



FREEDOM TO SPEAK UP POLICY (WHISTLEBLOWING)

DATE APPROVED:	24 August 2017
APPROVED BY:	Resources Committee
IMPLEMENTATION DATE:	August 2017
REVIEW DATE:	August 2019
LEAD DIRECTOR:	Director of Workforce & Organisational Development
IMPACT ASSESSMENT STATEMENT: No adverse impact on Equality or Diversity	

Document Reference Number:	HR – Policy – 002 (Version 7)
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Change Control:

Document Number	HR – Policy – 002
Document	Freedom to Speak Up Policy (Whistleblowing)
Version	7
Owner	Director of Workforce & Organisational Development
Distribution list	All
Issue Date	August 2017
Next Review Date	August 2019
Author	Head of HR

Change History:

Date	Change	Comment/Approved by
For previous version control please see version 6 of the Raising Concerns at Work Policy available from the Document Control Officer		
08 July 2015	Agreed no changes made	Regional Partnership Forum
June 2017	Reviewed, minor changes to reflect NHS Employers national guidance document. Renamed from Raising Concerns at Work (Whistleblowing) Policy.	HR Manager
06 July 2017	Sent for discussion. Group happy with document to proceed.	Policy Group
11 July 2017	Sent for ratification purposes – document agreed.	Workforce & Development Group
19 July 2017	Sent for information	Regional Partnership Forum
24 August 2017	Document mentioned in Chairs Report ratification purposes	Resources Committee

CONTENTS

1	Introduction	4
2	Scope.....	4
3	Roles and Responsibilities.....	6
4	Confidentiality	7
5	Procedure for Raising Concerns Internally	8
6	Gaining Independent Advice.....	9
7	Raising Concerns Externally.....	10
8	Policy Review	11
	Appendix 1 – Raising Concerns at Work Flow Chart.....	12

1 Introduction

- 1.1 The Trust is committed to ensuring that staff have the confidence to raise concerns and to know that they will be taken seriously and investigated. At work, it is reasonable that staff may have concerns from time to time, which normally can be resolved easily and informally. However, when staff have serious concerns about unlawful conduct, financial/ professional malpractice, or risk to patients/others it can be daunting to speak up about this. Therefore, this policy aims to give staff the assurance that concerns will be listened to and to outline a fair and easy process for staff to raise concerns at work.
- 1.2 In order to deliver high quality patient care and protect the interests of patients, staff and the organisation, the Trust aims to encourage a culture of openness and transparency, in which members of staff feel comfortable about raising legitimate concerns. It is hoped that by providing clear procedures and channels for staff to raise concerns, issues can be addressed at the earliest opportunity, in the most appropriate way, so that positive steps can be taken to resolve them and reduce future risk.
- 1.4 This is in accordance with The Public Interest Disclosure Act 1998, which gives statutory protection to employees who raise a genuine concern that malpractice is occurring, has occurred or is likely to occur and is in the public interest.
- 1.5 In March 2012, the NHS Constitution was updated to include an expectation that staff should raise concerns at the earliest opportunity and a pledge that NHS organisations should support staff when raising concerns by ensuring their concerns are fully investigated and that there is someone independent and outside their team that they can speak to.

Sir Robert Francis undertook an independent review of Whistleblowing in the NHS, his report published in 2015 made recommendations to improve the experience of staff in the NHS who feel that it is appropriate to raise concerns. This policy is written in the spirit and recommendations of the Francis report.

The key message is: **If in doubt, raise it!**

2 Scope

- 2.1 This policy applies to all employees, workers, trainees, agency staff, home workers, volunteers, contractors and self-employed NHS professionals working on behalf of the Trust (e.g. Doctors).
- 2.2 Concerns surrounding a management decision or action affecting terms and conditions of employment or the physical conditions in which employees are required to work should be raised through the Grievance

Procedure. The Dignity At Work Policy should be consulted for issues related to bullying, harassment or victimisation at work.

2.3 This policy should be used for raising concerns where the interest of others e.g. patients, staff or the Trust, are at risk. This may include unlawful conduct, financial or professional malpractice or risks to patients. Instances of malpractice are taken seriously and genuine concerns about the following could be reported through this policy, although not an exhaustive list:

- Unacceptable behaviour towards or ill treatment of patients, clients, colleagues or the public;
- Unacceptable risks to the health and safety of patients, clients, colleagues or the public;
- Inadequate induction or training for staff
- Lack of, or poor, response to a reported patient safety incident
- Acts of fraud and theft against the organisation and/or patients
- Any criminal offence;
- Unwarranted disclosure of information;
- Failure to comply with a legal obligation;
- Staff working under the influence of alcohol or drugs
- A bullying culture (across a team or organisation rather than an individual)

2.4 Staff do not have to provide proof that the failure or breach has occurred, or is likely to occur, however must be able to explain why they have a reasonable suspicion for the allegation and that the issue is in the public interest.

2.5 Whistleblowing legislation protects staff raising concerns from any detriment suffered from co-workers or employers. Provided a member of staff is acting in good faith, it does not matter if they are mistaken or if there is an innocent explanation for their concerns. The Trust will not tolerate the harassment, victimisation or detrimental treatment of anyone raising a concern, nor will it be tolerated if staff are bullied or pressured into not raising a concern.

However, it is not acceptable for any employees to maliciously raise concerns they know are untrue or to not act in a reasonable and responsible manner. Any employee who does so may be managed within the Trust's Disciplinary Policy.

2.6 Staff who, in the process of making a disclosure, commit a criminal offence, will not be protected under this policy.

2.7 As a consequence of the new public interest requirement employees cannot raise a protected disclosure about any breaches in their own employment contract. An employee can still make such a complaint by using the Trust's grievance procedure.

3 Roles and Responsibilities

3.1 Freedom to Speak up Guardians

The Trust has appointed a Freedom to Speak up Guardian who can be contacted for independent advice to all staff at any stage of raising a concern as below:

freedomtospeakup@wmas.nhs.uk

The Freedom to Speak Up Guardian can also be contacted in writing at:
Trust Headquarters
Millennium Point
Waterfront Business Park
Brierley Hill
DY5 1LX

3.2 The:

Director of Workforce & Organisational Development is responsible for the introduction and monitoring of the policy on behalf of the Trust, and to ensure that staff receive adequate support, guidance and advice when raising concerns.

3.3 Manager Responsibilities:

All Managers have a responsibility to:

- Ensure staff are aware of the Freedom to Speak Up (Whistleblowing) Policy
- Deal with genuine concerns seriously, responsibly and with due regard for confidentiality;
- Follow the procedure outlined in Section 5 below and where appropriate investigate and make an objective assessment of the concern;
- Take prompt action to resolve the concern or refer it on to the appropriate person;
- Keep detailed records of all discussions with staff, concerns raised and subsequent action taken to resolve issues.
- Inform senior managers where necessary;
- Provide feedback on the process to the member of staff raising the concern;
- Ensure that individuals who report genuine concerns do not suffer any disadvantage or recrimination;
- Monitor and review the situation.

3.4 Employee Responsibilities

It is the responsibility of every member of staff who has an honest and reasonable suspicion that misconduct or malpractice has occurred, is occurring or is likely to occur to raise their concerns at the earliest opportunity and in accordance with the procedure detailed in section 5 below. It is not necessary to wait for evidence or proof before raising a concern.

In September 2010, the NHS Staff Council agreed a new contractual right and duty for NHS staff to raise concerns about malpractice, patient safety, financial impropriety or any serious risks at work that are in the public interest. The change has been incorporated into the terms and conditions of service handbook.

Any individual associated with an organisation who commits acts or omissions forming part of a bribery offence may be liable for a primary bribery offence under the Bribery Act 2010 or for conspiracy to commit the offence with others. All members of staff therefore should report any concerns they may have about bribery in the Trust and/or wider NHS. Staff should therefore report any suspicions or allegations of bribery immediately to one of the following:

- Your line manager
- The Local Counter Fraud Specialist
- The NHS Fraud and Corruption Reporting Line (0800 028 40 60) or the online fraud reporting form at www.reportnhsfraud.nhs.uk

4 Confidentiality

4.1 Staff Confidentiality:

The Trust has respect for the confidentiality of staff raising concerns and if a member of staff does not wish the Trust to disclose their identity, this will not occur without their prior agreement. If however the Trust is unable to resolve the concern without revealing the member of staff's identity (i.e. to provide evidence in court), the Trust will discuss whether and how to proceed with the member of staff raising the concern.

4.2 Anonymous Concerns:

Staff are able to raise anonymous concerns, however in these circumstances it may be more difficult for the Trust to investigate their concerns thoroughly, and provide appropriate feedback.

4.3 Suspicions of Fraud

Any concerns relating to a suspicion of fraud should immediately be forwarded to the Local Counter Fraud Specialist (LCFS). Once the original suspicion has been raised the employee or line manager should not make any further enquiries. All further enquiries will be undertaken in confidence by the LCFS.

5 Procedure for Raising Concerns Internally

When staff are raising a concern, it should be clear that it is being raised under this policy. It is important that concerns are raised as soon as possible to avoid any further potential risks to the organisation, patients and staff. Any disclosure made under this policy should be made in writing along with as much evidence as possible to support the belief that the allegations made are well founded and in the public interest. If a member of staff wishes for their disclosure to be investigated anonymously this must be made clear from the outset.

Where possible concerns should be raised with an individual's line manager however it is accepted that there may be circumstances where this may not be appropriate to do. Therefore all staff may email the dedicated Freedom to Speak up mailbox at freedomtospeakup@wmas.nhs.uk with details of their concerns.

Freedom to Speak up Advocates

Staff throughout the Trust have also been appointed as Freedom to Speak up Advocates and have made a commitment to being accessible to enable our staff to raise concerns. Staff are able to discuss concerns with any advocate across the Trust at any point of the informal or formal steps of raising a concern.

A full list of advocates will be available on the Trust's Intranet Site

5.1 Step One

Members of staff who wish to raise a concern should do so in the first instance to their line manager, outlining the concern and presenting any appropriate evidence. A disclosure may be made by a trade union representative on behalf of a member of staff to their line manager.

The line manager is responsible for arranging to meet with the member of staff as soon as possible to discuss their concerns further. Staff have the right to be accompanied by a trade union representative or colleague.

5.2 Step Two

For circumstances when staff believe it is not appropriate to raise their concerns with their line manager or they do not feel that their concerns have been addressed at Step One they should contact either:

- Head of Human Resources
- Senior Operations Manager or equivalent Head of Department
- The Senior Manager named in Section 3.2

The concern may be made in writing or verbally, following which the member of staff will be invited to attend a meeting with the person the concern was raised with, as soon as possible. Staff will have the right to be accompanied by a trade union representative or colleague.

5.3 Step Three

If steps one and two have not been able to resolve the concern(s) raised or if the matter is not suitable to discuss with the people identified in the previous stages, due to the seriousness of the concern, staff may direct their concern in writing directly to the Chief Executive or to the Freedom to Speak Up Guardian.

5.4 Process for Handling Concerns Raised

Once a member of staff raises a concern at any of the steps, the manager receiving the concern will consider the information presented and decide the most appropriate way to proceed (informal review, inquiry or formal investigation.)

If it is deemed necessary for a formal investigation to further establish the facts in relation to the concerns raised, the manager receiving the concern will arrange for an independent team to carry out the investigation as soon as possible.

Staff who have raised a concern will receive a written initial response, within 14 days of the stage meeting summarising the issues raised, how the matter will be dealt with and providing details of who will be handling it and how they may be contacted. The person raising the concern will be treated with dignity and respect at all times and kept updated as reasonably possible throughout the process.

The member of staff raising the concern will be provided with written feedback at the close of the investigation, or within 28 days, whichever is the sooner advising what actions have been taken to address the concerns. There may be circumstances where it is not appropriate to provide full and detailed feedback where this may infringe a duty of confidence owed by the Trust to a patient or other third party.

6 Gaining Independent Advice

- 6.1** All staff have the right to consult and seek guidance from their professional organisation or trade union and from statutory bodies such as the Health and Care Professions Council.

6.2 Official representatives of unions or professional bodies may release information that relates directly to any official union or professional activity. This information must be presented on behalf of the union or professional body and not the Trust. Such a release of information will be exempt from the formal procedure outlined in Section 5, but should be within the guidelines of responsibilities outlined in Section 3.

6.3 The Royal Mencap Society is the designated national provider of whistleblowing advice for NHS staff and can be contacted as below:

Free Telephone: 08000 724 725

The helpline will operate on weekdays between 08.00 and 18.00 with an out-of-hours answering service available at weekends and on public holidays.

6.4 The independent charity Public Concern at Work advises on whistleblowing legislation and helps organisations to create a culture where it is safe and acceptable for staff to raise concerns at work. Contact details as below:

Confidential Telephone : 020 7404 6609

Email: helpline@pcaw.co.uk

Website: www.pcaw.co.uk

6.5 The NHS Fraud and Corruption Reporting Line (FCRL) can be contacted on 0800 028 40 60, all calls will be treated in the strictest of confidence.

7 Raising Concerns Externally

7.1 The Trust hopes that employees will feel confident to raise concerns internally, however there may be circumstances when staff feel that this is not possible or are unsatisfied with the Trust's response. Under these circumstances, staff can also contact their Trade Union Representative or professional body. The following external bodies can also be contacted

- NHS Whistleblowing Helpline:08000 724 725
- Public Concern at Work: 020 7404 6609
- NHS Improvement (0300 123 2257) for concerns about:
 - How NHS Trusts and foundation Trusts are being run
 - Other NHS providers with an NHS provider licence
 - NHS procurement, choice & competition
 - The national tariff

- Care Quality Commission (0333 405 33 33) for quality and safety concerns
- NHS England (0300 311 22 33) for concerns about:
 - Primary medical services (General Practice)
 - Primary dental services
 - Primary ophthalmic services
 - Local pharmaceutical services
- Health Education England for education and training in the NHS
- NHS Protect (020 7895 4500) for concerns about fraud and corruption
- Public sector finance: Audit Commission;
- Financial irregularities: Serious Fraud Office, Her Majesty's Revenue and Customs, NHS Fraud and Corruption Reporting Line (0800 028 4060)
- Health and safety dangers: The Health and Safety Executive;
- Environmental dangers: The Environment Agency;
- Others include: The Charity Commission, Occupational Pensions Regulatory Authority;

7.2 However, any member of staff who discloses information that is outside the protected rights for public disclosure (Public Interest Disclosure Act 1998) to the media or the public without recourse to this policy may be subject to disciplinary action and potential legal proceedings. Individuals will not be protected under the legislation if they disclose concerns to the media or the press for personal gain of any kind or if it is not reasonable in all circumstances.

8 Learning from Concerns

8.1 The focus of investigations will be on making improvements to services we provide for our patients. Where it is identified that improvements can be made these will be logged and reported to the Learning Review Group and Board of Directors on a bi-annual basis to ensure that necessary changes are made.

9 Policy Review

9.1 This policy will be reviewed in light of best practice and changing legislation every three years, or earlier if there is a requirement to do so.

Appendix 1 – Raising Concerns at Work Flow Chart

FREEDOM TO SPEAK UP PROCESS FOR RAISING CONCERNS

This is the preferred process as set out in the Trust's Freedom to Speak Up Policy.
Where appropriate Step 1 and Step 2 may be omitted.

