

# Whistleblowing and Addressing Workers Concerns

<b>Policy Acceptance</b>	
<b>Applies to:</b>	All staff, patients, carers & stakeholders
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<b>Responsible Manager 1</b>	Dr Russell Emerson
<b>Responsible Manager 2</b>	Anna Baldwin (Regional Service Manager)

## **1. Circulation**

This policy applies to all staff who work for The Organisation whether full-time or part-time, self-employed, employed through an agency, as a volunteer or as a contractor.

## **2. Scope**

2.1 The purpose of this policy and procedure is to outline ways in which all employees can express concerns about malpractice/wrongdoing and to encourage employees to raise these at an early stage and in an appropriate way in line with the Public Interest Disclosure Act 1998.

2.2 The Organisation and Board of Directors is committed to managing the organisation in the best way possible. This policy is in place to reassure staff that it is safe and acceptable to speak up and enable concerns to be raised at an early stage and in the right way. Rather than wait for proof, we would prefer you to raise the matter when it is still a concern. It can be difficult to know what to do when these concerns are about unlawful conduct, financial irregularities, abuse of patients, dangers to the public or environment, health and safety issues, or if you feel these issues are being inappropriately concealed.

2.3 This policy is to be applied consistently and in line with core organisational values.

### **2.4 Exclusions**

2.4.1 This policy does not apply to complaints about employment or how you have been treated. For cases such as this, the Grievance Procedure or Harassment and Bullying Policy should be used. There are also a range of policies and procedures that cover issues such as fraud and corruption, recruitment/selection, health and safety and staff are advised to refer to these when considering a disclosure under this policy. Reference to the guidance and professional advice provided by all the relevant professional and regulatory bodies such as the GMC, NMC or HPC can also be sought.

2.4.2 This policy does not replace the formal Complaints Procedure, which should be used by patients or those acting on their behalf to deal with specific incidents relating to individual patients.

2.4.3 There are other processes that staff can refer to as follows:

- Incident and Serious Reporting Policy and Procedures (e.g. for accidents, errors, staffing concerns etc.) Incident Reports can be submitted anonymously.
- Risk Management/Clinical Governance – staff can feed into this process and risks are highlighted and reported to management teams
- Health & Safety Issues – can be reported to the Health & Safety Lead (Sister Carolyn Battes)

### 3. Definitions

Whistleblowing: The official name for Whistleblowing is '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 protected.

Malpractice – could be improper, illegal or negligent behaviour by anyone in the workplace.

### 4. Reason for development of policy

4.1 The 'Whistle Blowing' Policy and Procedure is primarily for concerns where, due to malpractice, fraud, abuse or other inappropriate acts/omissions, the interest of others or The Organisation itself is at risk.

4.2 Staff have a right, and a duty, to raise with their employer any matters of concern they may have about health service issues associated with the organisation and delivery of care. The policy is designed to provide a clear commitment to staff that concerns will be taken seriously, and to encourage staff to communicate their concerns through the appropriate channels.

4.3 All clinicians and managers at every level of The Organisation have a duty to ensure that staff are provided with the opportunity to express their concerns and to do so. In order that staff can express their concerns it is important that clear principles and procedures are established.

### 5. Aims and Objectives

5.1 The 'Whistle Blowing' Policy is intended to cover serious public interest concerns that fall outside the scope of other procedures. These, as stated in the Act are that in the reasonable belief of the employee, the following matters are either happening now, have happened, or are likely to happen:

- ❖ A criminal offence
- ❖ The breach of a legal obligation
- ❖ A miscarriage of justice
- ❖ A danger to the health and safety of an individual
- ❖ Damage to the environment
- ❖ Deliberate covering up of/failing to report information tending to show any of the above 5 matters.

The Organisation is committed to the effective implementation of this policy and procedure. The aim of the procedure is to ensure that an appropriate process exists which supports the resolution of matters raised, in response to any disclosure of wrongdoing or irregularity and in a manner which is fair, expedient and discreet.

## 5.2 Your Safety

The Organisation is committed to this policy. If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any detriment (such as reprisal or victimisation). Provided you are acting in good faith (effectively this means honestly), it does not matter if you are genuinely mistaken or if there is an innocent explanation for your concerns. This assurance is not extended to those who maliciously raise a matter they know is untrue. If, following a thorough investigation, it is found that you raised a matter maliciously; this will be dealt with under the Disciplinary Policy.

## 5.3 Your Confidence/Anonymity

With these assurances, we hope you will raise your concern openly. However, we recognise that there may be circumstances when you would prefer to speak to someone in confidence first. If this is the case, please say so at the outset. If you do not wish to disclose your identity, this will not be done without your consent unless required by law. You should understand that there may be times when we are unable to resolve a concern without revealing your identity, for example where your personal evidence is essential (for example in court cases). In such cases, we will discuss with you whether and how the matter can best proceed. Please remember that if you do not tell us who you are it will be much more difficult to look into the matter. We will not be able to protect your position or to give feedback. Accordingly you should not assume we can provide the assurances we offer in the same way if you report a concern anonymously.

Where an individual does not wish to come forward as a witness, The Organisation retains the right to pursue the matter further but will respect the anonymity of the individual. However, it must be noted that this may ultimately prevent the organisation from being able to proceed. Concerns expressed anonymously are much less powerful but will be considered at the discretion of The Organisation. In exercising this discretion, the factors to be taken into account would include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

You should always try and raise issues internally or discuss the matter with a member of the management team. However, if you believe that a disclosure of information should be made externally in the public interest this should be soundly based and you should first seek independent and/or specialist advice.

## **IF IN DOUBT – RAISE IT!**

### **6. Whistle Blowing Procedure**

6.1 How to raise a concern if you are unsure about raising a concern at any stage you can get independent advice from a professional body, a trade union representative or Public Concern at Work. However, we do ask that you explain as fully as you can the information or circumstances that gave rise to your concern.

## 6.2 *Internal Stages*

Once you have reported your concern, we will assess it and consider what action may be appropriate. This may involve an informal review, an internal inquiry or a more formal investigation. We will tell you who will be handling the matter, how you can contact them and what further assistance we may need from you. When you raise the concern it will be helpful to know how you think the matter might best be resolved. If you have any personal interest in the matter, we do ask that you tell us at the outset. If we think your concern falls more properly within our grievance, harassment and bullying or other relevant procedure, we will inform you accordingly.

The following stages will normally apply:

### **Stage 1**

If you have a concern about a risk, malpractice or wrongdoing at work, we hope you will feel able to raise it firstly with your line manager or lead clinician. This may be done verbally or in writing. [N.B. the term Manager/Line Manager is generic and includes all clinicians with responsibility for staff and also any staff with supervisory roles]. You may involve a Trade Union Representative, a friend or a colleague at this stage, providing that that person is not involved in the investigation. Managers must help to create a climate where staff feel able to talk in confidence without the threat of disciplinary action being taken against them. The manager will identify the nature of the issue by undertaking a preliminary investigation.

### **Stage 2**

If stage 1 of the investigation and any resultant action does not resolve the matter, or if a concern involves the immediate line manager, the member of staff should raise the concern with the Human Resources Manager (Alice Pryke), Assistant Service Manager (Grace Hancock) or a Clinical Director (Dr Nik Nicolaou, Dr Andrew Morris, Dr Bav Shergill). Where concerns are raised with the designated officer, they will arrange an initial interview which will, if requested, be confidential to ascertain the areas of concern. At this stage, you will be asked whether you wish your identity to be disclosed and will be reassured about protection from possible victimisation. You will also be asked if you wish to make a written statement. In either case, the designated officer will write a brief summary of the interview, which will be agreed by both parties. The designated officer will report to the Chief Executive who will be responsible for the commission of any further investigation within The Organisation.

## 6.3 *The Formal Investigation*

If the concern raised is very serious or complex, a formal investigation may be held. The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until it becomes necessary to do so. In certain cases, however, such as allegations of ill-treatment of patients/clients, suspension from work may have to be considered immediately. Protection of patients/clients is paramount in all cases. The designated officer will offer to keep the member of staff informed about the investigation and its outcome. If the result of the investigation is that there is a case to be answered by any individual, the Disciplinary Policy will be used and the details discovered by the formal investigation, transferred to that process. Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the

designated officer will ensure that the employee suffers no reprisals. If there is no case to answer but there is evidence that the allegation was made frivolously, maliciously or for personal gain, disciplinary action will be taken against the complainant. The matter will be dealt with promptly at each stage. Where appropriate, immediate steps will be taken to remedy the situation as soon as practicably possible. A final outcome may take more time but a final resolution/outcome at each stage should be available within ten working days.

#### 6.4 Following the investigation

The Chief Executive will advise the designated officer as to the possible options open to The Organisation as a result of the outcome of the investigation. The designated officer will then arrange a meeting with the member of staff (where the identity has been disclosed) to give feedback on any action taken. (This will not include details of any disciplinary action, which will remain confidential to the individual concerned). The feedback will be provided as soon as possible. If the member of staff is not satisfied with the action taken/not taken, The Organisation recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health & Safety Executive, the Audit Commission, or the utility regulators, or, where justified, elsewhere (See Section 6.6).

#### 6.5 Complaints about the Chief Executive

In the event that the concern is about the Chief Executive, this concern should be made to the Board of Directors, by the member of staff, their manager or the designated officer, who will decide on how the investigation will proceed.

#### 6.6 Raising Concerns with outside bodies

The purpose of this policy is to ensure that staff are aware of the way to raise their concerns in-house and for staff to see that action is taken promptly to remedy a particular situation. It is hoped that this procedure will give staff the confidence to raise concerns internally. However, it is recognised that there may be circumstances where staff may feel they wish to report matters to outside bodies such as the Police, the Secretary of State for Health or, if the concern is about fraud and corruption, the NHS Fraud Hotline. A full list of persons/bodies can be found in The Public Interest Disclosure (Prescribed Persons) Order 1999 which sets out the full prescribed persons list and a description of the matters to which issues of concern could be referred. If members of staff are contemplating making a wider disclosure they are strongly advised to first seek further specialist guidance from professional or other representative bodies. The Organisation also recognises that staff may, after taking account of advice, wish to continue to raise their concerns using other avenues. These might include MPs or the Media. Staff should bear in mind that this action, if done unjustifiably could result in disciplinary action and could undermine public confidence in the service. However, disclosure may attract statutory protection from victimisation/other detriment where all of the following apply:

- They have an honest and reasonable suspicion that the malpractice/wrongdoing has occurred, is occurring, or is likely to occur;
- They honestly and reasonably believe that the information and any allegation contained in it are substantially true;

- The disclosure has not been made for personal gain;
- The concern has been raised with The Organisation or a prescribed regulator (unless there was reasonable belief of victimisation, there was no prescribed regulator and there was reasonable belief there would be a cover up);
- The matter was exceptionally serious

## 6.7 Independent Advice

If you are unsure whether to use this policy or you want confidential advice at any stage, you may contact any of the following:

- Trade Union or Professional Organisation
- A statutory body such as the NMC for Nursing, Midwifery and Health Visitors, the GMC or the Health Professions Council
- The independent charity Public Concern at Work on 020 7404 6609 or by email at [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk). Their lawyers can talk you through your options and help you raise a concern at any stage about how to raise a concern about serious malpractice or wrongdoing at work.

## 6.8 Confidentiality to Patients and The Organisation

As a member of NHS staff and in accordance with professional codes of practice, you have a duty of confidentiality to patients. Subject to the provisions of the Public Interest Disclosure Act, unauthorised disclosure of personal information about any patient will be regarded as a most serious matter, which will warrant disciplinary action. This applies even when you believe that you are acting in the best interests of a patient by disclosing personal information. You should always therefore act in a way which minimises the chance of any individual patient being identified. The Caldicott Guardian can provide advice. As an employee you also have an implied duty of confidentiality and loyalty to The Organisation as the employer. Subject to the provisions of the Public Interest Disclosure Act, breach of this duty may result in disciplinary action.

## 7 Responsibilities

### 7.1 The Chief Executive

The Chief Executive is the nominated board sponsor for the Whistleblowing Policy and Procedure across The Organisation, ensuring that all concerns raised are dealt with fairly, thoroughly and in accordance with the policy.

### 7.2 Managers

All managers are responsible for ensuring that staff are aware of the policy and its application, and for creating an environment in which staff are able to express concerns freely and without fear of reprisal.

### 7.3 Individuals

The individual has a responsibility to raise concerns providing s/he has a reasonable belief that malpractice and/or wrongdoing has occurred.

## **8. Training Requirements**

There are no mandatory training requirements associated with this Policy.

## **9. Monitoring and Compliance**

This policy shall be reviewed by the Board of Directors, Chief Executive and Clinical Directors. The Regional Services Manager is responsible for collating details of any cases which are dealt with under this procedure and will provide an aggregated report to the Board of Directors on an annual basis. The latter report will outline the nature of the concern and the outcome in a form that does not endanger the employee's confidentiality.

## Appendix 1

### Whistleblowing Policy and Procedure

The Whistleblowing Policy covers the following: -

- conduct which is an offence or a breach of law, e.g. fraud, corruption or theft
- disclosures related to miscarriages of justice
- health and safety risks, including risks to patients/visitors as well as other employees
- damage to the environment, e.g. green issues
- Verbal, sexual or physical abuse of patients, or other unethical conduct/behaviour
- discrimination on grounds of sex, race or disability or religion
- poor clinical practice
- malpractice
- professional misconduct
- nepotism

This list is neither exclusive nor exhaustive and there may be other serious public interest concerns, which would come under this Policy.

## Appendix 2

### **Guidance on Information Required when Raising A Concern under the Whistleblowing Policy and Procedure**

Checklist to assist us in assessing or investigating your concerns, it would be helpful if you could be as clear as possible with the details. As a minimum we need to understand the following:

- Date(s) of incident(s)
- Type of incident (see appendix 1 for guidance)
- Description of incident(s)/details of concerns
- Where did it happen?
- Who has been involved?
- If possible, explain how you think the matter may be best resolved or start thinking about it in preparation for any meetings you may be required to attend (if you have shared your identity)
- If you feel comfortable sharing your identify