considered PCaW’s submission to the first Inquiry, and have identified some further areas that we would like you to address for the purposes of this Inquiry, which include the following:

- You mention that you reviewed the Mid Staffs Whistleblowing Policy that was in place at the time, and offer your views as to its weaknesses. You also say that you were invited by the Trust to review the new policy. We would be grateful if you could provide some more detail in relation to your views on the existing policy at the time, as well as providing further detail and an update on the work you did with the Trust in relation to the new policy in place (and indeed any other work that you have done since with the Trust).
- You also mention that the policy revealed “clear warning signs about the culture within Mid Staffs”. Please could you expand upon this - why did PCaW consider this to be the case, and was there any other evidence you found to support this? What kind of “culture” is being referred to?
- Did PCaW receive any specific calls in relation to Mid Staffs during the period mentioned in the Terms of Reference? If so, how many? Have any calls been received since?
- Some more detail in relation to the statistics quoted re: receiving your highest proportion of calls from healthcare sector - how many relate to concerns about quality and safety of patient care/ competence of clinicians/ nurses; are there any trends in the nature of the concerns? Did PCaW feel there were any warning signs in relation to Mid Staffs?
- When you mention bullying, does PCaW view persons being pressurised or prevented from raising concerns as falling within that category?
- Details as to what PCaW does in circumstances where it receives a high proportion of calls that potentially raise concerns about an unsafe state of affairs. Does PCaW report this to anybody, or engage with the organisation itself?
- Information in relation to other organisations PCaW works together with - such as any of the Unions, the NHS Confederation or the NHS Social Partnership Forum etc. Equally any views PCaW has as to the efficacy of those or any other organisations in the healthcare sector in terms of support for whistleblowing.
- An explanation of how (if at all) PCaW worked/liaised with the HCC, and now with CQC - whether whistleblowing was something they dealt with/ encouraged; what expectations PCaW had of them as an organisation when dealing with whistleblowing. The same questions would also apply in relation to the GMC/ NMC; the BMA, Unite and Unison; and the Department of Health.
- As regards GMC/ NMC and the Royal Colleges - PCaW’s view on the role of those organisations in relation to whistleblowing and the suggestion that they do not adequately support their members.
- PCaW’s experience of, and views in relation to the use of gagging clauses for individuals making disclosures.
- An update upon the current focus of PCaW’s work and avenues being pursued to improve the system surrounding whistleblowing - including any past or ongoing dialogue with MPs or other government representatives/ organisations. This would also include an update on the work being done with the Department of Health on guidance for whistleblowers, as mentioned in the final paragraph of the submission to the first Inquiry.

I hope the above assists you in preparing a second submission for this Inquiry, but of course should you need any further clarification, please give me a call.

We would be grateful if you could give us an indication of how long you think it may take to produce the submission. We feel it may be useful to have your evidence for the February phase of witnesses as this will include Trust employees, but appreciate that you will need time to pull the information requested together.
I look forward to hearing from you.

Regards

Catherine

-----Original Message-----
From: Cathy James [mailto:cj@pcaw.org.uk]
Sent: 14 October 2010 16:03
To: Mid Staffs Inquiry Legal Team
Subject: PCaW submission

FAO Louisa Gibbons

Dear Louisa,

As discussed just now, please find attached our submission to the first Francis inquiry, providing more background about us and the work that we do as well as our comments on the whistleblowing policy in operation in the Mid Staffordshire NHS Foundation Trust at the relevant time.

I look forward to hearing from you further in the near future. Please note that while I am around next week, I will then be out of the office in w/c 25 October and so it would be easier for me to set up a meeting in the first week of November if that is possible.

Kind regards

Cathy James
Acting Director

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Public Concern at Work: Speaking up for the public interest. Registered charity no. 1025557. For information about our helpline, how to access training or support or if you would like to see how we make whistleblowing work, visit our website at www.pcaw.org.uk or you can download our latest report Where’s whistleblowing now? Ten years of legal protection for whistleblowers.

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***************[www.eversheds.com]***************
Mr Robert Francis QC
Mid Staffordshire Inquiry
7th Floor
New Kings Beam House
22 Upper Ground
London
SE1 9BW

14 December 2009

Dear Mr Francis QC,

Submission on behalf of Public Concern at Work to the independent inquiry into the care provided by the Mid Staffordshire NHS Foundation Trust

We wish to make a short submission on some of the important lessons that could be learned from the emerging story of what happened at Mid Staffordshire NHS Foundation Trust (Mid Staffs). Our comments are limited to the value of getting whistleblowing right, with some specific comments on what we know having reviewed the whistleblowing policy in place at Mid Staffs during the relevant period for this inquiry. We conclude by outlining best practice for whistleblowing arrangements which illustrates what steps the Trust, or indeed any organisation, should take to ensure their whistleblowing arrangements are fit for purpose.

Our comments build on and provide practical guidance on how to meet some of the concerns and recommendations given by Dr Colin-Thomé in his report. In particular this submission addresses his third recommendation1 which states:

“All health professionals who have contact with patients and the public must report concerns quickly. PCTs and providers should have systems in place for healthcare professionals to report concerns easily and quickly and should be held to account for the setting up of such systems.”

1 Summary of recommendations: involving patients and the public. Page 15 Report of Dr Colin-Thomé
About us
Public Concern at Work (PCaW) is the leading and independent authority on whistleblowing. PCaW was instrumental in setting up the legislative framework for whistleblowing in the UK under the Public Interest Disclosure Act 1998 (PIDA). We operate a free, expert helpline for workers who wish to raise a public concern (such as medical malpractice, fraud or other misconduct) and provide bespoke training and consultancy across the public, private and voluntary sectors. Recently we have worked with numerous trade unions, professional bodies and regulators including the Financial Services Authority, Ofsted and the Care Quality Commission. In July last year, we produced a Code of Practice on Whistleblowing Arrangements in partnership with the British Standards Institution on how to get whistleblowing right (a copy of which can be downloaded at www.pcaw.co.uk/bsi).

In February 2008, we won the Department of Health tender to provide advice for staff and NHS organisations in England, (including developing a whistleblowing policy pack for NHS entities) for three years. We have had contact with thousands of health professionals during the last 16 years. We receive the largest proportion of our calls from the health and care sectors. In the six month period 1 April to 30 September 2009, 21.4% of calls were from the health and social care sectors. (57% declared to be from an NHS related organisation, the remainder deemed to be so, or more generally from the care sector). Of these calls 75.4% were classed a public concern and 24.6% as private calls. By public we mean those involving a whistleblowing concern i.e. raising a matter - such as a patient safety risk or financial wrongdoing - which affects others or the organisation itself. Private calls are those calls that involve questions about the caller's private employment rights such as bullying and harassment, redundancy and the like. This year there was an increase of 5% from the number of public calls received in the same period last year.

It is vital to staff, patients and the public that organisations recognise the role they must play in making whistleblowing work. Dr Colli-Thomé's report highlighted that "the hospital trust itself was perceived as having a 'closed' culture, and were not open with sharing of information". When an organisation chooses (or it is perceived) not to listen to its staff, staff may not feel safe raising their concern inside or even outside their organisation. The risk is that they may choose the most dangerous option for patient safety - silence. Clearly it is in everyone's interest that we work towards a culture in which staff can and do challenge poor quality care without fear of reprisal.

The language of a policy can be indicative of whether or not a Trust is fostering such a culture. Our analysis of the messages, tone and nuances of the policy in place at Mid-Staffs in the relevant period reveals clear warning signs about the culture within Mid Staffs at the relevant time.

We wish to stress that a good policy is just the starting point and we will later detail the key elements of best practice in establishing robust whistleblowing arrangements.
Mid-Staffordshire NHS Foundation Trust
We have been asked by Bill Cash MP to review Mid Staffs 2007 whistleblowing policy. We do not have any information on how well the policy was communicated to staff or whether it was ever reviewed; therefore our comments are restricted to the language of the policy itself and what this tells us about: a) how safe a member of staff would feel in using the policy; and b) how the Trust communicated with staff.

We identified the following weaknesses in the policy:

• Overly legalistic - the policy went straight into legal terms and was not written in plain English, reducing its accessibility and offering very little reassurance to staff members.

• The explanation of the law was wrong - e.g. section 4.1 says all staff have a responsibility to "raise concerns in good faith with a true belief that a malpractice has occurred". It is more helpful to say that staff should raise a concern when they have a "genuine suspicion" - this encourages staff to speak up at the earliest opportunity, providing an opportunity to avert harm. Staff should know that they do not need to have proof or have to be sure before they approach their organisation with critical information. Additionally this wording reflects the approach of the law in relation to internal disclosures.

• The duty of fidelity was put above raising a concern "as members of staff have a duty of loyalty to the Trust as their employer it is important that trust between employer and employee is not compromised". This is at odds with the codes of conduct of professional bodies. There is a real danger that this would deter staff from raising their concern.

• The designated officer was the Deputy Chief Exec - from our experience it is better to have 3 stages: 1. line manager; 2. designated senior manager(s); and 3. Chief Executive or Non-Executive Director. Alternatively or additionally this third stage could be a contact on the Board of Governors for foundation trusts.

• The Department of Health was not listed as an external option.

• The list of regulators did not include the most relevant regulator at the time - the Healthcare Commission.

• Assurances to staff were right at the end of the policy. It is sensible to provide such assurances at the beginning. Good assurances in a policy should include, for example, a statement to staff that they will not be at risk of losing their job if they raise a genuine concern using the policy.

• The policy attempted to combine messages to managers as well as to staff - we find it is better to separate out management guidance from the whistleblowing policy.

• The Secretary of State for Health, NHS Fraud hotline and Counter-Fraud officer were offered as sources of advice, when in reality these are people to whom disclosures could be made.
It should be noted that in July 2009 we were contacted by Mid Staffordshire Foundation Trust to review a new whistleblowing policy. We have provided our detailed comments on this to them and we understand that this is a work in progress. Whilst it is a great improvement on its predecessor there is still work to be done.

**Guidance on whistleblowing arrangements**

As mentioned above we worked in partnership with the British Standards Institution to produce a comprehensive Code of Practice showing organisations how to get whistleblowing arrangements right. The document explains the key principles in whistleblowing and highlights good practice on leadership, the policy, communication, implementation, audit and review. The Code of Practice incorporates and builds on the guidance from the Committee on Standards in Public Life (CSPL) and 16 years of our experience in public interest whistleblowing. For ease, outlined below are the key principles established by CSPL upon which the Code of Practice is built.

**Best practice**

The approach and recommendations of CSPL have been adopted by the Combined Code and regulatory bodies as relevant to organisations in all sectors. Emphasising the important role whistleblowing can play in deterring and detecting malpractice and in building public trust, the Committee has explained: “The essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course.”

In making this work, the Committee has said that “leadership, in this area more than in any other, is paramount” and that the promotion of the whistleblowing arrangements is critically important. The Committee has long distinguished a ‘real’ internal whistleblower from an anonymous leaker to the press and has recently stressed that the Public Interest Disclosure Act should be seen as a ‘backstop’ for when things go wrong and not as a substitute for an open culture.

**Good policy**

Drawing in part on the practical experience of Public Concern at Work, CSPL recommended that a good whistleblowing policy should make the following points clear:

1. The organisation takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistleblowing concern from a grievance.
2. Staff have the option to raise concerns outside of line management.
3. Staff are enabled to access confidential advice from an independent body.
4. The organisation will, when requested, respect the confidentiality of a member of staff raising a concern.
5. When and how concerns may properly be raised outside the organisation (e.g. with a regulator).
6. It is a disciplinary matter both to victimise a bona fide whistleblower and for someone to maliciously make a false allegation.

**Good practice**

The CSPL “emphatically endorsed” additional elements of good practice drawn from Public Concern at Work’s evidence that organisations should:

(i) ensure that staff are aware of and trust the whistleblowing avenues;
(ii) make provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;
(iii) continually review how the procedures work in practice; and
(iv) regularly communicate to staff about the avenues open to them.

In its White Paper on Standards, the Government responded that “it agrees on the importance of ensuring that staff are aware of and trust the whistleblowing process, and on the need for the boards of public bodies to demonstrate leadership on this issue. It also agrees on the need for regular communication to staff about the avenues open to them to raise issues of concern.”

*Good audit*

The Institute of Chartered Accountants in England & Wales produced guidance on the whistleblowing obligations that companies have under the Combined Code on Corporate Governance and can apply equally to public sector organisations. They recommended that organisations include the following questions when they review the efficacy of their arrangements:

- Are there issues or incidents which have otherwise come to the board’s attention which they would have expected to have been raised earlier under the company’s whistleblowing procedures?
- Are there adequate procedures to track the actions taken in relation to concerns made and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by whistleblowing?
- Have confidentiality issues been handled effectively?
- Is there evidence of timely and constructive feedback?
- Have any events come to the committee’s or the board’s attention that might indicate that a staff member has not been fairly treated as a result of their raising concerns?
- Is a review of staff awareness of the procedures needed?

We hope our comments outlining past problems and best practice are helpful to the inquiry and provide assistance in providing practical guidance on how the recommendations in Dr Colin-Thomé’s report could be met. We should further mention that we are working with the Department of Health to produce guidance on whistleblowing arrangements for NHS organisations which we hope will be available in early 2010. We would be happy to provide further detail on any of the material outlined in this response and to answer any other questions regarding whistleblowing best practice.

Yours sincerely,

Catherine Wolthuizen
Director
Many thanks for this information which I know David will be very pleased to receive. If you would like to discuss this with him his mobile is 07966 378944, if it is switched off, please leave a message and he will get back to you as soon as he is able.

I am forwarding your comments to him I know your telephone number is at the foot of your email so I am sure one way or another he will be in contact.

Kind regards
Debbie Wakefield
Constituency Office Manager

From: Cathy James [mailto:cj@pcaw.co.uk]
Sent: 14 May 2009 11:44
To: WAKEFIELD, Debbie
Subject: RE: Stafford Hospital Policy on Whistle Blowing

Thanks Debbie,

I have just had a look at the policy and there are certainly a number of fairly significant problems with it - happy to have a word with David if he thinks it would help.

I thought it would help if I set out the key problems following a very brief review. I've also attached a copy of the policy we designed for the NHS Trusts in 2003 - this was part of a policy pack which also included further guidance, a compliance checklist, case studies etc. For further best practice guidance, it may help to look at the BSI Code of Practice which we produced in partnership with British Standards Institution (see http://www.pcau.co.uk/bsi/index.php) for further guidance on the issue.

Weaknesses of policy:

- Overly legalistic - the policy goes straight into legal terms and is not written in plain English, offering very little reassurance to staff members.
- Gets the law wrong - e.g under section 4.1 says all staff have a responsibility to “raise concerns in good faith with a true belief that a malpractice has occurred”
- Puts the duty of fidelity above raising concerns “as members of staff have a duty of loyalty to the Trust as their employer it is important that trust between employer and employee is not compromised”. A real danger that this will put people off raising their concerns.
- The designated officer is the Deputy Chief Exec - from our experience better to have 3 stages 1. line manager; 2. senior manager and 3. Chief Exec or Non-Exec Director
- Doesn’t include Department of Health as an external option
- List of regulators - doesn’t include key regulator such as Care Quality Commission (or even Healthcare Commission- as it then was)
- Assurances - are right at the back
- Policy attempts to combine messages to managers as well as to staff - we find it is better to separate out management guidance from the whistleblowing policy
- Offers the Secretary of State for Health, NHS Fraud hotline and Counter-Fraud officer - as sources of advice, when really these are people to whom disclosures could be made.
As stated this is not an in depth critique, but an attempt to highlight the main red flags.

I hope this is helpful.

Kind regards

Cathy James
Acting Director

Public Concern at Work
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London EC1N 7RJ
tel (0044) 20 7404 6609
fax (0044) 20 7404 6576

Public Concern at Work - Safeguarding the public interest: empowering individuals to speak up about wrongdoing in the workplace and helping organisations to address risk responsibly. Registered charity no. 1025557. For information visit our website at www.pcarw.co.uk

Please note that my email address is cj@pcarw.co.uk. If "demon" is included in any part of the address, there is a risk that I will not receive your message. Thank you.

From: WAKEFIELD, Debbie [mailto:WAKEFIELD@parliament.uk]
Sent: 14 May 2009 10:06
To: Cathy James; KIDNEY, David
Subject: Stafford Hospital Policy on Whistle Blowing
Importance: High

<<whistleblowingPolicy.pdf>>

Ms James

I understand that you have very kindly offered to look at the above policy on Whistle Blowing for David Kidney MP. The Trust reaffirmed this at their Trust Board Meeting held in public last week.

Kind regards

Debbie Wakefield - Constituency Office Manager to David Kidney MP
Dear Lesley,

Please find attached a copy of the policy with combined comments from myself and Cathy. There have been significant improvements in the wording of the policy, however we still feel that there needs to be some more work around its wording. We strongly recommend you follow the wording of the PCaW model policy which meets current best practice.

In addition to the attached document I briefly outline some of our comments below:

- The tone of the policy is too adversarial. The purpose of a whistleblowing policy is to speak to staff and encourage them to raise their concerns as early as possible.
- It is important to provide assurances to staff that the Board and Chief Executive are committed to the policy and the organisation being run in the best possible way. You can look at the wording of the PCaW model which clearly states the commitments of the Board and the Chief Executive. Leadership from the top is important in building confidence in whistleblowing arrangements.
- The policy is overly legalistic. If you contrast this with our model policy which has been drafted by lawyers but barely mentions the law. The law is there as a failsafe for workers who have been victimised or dismissed for having a concern.
- There is no discussion round the issues of raising concerns openly, confidentially and anonymously.
- The policy is too procedural in that the whistleblowing contact has to respond to the concern within 3 working days. Putting definite time limits may take away from the flexibility of how you will deal with the concern, particularly if you need to engage outside bodies in helping you deal with the concern. Additionally, a number of different types of concerns could be potentially raised through the whistleblowing policy and it is important the Trust is able to respond appropriately to each of them.
- We recommend the Trust include the Medical Director and Nursing Director as contacts at step 2. It is important to include the contact details of the individuals named.
- When listing external routes, list the ones that are appropriate to your organisation with contact details.

Please feel free to contact me if you have any questions about the comments we have made. I am happy to look at any redrafts of the policy.

Kind regards,
Shonali

Shonali Routray
Client Services Manager

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16 Baldwins Gardens
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EC1N 7RJ

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Public Concern at Work - Safeguarding the public interest by empowering individuals to speak up about wrongdoing in the workplace and helping organisations to address risk responsibly. Registered charity no. 1025557. For information visit our website at www.pcaw.co.uk
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### Whistleblowing Policy

#### Staff Involved in development:
- Job titles only

#### Division:

#### Department:

#### For use by:

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*July 2009*
1.0 POLICY STATEMENT

It is the responsibility of members of staff at all levels to ensure that they are working to the most up to date and relevant policies and procedures. By doing so, the quality of service offered will be maintained and the chances of staff making erroneous decisions which may affect patients, staff and visitors will be reduced.

As a member of staff you have a responsibility to ensure that if you become aware that the actions of other staff compromise patient care or the delivery of services then you would be expected to report such matters. This whistleblowing procedure is primarily for concerns where the interest of others and of this trust are at risk.

The Public Interest Disclosure Act 1998 gives statutory protection to members of staff who disclose information reasonably and responsibly in the public interest.

2.0 SCOPE OF POLICY

This policy applies to you whether you are in a permanent or temporary post, on the bank, the staff of contractors or a volunteer.

3.0 AIMS & OBJECTIVES

This Policy outlines the steps you can take if something is troubling you which you think we should know about. These concerns include; professional misconduct, financial malpractice or issues that involve the delivery of patient care.

It is important that you view this policy as a constructive process which aims to seek to resolve issues in a non-adversarial manner. This document seeks to set out a clear unambiguous procedure for all staff to raise their concerns and it is hoped that the process can make a positive contribution to having a climate of honesty and continuous improvement.

As a member of staff you are encouraged to raise genuine concerns about such malpractice at an early stage and in the right way. The Trust is committed to dealing with these concerns in a responsible, open and professional way and the procedure is outlined in this document.

The whistleblowing procedure is primarily to deal with concerns about practice within the Trust. If, as a member of staff you are aggrieved about any personal issues, then you should use the trusts grievance and disputes procedures...
3.1 Your Safety

The Trust is committed to this policy and will take reasonable steps to protect you when raising concerns in accordance with this policy and will as far as reasonably practicable respect your request to protect your identity and maintain your confidentiality. Any information will only be disclosed in exceptional circumstances following consultation with you and after gaining your written consent.

3.2 Your confidence

If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of retribution as a result, provided you acted in good faith. It does not matter if you are mistaken.

Of course we do not extend this assurance to someone who maliciously raises a matter they know is untrue. Any claims of malpractice made falsely or maliciously would be construed as a potential disciplinary offence. Similarly, the bullying, isolating or victimising of anyone making such claims in good faith, or detraining anyone from reporting such matters would also be construed as a potential disciplinary offence.

3.3 Anonymous Claims

Remember if you do not tell us who you are, it will be more difficult for your concerns to be investigated and for us to protect your position or give you feedback. We will however consider what actions may be justified arising from an anonymous report.

3.4 Representation

If you raise a concern you will have the right to seek and be represented by a trade union representative or work colleague at all stages.

4.0 ORGANISATION & RESPONSIBILITIES

4.1 Reporting Arrangements

Once you have told us of your concerns, we will look into it to assess initially what action should be taken; this may involve a formal investigation. We will tell you who is handling this matter, how you can contact him/her and whether your further assistance is needed. If you request us to do so, we will write to you summarising your concern and setting out how we propose to handle it.

When you raise the concern you may be asked how you think the matter might best be resolved. If you do have any personal interest in the matter, we do ask that you tell us at the outset. If your concerns fall more properly within the grievance procedure we will tell you.
4.2 Raising Concerns Internally

If you have a concern that you feel needs to be raised then the following options are available to you:

1. Internal disclosure to your line manager
2. Internal disclosure to a ‘designated officer’
3. Internal disclosure to the Chief Executive, Chairman or other Non-Executive Director

You can also request a trade union representative makes a disclosure on your behalf to any of the people listed above.

4.2.1 Internal Disclosure to your Line Manager – Step 1

You can meet with your line manager or professional head to discuss your concerns or alternatively to put your concerns in writing. All attempts will be made to resolve the matter informally and your manager will take the necessary steps to do this.

Your line manager/professional head will investigate the allegations thoroughly and respond to you in writing within 3 working days, where you will be advised of the process made and the likely timescale for concluding the investigation.

Once the investigation has been concluded, you will receive a formal response within 10 working days.

4.2.2 Internal Disclosure to the Designated Officer – Step 2

The designated officer is an alternative contact for you if you feel you wish to raise concerns under the provision of this policy or if your concerns have not been resolved through the informal route via your line manager/professional head.

The designated officer has been jointly appointed by Trust and Staff Side representatives. The designated officer for the Trust is the Deputy Chief Executive, Mike Gill, who can be contacted on 0844 583 3460 or ext 3460. In the event of him being unavailable the Trust Chair will deputise and undertake the role of the designated officer.

An initial meeting will be held where you can raise your concerns; this meeting will be held in the strictest confidence. You will be offered an option to make a verbal or written statement; in either case the designated officer will write a brief summary of the meeting which will be mutually agreed between the both of you.

Following this the designated officer will discuss the concerns you raised with the Chief Executive or Trust Chair, who will ensure an appropriate investigation is undertaken. You will be contacted within 3 working days.
advising you of the progress made and the likely timescale for concluding the investigation.

Once the investigation has been concluded, you will receive a formal response within 10 working days. If the matter has not been resolved to your satisfaction, then the matter can be referred to the Chief Executive for a resolution within a further 10 working days.

4.2.3 Internal Disclosure to the Chief Executive, Chairman or Non-Executive Director – Step 3

If, in exceptional circumstances your concern has not been resolved by your line manager or the designated officer, then your concern can be escalated to the Chief Executive, Trust Chairman or a Non-Executive Director.

At this stage a review of the investigations already undertaken will be carried out by the individual who you have raised your concerns to and if appropriate a further investigation will be commissioned. A formal response will be given to you within 10 working days.

4.2.4 Request for the Trade Union/Staff Representative to Act on your Behalf

In some cases you may wish to raise your concerns via a trade union representative before contacting your line manager or the designated officer. In these circumstances the trade union representative will ascertain the facts from you and raise them with the line manager or designated officer on your behalf. This will be undertaken within 2 working days of you raising your concerns.

4.2.5 Referral to the Chair for matters relating to the Chief Executive

If your concerns relate to the Chief Executive, you should raise your concerns with the designated officer who will raise the matter with the Trust Chair, who will in turn commission an appropriate investigation.

The designated officer will contact you within 3 working days to advise you of the progress made and the likely timescale for concluding the investigation. Following the investigation you will receive a formal response within 30 working days.

4.3 Disclosure outside of the Trust

Whilst we hope that this policy gives you the reassurance for you to raise any matters internally, we recognise that there may be circumstances where you wish to seek advice or report matters to bodies outside of the Trust.
4.3.1 Regulatory Bodies

Special provisions are in place for disclosures to a regulator, providing you have a reasonable and honest belief that the concerns you have are substantially true. Regulators include:

- Public sector finance: Audit Commission
- Fraud and fiscal irregularities: Serious Fraud Office, Inland Revenue, Customs & Excise, Counter Fraud Office
- Health & safety dangers: Health & Safety Executive
- Environmental dangers: Environmental Agency
- The Charities Commission
- The Occupational Pensions Regulatory Authority
- Data Protection Register
- Care Quality Commission
- Department of Health: Secretary of State for Health
- NHS Counter Fraud Line

In these cases, there is no requirement for you to have raised the matter internally but you may be expected to provide a higher level of proof regarding your concerns.

4.3.2 Other Routes

You can also make disclosures to the police, the media, or to an MP. To do this, you must have raised the matter either with the Trust through the internal disclosure system or to a regulator, unless you believe that:

- You have reasonable belief that you would be victimised if you raise this internally or with a regulator
- There is no regulator or you believe that the evidence would be concealed or destroyed
- Your concern is of an exceptionally serious nature

4.4 Independent Advice

You may also want to discuss your concerns and take advice from your Trade Union, Professional Association, Counter Fraud Officer or Public Concern at Work. These bodies will be able to advise you on your options and the circumstances in which you may be able to contact an outside body safely.

4.5 If you are Dissatisfied

If you are unhappy with our response, you can go to the other levels and bodies detailed above.

While we cannot guarantee that you will be satisfied with our response, our aim is to handle the matter fairly and properly. By using this policy, you will help us to achieve this.
5.0 IMPLEMENTATION

The Trust will ensure the following arrangement are implemented and remain in place:

5.1 Communications

- All new members of staff will receive information via the induction process
- All existing staff will have access to the policy via the intranet and information provided in the employees guide
- Information for contractors will be included in the relevant contract document
- Information for volunteers will be included in the induction process
- Information for Locums/Agency Staff will be included in the induction checklist
- A management guidance note is able for all managers as a means of reference

5.2 Training

Managers will be able to access the following training to help them to deal with concerns raised:
- Investigation Officers Training
- Managing Conflicts
- Assertiveness Training
- Equality & Diversity Training
- Stress Awareness

6.0 MONITORING & AUDITING

The Trust Board will be responsible for auditing the effectiveness of this policy. This will be measured by:
- Annual report summarising the cases reported and outcome
- Information that is made know to the Trust Board which could have been dealt with via this policy

7.0 RELATED CORPORATE DOCUMENTS

- Incident Reporting Guideline
- Grievance & Disputes Procedure
- Conduct & Capability Policy
- Dignity at Work Policy

8.0 FURTHER HELP

- Human Resources Department
- Local Counter Fraud Officer

July 2009
Whistleblowing Policy
Mid Staffordshire NHS Foundation Trust

- Information Governance Officer
- Occupational Health Department

9.0 KEY REFERENCE MATERIAL

- Public Interest Disclosure Act 1998

Comment [31]: You could refer to FCAW website and hyperlink this for more info on PIDA