

“Freedom to Speak Up”: raising concerns (whistleblowing) policy for the NHS

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This policy can be made available on request in other formats such as large print, Braille, audiotape or translated.

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Speak Up – we will listen

Speaking up about any concern you have at work is really important. In fact, it's vital because it will help us to keep improving our services for all patients and the working environment for our staff. You may feel worried about raising a concern, and we understand this. But please don't be put off.

In accordance with our duty of candour, our senior leaders and entire Governing Body (board) are committed to an open and honest culture. We will look into what you say and you will always have access to the support you need.

This Policy

This 'standard integrated policy' was one of a number of recommendations of the review by Sir Robert Francis into whistleblowing in the NHS, aimed at improving the experience of whistleblowing in the NHS.

It is expected that this policy (produced by NHS Improvement and NHS England) will be adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns for the benefit of all patients.

Our local process has been integrated into this policy, which provides more detail about how NHS East Staffordshire CCG will look into a concern.

Our CCG promotes Equality and Diversity. It is our aim to ensure that all patients, service users and staff feel valued and are treated in a fair and equitable manner. The CCG will adopt this policy as a Code of Conduct for staff and will maintain / promote effective 'whistle-blowing' procedures to ensure that concerned members of staff have a means through which concerns can be voiced.

We recognise and confirm that nothing in or referred to in this policy (including in relation to the issue of any press release or other public statement or disclosure) will prevent or inhibit the making of any protected disclosure, as defined in the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998, by any CCG member, any member of its Governing Body, any member of any of its committees or sub-committees, or any employee or of any of its members, nor will it affect the rights of any worker (as defined in that Act) under that Act.

All staff have a right and a duty to raise concerns when they have a genuine suspicion that something is wrong, whether or not proof is available. It is in the interest of both staff and the CCG that concerns are resolved effectively, as this will help maintain and improve the quality of the services provided.

The Public Interest Disclosure Act 1998 explicitly protects staff from victimisation or any reprisal, which could include dismissal for raising concerns reasonably and responsibly about matters in the public interest. The CCG will not tolerate the harassment or victimisation of anyone raising a genuine concern under this policy and any such acts will be dealt with as a disciplinary matter (this does not apply in cases when someone maliciously raises an issue knowing it to be untrue.)

What Concerns can I raise?

You can raise a concern about risk, malpractice or wrongdoing you think is harming the services we commission. Just a few examples of this might include (but are by no means restricted to):

- Unsafe patient care
- Unsafe working conditions
- Inadequate induction or training for staff
- Lack of, or poor, response to a reported patient safety incident
- Suspicions of fraud (which can also be reported to our local counter-fraud team)
- A bullying culture (across a team or organisation rather than individual instances)

Further examples are available from Health Education England (video).

Remember that if you are a healthcare professional you may have a professional duty to report a concern. If in doubt, please raise it.

Don't wait for proof. We would like you to raise the matter while it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.

This policy is not for people with concerns about their employment that affect only them – that type of concern is better suited to our CCG grievance policy:

www.eaststaffscg.nhs.uk/publications/policies/corporate/hr

Feel Safe to raise your Concern

If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of reprisal as a result.

We will not tolerate the harassment or victimisation of anyone raising a concern. Nor will we tolerate any attempt to bully you into not raising any concerns. Such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action.

Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

Confidentiality

We hope you will feel comfortable raising your concern openly, but we also appreciate that you may want to raise it confidentially. This means that while you are willing for your identity to be known to the person you report your concern to, you do not want anyone else to know your identity.

Therefore, we will keep your identity confidential, if that is what you want, unless required to disclose it by law (e.g. by the police). You can choose to raise your concern anonymously, without giving anyone your name, but that may make it more difficult for us to investigate thoroughly and give you feedback on the outcome.

Who can raise Concerns?

Anyone who works (or has worked) in the NHS, or for an independent organisation that provides NHS services can raise concerns. This includes agency workers, temporary workers, students, volunteers and governors.

Who should I raise my concern with?

In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your Line Manager (or Lead Clinician / Tutor). But where you don't think it is appropriate to do this, you can use any of the options set out below in the first instance. If raising it with your Line Manager (or Lead Clinician / Tutor) does not resolve matters, or you do not feel able to raise it with them, you can contact one of the following people - Annex [A] also sets out an example of the local process for escalating concerns:

- **The CCG Freedom to Speak Up (FTSU) Guardian:**

Mrs. Lynne Smith, Lay Member for Quality – lynne.smith@smithclovis.co.uk

- This is an important role identified in the national “Freedom to Speak Up Review” to act as an independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including the Accountable Officer, or if necessary, outside the CCG
 - FTSU guardians have a key role in helping to raise the profile of raising concerns in their organisation and provide confidential advice and support to staff in relation to concerns they have about patient safety and/or the way their concern has been handled. They don't have a remit to assist staff employed outside of their organisation.
 - Guardians don't get involved in investigations or complaints, but help to facilitate the process where needed, ensuring organisational policies in relation to raising concerns are followed correctly.
- **Our Head of Performance & Governance:**
 - Paul Winter: (01283) 507145 or (07725) 214657 / paul.winter@northstaffs.nhs.uk

If you still remain concerned after this, you can contact:

- **Our Executive Directors with responsibility for whistleblowing:**
 - *Clinical Matters*

Heather Johnstone, Chief Nurse
(01827) 306137
Heather.Johnstone@northstaffs.nhs.uk
 - *Financial Matters*

Wendy Kerr, Chief Finance Officer
(01283) 507146
Wendy.Kerr2@northstaffs.nhs.uk

All of these people will be well-versed in receiving concerns and will be able to give you information about where you can go for more support. If for any reason you do not feel comfortable raising your concern internally, you can raise concerns with the following external contacts or bodies:

- *HR or Staffing Matters*

Lisa Kelly, Senior HR Business Partner, Midlands & Lancashire CSU
Mobile: (07802) 857618 / Mobex: 67618
lisa.kelly11@nhs.net
- *Controlled Drugs*

Mahesh Mistry, Head of Service, South Staffs Medicines Support Team,
(01827) 206130
Mahesh.Mistry@northstaffs.nhs.uk
- *Suspected Fraud & Corruption*

Neil Mohan, Senior Manager, PricewaterhouseCoopers LLP
Direct: (01509) 604029 / Fax (01509) 604010
neil.mohan@uk.pwc.com
Donington Court, Pegasus Business Park, Castle Donington, DE74 2UZ

Staff not directly employed by the CCG (e.g. GPs, or those working under Service Level Agreements) should also report their concerns to one of the above officers.

Advice and support

Details on the local support available to you can be found above. However, you can also contact the Whistleblowing Helpline for the NHS and Social Care: www.wbhelpline.org.uk/ or (08000) 724725. Or otherwise, contact your Professional Body or Trade Union representative.

How should I raise my concern?

You can raise your concerns with any of the people listed above in person, by phone or in writing (including email). Whichever route you choose, please be ready to explain as fully as you can the information and circumstances that gave rise to your concern.

What will we do?

We are committed to the principles of the *“Freedom to Speak Up Review”* and its vision for raising concerns, and will respond in line with them - see Annex [B]. We are also committed to listening to our staff, learning lessons and improving patient care.

On receipt, a concern will be recorded and an acknowledgement received within two working days. This will record the date the concern was received, whether you have requested confidentiality, a summary of the concerns and dates when we have given you updates or feedback.

- **Investigation**

Where you have been unable to resolve the matter quickly (usually within a few days) with your Line Manager, we will carry out a proportionate investigation – using someone suitably independent (usually from a different part of the CCG) and properly trained – and we will reach a conclusion within a reasonable timescale, which we will notify you of.

Wherever possible we will carry out a single investigation: for example, where a concern is raised about a patient safety incident, we will usually undertake a single investigation that looks at your concern and the wider circumstances of the incident.

If your concern suggests a Serious Incident has occurred, an investigation will be carried out in accordance with the SI Framework as specified in our CCG Incident Reporting policy.

The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring. We may decide that your concern would be better looked at under another process: for example, our process for dealing with bullying and harassment. If so, we will discuss that with you.

Any employment issues (that affect only you and not others) identified during the investigation will be considered separately.

- **Communicating with you**

We will treat you with respect at all times and will thank you for raising your concerns. We will discuss your concerns with you to ensure we understand exactly what you are worried about. We will tell you how long we expect the investigation to take and keep you up to date with its progress. Wherever possible, we will share the full investigation report with you (while respecting the confidentiality of others).

- **How will we learn from your concern?**

The focus of the investigation will be on improving services for patients. Where it identifies that improvements that can be made, we will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

- **Governing Body (Board) Oversight**

The Governing Body will be given high-level information about all concerns raised by our staff through this policy and what we are doing to address any problems. The Governing Body supports staff raising concerns and wants you to feel free to speak up. We will include similar high-level information in our Annual Report.

- **Review**

We will review the effectiveness of this policy and local process at least annually, with the outcome published and changes made as appropriate.

Raising your Concern with an Outside Body

Alternatively, you can raise your concern outside the organisation with:

- *NHS Improvement for concerns about:*
 - How NHS Trusts / Foundation Trusts are being run
 - Other providers with an NHS provider licence
 - NHS procurement, choice and competition
 - The national tariff
- *Care Quality Commission for quality and safety concerns*
- *NHS England 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 for concerns about fraud and corruption.*

- **Making a ‘Protected Disclosure’**

There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise such a concern (to be able to claim the protection that accompanies it). There is also a defined list of ‘prescribed persons’, similar to the list of outside bodies on the previous page, to whom you can make a protected disclosure to:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf

To help you consider whether you might meet these criteria, please seek independent advice from:

- The Whistleblowing Helpline for the NHS & Social Care
- Public Concern at Work (www.pcaw.org.uk/)
- A legal representative

- **National Guardian Freedom to Speak Up**

The new National Guardian (once fully operational) can independently review how staff have been treated having raised concerns where NHS bodies may have failed to follow good practice, working with some of the outside bodies listed above to take action where needed.

Annex [A] – CCG Formal and Informal Procedures

Victimisation of a Whistleblower (all managers to note)

Where an employee is victimised after having made a genuinely held disclosure under the Public Interest Disclosure Act, upon which the CCG's Whistleblowing Policy is based, then the victimised employee can bring a claim at an Employment Tribunal against the CCG.

There is no cap on the value of an award that an Employment Tribunal can make against an employer (in this case the CCG) for victimisation. Quite apart from the moral and legal obligations, this sanction will provide a strong incentive for all employers, to protect their staff from victimisation when disclosing their concerns in whistleblowing cases.

- **Informal Procedure**

If an employee has a genuinely held concern that they feel should be addressed, they should feel able to raise it first with their Line Manager. They should reassure the employee at this point that they will not be at risk of losing their job or suffer from reprisals as a result of raising a genuine concern. If due to the circumstances of the concern the employee considers this ill-advised, the employee should seek advice from one of the CCG's designated officers as referred to on page 5 of this policy.

Where the issues cannot be resolved informally and the individual employee feels that their concerns have not been addressed then they should raise their concerns formally in accordance with this policy.

When approached about a whistleblowing concern, a manager to whom the report is made should make every effort to resolve the matter informally, seeking, as necessary, advice from the designated officers.

In cases of suspected fraud or corruption, the individual raising the concern should be advised to contact the Counter Fraud Manager, also noted on page 5, or through the NHS Fraud & Corruption Reporting Line on (0800) 028 4060.

- **Formal Procedure**

When a concern is raised through this policy, the designated officer should be immediately notified of the concern raised. Where a nominated Lay Member is notified of the concern, he/she should liaise with the appropriate designated officer to consider the nature and implications of the concern. The employee should be reassured at this point that they will not be at risk of losing their job or suffer from reprisals as a result of raising a genuine concern.

Anonymous allegations should always be considered, but supporting evidence is essential to back the allegation.

Once this information relating to the concern has been obtained, the designated officer will decide whether the concern is a matter to be dealt with through this policy or it would be more appropriately dealt with via another policy (e.g. the CCG's Disciplinary, Grievance or Incident policies). This may be discussed with the individual who raised the concern. However, sufficient information must have been considered before a decision is taken.

If the concern is to be investigated through this policy, and there are no other factors to consider, then a formal interview should be arranged with the individual raising the concern.

This should be held within five days of receipt of the concern wherever possible. The employee should be informed of this and advised that they may be accompanied by a friend, colleague or union representative (not acting in a legal capacity) if they wish, to support them. They should also be advised that another member of the CCG will need to be present during the interview in order to take comprehensive notes and that they will be given a copy of these

notes. The individual raising the concern should be assured at this point that the interview will be held in the **strictest confidence**.

Ideally the individual should feel comfortable in raising their concern openly. If the member of staff reporting their concern asks for their identity to be concealed they must be advised that the CCG will not disclose their identity without their consent. They should be informed that if the situation arises where the CCG is not able to resolve the concern without revealing their identity (for instance if their evidence is needed in court) that this will be discussed with them at that point to determine their desire for anonymity.

The interview notes of the meeting with the member of staff raising the concern should include the following information:

- Who was present at the interview, names and job titles
- Full details of all issues discussed at the interview
- Summary and next steps
- Recommendations

A copy of the notes will be sent to the individual raising the concern as soon as possible after the interview, asking them to check the notes for accuracy. The designated officer and the individual raising the concern should both sign the finalised notes and retain a copy.

Interviews must only be electronically recorded (e.g. by tape or digitally) with the explicit consent of the member of staff reporting the concern and the manager acting on behalf of the CCG. A comment about the electronic recording should be made at the beginning of the recorded interview.

Under no circumstances should the interview be electronically recorded covertly by either party as this may be deemed a breach of the Data Protection Act and/or Human Rights Act. If this method of recording the interview is agreed by both parties, a copy of the recording should be provided to both parties as soon as practicable after the interview.

The production or any agreed interview notes **should not delay** the need to commence preliminary investigations.

The designated officer will be responsible for investigating the allegation and may seek advice or specialist knowledge (in confidence) as necessary. Individuals providing this can be asked to attend any meeting if the designated officer considers it necessary. Investigations should commence within five days of the formal interview wherever possible.

Where concerns have been raised directly with the Accountable Officer or a Lay Member, he/she shall liaise with the designated officer who will investigate the concern raised on their behalf.

An investigation file should be set up to include all documentation relating to the case. This file should contain the following:

- A master copy of the notes from the interview
- Copies of all correspondence relating to the concerns, from the initial letter raising the concern to correspondence exchanged with the employee
- Details of any verbal communications to be kept in a daily log, particularly in relation to notifying the employee of all steps to be taken, any delays and the reasons why
- An index of any evidence presented by the employee, referenced appropriately with individual references for each separate piece of evidence
- All evidence presented (original if possible, where not possible copies).

The file should be clearly marked “Confidential” and must be kept in a secure, locked cabinet.

The designated officer should seek to complete the investigation within a four week timescale. If it is likely that the investigation will exceed this timescale, this should be communicated to the individual raising the concern. However, it is recognised that in complex matters, or where potential witnesses are not freely available, that the four week timescale may be impracticable, if this is the case the investigation must be completed as soon as possible.

The designated officer is responsible for ensuring that there is adequate communication and support for the individual raising the concern and **only if appropriate**, for those individuals against whom the allegations have been made. It is important that the individual raising the concern is where possible, kept informed of the progress of the investigation and when it is likely to be concluded, in order to reassure them that the CCG is taking their concern seriously.

The investigation may require involvement of other employees who may be informed of the concern and interviewed, unless it would prevent a correct investigation from taking place. Any employee interviewed will have the right to be accompanied by a union representative, full time union official, work colleague or other person not acting in a legal capacity.

Once the investigation has been completed, a report will be produced and the designated officer will make the appropriate recommendations. This may recommend no further action, disciplinary action, a referral to one or more of the professional bodies, or civil or criminal proceedings. The individual raising the concern must be informed of the outcome, unless there are special reasons for not doing so. If there is evidence to suggest that criminal activity has occurred, is occurring or is likely to occur, the Counter Fraud Manager, or the NHS Local Security Management Specialist and/or the Police will be informed.

Where there is no case to answer, but it is clear that the individual raised a genuine concern and was not acting maliciously, the designated officer should ensure that the individual reporting the concern suffers no reprisals.

Any employee who is not satisfied that their concern is being dealt with correctly by the designated officer has the right to escalate their concern in confidence to the CCG's Accountable Officer or a Lay Member. A further interview will be held, following the above format, and the Accountable Officer will decide if further investigation is required. The individual raising the concern will be informed of the Accountable Officers within five days.

Annex [B] – a vision for raising concerns in the NHS

Source: Sir Robert Francis QC (2015) *Freedom to Speak Up: an independent report into creating an open and honest reporting culture in the NHS*.

