

WHISTLEBLOWING POLICY

HR Policy:	VOY 08
Date Issued:	07/08/2013
Date to be reviewed:	Periodically or if statutory changes are required

Policy Title:	Whistleblowing Policy
Supersedes:	All previous Whistleblowing Policies
Description of Amendment(s):	New Policy for all employees
This policy will impact on:	All staff
Financial Implications:	No change
Policy Area:	HR
Version No:	9
Issued By:	Vale of York CCG
Author:	CSU Transition HR Policy Lead- adapted for local use by North Yorkshire and Humber commissioning Support Unit on behalf of Vale of York CCG
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APPROVAL RECORD

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Approved by Committees:	Vale of York CCG Governance Committee	
	Vale of York CCG Audit Committee	

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1.0 INTRODUCTION

1.1 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.

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.

Vale of York 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.

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 or the North Yorkshire and Humber Commissioning Support Unit (CSU) Workforce Department.

This policy is primarily for concerns where the interests of others, most especially service users, or of the CCG itself, are at risk.

If in doubt – raise it!

- 1.2 This policy aims to:
- 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 are making the disclosure in the public interest.
- 1.3 This organisation 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 local anti-fraud, bribery and corruption policy or safeguarding policies respectively. Please note that the principles of this policy will still apply.

2.0 POLICY STATEMENT

- 2.1 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).
- 2.2 The CCG encourages all staff to raise any concerns that they may have about the conduct of others in the CCG or the way in which it is run.
- 2.3 This policy applies to all employees and any agency or contract staff whilst they are working at the CCG, and is in accordance with the CCG's Equality and Diversity policy.
- 2.4 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 Local Counter Fraud Specialist (see Appendix 1) who, where appropriate, will arrange for the matter to be referred to the police for investigation and notified to NHS Protect. Please refer to the fraud 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 staff 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".
- 2.5 Where safeguarding concerns are raised these should be reported immediately to the responsible safeguarding officer in line with the safeguarding policy.
- 2.6 The three fundamental public service values underpinning the NHS and all public sector work, specified by the NHS Code of Conduct for Boards published by the NHS Executive in April 1994 are Accountability, Probity and Openness. All those who work in the public sector should be aware of, and act in accordance with, these values. Acting with honesty and integrity forms a cornerstone of the public sector values.
- 2.7 The CCG is a public sector body and its employees are required to be honest and impartial in the conduct of their business. All employees of the CCG should be aware of the Standards of Business Conduct documentation published on the CCG's intranet. The Governing Body is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the CCG.
- 2.8 All employees have a duty to report instances where they witness others failing to demonstrate the expected levels of integrity in their working life. This will include bribery, fraud, corruption or bringing the CCG, the NHS or wider public service in to disrepute.
- 2.9 This policy should be read in conjunction with the guidance in appendix 1.
- 2.10 Appendix 2 provides a summary of the PIDA Act 1998.

3.0 PRINCIPLES

- 3.1 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.
- 3.2 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 and regular training sessions will be organised for management of staff.

- 3.3 No employee will be victimised for raising a matter under this procedure for raising a legitimate concern. Any form of bullying, harassment, victimisation or retaliation of a Whistleblower will not be tolerated and will be managed in accordance with the CCG's disciplinary policy.
- 3.4 In the event that misconduct is discovered as a result of any investigation under this procedure the organisation's disciplinary procedure will be invoked in addition to any external measures
- 3.5 Where it can be demonstrated that an employee knowingly supplied false information when raising a concern the organisations disciplinary procedure will be invoked.
- 3.6 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. 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.
- 3.7 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.

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

4.0 THE PUBLIC INTEREST DISCLOSURE ACT 1998

- 4.1 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 good faith 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
 - a concealment of any of the above is being or is likely to be committed.

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 that making the disclosure is in the public interest is sufficient.

5.0 CONFIDENTIALITY

- 5.1 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.
- 5.2 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 whistleblower 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).
- 5.3 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.

6.0 HOW TO RAISE A CONCERN

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.

6.1 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.

6.2 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.

If you are unsure who to contact please ask one of the advice bodies listed below or someone from the CSU Workforce Team (see Annex 1 for contact details).

6.3 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:

- CSU Director of Human Resources and Governance , Amanda Wilcock (07917 086312) or
- Clinical Chair of the CCG Dr Mark Hayes (01904 555786) or
- CCG LAY Keith Ramsey (01904 555789)

- 6.4 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 approach a suitable organisation such as the Care Quality Commission or other regulatory body and do not disclose information which should properly remain confidential. Employees will need to confirm this with the person or organisation they decide to contact.
- 6.5 In light of the procedure laid down in this Policy it is expected that all employee 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 organizations and preferably discuss matters further with their manager before taking this step.
- 6.6 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.

7.0 INVESTIGATING PROCESS

- 7.1 Due to the varied nature of these sorts 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.
- 7.2 The CSU Workforce team shall advise those involved in the investigation in matters of employment law and other procedural matters.
- 7.3 Any potential disciplinary matters will be dealt with by the CCG in conjunction with the CSU and, where appropriate, relevant external bodies.
- 7.4 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 / Clinical Chair, or one of the designated persons described above.
- 7.5 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).

8.0 HELP AND ADVICE

- 8.1 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.
- 8.2 Free, independent and confidential advice can be obtained from the Whistleblowing Helpline for NHS and Social Care on 08000 724 725
- 8.3 In the NHS concerns can also be reported to the Department of Health via their Customer Service Centre on 0207 210 4850 or <http://www.dh.gov.uk/contact-dh/>

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

Public Concern at Work 3rd Floor, Bank Chambers 6 - 10 Borough High Street London, SE1 9QQ Tel: 020 7404 6609 Website: http://www.pcaw.co.uk	The Comptroller and Auditor General National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP Telephone: 020 7798 7999
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9.0 RESPONSIBILITIES

9.1 Director of Human Resources and Governance

The CSU Director Human Resources will be responsible for ensuring that employment law and the CCG's policies and procedures are adhered to throughout the investigation.

9.2 Chief Officer

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

9.3 Audit Committee

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

9.4 Managers

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

9.5 Staff

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

10.0 BRIBERY

10.1 Under the Bribery Act 2010, it is a criminal offence to:

- Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
- Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so.

11.0 EQUALITY STATEMENT

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 addition to offending background, trade union membership, or any other personal characteristic.

12.0 MONITORING AND REVIEW

- 12.1 The policy and procedure will be reviewed periodically by the CCG in conjunction with operational managers, the CSU and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.
- 12.2 The implementation of this policy will be audited at appropriate intervals and reported to the CCG Governing body.

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

In the case of fraud, **Do** tell the LCFS (Steven Moss or Glyn Thomas on 01904 725145/01904 725166), or the Chief Finance Officer or contact the NHS National Fraud and Corruption reporting line on 08000 724 725 or report online at www.reportnhsfraud.nhs.uk

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
- CSU Director of Human Resources and Governance/CSU Workforce Team
- Chief Finance Officer
- Local Counter Fraud Specialist
- Safeguarding Officer

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

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 and Safety Executive or Local Authority)
- Environmental dangers – the Environment Agency
- Others – 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 whistleblower 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 whistleblower 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]

Equality Analysis Initial Assessment**Title of the change proposal or policy:**

Whistleblowing Policy

Brief description of the proposal:

To ensure that the policy amends are fit for purpose, that the policy is legally compliant, complies with NHSLA standards and takes account of best practice.

Name(s) and role(s) of staff completing this assessment:

Janet Thacker

Date of assessment: 01/07/2013

Please answer the following questions in relation to the proposed change:

Will it affect employees, customers, and/or the public? Please state which.

Is it a major change affecting how a service or policy is delivered or accessed?

Will it have an effect on how other organisations operate in terms of equality?

If you conclude that there will not be a detrimental impact on any equality group, caused by the proposed change, please state how you have reached that conclusion:

No anticipated detrimental impact on any equality group. The policy adheres to the NHS LA Standards and best practice. Makes all reasonable provision to ensure equity of access to all staff. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.

Please return a copy of the completed form to the Equality and Diversity Manager