The Dudley Group NHS
NHS Foundation Trust

| Whistle Blowing Policy | | |
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| | **Policy Title:** | **Whistle Blowing Policy** |
| | **Name of Originator/Author:** | Human Resources Manager |
| | **Director Lead:** | Associate Director Human Resources |
| | **Target Audience:** | This policy applies equally to all staff working within the Trust and those who carry out work on the Trust's behalf including; Bank Staff, those on honorary contracts, research agreements, agency staff, voluntary workers, service partners and contractors. |
| | **Version:** | 4.0 |
| | **Date of Final Ratification** | 23rd July 2013 |
| | **Risk & Assurance Committee:** | Risk and Assurance Committee |
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| | **Registration Requirements Outcome Number(s) (CQC)** | Outcome: 14, Supporting Staff |
| | **Relevant Documents /Legislation/Standards** | • Fraud and Corruption Policy<br>• HC(90)9 – Department of Health guidance, Maintaining High Professional Standards in the Modern NHS<br>• Management of Health and Safety at Work Regulations 1999<br>• Public Interest Disclosure Act 1998 and subsequent amendments<br>• The Employment Tribunals (Constitution and Rules of Procedure) (Amended) Regulations 2010<br>• The Equality Act 2010 |

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| | | • Bribery Act 2010<br>• Fraud Act 2006 |
| | **Linked Procedural documents** | Incident Reporting Policy<br>Anti-Bullying and Harassment Policy<br>Grievance Policy<br>Disciplinary Policy<br>Fraud and Corruption Policy<br>Being Open Policy<br>High Professional Standards Policy<br>Anti- Bribery Policy<br>Supporting Staff Policy |
| Whistle Blowing Policy | **Contributors:** | Human Resource Managers<br>Staff-Side Representative (UNISON) |
| | **Consulted:** | **Designation:**<br>Human Resource Managers<br>Staff Side Representative Committee<br>Policy Group |
| | **EQUALITY SCREENED** | **Y**<br><br>**Date: 28/09/12** |
| | **EQUALITY IMPACT ASSESSMENT** | **N/A** |

**CHANGE HISTORY**

| Version | Date | Reason |
|---|---|---|
| 1. | 2007 | Policy development |
| 2. | Oct 2012 | Reviewed and updated |
| 3. | April 2013 | Inclusion of reference to Bribery, Act and Policy; changes to definitions; additional information on Training |
| 4. | July 2013 | Inclusion of references to 'Public Health Concern', Inclusion of comments from Policy Review Group and adjustments to accommodate changes to employment legislation. |

**A translation service is available for this document. The Interpretation/Translation Policy, Guidance for Staff is located on the intranet under Trust-wide Policies.**

## Contents

# THE DUDLEY GROUP NHS FOUNDATION TRUST

# WHISTLE BLOWING POLICY

## 1. INTRODUCTION

1.1 The Whistle Blowing Policy is not only intended to cover public interest concerns that fall outside the scope of other procedures, it is also to protect employees who make disclosures concerning management failure to follow policy or to act on employee concerns brought to their attention.

1.2 This Policy is designed to provide guidance and support; when raising concerns about wrongdoing at work and applies equally to all staff working within the Trust and those who carry out work on the Trust's behalf, including; Bank Staff, those on honorary contracts, research agreements, agency staff, voluntary workers, service partners and contractors.

## 2. STATEMENT OF INTENT

2.1 The Trust is committed to creating an open and honest culture that encourages responsible and timely dialogue about matters relating to risks to patients, staff, the public and organisational probity. The Trust encourages members of staff to raise genuine concerns about malpractice or impropriety at the earliest opportunity.

## 3. SCOPE

3.1 This policy establishes clear principles and processes to enable staff to express their concerns and discharge their duty under the Whistle-blowing legislation and aims to;

- encourage all staff to feel confident when raising concerns and to question an act where concerns about practice are experienced or witnessed
- provide avenues for staff to raise concerns in confidence and receive feedback on any action taken
- ensure that staff receive a response to concerns and that they are aware of how to pursue them if they are not satisfied
- reassure staff that they would be protected from possible reprisals or victimisation if they have made any disclosure in good faith.

3.2 The Whistle Blowing Policy also covers instances where:

- Fraud or Bribery is suspected to have occurred.
- Where there are serious concerns for patient safety.
- When all other Trust policies have failed to resolve the issues within the disclosure.

3.3 This policy does not replace the Trust's existing policies and procedures regarding Incident Reporting; reporting cases of potential Fraud or Bribery, Complaints or Grievances, nor does it replace the normal lines of communication between staff and their managers so that matters of concern may still be dealt with through normal management/advisory channels.

3.4 This policy does not prevent an employee from seeking external advice and support at any time, where they have concerns in the workplace in relation to Incident Reporting; reporting cases of potential Fraud or Bribery, Complaints or Grievances.

## 4. DEFINITIONS

**Qualifying Disclosure:** This is any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

- a criminal offence has been committed, is being committed or is likely to be committed
- a person has failed, is failing, or is likely to fail to comply with a legal obligation to which he or she is subject. This includes any contractual or other common law obligation, statutory duty or requirement or administrative law requirement. It could include professional malpractice or a failure to comply with any rules, regulations or codes or practice;
- a miscarriage of justice has occurred, is occurring or is likely to occur; false disclosure of information
- the health and safety of an individual has been, is being or is likely to be endangered
- sexual or physical abuse of patients emotional/institutional, or other unethical conduct.
- poor clinical practice
- malpractice
- professional misconduct
- nepotism
- the environment has been, is being or is likely to be damaged
- information indicating the occurrence of any of the above has been, is being or is likely to be deliberately concealed.

***Please note that this list is not exhaustive***

**Protected Disclosure:** The 1998 Public Disclosure Act (commonly referred to as the Whistleblowing Act) provides statutory protection including substantial compensation against employer reprisals to all employees who disclose information reasonably and responsibly in the public interest. A qualifying disclosure will be a protected disclosure where it is made, in the public interest:

- to the worker's employer, either directly to the employer or by procedures authorised by the employer for that purpose: **or**
- to another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure.

A further list of Disclosures and examples of malpractice that qualify as Protected Disclosures is enclosed at ***Appendix 2***.

**Regulatory Disclosures:** A disclosure that identifies a breach in the standards and regulations that apply either professionally or to the NHS Nationally. Regulatory bodies may include:

- Health and Safety Executive**;**
- Care Quality Commission (CQC)
- Monitor

Professional Regulatory Bodies would include:

- Doctors and Consultants; General Medical Council (GMC)
- Nurses and midwifery professionals; Nursing Midwifery Council (NMC)
- Health Protection Agency (HPA)
- Health Care Professionals Council

**Harrasment;** in general terms harassment is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic or the individual, and may be persistent or an isolated incident. Harassment can be verbal, non-verbal or written the key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

**Victimisation;** The subjection of a person to a detriment because he or she has brought or is going to bring, or is believed to have brought or be going to bring, proceedings under the Equality Act 2010 or internal Trust policies i.e. Grievance, Whistle-blowing, Incident Reporting, Fraud or Corruption. It can also be where a person has given evidence, information or support in connection the above. Co-workers are now personally liable for acts of victimisation and employers are vicariously liable for such acts unless reasonable steps are taken to prevent them.

**Malpractice;** is a type of negligence in which the professional under a duty to act fails to follow generally accepted professional standards, and that breach of duty is the proximate cause of injury to another who suffers harm. It is committed by a professional or her/his subordinates or agents on behalf of a client or patient that causes damages to the client or patient.

**General Medical Council (GMC);** is a professional body that all Doctors and Consultants are required to be registered with. The GMC promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.

**Nursing and Midwifery Council;** All qualified nurses are required to hold a registration pin number provided by the Nursing and Midwifery Council. The Nursing and Midwifery Council exists to safeguard the health and wellbeing of the public.

**Health Care Professionals Council (HCPC);** a regulatory body for Psychological and Social Care Health Professionals

**NHS Constitution;** Empowers Staff, patients and the public by setting out existing legal rights and pledges in one place, in clear and simple language. The Constitution also sets out clear expectations about the behaviours and values of all organisations providing NHS care.

**Public Concern at Work;** An independent whistle blowing charity who will provide legal confidential advice and discuss an employee's concerns and options. (for contact details see section 11)

**Trust Officers;** for the purpose of this policy a Trust Officer is a Manager or Director regardless of status or level within the organisation.

**Fraud;** any person who dishonestly makes a false representation to make a gain for themself or another or dishonestly fails to disclose to another person, informatin which he is under a legal duty to disclose, or commits any offence as defined in the Fraud Act 2006. (*see also Fraud and Corruption Policy*)

**Bribery;** Giving (or offering) or receiving (or requesting) a financial or other advantage in commection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith; Fraud Act 2006. (*see also Anti-Bribery Policy*)

## 5. DUTIES (RESPONSIBILITIES)

### 5.1 Chief Executive

The Chief Executive is responsible for:

- ensuring that appropriate arrangements are in place to support staff who wish to raise concerns under this policy.
- determining whether a concern is serious enough to warrant an inquiry or an investigation.
- ensuring that confidentiality is maintained.
- ensuring an appropriate response to the concern is provided
- managing concerns directly where they relate to the Associate Director of HR.

5.2 **Associate HR Director;** will assist the Chief Executive with any investigation or inquiry ensuring the policy is followed and all parties involved are supported. The Associate Driector of HR may liaise with professional bodies as required within their professional standards.

The Associate HR Director is responsible for:

- determining with the Chief Executive whether a case is serious enough to warrant an inquiry or investigation.
- ensuring the concern is investigated properly by the Line Manager or, where the line manager is implicated in the complaint, a nominated Investigating Officer
- appoint an Investigating Officer if there is a suggestion the Line Manager is implicated in the concern.

- report concerns and investigation reports received from the Line Manager/Investigating Officer to the Chief Executive
- ensuring that any corrective action identified as being required following an investigation, is undertaken
- providing feedback to the Line Manager/Investigating Officer to allow the individual who raised the concern to be briefed appropriately
- where required, maintain contact with the appropriate professional body
- ensure that confidentiality is maintained
- Ensure the interaction protocol between the Local Counter Fraud Specialist and Human Resources is applied and followed.

5.3 **Director of Finance**

In instances where fraud or corruption is suspected, the Trust's Director of Finance is responsible for enlisting the support and advice of the Local Counter Fraud Specialist and will receive any subsequent investigation reports and recommendations.

5.4 **Local Counter Fraud Specialist;** is contracted by the Trust to investigate and advise on any reported allegations of Fraud**.** Investigations undertaken by the Local Counter Fraud Specialist will be conducted in accordance with the standards defined in the NHS Fraud and Corruption Manual and the Secretary of States Directions.

5.5 **Investigating Officer**

The Investigating Officer may be the line manager of the member of Staff who has a concern; a Senior Manager of the Trust or a person who has been appointed by the Chief Executive and/or Associate Director of HR or in circumstances where a Director or Associate Director is implicated in a concern, the Chief Executive may be the Investigating Officer:

- ensuring this policy is adhered to during the investigation
- ensuring the investigation is conducted in accordance with this policy and remains fair and confidential
- providing an investigation report and feedback on recommendations to the Chief Executive and Associate HR Director.

5.6 **Human Resource Managers**

Human Resources Managers are responsible for providing specialist employment advice throughout the whistle blowing process and to support the individuals involved, regardless of their role or involvement.

5.7 **Line Managers**

Line Managers are responsible for:

- Ensuring that avenues are provided for staff to raise concerns without fear of any reprisals
- Ensuring that staff are aware of the Whistle Blowing Policy and know how to raise concerns

- Informing the Chief Executive of any concerns raised.
- Investigating concerns or contributing to any investigation by an appointed Investigating Officer
- Determining appropriate corrective action required following an investigation and reporting these to the Chief Executive.
- Providing feedback to the individual who raised the concern with the outcome of the investigation.
- Ensuring that confidentiality is maintained.

5.8 **Staff**

Individual members of staff have a right and duty to raise with the Trust any matters of concern they have about health service issues associated with the organisation and delivery of care. Staff are responsible for:

- understanding this policy and how to apply it
- understanding their rights under this policy and whistle blowing legislation.
- making their concerns known
- advising their Line Manager/Investigating Officer of any untoward actions that they consider have been taken against them as a result of expressing their concerns under this policy**.**

## 6. Whistleblowing Fundamental Principles

6.1 All members of staff are required to be aware of the following fundamental principles of this policy.

6.1.1 It is a condition of employment of all staff that they must report to local management any legitimate concerns about wrongdoings or malpractice. Professional staff are reminded that under their registration conditions they have a duty to report any suspected malpractice to their employer and governing bodies.

6.1.2 Staff must be watchful for illegal, fraudulent or unethical conduct and report anything of that nature about which they become aware.

6.1.3 An instruction to cover up a wrong doing is itself a disciplinary offence. If a member of staff is told not to raise or pursue any concern, even by a person in authority such as a Manager or Director, they should not agree to remain silent, but report the matter in line with Stage 3 of the process. (see ***Appendix 3***).

6.1.5 Any employee who has acted in good faith on having reasonable suspicion of any wrongdoings, malpractice or management failure to follow this policy will not be subject to any detriment even in circumstances where such suspicions prove unfounded. For further information and advice for Staff see ***Appendix 2.***

6.1.6 Feedback will be given on the management action being taken, with due regard to the Trust's duty of confidence e.g. details of disciplinary action. This will normally take place within 15 working days of the concern being received.

If a full report is not possible within the timesale a progress report with details of proposed action to be taken will be provided.

6.1.7 Any harassment or victimisation of a member of staff properly using this policy will be regarded as gross misconduct and a dismissible offence.

6.1.8 All reported allegations to Managers must be notified to the Chief Executive and/or Associate HR Director immediately (or at the earliest possible time). A case file of complaints will be retained within the Human Resources department

6.1.9 If two or more people share the same concern, the concern should be raised separately and not discussed further between whistleblowers. Additional advice and support for staff is available in ***Appendix 2***

### 6.2 False Allegations

6.2.1 If a 'whistleblower' is discovered to have made a malicious concern they know to be untrue they will not be afforded the protections in ***Appendix 2***. If following an investigation it is shown that a concern has been raised deliberately, falsely and/or with malicious intent either internally or externally (i.e. to the press), then action will be taken against the 'whistleblower' under the Trust's Disciplinary Policy, if employed by the Trust.

### 6.3 Anonymous Allegations

6.3.1 When a concern is raised anonymously it is difficult to investigate and difficult to clarify ambiguity. There is an increase in speculation of the whistleblower's identity and a greater risk of that whistleblower's identity being revealed.

6.3.2 In order for this policy to be successful it is desirable that reports of suspected malpractice should not be anonymous, however, if staff will not disclose information under any other circumstances then the process will allow for necessary anonymous disclosures. However, 6.1 and 6.2 will apply; Additional Advice and Support for Staff is available in ***Appendix 2.***

### 6.4. Safeguarding

6.4.1 Examples of concerns Staff member may have about the conduct of other individuals in a position of Trust within the organisation are:

- Unprofessional behaviour
- Bullying by Staff
- Any form of abuse (physical, sexual, emotional, neglect or financial)
- Name Calling
- Personal contact with children, young people and vulnerable adults which is contrary to the Trusts policies and codes of conduct.
- Any form of racial abuse
- Inappropriarte sexualised behaviour
- Knowledge about an individual's personal circumstances which may indicate they could be a risk to children or unsuitable to work with children and vulnerable adults.

***This list is not exhaustive*.**

6.4.2 For the process raising a concern that falls under safeguarding see ***Appendix 3*** and refer to the relevent Safeguarding Policy.

## 6.5. Confidentiality

6.5.1 All concerns will be treated in confidence, however, there may be a need for Staff to give evidence e.g. if they have witnessed a crime or in regard to any disciplinary procedures, which may ensue.

6.5. 2 Any concerns raised in confidence will be respected unless disclosure is essential in the interests of patients or security or through statutory or legal requirement.

## 7. SUPPORTING STAFF INVOLVED IN A WHISTLE-BLOWING INQUIRY/INVESTIGATION

7.1 Whistle-blowing places a significant amount of pressure on the whistleblower and they may require substantial support. The Trust's Supporting Staff Policy is designed for just such an occasion. Line Managers/Investigating Officers and HR Managers will review the Supporting Staff Policy and advise the concerned Staff members of the support available to them under this policy signposting them to the Supporting Staff Policy. Additional, advice and support for staff is enclosed in this policy at ***Appendix 2*** .

## 8. SUPPORT/TRAINING

Whilst there is no formal training in the application of this policy there is training available for the linked policies, in particular;

- Safeguarding Children
- Safeguarding Adults
- Incident Reporting Policy
- Equality and Diversity (Anti-Bullying and Harassment Policy)
- Anti Bribery Policy (training available from the Local Counter Fraud Specialist)
- Fraud and Corruption Policy (training available from the Local Counter Fraud Specialist)

This policy is published on the Trust's intranet (the HUB) and as such is available to all members of staff. Additional copies may be provided by the employee's Line Manager or Human Resources. At each level of the organisation support is available e.g.

- The Employee will receive support from their Line Manager, Human Resources and Staff Side Representative.
- The Line Manager will receive support and advice from Human Resources and, in the case of a suspected fraud, bribery or corruption from the Counter Fraud Specialists and Finance Director.

- Senior Managers will receive support and advice from Human Resources on employment matters and in the case of a suspected fraud, bribery or corruption from the Counter Fraud Specialists and Finance Director.
- The Finance Director will receive support and advice from the Counter Fraud Specialists, Human Resources and Chief Executive.

## 9. Process for Monitoring Compliance

The effectiveness of this policy document is routinely monitored (audited) to ensure the policy objectives are being achieved. The process of monitoring is described in ***Appendix 1***.

## 10. Equality Impact Assessment

Dudley NHS Foundation Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds. This policy has been assessed accordingly.

## 11 References


Public Sector Equality Duty: Part 11, Section 149 (2010) In: Equality Act 2010. Chapter 15. London: The Stationery Office. Available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf [Accessed 9/10/2012]

Equality Act 2010. Chapter 15. London: The Stationery Office. Available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf [Accessed 9/10/2012]

NHS (2012) The NHS Constitution: the NHS belongs to us all. Available at: http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Documents/nhs-constitution-interactive-version-march-2012.pdf [Accessed 9/10/2012]

Nursing and Midwifery Council
www.nmc-uk.org/Nurses-and-midwives/Raising-and-escalating-concerns

Health & Care Professions Council
www.**hcpc**-uk.org/registrants/**raisingconcerns**/whistleblowing

Public Concern at Work, (Independent Whistleblowing Charity)
www.pcaw.org.uk; helpline@PCAW.co.uk

British Medical Association
www.bma.org.uk

The Bribery Act 2010
www.justice.gov.uk/downloads/legislation/**bribery-act-2010**-guidance.pdf

The Fraud Act 2006
www.legislation.gov.uk/ukpga/**2006**/35/pdfs/ukpga_**2006**0035_en.pdf

*Appendix 1*

| Element to be monitored | Lead | Tool | Frequency | Reporting arrangements | Acting on recommendations and Lead(s) | Change in practice and lessons to be shared |
|---|---|---|---|---|---|---|
| **Monitoring and Audit** | **Associate HR Director** | **Log of all concerns received whether or not by HR, Staff Side Representative, Trust Auditors and Counter Fraud Specialists Annual Plan agreed with Audit Committee** | **Annual** | **Reported to the Equality and Diversity Management Group** | **Assessment of information to identify areas of concern for future action** | **Required changes to practice will be identified and actioned within a specific time frame. A lead member of the team will be identified to take each change forward where appropriate. Lessons will be shared with all the relevant stakeholders.** |
| | **Counter Fraud Specialist/ Finance Director** | **Report to include:**<br>**• Progress against Plan**<br>**• Outcomes**<br>**• Investigations**<br>**• Updates**<br>**• Case Closures** | **Quarterly** | **Audit Committee** | | |

## Additional Advice and Support to Staff *Appendix 2*

This appended document should be read in conjunction with ***Appendix 3*** and the Trust Whistle-blowing Policy. Notwithstanding process stages identified in ***Appendix 3***, staff should also be aware of the following:

**Examples of malpractice that qualify as a Protected Disclosure;** under the Public Interest Disclosure Act include the following:-

- Abuse or mistreatment of patients
- Exposing patients to unacceptable risk
- Acts of fraud and theft against the organisation and patients
- Dangerous Health and Safety situations
- Deliberately concealing information relating to any malpractice;
- Staff working under the influence of alcohol/substance misuse

There are existing procedures in place to enable staff to lodge a grievance relating to their employment and a range of policies and procedures that cover issues such as:

- harassment,
- fraud and corruption
- bribery,
- recruitment & selection,
- health & safety,
- safe guarding adults
- safe guarding children
- anti-bullying and harassment

It is important to make reference to the guidance and professional advice provided by all the relevant professional and regulatory bodies such as GMC, NMC, HCPC etc. This policy does not replace the Trust's Grievance Policy.

A confidential hotline, “NHS Fraud and Corruption Reporting Line” on 08000284060 may be used to report suspicions of fraud or corruption in the NHS

Alternatively, the Local Counter Fraud Specialist, Anthony Kelly can be contacted on 07528970392 or email: Anthony.Kelly@rsmtenon.com for matters relating to fraud or bribery.

**Internal Disclosures**

- Staff have the option to share their concerns in the first instance with colleagues or other representatives including trade union officials. Staff may also be accompanied by a work colleague or Staff Side representative when discussing allegations and suspicions with management.

- Once a concern is received the person hearing the concern has a duty to report the concern to:
  - Their Line Manager,
  - A Senior Trust Manager
  - Human Resources
  - Associate Director of HR
  - Chief Executive

  to avoid their vicarious liability.

- Any instances relating to potential fraud, bribery or corruption will be reported to the Trust's Local Counter Fraud Specialist. In these cases discretion is encouraged and in no circumstances should the accused be alerted or challenged.

- The legislation allows employees to seek legal advice about any malpractice concerns they may have.

- Professional staff may contact their professional registration bodies e.g. General Medical Council (GMC), Nursing Medical Council (NMC) for guidance about any malpractice concerns.

- The charity "Public Concern at Work" offers a free confidential advice service about concerns over serious malpractice at work. Their contact details are:

  Website: www.pcaw.co.uk Confidential Telephone: 020 7404 6609
  The telephone helpdesk is open from 9am – 6pm Monday to Friday.

**External Disclosures**

- The Secretary of State for Health, in order to promote accountability in public, allows NHS staff to report their honest and reasonable suspicions of malpractice to the Secretary of State without first raising the matter internally.

- If your concern is about fraud and corruption you can also contact the NHS Counter Fraud Hotline (0800 028 4060).

- **Regulatory Disclosures** – Special provision is made for disclosures to bodies prescribed under the Act. Protection will apply where the test for internal disclosure is met and, additionally, the employee reasonably and honestly believes that the information and any allegation contained in it are substantially true. Regulatory bodies relevant to the NHS include:
    - Health and Safety Executive
    - Care Quality Commission
    - Monitor

**Wider Disclosures**

- Examples of wider disclosures include Police, Media, MPs and Non-Prescribed Regulators. Staff are advised that wider disclosures are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain.

- In addition a further pre-condition to gain protection for a wider disclosure must be met. This is either:-
    - the person reasonably believed he/she would be victimised if the matter was raised either internally or with a prescribed regulator; or
    - there was no prescribed regulator and they reasonably believed the evidence was likely to be cancelled or destroyed; or
    - the concern had already been raised with the employer or a prescribed regulator without being addressed in a timely manner; or
    - the concern is of an exceptionally serious nature.

  Failure to meet these requirements means that the employee would not qualify for protection under this policy.

**Independent advice:**

If a concerned member of a Staff is unsure whether to use this procedure or they want confidential and independent advice at any stage, they may contact their trade union or the independent charity Public Concern at Work on 020 7404 6609 or by email - helpline@pcaw.co.uk (www.pcaw.co.uk). Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

## Whistle-blowing Process *Appendix 3*

The Staff member making a formal disclosure should as soon as practicable disclose, in confidence, the grounds for the belief of malpractice or impropriety to one of the Trust Officers, identified below. Any disclosure under this procedure does not, initially, require disclosure in writing. However, the concern/disclosure must be made in writing within 3 days of expressing the concern. The person making the disclosure should provide as much supporting written evidence as possible about the grounds for their belief.

1. Concerns will be made, as the concerned Staff member deems appropriate, to one of the following:

   - Your Line Manager
   - Your Directorate Head (General Manager, or Medical Head)
   - The Chief Executive, based in Trust Headquarters, Block C.
   - Chair of Trust Board, based in Trust headquarters, Block C

   Contact can be made by telephone, e-mail or in writing to Trust Headquarters, Russell's Hall Hospital, Block C, Pensnett Road, Dudley, DY1 2HQ. All correspondence should be marked in confidence to be opened by the addressee only. See ***Appendix 2*** for additional advice and support for Staff disclosing a concern.

1.1 **Any concern regarding child protection** must be referred to external agencies for investigation. If there are concerns that an adult working with children may have abused a child, or be unsuitable to work with children; the Local Authority Designated Officer (LADO) will be informed. Managers are encouraged to contact a LADO directly for discussion and advice. The Trust Policy for Safeguarding Children will apply.

1.2 **Concerns relating to vulnerable adults**, the Matron Safeguarding Vulnerable Adults or Adult Safeguarding lead should be informed. Referral to adult protection and the Police will need to be considered. The Trust policy for Safeguarding Adults will apply.

**2 Stage 1: verbal**

A member of Staff's initial concern(s) may take the form of a verbal notification to their Line Manager or, if they suspect their Line Manager is involved in or condoning malpractice, the member of Staff may raise the matter with;

- The next level of management
- A Staff Side/Union Representative.
- A member of HR

The expressed concern(s) must be considered, with the use of this policy, as to whether or not Staff concerns amount to a disclosure.

2.1. The Trust Officer (as listed above) receiving the concerns will arrange a meeting with the Staff Member to discuss the concerns in detail.

2.2 The concerned Staff member is entitled to be accompanied at any inquiry/investigation meetings. The person accompanying the Staff member may be a work colleague or Staff Side/Union representative.

2.3 The Trust Officer receiving the concern from the member of Staff may seek advice and support from the next level of management or Human Resources with regard to the operation of this policy and inquiry/investigation.

2.4 If the concern relates to Safeguarding Children the Safeguarding children Policy must be followed.

3 **If the Staff members concern(s) amount to a disclosure**, as defined within the Whistle-blowing Policy, it must be acted on immediately. See Internal Disclosure ***Appendix 2.***

3.1 The staff member expressing concern(s) must receive a response to their concern(s) with in **three working days** of raising the concern. If they do not receive a response within the given time period the member of staff may proceed to raise their concern(s) with a Senior Officer or the next management level of the Trust.

3.2 In the case where the original verbal disclosure was made to a senior member and no response was made within the given time period of **three working days** then the staff member can raise the concern(s) with the Associate Director of HR or the Chief Executive.

3.3 In all cases where the verbal concern(s) amounts to a disclosure the Staff member will recieve a response within **three working days** and will be required to place their concerns in writing providing as much information as possible e.g. identifying dates, times, incidents, witnesses and the name of the person(s) who are involved in the issue the employee is concerned about.

4 **If the Staff members concern(s) do not amount to a disclosure**, as defined within the Whistle-blowing Policy, they will recieve a response to their concerns within **three working days**; the individual will be encouraged, and the Manager will support, the Staff member to use the appropriate Trust Policy.

Alternative appropriate policies may be:

- Grievance Policy
- Anti-Bullying and Harassment Policy
- Fraud and Corruption Policy
- Incident Reporting Policy
- Safeguarding Adults
- Safeguarding Children
- Maintaining High Professional Standards (guidance document)

## 5. Stage 2

### 5.1 Raising a Concern(s) Formally

If the concerned Staff member is not confident that the above stages are appropriate for sharing their concern(s) they are encouraged to raise the matter formally. Where there is doubt as to the way forward, a member of Staff may seek a confidential meeting with their Line Manager or Human Resources to discuss whether it would be appropriate to make a formal disclosure under this policy.

5.2 The concerned Staff member may be accompanied at any meeting undertaken under this policy by a work colleague or Staff Side/Union representative.

5.3 A staff member seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as someone making a formal disclosure; regardless of whether or not a formal disclosure follows.

## 6. Process for Trust Officers on Receipt of a Disclosure

6.1 A Trust Officer, receiving a Staff members concern(s) may decline to become involved on reasonable grounds. Such grounds include previous involvement or interest in the matter concerned, incapacity or unavailability or that the Trust Officer is satisfied that a different Trust Officer would be more appropriate to consider the matter in accordance with this policy.

6.2 On receipt of the disclosure, the Trust Officer will confirm receipt (**within 3 working days**) and offer to interview, in confidence, the person making the disclosure. Such an interview will take place as soon as practicable after the initial disclosure.

The purpose of the interview will be for the Trust Officer to obtain as much information as possible about the grounds of the belief, the reasons for their disclosure and to consult about further steps which could be taken.

6.3 The Staff member making the disclosure may be accompanied by a Staff Side/Union representative or work colleague at the interview. The Trust Officer may be accompanied by an administrative assistant to take notes. Due regard will be given to confidentiality.

7. **Where the Trust Officer is satisfied that this Whistle blowing Policy is appropriate**; they shall decide on the nature of the investigation of the allegations. They will confer with the Human Resources, the Counter Fraud Specialist (if appropriate to the concerns) and/or the Chief Executive who will advise on the appropriate type of investigation i.e. internal investigation by Trust staff; or referral of the matter to the police or other appropriate public authority; or the commissioning of an independent enquiry, for example by the Trust's Auditors or Local Counter Fraud Specialist.

8 **If the Trust Officer decides that the Whistle-blowing Policy is not appropriate;** in respect of the matter disclosed, they shall inform the discloser, giving reasons in writing. These could be on grounds that that the matter should be, is already, or has already been the subject of appropriate proceedings under one of the Trust's other procedures; or that it is already the subject of legal proceedings, or has already been referred to the police or other public authority.

## 9 Stage 3

9.1 **If the Staff Member has been asked to cover up or say nothing about an event**; they should contact the Chief Executive or Associate Director of Human Resources to make their disclosure and are **not** required to undertake stages 1 & 2.

9.1.1 No staff member should be placed in a position whereby they are under pressure to cover-up or say nothing about an incident. In disclosing the event the Staff member will:

- Discharge their duty under the Whistle blowing Act
- Receive support and protection from any actions that may be construed as victimisation
- Provided they were not party to the event will not be held vicariously liable should legal action be undertaken.

9.2 **If the discloser (Staff Member) is not satisfied with the Trust Officer's decision in Stages 1 & 2**; they may ask the Chief Executive to review the matter of the disclosure, the information and evidence presented, the process followed by the Trust Officer and the grounds for the Trust Officer's decision. See also paragraph 13 below.

10 **If the Chief Executive decides that the matter should be reviewed further** ; a second Trust Officer may be directed to arrange an appropriate review of the previous investigation and may make further investigations or enquiries.

11 **If the newly appointed Trust Officer decides to uphold the view of the original Trust Officer's decisions/investigations;** following a review of the investigation report, and any further investigations that may be undertaken, no further action will be taken under the Trust's Whistle-blowing processes.

11.1 The discloser (Staff member) may then consider whether to refer the allegations of malpractice or impropriety to an external agency. See ***Appendix 2***, **External Disclosures and Wider Disclosures**

12 **If the newly appointed Trust Officer decides to uphold the views of the concerned member of Staff;** further actions will be undertaken in line with their recommendations and appropriate policies invoked depending on the nature of the concern and outcome of the investigation.

12.1 The concerned Staff member will be entitled to be informed of the outcome of this second review/investigation. However, in order to protect the confidentiality of any other Staff members involved in the expressed disclosure; the concerned Staff member will not recieve details of any actions to be undertaken.

13 **If the concerned Staff member considers that it is not appropriate to approach the Chief Executive** for any reason, you should approach the Associate Director of Human Resources who will liaise with the nominated non-executive director of the Trust, about an investigation.

14 **If the concerned Staff member does not consider it appropriate to approach either the Chief Executive or the Associate Director of Human Resources;** for any reason, you may approach a nominated Non-Executive Director directly, but you will need to explain your grounds for not approaching either the Chief Executive or the Associate Director of Human Resources.

## 15. External process

15.1 If on conclusion of stages 1, 2 and 3 the concerned Staff member reasonably believes that the appropriate action has not been taken, they should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- NHS Counter Fraud Service (0800 0284060);
- Secretary of State for Health, Richmond House, 79 Whitehall, London, SW1A 2NS (020 7210 4850)
- HM Revenue & Customs (0800 595000);
- Health and Safety Executive (0845 3450055);
- Environment Agency (0800 807060).