

WHISTLEBLOWING POLICY AND PROCEDURE – RAISING CLINICAL & OTHER CONCERNS

Summary

The purpose of the Whistleblowing Policy is to encourage and enable staff to raise clinical and other concerns within the Trust in a constructive and positive manner, rather than overlooking a problem or “blowing the whistle” outside. The policy and procedure should be read in conjunction with the Whistleblowing Frequently Asked Questions, and the ‘Being Open and Duty of Candour’ policy, available on the intranet.

The Francis Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry clearly indicated that the staff did not feel safe raising their concerns about the patient care that was being delivered. A key theme of the report was the requirement for openness, transparency and candour about matters of concern.

The aim of the whistleblowing policy and procedure is to encourage an open culture in the Trust and to reassure staff that concerns raised correctly under this policy will be listened to and acted on appropriately. It is an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. Staff who raise concerns that they reasonably believe are in the public interest are protected from adverse treatment by the Trust or from suffering a detriment, such as bullying or harassment, from another worker.

The Trust encourages staff to raise any concerns in the first instance with their line managers. This is to encourage concerns to be dealt with promptly and informally wherever possible.

Behaviour intended to deter anyone from raising a concern, or to victimise an employee for doing so, is not acceptable and this may be treated as gross misconduct.

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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. 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.

2. About this Policy

The standard integrated policy "Freedom to speak up: raising concerns (whistleblowing) policy for the NHS" was one of a number of recommendations of the review by Sir Robert Francis into whistleblowing in the NHS, aimed at improving the experience of whistleblowing in the NHS. This policy (produced by NHS Improvement and NHS England) is being adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns for the benefit of all patients. Our local policy and process adheres to the principles of the national policy and provides more detail about how we will look into a concern raised by you.

3. Roles and Responsibilities

3.1 Your manager is responsible for:

- Ensuring that all staff are familiar with and have access to this policy.
- Complying with the Trust's procedures and principles as outlined.
- Ensuring concerns raised are taken seriously and responding to concerns in a timely fashion.
- Evaluating the basis of any claim brought to their attention and referring upwards to a more senior manager if appropriate.
- Respecting confidentiality when handling sensitive/confidential information, and maintaining anonymity where necessary.

3.2 Human Resources are responsible for:

- Ensuring new staff are made aware of this policy and how they can access it.
- Advising managers and individuals in the application of the policy and procedure.
- Supporting Freedom to Speak Up (FTSU) Champions through appropriate access to information to enable them to triangulate intelligence from FTSU issues with other information that may be used as measures of FTSU culture or indicators of barriers to speaking up.
- Promoting a culture that encourages and supports speaking up and learning from experience is disseminated across the Trust.

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- Ensuring that workers have the knowledge, skills and capability to speak up and that managers listen and respond to issues raised effectively.
- Monitoring the application of the policy to ensure it is applied in a fair and consistent way to each concern raised.
- Keeping records, monitoring and auditing the number and nature of claims made, actions taken, and reporting this information to the Trust Board on an annual basis.

3.3 The Medical Director and Chief Nurse are responsible for:

- Ensuring that the FTSU Guardian has appropriate support and advice on patient safety and safeguarding issues
- Ensuring that effective and, as appropriate, immediate action is taken when potential patient safety issues are highlighted by speaking up.
- Ensuring that learning is operationalised within the teams and departments they oversee

3.4 You are responsible for

- Raising the concern as soon as possible in an objective and factual way, using this policy and accompanying procedure.
- Keeping records where possible of any incidents and potential witnesses.
- Cooperating with any investigation, if appropriate, including being available for interview (notice will be given), providing a statement and/or documentation.
- Maintaining confidentiality of patients and staff and any other individuals concerned.
- Ensuring any concern relating to the welfare of a child or young person is responded to in line with the Trust's 'Child Protection and Safeguarding Children Policy' and a referral made to children's social care if required.

4. What Concerns Can I Raise?

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

- Unsafe patient care including safeguarding concerns
- Safeguarding concerns relating to children and young people including child sexual exploitation
- Unsafe working conditions
- Inadequate induction or training for staff
- Lack of, or poor, response to a reported patient safety incident
- Suspicions of fraud (which can also be reported to our local anti-fraud team on 07468 750 121).
- A bullying culture (across a team or organisation rather than individual instances of bullying)

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- 4.2 For further examples, you may wish to view the Health Education England video which is available at <https://www.hee.nhs.uk/our-work/hospitals-primary-community-care/learning-be-safer/raising-responding-concerns>.

Remember that if you are a healthcare professional you may have a professional duty to report a concern. **If in doubt, please raise it.** Don't wait for proof. We would like you to raise the matter while it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.

- 4.3 Please note that this policy is **not** for people with concerns about their employment that affect only them – that type of concern is better suited to our Grievance Policy and Procedure which is available on the intranet.

5. Feel Safe to Raise Your Concern

- 5.1 If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of reprisal as a result. We will not tolerate the harassment or victimisation of anyone raising a concern. Nor will we tolerate any attempt to bully you into not raising any such concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action. Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

6. Confidentiality

- 6.1 We hope you will feel comfortable raising your concern openly, but we also appreciate that you may want to raise it confidentially. This means that while you are willing for your identity to be known to the person you report your concern to, you do not want anyone else to know your identity. Therefore, we will keep your identity confidential, if that is what you want, unless required to disclose it by law (for example, by the police). You can choose to raise your concern anonymously, without giving anyone your name, but that may make it more difficult for us to investigate thoroughly and give you feedback on the outcome.

7. Who Can Raise Concerns?

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

8. Who Should I Raise My Concern With?

- 8.1 In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager (or lead clinician or tutor). This will allow for prompt resolution at local level and aims to ensure concerns are addressed at an informal level. But where you don't think it is appropriate to do this, or you are not satisfied with their resolution, you can access the following stages of the procedure – see section 12 below.
- 8.2 If raising it with your line manager (or lead clinician or tutor) does not resolve matters, or you do not feel able to raise it with them, you can contact one of the Our

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Freedom to Speak up Champions. Contact details of our Freedom to Speak Up Champions is contained in Appendix 1.

8.3 You do not necessarily have to contact the Champion that has been assigned to your Division; you can contact any of the Champions.

- If you still remain concerned after this, you can contact:
 - Our Freedom to Speak Up Guardian who can be contacted on FTSUGuardian@rmh.nhs.uk. 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.

8.4 All of these people have been trained in receiving concerns and will give you information about where you can go for more support. If for any reason you do not feel comfortable raising your concern internally, you can raise concerns with external bodies, listed in Appendix 2.

9. Advice and Support

9.1 Details on the local staff support available to you can be found on the Occupational Health pages of the intranet. However, you can also contact the Whistleblowing Helpline for the NHS and social care, Public Concern at Work, on telephone 020 7404 6609 or email helpline@pcaw.co.uk. You may also contact your professional body or trade union representative (see Appendix 3).

10. How Should I Raise my Concern?

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

11. What Will We Do?

11.1 We are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns, and will respond in line with them (see Appendix 4). We are committed to listening to our staff, learning lessons and improving patient care. On receipt of your concern at step 2, the concern will be recorded and you will receive an acknowledgement within two working days. A central record will record the date the concern was received, whether you have requested confidentiality, a summary of the concerns and dates when we have given you updates or feedback.

12. Procedure for Raising Concerns

12.1 Step 1: Informal Management Stage

12.1.1 If you have a concern about a risk, malpractice or wrongdoing at work, we hope you will feel able to raise it first with your line manager, lead clinician or tutor (for students). This may be done orally or in writing.

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12.2 Step 2: Contact a Freedom to Speak up Champion

12.2.1 Our Freedom to Speak up Champions (see section 8.2 and Appendix 1) are available to provide confidential advice and support to you in relation to raising your concerns. They will not be directly involved in any investigation or complaint, instead their role will be to support you to get timely resolution to the concerns you have raised.

12.3 Step 3: Escalating Your Concern to the Freedom to Speak up Guardian

12.3.1 If you feel unable to raise the matter with your line manager, lead clinician or tutor, for whatever reason, or if the matter has not been resolved through support from a Freedom to Speak up Champion please raise the matter with our Freedom to Speak Up Guardian on FTSUguardian@rmh.nhs.uk.

12.3.2 This person has been given special responsibility and training in dealing with whistleblowing concerns. They will:

- treat your concern confidentially unless otherwise agreed
- ensure you receive timely support to progress your concern
- escalate to the Board any indications that you are being subjected to a detriment for raising your concern
- remind the organisation of the need to give you timely feedback on how your concern is being dealt with
- ensure you have access to personal support since raising your concern may be stressful.

12.3.3 If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made.

12.4 Investigation

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

12.4.2 Wherever possible we will carry out a single investigation (so, for example, where a concern is raised about a patient safety incident, we will usually undertake a single investigation that looks at your concern and the wider circumstances of the incident). The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring. Usually the report will be completed within 15 working days.

12.4.3 If your concern suggests a Serious Incident has occurred, an investigation will be carried out in accordance with the Serious Incident Framework (available on the intranet).

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12.4.4 We may decide that your concern would be better looked at under another process; for example, the Bullying and Harassment Policy and Procedure. If so, we will discuss that with you.

12.4.5 Any employment issues (that affect only you and not others) identified during the investigation will be considered separately, i.e. under the grievance procedure.

12.4.6 Where the concern raised is very serious the investigating manager must make the Chief Executive aware. A very serious concern would be one that relates to:

- the carrying out of a criminal offence;
- failure to comply with a legal obligation;
- danger to the health or safety of any individual;
- damage to the environment; and/or
- deliberate concealment of any of the above

12.4.7 If during the course of the investigation, a concern arises about an issue of fraud or corruption, the investigating manager will contact the Local Anti-Fraud Specialist for advice at the earliest opportunity.

12.5 Step 4: External Bodies

12.5.1 You can raise concerns formally with external bodies. Full contact details for support and prescribed bodies can be found in Appendix 2.

13. Communicating with You

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

14. How will we Learn from your Concern?

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

15. Board Oversight

15.1 The Board will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. This will be a standing agenda item at every Board meeting. We will include similar high level information in our annual report. The Board supports staff raising concerns and wants you to feel free to speak up.

16. Making a 'Protected Disclosure'

16.1 There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise a concern (to be able to claim the protection

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that accompanies it). There is also a defined list of 'prescribed persons', similar to the list of outside bodies in Appendix 2, who you can make a protected disclosure to. To help you consider whether you might meet these criteria, please seek independent advice from the Whistleblowing Helpline for the NHS and social care, Public Concern at Work or a legal representative.

A summary of the Public Interest Disclosure Act is provided at Appendix 5.

17. National Guardian Freedom to Speak Up

17.1 The new National Guardian (once fully operational) 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 above to take action where needed.

18. Responsibility

18.1 Overall responsibility for the application of this Policy rests with the Director of Workforce. Additionally the Board will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high level information in our annual report. The Board supports staff raising concerns and wants you to feel free to speak up.

18.2 This Policy will be reviewed annually, unless the Trust considers that an earlier review is appropriate.

19. Communication and Training

19.1 This Policy will be communicated to all persons working for the Trust and a copy is accessible on the Trust Intranet.

19.2 The Trust will ensure this Policy is communicated consistently through induction training, raising concerns awareness training, and regular bulletin, newsletter and policy reminders.

19.3 The Trust will provide training to Managers to ensure they understand their roles and responsibilities in relation to the Policy and Procedure if a concern is raised with them.

20. Policy Review

20.1 Overall responsibility for this policy and procedure rests with the Integrated Governance and Risk Management Committee.

20.2 This policy and any associated procedure(s) will be reviewed at the date stated and may be subject to change at that time, or at an earlier date if necessary, subject to consultation with staff representatives recognised for that purpose.

20.3 The Trust arrangements for Whistleblowing will be reviewed by the Audit and Finance Committee every two years.

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Appendix 1

Freedom to Speak up Champion Contact Details

- Cancer Services: FTSUcancerservices@rmh.nhs.uk
- Clinical Services: FTSUclinicalservices@rmh.nhs.uk
- Private Care: FTSUprivatecare@rmh.nhs.uk
- Corporate: FTSUcorporateservices@rmh.nhs.uk
- Clinical Research: FTSUclinicalresearch@rmh.nhs.uk

Please note you do not necessarily have to contact the Champion that has been assigned to your Division; you can contact any of the Champions.

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Appendix 2

Raising your Concern with an Outside Body

You can raise your concern outside the organisation with:

- NHS Improvement for concerns about:
 - how NHS trusts and foundation trusts are being run
 - other providers with an NHS provider licence
 - NHS procurement, choice and competition
 - the national tariff
- Care Quality Commission for quality and safety concerns
- NHS England for concerns about:
 - primary medical services (general practice)
 - primary dental services
 - primary ophthalmic services
 - local pharmaceutical services
- Health Education England for education and training in the NHS
- NHS Protect for concerns about fraud and corruption
- The NSPCC Whistleblowing Advice Line for concerns about children. They can be contacted on 0800 028 0285 or help@nspcc.org.uk

National Guardian Freedom to Speak Up

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

Prescribed Persons/Bodies

The following contacts for the prescribed persons were found on the gov.uk website.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf

The Audit Commission for England and Wales could be contacted if you have concerns relating to:-

The conduct of public business

Value for money

Fraud and corruption in local government and health service bodies

The Audit Commission

1st Floor Millbank Tower

Millbank, London SW1P 4HQ

Tel: 0844 798 3131

www.audit-commission.gov.uk/about-us/contact-us/whistleblowing

The Comptroller and Auditor General of the National Audit Office could be contacted if you have concerns relating to:-

Public businesses in England, this includes value for money, fraud and corruption in providing centrally funded public services

The Comptroller and Auditor General National Audit Office

157-197 Buckingham Palace Road

Victoria, London

SW1W 9SP

Tel: 020 7798 7999

www.nao.org.uk/about_us/concerns_about_public_spending.aspx

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The Charity Commissioners for England and Wales could be contacted if you have concerns relating to:-

The administration of charities in England and Wales or for funds given or held for charitable purposes

Charity Commission Tel: 0845 300 0218 www.charity-commission.gov.uk

The Information Commissioner could be contacted if you have concerns relating to:-

Data protection freedom of information rights and duties in England and Wales

The Office of the Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

Tel: 01625 545745 Fax: 01625 524510

Email: mail@ico.gsi.gov.uk

www.ico.gov.uk

The Health and Safety Executive could be contacted if you have concerns relating to:-

Health or safety at work or the health and safety of the public

Health and Safety Executive

2 Rose Court

Southwark Bridge

London SE1 9HS

Online form: www.hse.gov.uk/contact/workplace-complaint.htm

Tel: 0300 0031647

www.hse.gov.uk

Care Quality Commission could be contacted if you have concerns relating to:-

The provision of health care on the NHS or independent health care services

CQC National Customer Service Centre

Citygate Gallowgate

Newcastle upon Tyne

NE1 4PA

Tel: 03000 616161 www.cqc.org.uk

The Independent Regulator of NHS Foundation Trusts aka MONITOR is now part of **NHS**

Improvement could be contacted if you have serious concerns relating to:-

The regulation and performance of NHS foundation trusts that you can't raise directly with the Trust

Enquiries, complaints and whistleblowing team

NHS Improvement

Wellington House

133-155 Waterloo Road

London

SE1 8UG

Tel: 020 3747 0900

Email: enquiries@improvement.nhs.uk

www.improvement.nhs.uk

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Appendix 3

Relevant External Support Contact Details

Trade Unions

Name	Telephone Number	Web Site
Royal College of Nursing (RCN)	0345 772 6300	www.rcn.org.uk/raisingconcerns
UNISON	0845 355 0845	www.unison.org.uk
Unite	020 7611 2500	www.unitetheunion.org
British Medical Association (BMA)	020 7387 4499	www.bma.org.uk
Chartered Society of Physiotherapy	020 7306 6666	www.csp.org.uk
GMB	020 8202 8272 (London Region)	www.gmb.org.uk
British Dietetic Association	01212008080	www.bda.uk.com
Federation of Clinical Scientists	020 7403 8001	www.acb.org.uk
Hospital Consultants & Specialists Association	01256 771777	www.hcsa.com
Society of Radiographers	020 7740 7200	www.sor.org
British Association of Occupational Therapists		www.cot.co.uk

Independent Organisations

Name	Telephone Number	Web Site
Whistleblowing Helpline	08000 724 725	www.wbhelpline.org.uk
Public Concern at Work	020 7404 6609	www.pcaw.co.uk
Patients First		www.patientsfirst.org.uk
Medical Defence Union	0800 716 646	www.mddus.com

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Appendix 4 A Vision for Raising Concerns in the NHS



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

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Appendix 5

Summary of Public Interest Disclosure Act 1998

Introduction

This Act, which came into force on 2 July 1999, provides statutory protection for 'workers' who make a 'qualifying disclosure' through one of the 'specified methods' for disclosure.

Volunteers and independent consultants do not have any statutory rights under current disclosure regulations, though are still encouraged to raise concerns.

This summary provides basic definitions and an outline of the terms of the Act.

Worker under the Act

The definition of a worker includes; employees, agency workers and third-party contractors whose work is basically controlled by the alleged employer.

Qualifying Disclosure

A qualifying disclosure means any disclosure of information of which the worker has a reasonable belief that is in the public interest, and tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health and safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, or is being or is likely to be damaged;

AND/OR

- that information tending to show any matter falling within any one of the above points has been, is being or is likely to be deliberately concealed;

In order to count as a qualifying disclosure it does not matter whether the perceived malpractice was in the past, is in the present or will be in the future.

Specified Methods of Disclosure

In order to qualify for protection under the Act the worker must have made his/her qualifying disclosure in one of the following ways:

- to his/her employer or to a third party named in the employer's whistle-blowing procedure as a recognised external contact in such cases;
- in the course of obtaining legal advice;
- to a Minister of the Crown, where the worker's employer has been appointed by a Minister, e.g. NHS Trust;

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- to a 'prescribed person' - the details of these bodies/people and the matters in respect of which they are prescribed are contained in the Public Interest Disclosure (Prescribed Persons) Order 1999;

AND

- in exceptional circumstances the above means can be bypassed and the disclosure made to another person/organisation where the worker can show that the disclosure is based on a reasonable belief that it is in the public interest, is of an exceptionally serious nature, is not made for the purposes of personal gain and it was not reasonable in the circumstances to use the above means of disclosure.

Protection

Where a worker has made a protected disclosure and he/she is dismissed or subjected to any other detriment as a result of the disclosure, this will be unlawful. Compensation for unfair dismissal, where appropriate, will be calculated in accordance with the Public Interest Disclosure (Compensation) Regulations 1999.

Exceptions

A disclosure will not qualify for protection under the Act if:

- the person making the disclosure commits an offence by making it, e.g. breaches the Official Secrets Act;

OR

- it is a disclosure in respect of which legal professional privilege would apply;

OR

- the disclosure is not appropriately made through one of the specified methods for disclosure.

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