

NHS Derby and Derbyshire Clinical Commissioning Group

Raising Concerns at Work (Whistleblowing) Policy

CONTENTS

		Page
1.	Equality Statement	4
2.	Due Regard	4
3.	Definition of Whistleblowing	4
4.	Policy	4
5.	Scope	5
6.	When does the Whistleblowing Policy apply	5
7.	What are the employee obligations under this policy	6
8.	Principles	7
9.	Procedure	7
10.	Investigation	9
11.	Protected Disclosures	9
12.	Help and Advice	10
Appendix 1	Guidance to Staff.....	11
Appendix 2	Contact Details for Raising or Escalating a Whistleblowing Concern.....	13
Appendix 3	Record of Whistleblowing Concern	15

VERSION CONTROL

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1. EQUALITY STATEMENT

- 1.1 NHS Derby and Derbyshire Clinical Commissioning Group (the "CCG") aims to design and implement policy documents that meet the diverse needs of our services, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no one receives less favourable treatment due to their protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.
- 1.2 In carrying out its function, the CCG must have due regard to the Public Sector Equality Duty (PSED). This applies to all activities for which the CCG is responsible, including policy development, review and implementation.

2. DUE REGARD

This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty (PSED) of the Equality Act 2010 to eliminate discrimination; harassment; victimisation; to advance equality of opportunity; and foster good relations between the protected groups. This can be evidenced in sections 3.3; 4.1; 5.2 and 7 of this policy.

3. DEFINITION OF WHISTLEBLOWING

"Whistleblowing" means raising a concern which is done in the public interest about wrongdoing in an organisation. A "whistleblower" is a person who exposes wrongdoing.

4. POLICY

- 4.1 The CCG conducts its work to the highest standards and complies with relevant laws and regulations. While working for the CCG, employees and workers must adhere to those standards.
- 4.2 The CCG takes any wrongdoing in the workplace very seriously. If, at any time, employees know of, or suspect, any wrong doing in the workplace they must report the matter to us immediately so that the CCG can take steps to deal with it appropriately. If an employee has a genuine concern they should report it straight away.
- 4.3 The CCG is aware that employees may not want to come forward with their concerns because they feel that speaking out would be disloyal to their colleagues.

They may also be worried that they will be victimised or harassed or penalised in some other way. They may be tempted to ignore their concerns rather than report something that may only be a suspicion. The CCG has therefore drawn up a whistleblowing policy, details of which are set out below. The aim of this policy is to reassure employees that they can report genuine concerns about wrongdoing at work without any risk to themselves. Harassment, victimisation or bullying behaviour towards a whistleblower will not be tolerated and will be dealt with in line with the CCG's Dignity at Work Policy (previously named Bullying & Harassment Policy) and may lead to action in line with the CCG's Disciplinary Policy.

- 4.4 Of course, the CCG also wants to make it clear that, while the CCG will provide safeguards for employees when they raise genuine concerns, any spurious or vexatious allegations, particularly where they cause difficulties for innocent colleagues, may lead to disciplinary action being taken against them in line with the CCG's Disciplinary Policy.

5. SCOPE

- 5.1 The policy applies to all the CCG's current and former employees. It also applies to secondees, external consultants, contractors and agency personnel while working for us.
- 5.2 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.

6. WHEN DOES THE WHISTLEBLOWING POLICY APPLY

- 6.1 Employees should use the whistleblowing policy set out below to raise genuine concerns they have about any workplace malpractice.
- 6.2 In line with the constitution the CCG recognises and confirms that nothing in or referred to in the constitution (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 member of the CCG, any member of its governing body, any member of any of its committees or sub-committees or the committees or sub-committees of its governing body, or any employee of the CCG or of any of its members, nor will it affect the rights of any worker (as defined in that Act) under that Act.

- 6.3 Examples are:
- 6.3.1 criminal offences including fraud or financial irregularity (which can also be reported to NHS Counter Fraud Authority);
 - 6.3.2 breaching a legal obligation;
 - 6.3.3 a miscarriage of justice;
 - 6.3.4 unsafe working conditions;
 - 6.3.5 unsafe patient care and/or a poor response to a reported patient care incident;
 - 6.3.6 damaging the environment;
 - 6.3.7 inadequate induction or training for staff;
 - 6.3.8 concerns and/or non-compliance with the CCG's conflict of interest procedure;
 - 6.3.9 intentionally concealing information relating to any of these matters.
- 6.4 This is not an exhaustive list and further examples can be found by viewing this [Health Education England video](#). If employees become aware of any incidents of malpractice they should tell the CCG about under this policy.
- 6.5 The CCG also operates a grievance policy and a bullying and harassment policy (Dignity at Work Policy). If employees want to raise an issue relating to their individual employment, or where they are being bullied or harassed, they should use the grievance or bullying and harassment policies, as appropriate. If they want to tell the CCG about something and they are not sure which policy to use, they should ask their line manager or the Human Resources (HR) team.

7. WHAT ARE THE EMPLOYEE OBLIGATIONS UNDER THIS POLICY

- 7.1 As someone working for us the employee must:
- 7.1.1 be aware of the CCG policy to deal with whistleblowing issues; and
 - 7.1.2 tell us about any actual or suspected malpractice at work.
- 7.2 If the CCG discovers that the employee has not come forward to tell the CCG about malpractice when they knew about it, the CCG may treat that as a disciplinary issue.
- 7.3 If the employee is a manager they have additional responsibilities:
- 7.3.1 to promote awareness of this policy and the whistleblowing procedure;
 - 7.3.2 to encourage an open working environment where everyone feels confident about expressing genuine concerns;

7.3.3 to ensure the employee takes appropriate action if a whistleblowing issue is brought to their attention.

7.4 It is very important that everyone feels able to use the whistleblowing policy without worrying about recriminations. Therefore if a colleague raises an issue under the whistleblowing policy the employee must not treat them unfavourably in any way. Any deliberate detrimental action against a colleague who makes a disclosure under this policy may be treated as gross misconduct, for which the CCG may terminate the employee's employment without notice.

8. PRINCIPLES

8.1 The CCG will take seriously any matter raised under the whistleblowing policy.

8.2 The CCG will operate the policy without unnecessary delay.

8.3 The CCG encourages people to raise their concerns openly but will respect the wishes of people who wish to raise their concerns confidentially. This means that while someone's identity may be known to the person to whom the concern is reported, it will not be shared unless it is required by law (for example by the police). If investigations are conducted which involve others, the CCG will of course carry out its investigations with discretion.

8.4 As long as the employee uses this policy to raise genuine concerns that are "in the public interest", without an ulterior motive, the CCG will ensure that the employee has full support and protection. The employee should tell the CCG immediately if they think they have suffered in any way or been treated unfairly because they have raised a concern under this policy. The CCG will take appropriate action against anyone found to have victimised the employee.

9. PROCEDURE

9.1 Who to report concerns to?

9.1.1 If the employee has a concern about minor wrongdoing at work they should raise it, in the first instance, with their line manager.

9.1.2 If the employee does not want to approach their line manager, perhaps because they think he or she may be involved or implicated in the wrong-doing or where the issue is very sensitive, they should contact another Senior Manager or the HR team who will tell them whom they should contact in confidence.

9.1.3 Alternatively, the employee can raise the matter in confidence, either verbally or in writing, with the Head of Governance or delegated officer. In extreme cases, if the matter is urgent or involves a serious hazard or danger, they should raise the issue in confidence with the Chief Executive Officer both of whom have been designated as independent contacts under this policy.

- 9.1.4 Concerns may also be raised with the CCG's Freedom to Speak Up Guardian, the Lay Member for Governance. The purpose of this important role is to act as an independent and impartial source of advice to staff at any stage of raising a concern.
- 9.1.5 In some circumstances, for instance if the matter involves fraud, it might be appropriate to report the wrong-doing to the Chief Finance Officer or the Counter Fraud Specialist. Alternatively, if an individual prefers to report the matter externally, then they can contact NHS Counter Fraud Authority on 0800 028 40 60 or www.reportnhsfraud.nhs.uk (please refer to point 10.1).
- 9.1.6 Queries or issues around a potential or perceived conflict of interest may be raised with the CCG's Conflicts of Interest Guardian who will operate in line with the NHS England 'Managing Conflicts of Interest: Revised Statutory Guidance for CCG's', June 2016.
- 9.2 If for any reason an employee is not comfortable raising their concern internally, they can raise their concern externally as follows:
- 9.2.1 NHS Improvement for concerns about:
- (a) how NHS trusts and foundation trusts are being run;
 - (b) other providers with an NHS provider license;
 - (c) NHS procurement, choice and competition;
 - (d) the national tariff;
- 9.2.2 Care Quality Commission for quality and safety concerns;
- 9.2.3 NHS England for concerns about:
- (a) primary medical services (general practice);
 - (b) primary dental services;
 - (c) primary ophthalmic services;
 - (d) local pharmaceutical services;
- 9.2.4 Health Education England for education and training in the NHS;
- 9.2.5 NHS Counter Fraud Authority for concerns about fraud and corruption.

9.3 **What happens if the employee is involved in the wrongdoing?**

If the employee is personally involved or implicated in wrongdoing at work, the CCG would encourage them to tell us about it under this policy. The CCG will take the employees co-operation into account in deciding on any appropriate disciplinary action.

9.4 **What information is required?**

- 9.4.1 So that the CCG can investigate the employee concern fully, as much detail as possible is required. The employee should describe their concerns in writing. However, if the employee thinks that the matter is urgent, it can be reported in person or by phone, and confirmed in writing later.
- 9.4.2 Depending on the nature of the issue raised, the CCG may need to involve external advisers or authorities. These might include the police, legal advisers, NHS Counter Fraud or any relevant public authority. If that is necessary, the CCG will inform the employee. The employee may be asked to provide information to any of these bodies and they must help them in whatever way is required.
- 9.5 All whistleblowing concerns will be logged by the CCG along with any action that has been taken as a consequence. This log will be stored confidentially by the appropriate officer within the CCG. The log will be monitored periodically by the CCG's Audit Committee Chair or the Chief Executive Officer if it is not appropriate to share with the chair of the Audit Committee.

10. **INVESTIGATION**

- 10.1 Once the employee has reported their concerns, the CCG will decide what investigations need to be carried out and by whom (i.e. a suitably independent investigator). The extent of the investigation and the timescale will depend on the nature of the employee concern.
- 10.2 When the CCG's investigation is finished, the CCG will let the employee know what has been found and any steps taken to resolve the matter. Investigations will be objective and evidence-based that focus upon identifying and rectifying issues, and learning lessons to prevent issues from recurring.
- 10.3 If misconduct is discovered as a result of any investigation under this procedure the CCG's disciplinary policy will be used, in addition to any appropriate external measures.

10.4 **What if the employee is not satisfied?**

If the employee is not satisfied that their concerns have been properly investigated, they should discuss this with the Head of Governance, in the first instance.

11. **PROTECTED DISCLOSURES**

- 11.1 The purpose of the whistleblowing policy is to encourage employees to raise concerns about wrongdoing within the CCG so that the CCG can deal with them. If employees raise their concerns with us in accordance with PIDA Act 1998, where they reasonably suspect malpractice in the workplace relating to any of the matters listed in section 5 above, they are protected by law from any recriminations. These

disclosures are called "protected disclosures". Employees are not entitled to this legal protection if they raise concerns that are not protected disclosures. For example, if they report something that they know to be untrue, or if they report wrongdoing to parties outside the CCG, other than in very limited circumstances.

- 11.2 An employee can report fraud and security matters to NHS Counter Fraud Authority via their Fraud and Corruption Reporting hotline and website: <https://www.reportnhsfraud.nhs.uk/> as NHS Counter Fraud Authority is a "prescribed person". This means that the employee disclosure is a "protected disclosure".
- 11.3 The law relating to making protected disclosures to public or other bodies is complex. If employees are unsure about what to do they should contact the HR team in the first instance.

12. HELP AND ADVICE

- 12.1 If employees need any more information about the whistleblowing policy, they can contact the HR team who will be pleased to help.
- 12.2 Employees may also contact the [Whistleblowing Helpline](#) or contact their professional body or trade union.

APPENDIX 1

GUIDANCE TO STAFF

Question – 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

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

In cases of fraud, corruption or bribery:

Do report all instances of fraud to the Chief Finance Officer, Counter Fraud Specialist or NHS Counter Fraud Authority [either via their confidential hotline (0800 028 40 60), or their online form found at www.reportnhsfraud.nhs.uk].

Do keep any evidence safe.

Do make notes on what you know/heard/saw.

Don't rely on someone else to make the call.

Don't ignore it.

Don't confront any suspect yourself directly.

Don't start an investigation yourself.

Don't discuss your concerns

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
- Chief Finance Officer
- Counter Fraud Specialist

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

BRIBERY ACT 2010

This section is provided for information.

Staff are not required to categorise any concerns they have but may find it useful to know how the Bribery Act defines bribery. The Act defines three key offences with regard to bribery, which are:

- Active bribery (offering, promising or giving a bribe);
- Passive bribery (requesting, agreeing to receive or accepting a bribe); and
- Bribery of a foreign public official.

It is also an offence for a corporate body not to have adequate preventative procedures in place to prevent bribery.

The reporting process outlined in this document and the Fraud, Corruption and Bribery Policy should be followed for all genuine suspicions of bribery.

APPENDIX 2

CONTACT DETAILS FOR RAISING OR ESCALATING A WHISTLEBLOWING CONCERN

Contact Details for Raising or Escalating a Whistleblowing Concern

Where possible all concerns raised by CCG directly employed / contracted staff should be made with the member of staff's Line Manager in the first instance. However, where this is not felt appropriate or where the matter has not been satisfactorily resolved or the matter is being raised by staff from third party organisations commissioned by the CCG the following people / organisations should be contacted:

Concerns relating to corporate governance / organisational mismanagement

Chief Executive Officer

The Chief Executive Officer will be responsible for:

- ensuring that employment law and the CCG's policies and procedures are adhered to throughout the investigation; and
- having an overview of the issues involved and will keep the Governing Body informed of the progress of any investigation as necessary.

Concerns relating to clinical quality and safety

Chief Nurse & Quality Officer – Brigid Stacey

NHS Derby and Derbyshire CCG

Cardinal Square, 10 Nottingham Road, Derby DE1 3QT

E-mail: brigidstacey@nhs.net

Concerns relating to fraud and corruption – key personnel

Chief Finance Officer – Richard Chapman

NHS Derby and Derbyshire CCG

Scarsdale, Nightingale Close, Chesterfield S41 7PF

E-mail richard.chapman@nhs.net

The Counter Fraud Specialist is responsible for the investigation of fraud against the CCG. They may be approached by an employee with suspicions, and are responsible for reporting the details to the Chief Finance Officer. They are required to investigate cases in accordance with relevant legislation and NHS Counter Fraud Authority guidance.

Your Local Counter Fraud Specialist is:

Ian Morris
Gwendolen House,
Gwendolen Road,
Leicester LE5 4QF

E-mail: ian.morris7@nhs.net

Telephone: 0116 295 4670

Head of Governance

The Head of Governance will be responsible for liaising with the CCG's solicitors where necessary.

Line Managers

Suspicious of fraud should be reported directly to the Counter Fraud Specialist or Chief Finance Officer. If a report is made to an employee's Line Manager, however, then the manager will be responsible for passing the details to the CFS or Chief Finance Officer.

CCG Audit Committee

The Audit Committee will review the register of reported suspicions on an annual basis. They will also review the Counter Fraud Specialist's final reports and consider any necessary improvements to controls.

APPENDIX 3

RECORD OF WHISTLEBLOWING CONCERN

Name of employee / anonymous	Department
Name and contact details of Line Manager / person receiving initial details of concern:	
Description of concern	
<p>Does the employee have any personal interest in the concern? (Yes / No)</p> <p>If 'Yes', does the concern warrant investigation through the Whistleblowing Policy or any other HR Policy?</p>	
Initial action taken by Manager receiving initial details of concern	

Details of person responsible for fully investigating the concern		
Outcomes		
Review	Yes	No
Issue Resolved		
Employee Treated Fairly / No Adverse Incidents		
Confidentiality Maintained		
Follow-Up Actions		

Organisational Lessons Learned (if any)

Reviewed by (name):

Signature:

Date:

Additional Comments: