

WHISTLEBLOWING POLICY

September 2019

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Name of Policy:	Whistle Blowing Policy
Date Issued:	September 2019
Date to be reviewed:	2 years or if statutory changes are required

Policy Title:	Whistle Blowing Policy	
Supersedes: (Please List)	All previous Whistleblowing Policies inc HCCG 01v10	
Description of Amendment(s):	Updated to reflect national NHS Whistleblowing policy and NHS organisational changes	
This policy will impact on:	All CCG staff	
Policy Area:	Quality and Clinical Governance	
Version No:	Version 11	
Author:	Quality Team	
Effective Date:	August 2020	
Review Date:	September 2021	
Equality Impact Assessment Date:	September 2019	
APPROVAL RECORD		Date:
	Hull CCG Board	July 2020
Consultation:	Staff and relevant others	13.01.20
	SPF	14.02.20



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1. INTRODUCTION

- 1.1 The CCG is committed to the principle of public accountability. The CCG will investigate genuine and reasonable concerns expressed by employees relating to malpractice within the CCG and will ensure that employees are not discriminated against or suffer a detriment as a result of making such a disclosure, as laid down by the Public Interest Disclosure Act 1998 (PIDA).
- 1.2 The CCG encourages all individuals to raise any concerns that they may have about the conduct of others in the CCG or the way in which it is run.

2. SCOPE

- 2.1 This policy applies to CCG employees, Council of Members, Members of the Governing Body, members of its committees and sub-committees, Lay Members, any staff seconded to the CCG and is in accordance with the CCG's Equality and Diversity policy.
- 2.2 It also applies to any whistleblowing concerns raised by employees and sub-contractors of providers (both clinical and non-clinical of services commissioned by the CCG). To this extent, the CCG will undertake the same procedures as outlined in this policy. This may include the need for the CCG to communicate the concerns raised by the individual with the employing organisation(s) to ensure appropriate investigation and follow-up action. However, in all instances the principles as outlined below will be followed, including non-disclosure of identity.

3. POLICY PURPOSE AND AIMS

- 3.1 This policy aims to:
 - Encourage employees to feel confident in raising serious concerns regarding the welfare of patients and the practice of the CCG,
 - Provide avenues for employees to raise those concerns and receive feedback on any action taken,
 - Ensure that employees receive a response to their concerns,
 - Reassure employees that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they are making the disclosure in the public interest.
- 3.2 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially and the outcome of the investigation reported back to the employee who raised the issue within the agreed timescales.
- 3.3 All employees will be made aware of the policy on joining the organisation and will be encouraged to read and understand it's process. All existing staff will be made aware of the policy.
- 3.4 No employee will be victimised for raising a matter under this procedure for raising a legitimate concern. Co-workers who harass or bully someone on the grounds they have made a protected disclosure are personally liable, and the employer is vicariously liable for such actions (subject to a defence they have taken 'all

reasonable steps' to prevent workers acting this way).

- 3.5 In the event that misconduct is discovered as a result of any investigation under this procedure the CCG's disciplinary procedure will be invoked in addition to any external measures.
- 3.6 Where it can be demonstrated that an employee knowingly supplied false information when raising a concern the CCG's disciplinary procedure will be invoked.
- 3.7 The CCG will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential, so long as it does not hinder or frustrate any investigation or unless the CCG is required to disclose it by the law (for example, by the police). However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.
- 3.8 This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the CCG.
- 3.9 In exercising this discretion, the factors to be taken into account will include:
- The seriousness of the issues raised
 - The credibility of the concern
 - The likelihood of confirming the allegation from attributable sources.
- 3.10 Disclosures from outside of the CCG will be treated sensitively. As with 3.8, the CCG encourages external individuals to put their name to any disclosures they wish to make to the CCG. Any external disclosures, whether identifiable or anonymous, will be reviewed at the discretion of the CCG as part of its role to monitor the health of the local health economy, recognising that the CCG may have limited powers to act. Where a credible concern is raised that falls within the remit of the CCG, the CCG will review such issues.
- 3.11 This policy will be communicated to staff via team meetings/team brief and approved policies will be published on the CCG's website.
- 3.12 Support will be available to all Line Managers in the implementation and application of this policy.
- 3.13 This policy encompasses the national "Freedom to Speak up: Raising Concerns (Whistleblowing) policy" for the NHS which was aimed at improving the experience of whistleblowing in the NHS.

4. IMPACT ANALYSIS

4.1 Equality

The CCG is committed to eliminating discrimination and promoting equality and diversity in its Policies, Procedures and Guidelines.

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation.

In developing this policy, an Equality Impact Analysis has been undertaken and is attached as an appendix. As a result of the initial screening, the policy does not appear to have any adverse effects on people who share protected characteristics and no further actions are required at this stage. However, monitoring the use of the policy will be essential in order to ensure it is implemented equitably.

4.2 Bribery Act 2010

NHS Hull Clinical Commissioning Group has a responsibility to ensure that all staff are made aware of their duties and responsibilities arising from The Bribery Act 2010.

The Bribery Act 2010 makes it a criminal offence to bribe or be bribed by another person by offering or requesting a financial or other advantage as a reward or incentive to perform a relevant function or activity improperly performed. The penalties for any breaches of the Act are potentially severe. There is no upper limit on the level of fines that can be imposed and an individual convicted of an offence can face a prison sentence of up to 10 years.

For further information see <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf>.

If you require assistance in determining the implications of the Bribery Act please contact the Local Counter Fraud Specialist (LCFS) on telephone number 01482 866800 / 07872 988939, email nikki.cooper@audit-one.co.uk or nikki.cooper1@nhs.net (secure). In the absence of the LCFS please contact the AuditOne Fraud hotline – 0191 441 5936, email – counterfraud@auditone.co.uk or ntawnt.counterfraud@nhs.net (secure).

This policy incorporates the requirements of the Public Interest Disclosure Act 1998 (PIDA) and the Bribery Act 2010. Where instances of fraud are identified these should be reported immediately to the Chief Finance Officer or the LCFS (see Appendix 1) who, where appropriate, will arrange for the matter to be referred to the police for investigation and notified to NHS Counter Fraud Authority. Please refer to the CCG's Counter Fraud, Bribery and Corruption policy. One of the basic principles of public sector organisations is the proper use of public funds and this would include the assets bought through public funds. It is therefore important that all CCG employees are aware of the rules against any acts involving bribery, dishonesty, corruption or damage to CCG property. For simplicity all such offences are hereafter referred to as "fraud".

5. NHS CONSTITUTION

5.1 The CCG is committed to providing best value for taxpayers' money and the most

cost-effective, fair and sustainable use of finite resources - public funds for healthcare will be devoted solely to the benefit of the people that the NHS serves

- 5.2 The NHS is accountable to the public, communities and patients that it serves - the NHS is a national service funded through national taxation, and it is the Government which sets the framework for the NHS and which is accountable to Parliament for its operation. However, most decisions in the NHS, especially those about the treatment of individuals and the detailed organisation of services, are rightly taken by the local NHS and by patients with their clinicians. The system of responsibility and accountability for taking decisions in the NHS should be transparent and clear to the public, patients and staff. The Government will ensure that there is always a clear and up to date statement of NHS accountability for this purpose
- 5.3 This Policy supports the NHS Constitution by providing a framework whereby any issues or concerns raised that may affect the NHS Constitution commitments detailed in 5.1 and 5.2 can be addressed.

6. ROLES / RESPONSIBILITIES / DUTIES

Director of Quality and/or Clinical Governance

- 6.1 The Director of Quality and Clinical Governance and will be responsible for ensuring that employment law and the CCG's policies and procedures are adhered to throughout the investigation.

Accountable Officer

- 6.2 The Accountable Officer will have an overview of the issues involved and will keep the Governing Body informed of the progress of any investigation as necessary.

Audit Committee

- 6.3 The Audit Committee will review any reports submitted to it in respect of this policy, and consider any necessary recommendation

Managers

- 6.4 Concerns will normally be reported to an employee's line manager. The manager will be responsible for passing the details to the Director of Quality and Clinical Governance or in cases of fraud to the LCFS or Chief Finance Officer.

Staff

- 6.5 All staff are responsible for being aware of this policy and for raising any concerns they have using appropriate procedure.

7. PROCEDURE

8.0 INTRODUCTION

- 8.1 All of us at one time or another have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about patient care or patient services, professional practice, unlawful conduct, dishonesty, financial malpractice, or a danger to health, safety or the environment, or a cover up of any of these, it can be difficult to know what to do.

- 8.2 You may be worried about raising such issues or may want to keep the concerns to yourself, perhaps feeling it is none of your business or that it is only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the CCG. You may have said something but found that you have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next.
- 8.3 NHS Hull Clinical Commissioning Group (CCG) has introduced this policy to enable you to raise your concerns or suspicions about any issues of malpractice at an early stage and in the right way. We know from experience that to be successful we must all try to deal with issues on their merits. The CCG welcomes your genuine concerns and is committed to dealing responsibly, openly and professionally with them. Without your help, we cannot deliver a safe service and protect the interests of patients, staff and the CCG. If you are worried, we would rather you raised it when it is just a concern than to wait for proof.
- 8.4 If something is troubling you which you think we should know about or look into, please use this procedure. However, if you are aggrieved about your personal position then this is not the appropriate procedure and you should seek advice from your manager, a member of the HR team, Trade Union representative or Whistleblowing Hotline.
- 8.5 This policy is primarily for concerns where the interests of others, most especially patients, or of the CCG itself, are at risk. It can also be used by staff in order to raise allegations against colleagues in terms of safeguarding children or adults. It can be used by volunteers, trainees, agency workers, home workers, contractors and independent consultants as well as all CCG employees. It is recognised that employees of the CCG's commissioned services might also raise concerns directly with the CCG. This policy describes the process as to how these will be managed as well.
- 8.6 Concerns can be raised about risk, malpractice or wrongdoing that is harming the service we commission. 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 should be reported to our local counter fraud team (see appendix 1 for contact details)
 - A bullying culture (across a team or organisation rather than individual instances of bullying).

For further examples, [please click here to see Health Education England video.](https://www.youtube.com/watch?v=zjau1Ey0di8)
(<https://www.youtube.com/watch?v=zjau1Ey0di8>)

If in doubt – raise it!

- 8.7 The CCG also has separate policies to cover fraud and safeguarding concerns which provide further guidance and details separate procedures for reporting suspected cases of fraud. If your concern relates to a suspected incidence of fraud

or safeguarding then please refer to the fraud or safeguarding policies respectively. Please note that the principles of this policy will still apply.

8.8 Employees of the CCG's commissioned services should normally raise their concerns under their employer's Whistleblowing Policy, which will afford the employee their rights under Whistleblowing legislation. However, it is recognised that provider employees may feel they need to raise their concerns directly with commissioners or with other regulators, such as the Care Quality Commission. This policy ensures that the CCG will act on any such genuine concerns raised from outside of the CCG.

9.0 THE PUBLIC INTEREST DISCLOSURE ACT 1998

9.1 The above act provides protection for employees who raise legitimate concerns about specified matters. These are called "qualifying disclosures". A qualifying disclosure is one made in the public interest by an employee who reasonably suspects:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach or failure to comply with any legal or professional obligation or regulatory requirement;
- bribery;
- financial fraud or mismanagement;
- unauthorised disclosure of confidential information;
- abuse in care;
- patient safety;
- a concealment of any of the above is being or is likely to be committed.

9.2 It is not necessary for the employee to have proof that such an act is being, has been, or is likely to be committed, a reasonable belief is sufficient.

9.3 Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

9.4 The CCG cannot offer employee protection for issues raised by employees from outside of the CCG but can review any genuine concerns raised with it sensitively and within the scope of powers of the CCG.

10.0 CONFIDENTIALITY

10.1 Employees raising a concern should be aware of the need to follow this procedure and in particular to maintain confidentiality. Allegations of Breaches in Confidentiality will be dealt with using the appropriate procedures, through the use of the CCG Disciplinary Policy.

10.2 The identity of the individual who has raised a concern will be protected on request and will not be disclosed without consent. Whether and how to proceed will be

discussed with the whistle blower if the situation arises where the concern cannot be resolved without revealing their identity (for example, because there is an internal investigation or evidence is needed in court).

- 10.3 Any employee raising a concern must be aware that they may be asked to present evidence to substantiate any allegations made, and/or to provide a written statement. In addition, they may be asked to explain their allegations during any disciplinary proceedings that may result from them.
- 10.4 Employees who raise a genuine concern under this policy, will not be at risk of losing their job or suffering any form of reprisal as a result. The CCG will not tolerate the harassment or victimisation of anyone raising a concern and will not tolerate any attempt to bully anyone who raises such a concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in investigation. Provided an employee raising a concern is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.
- 10.5 The CCG 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 Appendix 3).

11.0 HOW TO RAISE A CONCERN

- 11.1 We all have a responsibility and duty (often reinforced in Professional Codes of Conduct) to draw to the attention of CCG management any anxieties or concerns which we may have in respect of the conduct of another employee where we consider that this conduct may be detrimental to the interests of patients and/or employees of the CCG. This includes instances which compromise or appear to compromise the standards laid down by the CCG, including health and safety, ethical behaviour, clinical governance, corporate governance or probity protocols. There may be implications for you as an individual if you do not raise your concerns with CCG management or, as a minimum, discuss the matter with your professional organisation.
- 11.2 The CCG are committed to listening to our staff learning lessons and improving patient care. On receipt the concern will be recorded by the CCGs Director of Quality and Clinical Governance who will send an acknowledgment of the concern within two working days. The central record will record the date the concern was received, if the individual has requested confidentiality, a summary of the concerns and dates when the individual has been updated or given feedback.

11.3 Step One

If you have a concern about any issue, we hope you will feel able to raise it in the first instance with your manager.

11.4 Step Two

If you don't feel Step one is appropriate or it hasn't worked, please raise the matter with a CCG Senior Officer or Director. Please say if you want to raise the matter in confidence so that they can make appropriate arrangements. We will ask if you

would like us to write to you summarising your concern and the action we propose to take.

11.5 Senior Managers / Directors have been given special responsibility and training in dealing with whistleblowing concerns. They will:

- treat the concern confidentially unless otherwise agreed.
- ensure the individual receives timely support to progress the concern
- escalate to the Board any indications that individuals are being subjected to a detriment as a result of raising a concern
- remind the CCG of the need to give timely feedback to the individual on how the concern is being dealt with
- ensure that individuals who raise a concern have access to support as raising a concern may be stressful.

11.6 If you are unsure who to contact please ask one of the advice bodies listed (see section 11 for contact details).

11.7 **Step Three**

If step one and/or step two channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact:

- Director of the CCG (Director of Quality and Clinical Governance/ Exec Nurse, (01482) 344619) or
- CCG Lay Member (Karen Marshall, 01482 344700)
- Chair of the CCG (Dr Dan Roper, 01482 344700).

11.8 This procedure is intended to provide employees with an opportunity within the CCG to raise concerns. If, however, they are not satisfied with any action taken and feel it is right to take the matter outside the CCG, they should ensure that they do not disclose information which should properly remain confidential. Employees will need to confirm this with the person or organisation they decide to contact.

11.9 If steps 1 – 3 have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above you can raise your concern outside of the CCG with:

- NHS England for concerns about:
 - How NHS trusts and foundation trusts are being run
 - Other providers with an NHS provider licence
 - NHS procurement, choice and competition
 - Primary medical services (GP Practices)
 - Primary dental services (Community Dentists)
 - Primary ophthalmic services (Community Opticians)
 - Local pharmaceutical services (Community Pharmacy)
 - The national tariff.

- Care Quality Commission (CQC) for quality and safety concerns about providers registered with the CQC
- Health Education England (HEE) for education and training in the NHS
- NHS Counter Fraud Authority for concerns about fraud and corruption.

11.10 In light of the procedure laid down in this Policy it is expected that all employee's concerns can be addressed and dealt with internally or externally, and without reference to the media. An employee who has exhausted all the locally established procedures and who has taken account of any initial advice which they may have been given may, as a last resort, consider speaking to the media. If the employee considers that the involvement of the media is appropriate they should seek advice (or further advice) from professional or other representative organisations and preferably discuss matters further with their manager before taking this step.

11.11 Such action, if entered into unjustifiably, could unreasonably undermine public confidence in the services provided by your colleagues and the CCG. Employees are therefore strongly advised to first seek further specialist guidance as noted above.

11.12 Concerns raised from outside of the CCG will be reviewed by the Chair of the CCG or a CCG Director in the first instance. This will determine what steps are taken in light of the concerns raised and the scope of the CCG's role.

12.0 INVESTIGATING PROCESS

12.1 Due to the varied nature of these sort of complaints, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

12.2 The HR team shall advise those involved in the investigation in matters of employment law and other HR procedural matters.

12.3 Any potential disciplinary matters will be dealt with by the CCG and, where appropriate, relevant external bodies.

12.4 If the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Chief Officer / Chair, or one of the designated persons described above in point 11.7.

12.5 If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the CCG recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive) or, where justified, other relevant external bodies.

13.0 HELP & ADVICE

13.1 At any point either before raising the concern or at any stage in this procedure an

employee may involve a Trade Union or Professional Association Representative who will be able to provide help and advice.

13.2 Free, independent and confidential advice can be obtained from the Whistleblowing Helpline for NHS and Social Care on 08000 724 725.

13.3 Support and advice is available from Public Concern at Work and the NAO Controller and Auditor General at the following addresses:

PROTECT The Green House 244 -254 Cambridge Heath Road LONDON E2 9DA Tel : 020 74033 8823 Website : https://protect- advice.org.uk/ Email : <a href="mailto:whistle@protect-
advice.org.uk">whistle@protect- advice.org.uk	The Comptroller and Auditor General National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP Telephone: 020 7798 70000
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13.4 Employees are able to approach Occupational Health as a means of support when concerns have been raised

14.0 RESPONSIBILITIES

14.1 Director of Quality and Clinical Governance / Executive Nurse

The Director of Quality and Clinical Governance / Executive Nurse will have an overview of the issues involved and will keep the Governing Body informed of the progress of any investigation as necessary. The Director of Quality and Clinical Governance / Executive Nurse will arrange training for all staff who are likely to receive concerns to be appropriately trained.

14.2 Integrated Governance and Audit Committee

The Integrated Governance and Audit Committee will review any reports submitted to it in respect of this policy, and consider any necessary recommendation.

14.3 Human Resources Team

The Human Resources team will be responsible for the provision of advice in relation to employment law and the CCG's HR policies and procedures.

14.4 Managers

Concerns will normally be reported to an employee's line manager. The manager will be responsible for passing the details to the Director of Quality and Clinical Governance or in cases of fraud to the LCFS or Chief Finance Officer unless it is clear that the concerns are groundless.

14.5 Staff

All staff are responsible for being aware of this policy and for raising any concerns

they have using appropriate procedure.

15.0 NHS FREEDOM TO SPEAK UP POLICY

15.1 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.

15.2 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 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.

15.3 If raising it with your line manager does not resolve matters, or you do not feel able to raise it with them, you can contact:

- Our CCG Freedom to Speak Up Guardian – The Director of Quality and Clinical Governance / Executive Nurse this is an important role identified in the 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 chief executive, or if necessary, outside the organisation

15.4 The new National Freedom to Speak Up Guardian can independently review how staff have been treated having raised concerns where NHS trusts and foundation trusts may have failed to follow good practice, working with some of the bodies listed within the policy to take action

15.5 The role of the National Freedom to Speak Up Guardian is sponsored by the CQC and NHSE and was created after the Francis Freedom to Speak up Review (2015). The Guardian helps to provide guidance and training to local Freedom to Speak Up Guardians in each NHS Trust. Cases can be referred to the National Guardian for review.

15.6 Further advice and support on Speaking Up is available from "Speak Up" a Social Enterprise commissioned by the Department of Health to provide free, independent, confidential advice on the speaking up process. There website can be accessed at <https://speakup.direct/>

15.6 Freedom to Speak Up Guardian & NHS Contracts

All holders of NHS Contracts are required to have a Freedom to Speak Up Guardian. A directory of Provider Guardians can be found on the CQC website

16.0 TRAINING AND AWARENESS

16.1 Guidance and support will be available to all Line Managers, by the HR Team, in the

implementation and application of this policy upon request.

17.0. MONITORING AND EFFECTIVENESS

- 17.1 The policy and procedure will be reviewed and audited periodically in conjunction with the senior leadership team and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.
- 17.2 The implementation of this policy and local process will be audited annually and reported to the CCG Governing Body. The Board will also be given high level information about all concerns raised by CCG staff through the policy and what the CCG are doing to address any problems. The CCG will include similar high level information in the annual report.

18.0 POLICY REVIEW

- 18.1 This Policy will be reviewed within 2 years from the date of implementation or sooner if statutory or legislation changes require a review.

APPENDIX 1 GUIDANCE TO STAFF

Q - *What should you do if you suspect malpractice?*

Do make an immediate note of your concerns
Do convey your suspicions to someone with the appropriate authority and experience
Do deal with the matter promptly
Do in cases of suspected fraud tell the LCFS or the Chief Finance Officer or contact the NHS National Fraud & Corruption reporting line on 0800 028 4060 or report online at <https://cfa.nhs.uk/> in cases of fraud.

Don't do nothing
Don't be afraid of raising your concerns
Don't accuse any individuals directly
Don't try to investigate the matter yourself
Don't tell anyone about your suspicions other than those with the proper authority

GUIDANCE TO MANAGERS

Do be responsive to staff concerns
Do note details
Do try to evaluate the allegation objectively
Do deal with the matter promptly
Do advise the appropriate person:

- Line Manager
- CCG HR Team
- Local Counter Fraud Specialist
- Safeguarding Officer
- Director of Quality & Clinical Governance /.Executive Nurse

Don't ridicule suspicions raised by staff
Don't approach or accuse any individuals directly
Don't convey your suspicions to anyone other than those with the proper authority
Don't try to investigate the matter yourself

APPENDIX 2

SUMMARY OF THE PUBLIC INTEREST DISCLOSURE ACT 1998

The Act applies to the public, private and voluntary sectors. It aims to improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker.

The Act sets out the circumstances in which a disclosure of information may be protected. In brief, to obtain that protection, workers must act reasonably and responsibly. An employee who makes a rash disclosure (to the media for example, of a matter which could and should have been raised internally) will not be protected.

Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

Malpractice

The Act applies to people at work raising genuine concerns about crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment, and the cover up of any of these. In the NHS this includes a worker raising concerns about risks to patients or about financial malpractice. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals Covered

In addition to employees, the Act covers other workers, trainees, agency staff, homeworkers and all self-employed NHS professionals (i.e. doctors, ophthalmologists, dentists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, army or police officers.

Internal Disclosures

A disclosure to the employer will be protected if the employee (often referred to as a “whistleblower”) has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the malpractice, this same test applies to disclosures made to it.

Legal Advice

To ensure that people concerned about malpractice can get independent and confidential advice about how the Act works, disclosures to lawyers are protected.

NHS and Quangos

To promote accountability in public life, the same protection as for internal disclosures applies where someone in the NHS or a public organisation blows the whistle direct to the

sponsoring department. There is no requirement that such concerns be raised internally first.

Regulatory Disclosures

Special provision is made for disclosures to organisations, which are prescribed under the Act. Those relevant to the NHS are:

- Public sector finance – Audit Commission
- Fraud and fiscal irregularities – Serious Fraud Office, Inland Revenue, Customs and Excise
- Health and Safety dangers – the relevant enforcing authority (Health & Safety Executive or Local Authority)
- Environmental dangers – the Environment Agency
- Others – Care Quality Commission, Charity Commission, Occupational Pensions Regulatory Authority

Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

Wider Disclosures

First, the concern must have been raised with the employer or a prescribed regulator, unless:

- The worker reasonably believed s/he would be victimized if s/he did do
- There is no prescribed regulator and the worker reasonably believed there would be a cover-up
- The matter was exceptionally serious

If one of the above pre-conditions is met, and the Tribunal is satisfied that disclosure was reasonable, the whistle blower will be protected.

Wider disclosures (e.g. to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and the following provisions are met:

- In deciding the reasonableness of the disclosure the Tribunal will consider the identity of the person it was made to, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence the employer owed a third party.
- Where the concern had been raised with the employer or a prescribed regulator, the Tribunal will also consider the reasonableness of their response.
- Finally, if the concern had been raised with the employer, the Tribunal will consider whether any whistleblowing policy in the organization was or should have been used.

Full Protection

Where a worker or employee is victimised for blowing the whistle in breach of the Act, s/he can bring a claim at an Employment Tribunal. The usual limits on awards in employment law will not apply under the Public Interest Disclosure Act. Workers and employees who lose their jobs in breach of the Act will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

Where an employee (but not other workers) is dismissed for blowing the whistle, s/he may apply within seven days for an interim order. Where the Tribunal considers that the employee is likely to win at the full hearing, it will order that s/he keeps his/her job or is paid his/her wages pending the full hearing.

The provisions on interim relief do not apply to self-employed professionals in the NHS. Nor can a tribunal make a Re-employment Order where the contract of a self-employed professional has been terminated in breach of the Act. However, as such workers will be entitled to recover their full losses at an Employment Tribunal; re-employment may well be an option the employer may wish to consider in the event of a claim under the Act.

Gagging Clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Criminal Offences

Where the disclosure of that information was itself a criminal offence, such as under the Official Secrets Act, the whistle blower will not be protected under the Act if s/he has or would have been convicted of the offence.

Extract from the Public Concern at Work Briefing Pack

Step One—Contact your Line Manager
If you have any concerns relating to this policy we would hope that in the first instance you are able to raise it with your line manager



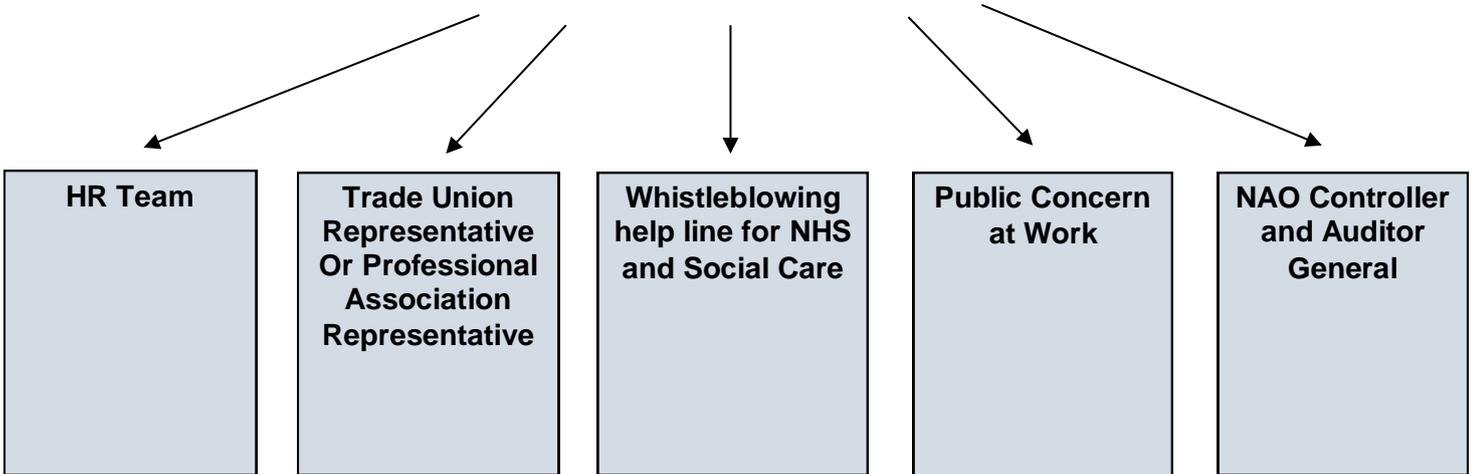
If you don't feel that step one is appropriate, or it hasn't worked, please continue to step two



Step Two— CCG Senior Officer or Director
Please say if you want to raise this matter in confidence so that appropriate arrangements can be made. We will ask if you would like us to write to you summarising your concern and the action we propose to take



If you are unsure who to contact please ask one of the following bodies for advice (contact details within the policy body (page 12))



If step one and/or step two have been followed and you still have concerns or if you feel that the matter is so serious that you cannot speak with any of the above bodies please contact:



Appendix 4



Appendix 5



Hull

Clinical Commissioning Group

HR / Corporate Policy Equality Impact Analysis:	
Policy / Project / Function:	Whistle Blowing Policy
Date of Analysis:	September 2019
Completed by: (Name and Department)	Robert Thompson Head of Nursing & Quality
Are there any significant changes to previous policy likely to have an impact on staff / other stakeholder groups?	<p>The aim of this policy is to:</p> <ul style="list-style-type: none"> • Encourage employees to feel confident in raising serious concerns regarding the practice of the CCG • Provide avenues for employees to raise those concerns and receive feedback on any action taken • Ensure that employees receive a response to their concerns • Reassure employees that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they have made any disclosure in the public interest
Please list any other policies that are related to or referred to as part of this analysis	<ul style="list-style-type: none"> • Fraud and Bribery (Public Interest Disclosure) • Disciplinary Policy • Equality and Diversity Policy • Standards of Business Conduct
Who will the policy, project or function affect?	<ul style="list-style-type: none"> • CCG Employees • Agency & Contract Staff
What engagement / consultation has been done, or is planned for this policy and the equality impact assessment?	Consultation on the updated policy will take place with CCG staff
Promoting Inclusivity and Hull CCG's Equality Objectives.	The policy does not directly promote inclusivity

<p>How does the project, service or function contribute towards our aims of eliminating discrimination and promoting equality and diversity within our organisation?</p> <p>How does the policy promote our equality objectives:</p> <ol style="list-style-type: none"> 1. Ensure patients and public have improved access to information and minimise communications barriers 2. To ensure and provide evidence that equality is consciously considered in all commissioning activities and ownership of this is part of everyone's day-to-day job 3. Recruit and maintain a well-supported, skilled workforce, which is representative of the population we serve 4. Ensure the that NHS Hull Clinical Commissioning Group is welcoming and inclusive to people from all backgrounds and with a range of access needs 5. To demonstrate leadership on equality and inclusion and be an active champion of equalities in partnership programmes or arrangements 	<p>but provides a framework to support CCG staff with regards to Whistle Blowing.</p>
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Equality Data	
<p>Is any Equality Data available relating to the use or implementation of this policy, project or function?</p> <p>Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine <i>Protected Characteristics</i> – referred to hereafter as '<i>Equality Groups</i>'.</p> <p>Examples of <i>Equality Data</i> include: (this list is not definitive)</p> <p>1: Recruitment data, e.g. applications</p>	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p>Where you have answered yes, please incorporate this data when performing the <i>Equality Impact Assessment Test</i> (the next section of this document). If you answered No, what information will you use to assess impact?</p> <p>Please note that due to the small number of staff employed by the CCG, data with returns small enough to identify individuals cannot be published. However, the data should still</p>

<p>compared to the population profile, application success rates</p> <p>2: Complaints by groups who share / represent protected characteristics</p> <p>4: Grievances or decisions upheld and dismissed by protected characteristic group</p> <p>5: Insight gained through engagement</p>	<p>be analysed as part of the EIA process, and where it is possible to identify trends or issues, these should be recorded in the EIA.</p>
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Assessing Impact

**Is this policy (or the implementation of this policy) likely to have a particular impact on any of the protected characteristic groups?
(Based on analysis of the data / insights gathered through engagement, or your knowledge of the substance of this policy)**

Protected Characteristic:	Neutral Impact:	Positive Impact:	Negative Impact:	Evidence of impact and, if applicable, justification where a <i>Genuine Determining Reason</i> ¹ exists (see footnote below – seek further advice in this case)
<p>It is anticipated that these guidelines will have a positive impact as they support policy writers to complete meaningful EIAs, by providing this template and a range of potential issues to consider across the protected characteristics below. There may of course be other issues relevant to your policy, not listed below, and some of the issues listed below may not be relevant to your policy.</p>				
Gender	X			This policy applies to all staff regardless of gender.
Age	X			This policy applies to all staff regardless of age.
Race / ethnicity / nationality	X			This policy applies to all staff regardless of race, ethnicity or nationality.
Disability	X			This policy applies to all staff regardless of disability.
Religion or Belief	X			This policy applies to all staff regardless of religion or belief.
Sexual Orientation	X			This policy applies to all staff regardless of sexual orientation.

1. ¹ *The action is proportionate to the legitimate aims of the organisation (please seek further advice)*

Pregnancy and Maternity	X			This policy applies to all staff regardless of pregnancy or maternity.
Transgender / Gender reassignment	X			This policy applies to all staff regardless of transgender/ gender reassignment.
Marriage or civil partnership	X			This policy applies to all staff regardless of marriage or civil partnership.

Action Planning:

As a result of performing this analysis, what actions are proposed to remove or reduce any risks of adverse impact or strengthen the promotion of equality?

Identified Risk:	Recommended Actions:	Responsible Lead:	Completion Date:	Review Date:
As the policy is written in English there is a potential impact on employees who may have communication barriers.	<p>The policy document includes an accessibility statement offering alternative formats on request.</p> <p>The CCGs internal 'portal' and external website signpost individuals to alternative formats such as large print, braille or another language</p>	CCG Communications	Updating of this facility is ongoing	2 years from approval date.

Sign-off

All policy EIAs must be signed off by Mike Napier, Associate Director of Corporate Affairs

I agree with this assessment / action plan

If disagree, state action/s required, reasons and details of who is to carry them out with timescales:



Signed:

Date: 03.06.20