

RAISING CONCERNS AT WORK POLICY

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Version Control

Version	Description of Change(s)	Reason for Change	Author	Date
1.0	Amend in line with Raising Concerns at Work Guidance issued March 2014	Discussion with Staff Side representatives on 24.4.14	CM	
1.1	Various	Policy Harmonisation Group (PHG)	PHG	20.11.14 & 27.11.14
1.2		Policy Harmonisation Group	PHG	4.12.14
1.3	Review of comments received	Policy Harmonisation Group	PHG	18.12.14
1.4	Various	Policy Harmonisation Group	PHG	8.1.15 & 22.1.15
1.5	Final amendments including reference to Datix.	Policy Harmonisation Group	PHG	29.1.15
1.6	Amendments raised at JNCC	For JNCC approval by circulation	CM	18.2.15

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1. INTRODUCTION & PURPOSE

- 1.1 London North West Healthcare NHS Trust (the Trust) is committed to encouraging a climate of openness and dialogue endorsed by the positive working relationship between Trust management, staff and their accredited trade union representatives. The Trust is keen to promote an environment which enables staff to feel able to raise concerns which are in the public interest in a responsible way without fear of victimisation.
- 1.2 This Policy provides information, guidance and a procedure for raising concerns at work or “whistleblowing”. Both phrases are used in this Policy although “raising concerns” is favoured as it describes in a better way the broad range of approaches which make up raising concerns and “whistleblowing” has negative connotations for some.
- 1.3 This policy sets out the Trust's position and provides guidance on how staff can raise their concerns about something that is, or could result in, a danger (to patients, public or colleagues) professional misconduct or financial malpractice whilst maintaining the appropriate level of confidentiality and respecting the rights of staff, patients and the Trust.
- 1.4 Staff may be worried about raising such an issue, perhaps feeling it is none of their business or that it is only a suspicion. Staff may feel that raising the matter would be disloyal to colleagues, to managers or to the Trust. Staff may have said something but found that they had spoken to the wrong person or raised the issue in the wrong way and were not sure what, if anything, to do next. Any member of staff raising a concern as set out in Section 6 onwards of this Policy will be supported by their managers and protected from negative repercussions of raising these concerns.
- 1.5 The Trust has introduced this Policy to enable everyone to ‘blow the whistle’ safely so that such issues are raised at an early stage and in the right way. The Trust knows from experience that to be successful the Trust must try to deal with issues on their merits. The Trust welcomes genuine concerns and is committed to dealing responsibly, openly and professionally with them. Without staff help, we cannot deliver a safe service and protect the interests of patients, staff and the Trust. If staff are worried about an aspect of Trust business or service provision, the Trust would want it to be raised when it is a concern rather than to wait for proof.

2. COMMUNICATION AND AWARENESS

All staff will be made aware of this Policy in the following ways:

- At staff induction

- Via the Staff Handbook
- It will be publicised to all Trust staff via the Trust intranet.
- Line managers will bring the Policy to the attention of staff and will ensure those staff who do not have access to the intranet, receive details of where they can obtain a copy of the policy.
- As well as the intranet, the policy will be made available via the Trust's internet site.

3. KEY PRINCIPLES

- 3.1 The key responsibility of the Trust is to provide safe, cost effective, quality health care and to meet the needs of individual patients. Although Consultants have ultimate responsibility for the care of their patients, all NHS workers have a duty, and the right, to draw to the attention of their employer any matter they consider to be to the detriment of the interests of patients, visitors, or other workers.
- 3.2 The Trust actively supports staff being open and raising concerns. If you see or hear something that results in a concern about a risk, wrong-doing or malpractice in the Trust, then do something about it.
- 3.3 London North West Healthcare NHS Trust is, therefore, totally committed to enabling staff to contribute their views freely on all aspects of the Trust's activities, recognising that free expression of views can contribute to improving services, particularly relating to delivery of care and services to patients, clients, their family members or carers.
- 3.4 Any worker(s) who raise concerns honestly, with regard to public interest and are not themselves acting illegally, maliciously or for personal gain, will not be penalised for doing so.
- 3.5 All workers, including employees, are entitled to raise issues of concern openly, confidentially (the person's name is known by the Trust but is not disclosed unless this is required by law), or anonymously (the person does not identify themselves) (see Section 12).
- 3.6 All allegations will be properly considered and may be investigated to determine their validity.
- 3.7 Learning from things that go wrong works best when systems, processes, communication and training are taken into account. Where things have gone wrong and mistakes are made, the emphasis will be on understanding why, whether there are system, process, or some other causes for the problem. How any individual worker has acted, or not acted, will always be considered

in the context of the environment and support arrangements within which they work.¹

4. SCOPE OF THIS POLICY

- 4.1 The Policy applies to all Trust workers irrespective of whether they are an employee, agency or bank staff, the staff of one of the Trust's contractors, a student or volunteer. It does not apply to patients, service users, their relatives or friends wishing to raise complaints about their treatment. A separate complaints procedure exists for this.
- 4.2 The Policy is not intended to replace the requirements and guidance laid down by appropriate professional bodies although it may assist in applying them.
- 4.3 The Policy sets out the rights and responsibilities of all those referred to in 4.1 when raising issues of concern about Trust services which impact on staff welfare and/or patient care (other than those dealt with under the complaints procedure or grievance procedure). Staff not directly employed by the Trust (e.g. agency staff and students) may have access to separate arrangements for raising concerns. This could be via a separate employer and/or a professional organisation / trade union.
- 4.4 The Policy also refers to legal rights and protections. The law changes from time to time so any statement in this document about the law must be treated with caution. Anyone seeking clarification on the law will need up to date advice from an informed professional adviser.
- 4.5 In addition to the legal protections available under PIDA, the Trust encourages and protects employees, other workers and volunteers who raise any concerns relating to the quality of care afforded to patients, service users or their families.
- 4.6 Whistleblowing is where an employee or other worker, has a concern about a danger or illegality that has a public interest aspect to it: usually because it threatens others (e.g. patients, or the public). A grievance is, by contrast, a dispute about an employee's own employment position and has no additional public interest dimension. Employees who have a complaint about their own employment position should refer to the Trust's Grievance Policy.
- 4.7 Suspected issues relating to fraud may be dealt with under this Policy and / or in accordance with the Trust's Counter Fraud Policy (see Section 11).

¹ The Trust's Root Cause Analysis Investigation tool lists a number of factors for consideration: patient factors, staff factors, task factors, communication, equipment, work environment, organisational, education and training, team factors.

5. LEGISLATION

Public Interest Disclosure Act 1998 (PIDA)

- 5.1 PIDA is known in the UK as the whistleblowing law. The Act gives workers protection under the law by providing that employers should not victimize any employee who raises a concern internally or to a prescribed regulator. The Act covers all workers including temporary agency staff, persons on training courses and self-employed staff who are working for and supervised by the NHS. The Act does not cover volunteers, although this Policy does. For further information about the law see the Public Concern at Work website: <http://www.pcaw.org.uk/guide-to-pida>
- 5.2 The Public Interest Disclosure Act, 1998 (PIDA) sets out specific disclosures of information which are categorised as qualified disclosures and provides protection to workers against dismissal or adverse treatment in employment as a consequence of making the disclosure, within certain procedural requirements which are set out in this document.
- 5.3 A “qualifying disclosure” under PIDA means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and shows one of the following:
- a) That a criminal offence has been committed, is being committed or is likely to be committed
 - b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which s/he is subject
 - c) That a miscarriage of justice has occurred , is occurring or is likely to occur
 - d) That the health or safety of any individual has been, is being or is likely to be endangered
 - e) That the environment has been, is being or is likely to be damaged; or
 - f) That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- 5.4 Under the Act a disclosure may be made to:
- The employer or other responsible person
 - A legal adviser
 - A Minister of State
 - A prescribed regulator
 - Any other person when it is reasonable to do so.

The Bribery Act 2010

5.5 The Bribery Act 2010 came into force on 1 July 2011. The Act includes two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery).

5.6 Bribery is defined as:

A bribe is offering, promising, or giving a financial, or otherwise, advantage to another person with the intention of bringing about improper performance or reward. The Bribery Act also states that a person is guilty of an offence if they request, agree to receive, or accept a financial or other advantage intending that a relevant function or activity should be performed improperly by them or another. It further states that offering or agreeing to accept a bribe is an offence even if no money or goods have been exchanged.

Ministry of Justice guidance on The Bribery Act is available at <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

5.7 Any allegations of bribery should be reported to the Trust's Local Counter Fraud Specialist.

5.8 At the point this Policy was agreed, the Trust was in the process of developing an Anti-Fraud and Bribery Policy. Any staff concerned about these matters will find it useful to refer to this Policy once it is available on the Trust Intranet.

Enterprise and Regulatory Reform Act 2013

5.9 Changes to previous legislation were introduced to strengthen protection for workers who 'whistleblow' under the **Enterprise and Regulatory Reform Act 2013**. These changes were intended to:

- ensure that people only blow the whistle on matters which are in 'the public interest'
- allow whistleblowing claims to go through the Employment Tribunal system without being too easily dismissed for not being made in 'good faith'
- introduce redress for those who suffer detriment at the hands of a co-worker as a result of reporting a concern.

THE NHS CONSTITUTION

5.10 In March 2012, the Secretary of State for Health, published an updated NHS Constitution, which further reinforces the responsibility of staff to report concerns and of employers to act on them. This announcement followed the

publication of the Department of Health's response to the public consultation on proposals to change the NHS Constitution in respect to whistleblowing.

5.11 The changes to the NHS Constitution were intended to reflect the law as it currently stands and provide a reinforcement of pre-existing protections rather than introducing any additional statutory obligations on employers. The changes include:

- an expectation that staff should raise concerns at the earliest possible opportunity
- a pledge that NHS organisations will respond professionally and appropriately and signpost staff to where they can seek support and advice throughout the process
- clarity about current legal protections and rights for individuals under the Public Interest Disclosure Act where they follow the correct process.

5.12 The NHS Constitution and NHS Constitution Handbook are available at: www.gov.uk/government/publications/the-nhs-constitution-for-england.

PROCEDURES FOR RAISING CONCERNS

6 Informal Procedures

6.1 Regular team meetings are encouraged wherever possible and relevant. These offer opportunities for staff and managers to discuss and address issues of concern.

6.2 Alternatively, areas of concern should be reported to an appropriate line manager to ensure a speedy resolution.

6.3 Managers will:

- a) recognise that raising concerns can be difficult
- b) consider them fully and sympathetically
- c) take concerns seriously
- d) check whether the person raising the concern is doing so openly or confidentially, see Section 12
- e) seek advice from other professionals where appropriate
- f) take action where appropriate.

6.4 The manager will give feedback on any action taken. If the manager decides no action is necessary / appropriate, an explanation will be provided to the person who raised the concern.

- 6.5 Even though a concern has been raised informally, the manager may decide the concern is significant enough to warrant recording onto Datix, as in the formal procedure (see below). This will enable monitoring progress with the particular concern as well as across the Trust for similar issues.

7 Formal Procedure

- 7.1 The formal reporting procedure should be applied when a worker is dissatisfied with the outcome of the informal process or, for whatever reason, feels unable to report or resolve matters through their line management.
- 7.2 A worker must have a "reasonable belief" that the disclosure of information is in the public interest and shows one of the qualifying incidents (see 3.3 above) has been/is being/or is likely to happen. This must be more than an unsubstantiated rumour.
- 7.3 In these circumstances, staff should report concerns to their Head of Department, HR, most relevant Executive Board member or the Non-Executive Director for Raising Concerns (see Section 8). All staff with access to the Trust Intranet may also choose to enter the details of the concern they are raising, directly onto the Trust's Datix Incident Reporting System. This can be accessed by [clicking here](#). An appropriate manager will be contacted through Datix to consider what steps should be taken in response to the concerns which have been raised.

Unless the member of staff has themselves entered the details onto Datix, then the person they report their concerns to, should do so. This will enable proper reporting, follow up and monitoring across the Trust of concerns raised by Trust workers.

If the concern being raised is of a particularly sensitive nature and / or the worker who wishes to raise it is unsure as to how to do so using Datix, then they should discuss the matter in confidence with a senior member of the Clinical Governance Team.

Should the concerns involve either fraud or bribery then the matter should be reported to the Trust's Local Counter Fraud Specialist (LCFS) or Director of Finance.

- 7.4 This person will appoint an appropriate investigating officer to ensure that an investigation is carried out and must inform the Chief Executive if a serious allegation is being investigated.
- 7.5 If suspension or disciplinary action is contemplated, advice should be sought from the Human Resources Directorate.

- 7.6 The manager will give verbal and written feedback to the worker raising the concern. If no action is necessary / appropriate, an explanation will be provided. Care must be taken to ensure that staff raising concerns are as fully apprised as possible about the result of raising their concern without breaching confidentiality.
- 7.7 If, following this formal procedure, a worker is dissatisfied with the outcome; they can refer the matter in writing to the Chief Executive / Nominated Non-Executive Director. The Chief Executive / Nominated Non-Executive Director will respond within four weeks of receiving the information.

8. NON-EXECUTIVE DIRECTOR FOR RAISING CONCERNS

- 8.1 The role of the Non-Executive director is to:
- Ensure action is taken to give proper consideration to concerns raised with her / him
 - Continually monitor progress with such concerns
 - Assure her / himself that the person raising the concerns is being kept informed and that all necessary support is being offered
 - Ensure that the results of an investigation are dealt with at the appropriate level in the organisation
 - Ensure there is Board level awareness of whistleblowing, of the issues raised and progress in dealing with these.
- 8.2 In recognition of this, the Board has appointed a Non-executive Director and member of the Trust Board to this role. Any member of staff wishing to contact the Non-Executive Director may do so by referring to the contact details included under Raising Concerns on the Trust Intranet ([click here to access](#)).

CONTACTING OUTSIDE PERSONS/ORGANISATIONS

9 Professional, representative and regulatory organisations

- 9.1 A worker has the right to consult or seek guidance and support from their professional organisation or trade union and from statutory bodies such as the Nursing & Midwifery Council, the General Medical Council and the Health and Care Professions Council. This does not detract however from the importance of following the procedure given in this document for reporting concerns.
- 9.2 Any worker who is considering making a disclosure of confidential information because they consider it to be in the public interest, is advised to seek specialist advice (e.g. from professional organisations, trades unions etc.) before taking action.

- 9.3 The Act makes special provision for disclosures to regulators such as the Care Quality Commission, the Health and Safety Executive and the Inland Revenue. Such disclosures are protected where the whistle blower meets the criteria for disclosure to the employer **AND** reasonably believes that the information and any allegation in it are substantially true and relevant to that regulator.
- 9.4 The Care Quality Commission's role is to regulate health care providers. Staff may choose to contact the CQC in confidence by telephone: 03000 616161, by email to enquiries@cqc.org.uk or by writing to: CQC National Correspondence, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA.
- 9.5 The Health & Safety Executive's work covers a varied range of activities; from shaping and reviewing regulations, producing research and statistics and enforcing the law. For more information go to: www.hse.gov.uk/
- 9.6 The NHS Fraud and Corruption reporting line is a Freephone service via 0800 028 40 60. For more information go to: www.nhsbsa.nhs.uk/3100.aspx
- 9.7 Staff may raise concerns externally and be protected under the legislation in certain circumstances. Therefore, any person considering raising a concern externally should only do so having received advice that it is appropriate to do so from one of the organisations listed in this Section.
- 9.8 The Trust's Human Resources Department can also be contacted for safe and confidential advice and the Trust's recognised trade unions will be able to advise you which route is appropriate in your circumstances.
- 9.9 The Government-funded whistleblowing helpline, a free-phone service, is available to NHS staff and those in the social care sector. The helpline number will be clearly highlighted on the Trust's intranet; 08000 724 725.

10. Contacting the Media/Member of Parliament etc.

- 10.1 A worker who has made use of this procedure and still wishes to consult their local MP or contact the media is strongly advised to seek informed advice before doing so. Whilst some wider disclosures to the media are protected under PIDA, the circumstances under which they are protected are tightly defined.
- 10.2 A worker who decides to proceed with contacting the media should inform the Chief Executive / Nominated Non-Executive Director of the action they have taken or are proposing to take.
- 10.3 If workers are personally approached by a member of the media, they must direct the inquiry to the communications office.

11. FRAUD

11.1 Fraud is defined as:

Any person who dishonestly makes a false representation to make a gain for himself or another or dishonestly fails to disclose to another person, information which he is under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006. Appendix B is a summary of the Fraud Act 2006.

11.2 *“If your concern is related to a detected or suspected incidence of fraud or corruption, you should follow your local whistleblowing policy or the reporting procedure prescribed by NHS Protect by reporting directly to the Local Counter Fraud Specialist, Director of Finance, or via the fraud and corruption line or online reporting form where you are able to. You will still be entitled to make a whistleblowing complaint and receive protection under the Public Interest Disclosure Act”².*

12. CONFIDENTIALITY

12.1 **Openly raising a concern or whistleblowing**

The culture the Trust is aiming to achieve is where workers who have a whistleblowing concern feel it is safe and acceptable to raise the concern openly (where those involved know what the issue is and who has raised it). This openness makes it easier for the Trust to assess the issues, to work out how to investigate the matter, to get more information, to understand any hidden agendas, to avoid witch hunts and minimise the risk of a sense of mistrust or paranoia developing.

12.2 **Raising a concern confidentially**

While openness is the ideal, in practice some staff may have good reason to feel anxious about identifying themselves at the outset. In such cases staff may approach someone indicating their wish for their concern to be dealt with confidentially. This will mean that the staff member's name will not be revealed without their consent, unless required by law.

Workers who raise concerns confidentially, should be aware that, even though their name will not be mentioned by the Trust, this is not a guarantee that

² Extract from NHS Constitution Handbook 2012: Whistleblowing; Advice to all Staff

others will not try to deduce (correctly or otherwise) their identity. For example, where the worker has already voiced the concern to colleagues or their manager, others may assume they are the source of any disclosure made higher up in the Trust. This is another example of why openly raising a concern or whistleblowing is the best approach.

12.3 Raising a concern anonymously

This is where the worker raising the concern does not identify her or himself at any stage when raising the concern.

The Trust does not actively encourage workers to raise concerns anonymously. This is because anonymity makes it difficult to investigate the concern and impossible to liaise with the worker (to seek clarification or more information, to give them feedback and offer them protection).

If a worker wishes to remain anonymous when raising a concern, they should either put their concern in writing, not giving their name, or enter the relevant details on the Trust's Datix Reporting System, again without providing their name.

A worker who raises a concern anonymously may (or may not) find themselves included as part of an investigation into the concern. The investigator will not realise that the worker was the person who chose to raise the concern unless the worker volunteers this information at which point the concern is no longer raised anonymously and the worker should indicate whether they now wish their concern to be treated openly or confidentially.

When the Trust receives anonymous reports it will assess the information and establish whether it is possible or prudent to follow it up. Any anonymous concerns raised will be included in the Raising Concerns report to the Board / Board Sub-Committee.

12.4 All workers have a duty of confidentiality to patients and other workers. Workers also have an implied duty of confidentiality and loyalty to their employer. Unauthorised disclosure (i.e. one which does not meet the requirements set out in paragraph 5 above) of personal information or breach of duty to the employer will be treated seriously and may result in formal disciplinary proceedings.

12.5 Any worker who is considering making a disclosure of confidential information because they consider it to be in the public interest, is advised to seek specialist advice (e.g. from professional organisations, trades unions etc.) before taking action.

13. SUPPORT

13.1 A variety of sources of support are available to all those who work in the Trust. These include:

- The senior divisional leadership team
- Professional leads
- The Human Resources Directorate
- Trade union representatives
- All directors and the Chief Executive
- The Non-Executive Director for Raising concerns (see Section 8)
- A government funded free phone help line: 08000 724 725
- The organisations listed in section 9.

13.2 Training to support this policy will include:

- Training for all staff at Induction and communications / updates thereafter.

13.3 The Trust will not tolerate the victimisation, bullying or harassment of any individual who has raised a concern in accordance with this Policy. Any workers involved in such actions will be liable to disciplinary proceedings. There may also be legal repercussions.

14. VICTIMISATION, REPRISAL OR REPROACH

All allegations of victimisation, reprisal or reproach as a result of raising concerns in good faith under this Policy and in line with the Public Interest Disclosure Act (1998) will be investigated and could lead to disciplinary action.

15. MONITORING AND REVIEW OF CONCERNS RAISED UNDER THIS POLICY

Regular reports detailing: incidents of whistle blowing, actions taken as a result and outcomes including user experiences (see Appendix C), will be considered by the Audit, Governance & Risk Board Committee which may make specific recommendations to other Board Committees if appropriate.

16. FALSE OR MALICIOUS ALLEGATIONS

This policy is intended to enable and encourage workers to raise genuine concerns about possible wrongdoing at work without fear of reprisal and to reassure workers that such matters will be dealt with seriously and effectively by the Trust.

The Trust's management will assume that all protected disclosures are raised in good faith. However, in the event that a disclosure is frivolous, malicious or vexatious, the complainant raising it may be subject to disciplinary action in accordance with the Trust's Disciplinary Policy.

17. POLICY REVIEW

The policy will be reviewed every two years unless changes to legislation require an earlier review.

18. REFERENCES

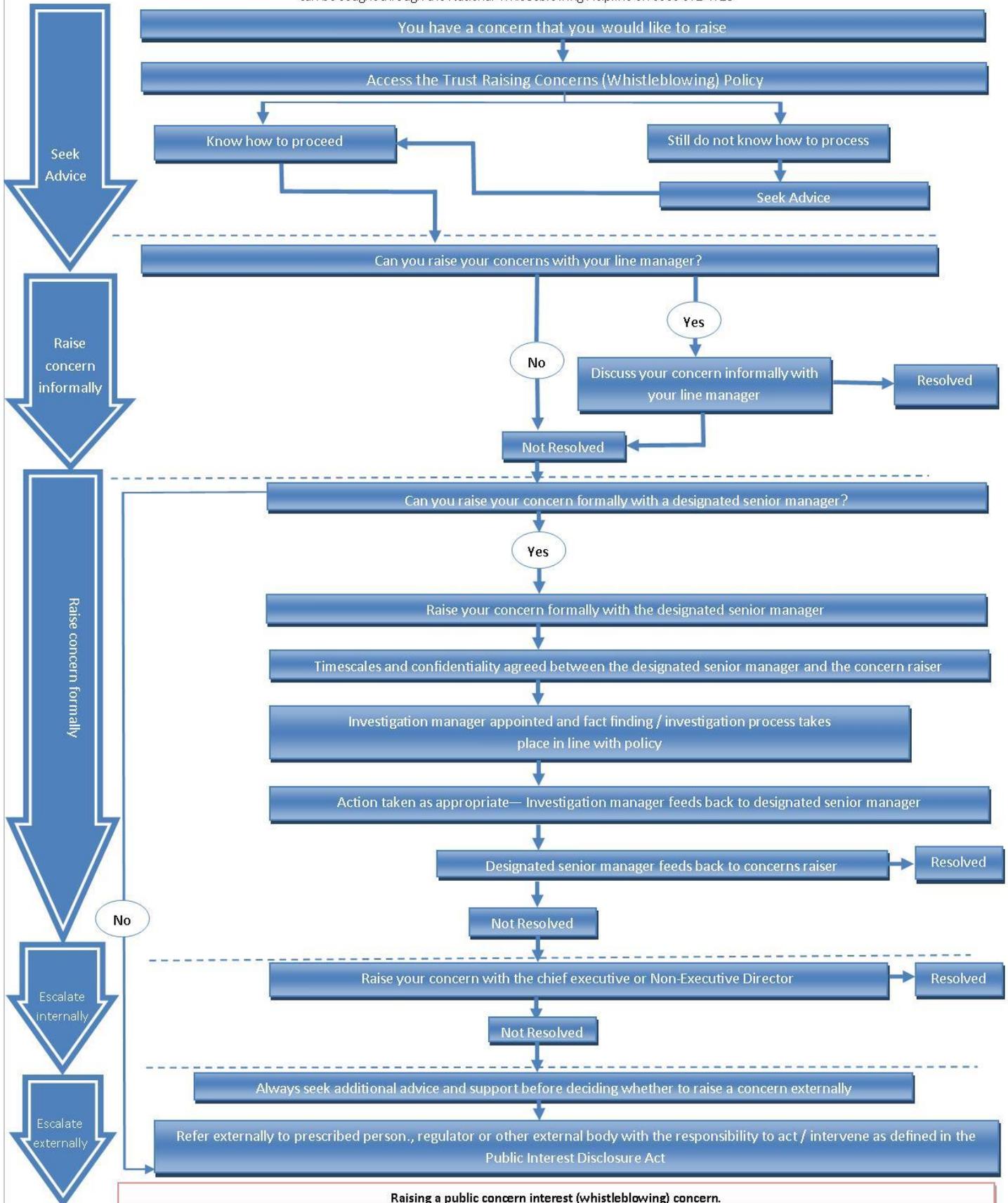
This policy has been developed by making reference to the following:

Ealing Hospital NHS Trust Whistleblowing Policy
NWLH NHS Trust Whistleblowing Policy
Ealing Hospital NHS Trust Guidance to Staff on Counter Fraud
London North West Healthcare draft Incident & Near Miss Reporting Policy
Fraud and Corruption Manual for Health Bodies
Public Interest Disclosure Act 1998
The Fraud Act 2006
The Bribery Act 2010
The Enterprise and Regulatory Reform Act 2013
Professional Codes of Conduct (NMC/GMC/HCPC)
CQC: Raising a concern: A quick guide for Health & Care Staff
HSC 1999/98
NHS Constitution
Code of Conduct for NHS Managers 2002
The Robert Francis QC Reports of the Independent Inquiries into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009
Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health and Social Care
Whistleblowing Arrangements Code of Practice; BSi PAS 1998:2008

Flowchart for raising concerns

*You should seek to highlight your concern within the Trust informally where possible.

Advice and support is available throughout this process. You can contact your trade union, HR, professional regulator, professional body or, alternatively, independent advice can be sought through the National Whistleblowing Helpline on 0800 072 4725



Raising a public concern interest (whistleblowing) concern.
 A public concern may include where:

- someone's health and or / safety has been put in danger because of an action or inaction;
- damage has been caused to the environment;
- a criminal offence has been committed;
- an employer fails to obey the law (such as not having appropriate insurance);
- a malpractice or wrong-doing has been covered up;

Whistleblowing Guidance

Confidentiality

If someone approaches you and informs you they wish to raise a concern or whistleblow “in confidence”, what should you do?

1. Thank the person for placing their trust in you.
2. Check with the person that they want something done about what they are about to tell you [if not, then why are they telling you?] and that to get anything done you are more than likely going to have to involve others.
3. Tell the person gently and firmly that you can undertake to keep their identity confidential between you although if what they tell you indicates something illegal or dangerous to themselves or others, then the confidentiality “agreement” would not apply.
4. Also tell the person that whilst you will not reveal their name to anyone, this will not stop others trying to guess who has raised the issue.
5. Ask them if they still want to raise a concern with you and clarify whether they wish to do so confidentially or openly.
6. If they do, then listen carefully to what they have to say.

If an investigation is required in the area where the whistleblower works, s/he should be advised of this.

Clinical professionals will want to consult their own Code of Practice. As an example, the Nursing Code of Practice states (paragraph 7)

*“You must disclose information if you believe someone may be at risk of harm,
...”*

Why is raising a concern anonymously discouraged by the Trust?

Anonymity makes it difficult to investigate the concern, to deter misuse and impossible to liaise with the worker (to seek clarification or more information, to assure them or to give them feedback).

Nevertheless, the Trust is committed to assessing any anonymous reports, assessing the information included and deciding whether it is possible or prudent to follow them up.

Concerns raised anonymously will be included in any report going to the Board or designated Board Sub-Committee.

Is Raising a Concern or Whistleblowing “snitching” or “grassing”?

No. We are all taxpayers and at various points in our lives we will all need to use NHS services. We deserve the best service possible for our money. When it comes to our turn to use an NHS service we will hope that the staff in that service have recognised the importance of raising any concerns they have.

The NHS Constitution recognises this and includes the expectation that all staff should:

“raise any genuine concern you may have about a risk, malpractice or wrongdoing at work (such as a risk to patient safety, fraud or breaches of patient confidentiality), which may affect patients, the public, other staff or the organisation itself, at the earliest reasonable opportunity³.”

If I call the Whistleblowing Helpline, have I reported the concern?

Essentially no. The purpose of a helpline is to provide a safe haven where the worker can confidentially discuss whether and how best to raise a whistleblowing concern. The information given and advice provided on a helpline are confidential between the helpline provider and the worker.

The Government-funded whistleblowing helpline is 08000 724 725.

Giving feedback to the person who raised the concern

Clearly, unless feedback is given, the person may assume that their concerns have not been considered seriously and may decide to pursue the issue through other channels including externally. The aim should be to give as much feedback as possible, whilst not breaching confidentiality; e.g. on the outcome on any disciplinary proceedings.

It should be made clear to everyone that the person was right to raise the concern (unless it appears that the concern was raised in a malicious or vexatious way).

³ The NHS Constitution:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/170656/NHS_Constitution.pdf.

Raising Concerns User Feedback

Obtaining feedback from those who have used the Trust's Raising Concerns Policy will help the Trust gain a better understanding of what it is like for staff to raise a concern. Also when it comes to reviewing the Policy, information gained from users will be very important in improving the next version.

This form should be completed by the person who raised the concern in discussion with someone who has not been involved in the particular concern who will be identified by the Corporate Governance Team.

Q1 Was the Policy clear to you in how to raise your concern?

Q2 Did you feel supported in doing so?

Q3 Did you experience any negative repercussions as a result of raising the concern?

Q4 Were you kept informed of progress with dealing with your concern?

Q5 Do you have anything to add that would be helpful to the Trust in reviewing its practices and procedures for raising concerns?

Appendix D**INVESTIGATION PROCEDURE FOR RAISING CONCERNS AT
WORK POLICY****Contents**

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1.0 INTRODUCTION

When a concern is raised it is the responsibility of the manager with whom the concern is raised, to take action.

On some occasions an investigation will be required. This procedure is designed to ensure that when an investigation into a Raising Concern (Whistleblowing) related issues is required, that a clear, fair, and robust process is used by the London North West Healthcare NHS Trust (the Trust).

2.0 PROCEDURE STATEMENT

2.1 The purpose of investigation under this procedure is to determine the **facts** about a concern or allegation. This will enable the Trust to take action to address the specific matters investigated, improve its capacity to deliver its objectives and identify areas for improvement (either individual, team or systems).

2.2 The Trust believes it is important that concerns are investigated in a professional manner to ensure that the facts are established, lessons are learned, appropriate actions are taken and followed by monitoring to assess the effectiveness of the actions.

2.3 The Trust is committed to ensuring all members of staff are treated fairly and equitably. This procedure is designed to ensure that all investigations into raising concerns related issues are investigated objectively, consistently and fairly.

2.4 The Trust is committed to ensuring good working relationships across the organisation and has adopted this approach to investigating concerns about the conduct of workers, and concerns raised by workers, to ensure that investigations are seen to be objective, fair, and non-adversarial.

2.5 Investigations should be completed as soon as possible. In cases of a single incident or non-complex issues it is expected that investigation reports will normally be completed within twenty one calendar days. In more complex cases, particularly those with a large number of potential witnesses this period may need to be extended.

2.6 The Trust will ensure that all staff undertaking investigations are competent to do so. An investigating officer will normally have completed training in investigation before undertaking investigations or have demonstrated his/her competence to investigate to the senior manager commissioning the investigation.

2.7 The Trust recognises that not all issues of concern should be investigated formally. The nature of some concerns, particularly those that are not likely to lead to formal action under a Trust procedure, will mean that formal investigation is inappropriate.

3.0 SCOPE

3.1 This procedure focuses on the investigation of raising concerns related issues.

3.2 It may not always be possible to investigate raising concerns related issues separately, under this procedure as these may form part of a wider investigation. In these circumstances, the approach outlined in this procedure should be followed as closely as possible.

3.3 For all cases where the subject of the investigation is a doctor or dentist employed by the Trust, the [Trust Procedure on Maintaining High Professional Standards] must be followed.

3.4 Where the concern to be investigated could be considered a criminal or fraudulent act it may need to be referred to either the Police or Local Counter Fraud Service in the first instance (see Disciplinary Procedure).

4.0 DEFINITIONS AND RESPONSIBILITIES

4.1 Senior manager

The senior manager will be responsible for:

- agreeing that there is a case for investigation
- appointing the investigating officer
- confirming the terms of reference for the investigation and considering any subsequent request to amend the terms of reference
- agreeing the indicative timescale for the investigation
- confirming that he/she is satisfied with the investigation report
- deciding what, if any, action to take as a result of the investigation report.

The senior manager must ensure that he/she is the most appropriate manager to oversee the investigation. If he/she believes another manager should oversee the investigation it is his/her responsibility to clarify this issue.

4.2 Investigating officer

The investigating officer is responsible for leading the investigation. He/she is responsible for:

- proposing the timescale for the investigation to the senior manager
- collecting all information relevant to the investigation (e.g. documentation, witness statements)
- proposing amendments to the terms of reference or timescale of the investigation to the senior manager
- writing the investigation report, (see guidelines on page 29)
- informing the senior manager of progress.

4.3 Human Resources

HR will be able to give advice into an employment related issue and how to conduct the investigation.

4.4 Specialist and professional advisors

The investigating officer may not have all the required knowledge to investigate fully. In these circumstances the senior manager may ask for additional support from a specialist advisor or professional lead either for the duration of the investigation or on an ad hoc basis.

4.5 Trade union/staffside representative or a work colleague

A recognised trade union/staffside representative or a work colleague (the companion) may accompany a workers under investigation at investigatory meetings. The companion may not answer questions on behalf of the worker under investigation, but may make representations on their behalf during the meeting. To ensure a fair investigation the companion may not be a potential witness to the matter under investigation.

4.6 Other staff

Other members of staff may be required to participate in the investigation as witnesses or to provide supporting information. Staff and their managers are expected to make every effort to cooperate fully with the investigating officer. The investigating officer will make every effort to ensure services aren't adversely affected by the involvement of staff in the investigation.

5.0 INVESTIGATION PROCESS

The investigation process will involve the following stages:

1. identify potential issues to investigate
2. decide whether an investigation is appropriate
3. agree terms of reference for investigation
4. communicate terms of reference and investigation process to relevant individuals
5. conduct investigation
6. write investigation report.

5.1 Identify potential issues to investigate

Issues that may require investigation may be identified in a number of ways:

- an incident
- complaint or concern raised by or with management.

These may be raised in writing or verbally.

Any worker (e.g. honorary appointees, contractors, employees) may raise concerns that may require investigation. Any worker who has a concern that is in the public interest, has an obligation to raise this with his/her immediate manager as soon as possible after he/she is aware of the issue.

Depending on the seniority of the line manager, s/he may need to report the concern to a more senior manager.

5.2 Decide whether an investigation is appropriate

The senior manager should decide whether there is a case for a formal investigation or whether some preliminary investigation should be conducted before a decision can be made. The senior manager may take advice, as appropriate, from an HR practitioner, or other Trust advisors (e.g. health and safety) before making a decision. The decisions available to the senior manager are:

- no further action required
- no formal investigation, but informal action required
- initiate formal investigation and appoint an investigator
- refer the matter to his/her manager (usually only in the case of issues which may have significant implications for the Trust).

The senior manager should make a written record of his/her decision and communicate this decision to the person raising the concern.

5.3 Agree terms of reference for investigation

The senior manager should confirm the terms of reference for the investigation to the investigating officer. The terms of reference must include:

- the name and title of the members of the investigation team (e.g. investigating officer, specialist advisors)
- issues to be investigated. The description of the issue(s) to be investigated should be as detailed as possible (e.g. the procedure or procedures allegedly breached; the date, time, location and individual(s) affected by an incident)
- resources required for the investigation
- any relevant policies or procedures
- the names of individuals to provide evidence to the investigation
- estimated timetable for the investigation, including when the investigation report will be provided to the senior manager
- confidentiality statement.

If for any reason the investigating officer considers the terms of reference should be revised he/she should discuss and agree this with the senior manager as soon as possible. Circumstances in which the terms of reference may be modified include new evidence coming to light, closely related issues or concerns being raised during the investigation. If the terms of reference are changed this should be communicated to all relevant parties as soon as possible (see 5.4 below).

5.4 Communicate terms of reference and investigation process to relevant individuals

The investigating officer is responsible for advising relevant individuals of the investigation once the terms of reference have been agreed. The investigation officer will

send a letter of invitation (see page 21) to attend an investigatory meeting stating the date, time and venue of the meeting. The letter will state that if the individual wishes he/she may be accompanied by a recognised trade union/staff organisation representative or work colleague at this meeting.

5.5 Conduct investigation

All workers are required to co-operate fully with internal investigations. The Trust will expect contractors and employees of partner organisations to co-operate with internal investigations, but the investigating officer may need to explain the request for information to the individual's manager (which in some circumstances may require a request for co-operation from the senior manager). Approaches to patients, visitors or the public should be discussed with the PALS team in advance.

Any individual providing information to the investigation should be provided with information on the issues under investigation. The information provided to the individual will be sufficient to allow him/her to contribute to the investigation, but may need to be limited, at the discretion of the investigating officer, to avoid prejudice to the investigation or breach of confidentiality. Individuals providing evidence to the investigation must be advised that he/she will be asked to provide a written statement or attend an investigatory meeting and formally confirm their evidence is true and accurate. They may be asked to provide evidence in person at a formal hearing.

The Trust recognises that in some circumstances staff may be concerned about providing evidence to an investigation. The Trust will ensure that staff are not victimised as a result of evidence provided to an investigation. In exceptional circumstances, where an individual is concerned that they may suffer a detriment from the subject of an investigation he/she may, at the discretion of the investigating officer, make an anonymous statement. In these circumstances the investigating officer must explain in the investigation report why the evidence was given anonymously.

The investigating officer should conduct the investigation which may include:

- gathering copies of relevant Trust or NHS policies and procedures and codes of conduct
- gathering copies of relevant documentation (e.g. written records, incident forms, floor plans, role profiles, rosters)
- interviewing individuals who can provide information (e.g. witnesses to an incident) and confirming an agreed written record of this interview
- gathering other relevant information
- interviewing any individuals under investigation.

Individuals invited to investigatory interviews should be given reasonable notice of the interview. Reasonable notice will in part be determined by the nature of the matter under investigation (e.g. if the matter requires immediate investigation. the interview will necessarily happen at short notice). Individuals under investigation that may lead to formal action should be given sufficient notice to arrange to be accompanied at an investigation interview. It is not expected that it will take an individual more than seven calendar days to arrange for a recognised trade union representative or work colleague to accompany him/her to the investigation meeting.

Unavailability of a recognised trade union representative or work colleague must not unduly delay an investigation. If an individual cannot be accompanied on the date originally requested by the investigating officer he/she must provide an alternative date and time that he/she will be available. This alternative date must be no longer than seven calendar days from the date of the original meeting date. In circumstances where no alternative date is provided within this timescale the investigating officer may either arrange another date or interview the individual without a companion.

The investigation should be balanced and impartial and reflect both sides of the case. An implication of this is that the investigation should seek to determine the context/background to the issues under investigation and whether this was an isolated incident, or had happened previously.

5.6 Write investigation report

The report should set out clearly the background to the investigation, how it was conducted, findings, conclusions and recommended actions. All supporting information should be included as appendices to the investigation. A standard format for the investigation report is provided on pages 22 - 24.

6.0 FOLLOWING REPORT SUBMISSION

6.1 Consider investigation report

The senior manager will consider the investigation report and must first decide whether he/she is satisfied with the report. If the senior manager is not satisfied with the report he/she will advise the investigating officer of this and advise him/her of further information required, or re-presentation/rewriting of the report. This should not unduly delay the completion of the investigation, but is essential to ensure that all relevant information is included in the report to support a decision about any further action required.

6.2 Determine and implement next steps

The senior manager will determine what action is required as a result of the investigation. This may include initiating a review of a Trust policy or procedure, informing external bodies of the outcome of the investigation (e.g. Department of Health, Care Quality Commission, Nursing & Midwifery Council, Health & Care Professions Council), taking action under another Trust procedure (e.g. arranging a formal disciplinary hearing).

An individual subject to the investigation will be informed of the next steps as a result of the investigation as soon as possible.

The senior manager has responsibility for ensuring the implementation of his/her decisions.

7.0 REFERENCES

This procedure has been developed by reference to the following:

NWLH NHS Trust Investigation Policy
NWLH NHS Trust Disciplinary Policy
Ealing Hospital NHS Trust Disciplinary Policy

NHS Brent Performance & Conduct Policy
NHS Ealing Disciplinary Policy
NHS Harrow Disciplinary Policy
Human Rights Act
Employment Relations Act
Employment Act
ACAS Guidance Disciplinary & Grievance Procedure.

TEMPLATE INVITATION TO INVESTIGATION MEETING

**ADD TRUST AND DEPT LETTER HEAD
(add contact details – telephone, fax and email)**

Date

Private and confidential

**Name
Address**

Dear (name)

I am writing to confirm the arrangements for an investigatory meeting on (date) at (time) in (venue). The terms of reference for this investigation have been agreed with [insert name / job title of senior manager] and are:

[insert edited terms of reference as bullet points]

[Note: Terms of reference sent to witnesses should be edited to make them aware of only those elements relevant to their involvement. Where this is the case, a note should confirm this; e.g.

These terms of reference have been edited to enable your participation whilst preserving confidentiality.]

The meeting will also be attended by (name and title of specialist if applicable), who will participate in the meeting where appropriate. You are entitled to be accompanied at this meeting by a recognised trade union/staffside representative or work colleague who is not likely to be interviewed as a witness. The meeting will also be attended by (name/title) who will be taking notes.

Should you be unable to make this date and time, please contact me on ext. (insert ext.) so that we can make suitable alternative arrangements.

Yours sincerely

**MANAGER
INVESTIGATING MANAGER
CC: Name – HR JOB TITLE**

GUIDELINES ON WRITING INVESTIGATION REPORTS

These guidance notes are intended to provide a framework for writing an investigation report and the format laid out below is only a suggested one. The aim of the report is to demonstrate that a full and impartial investigation has been conducted and to make all evidence available to the manager who has to decide what, if any, action should be taken. The report will also be part of the evidence available at any subsequent formal hearing should one be necessary.

1.0 INTRODUCTION

1.1 This should summarise why the investigation was carried out e.g. to investigate a concern that has been raised.

1.2 The date when the concern was raised, how it was raised and how it led to this investigation should be specified.

1.3 The terms of reference for the investigation and the senior manager who requested it.

3.0 BACKGROUND INFORMATION

Only information relevant to the case should be included and this will differ from case to case. It may include:

(a) Type of ward, department, team, professional group

(b) Responsibilities of post holder (related to duties in the job description)

(c) Procedures, policies, professional codes of practice (these can be appended to the investigation report, e.g. drug administration policies, NMC code of conduct)

(d) Diagrams/ floor plans to show where alleged incidents took place

(e) Rotas/timesheets to demonstrate who was on duty.

(f) If possible patients' notes should not be included. In view of the issues this raises around confidentiality it is more appropriate to make the notes available for reference on the day of the hearing; if it is essential to include notes to blank out the names, addresses and other information that can identify the patient.

4.0 BACKGROUND TO THE ALLEGATION

This should be included only if relevant to the matter under investigation e.g. any notable events that took place on the day in question.

5.0 SUMMARY OF THE INVESTIGATION

5.1 This is the chronological account of how the investigation was conducted and will include such matters as:

(a) Names and designations of people spoken to as part of the investigation and the dates the interviews took place. A brief summary of what the witnesses said will be helpful and reference to appendices should be made.

(b) An account of how the employee responded to the allegation(s)

(c) The typed, signed version of the notes and the statements received from the employee and witnesses should be included as appendices (hand-written notes should be retained for reference).

6.0 STATEMENT OF FINDINGS

- 6.1** The information gathered during the investigation should have allowed the investigating officer to establish the facts and should state where witnesses' versions of events and statements support the facts or any points that are in dispute.
- 6.2** The employee's response and any evidence that supports or contradicts their version of events should be stated.
- 6.3** If appropriate the investigating officer should state how they would expect the employee to act in the given situation and the degree to which the employee's actions fell short of the expected behaviour/performance with reference to any professional/departmental/Trust standards.
- 6.4** If appropriate the investigating officer should state any wider implications of any misconduct or capability for the Trust, NHS, or profession.

7.0 CONCLUSION

This is a very brief statement outlining the conclusions the investigating officer has drawn from the investigation and indicating whether or not he/she believes that there is a case to answer under the Trust's (formal) disciplinary procedure.

The conclusion will normally be one (or more) of the following outcomes:

- a) that there are procedural, or other issues that the Trust should address to reduce the risk of future occurrences
- b) that there is no evidence that there is a case of misconduct to answer; (this may be supplemented by a recommendation for training and development, or other measures)
- c) that there is evidence of a case of misconduct for one or more employees to answer.

Note: the investigating officer should not indicate the level of warning they believe is appropriate under the disciplinary procedure.

8.0 RECOMMENDATIONS

The investigation report may also include additional recommendations about action the Trust should consider as a result of the conclusions reached.

GUIDELINES FOR CONDUCTING INVESTIGATORY INTERVIEWS

These guidelines refer to formal investigations and are intended as a best-practice guide.

1. Prior to the investigation commencing, the investigating officer should meet with the employee whose behaviour/performance is being investigated so that the allegations can be put to him/her and the timetable and investigation process can be explained.
2. At this meeting the employee should be asked whether they would like the letter on **page 28** to be sent to anybody else (e.g. a recognised trade union/staffside representative or work colleague). For impartiality reasons, the work colleague must not be a potential witness to the allegations/incident being investigated.

3. Any member of staff being interviewed (including witnesses) should be given the opportunity to be accompanied by a recognised trade union/staffside representative or a work colleague not likely to be involved in the investigation.
4. The investigating officer should prepare a checklist of key questions for each interviewee.
5. The purpose of the meeting should be outlined to the interviewee at the outset and all parties present introduced.
6. The recommended structure of the interview is to give a brief factual account of the allegation/complaint/issue being investigated and then to note down the interviewee's statement of account, clarifying dates, times, locations, conversations and anything else considered to be of relevance. This account needs to be factual and objective, and an individual's personal views or assumptions should be classified accordingly.
7. A reminder of the need for confidentiality should be given to all interviewees and the serious implications of any breach of confidentiality.
8. At the end of the interview, interviewees should either be asked to sign a record of the notes of the meeting, as they may need to be submitted as part of the investigation report and/or a possible formal hearing or confirm agreement the written record of the interview which will normally be available a few days after the interview. The interviewee may comment on the accuracy of the record of the interview, but may not amend the record to include additional information. If the interviewee wishes to submit additional information this should be included in a separate statement. If the interviewee wishes to submit a statement he/she should indicate this to the investigating officer and agree a deadline for its submission.
9. The interview record is intended to be a correct record of the discussion and will be produced in a format to reflect this.
10. If an employee does not agree with the notes and refuses to sign this should be noted if they are submitted as evidence. Otherwise, unsigned statements / transcripts should be confirmed, by the witness, as a true record at the hearing.
11. Witnesses should be notified during the investigatory process that they might be required to attend any formal hearing to corroborate their statements in the presence of the employee against whom formal action is being considered. This can help to discourage vexatious or frivolous statements being given.

Equality Impact Assessment (EqIA) Forms and Guidance for HR Policy Harmonisation

Policy being assessed: Raising concerns (Whistleblowing)	
Summary purpose, aims, objectives of the policy: To encourage a climate of openness and dialogue endorsed by the positive working relationship between Trust management, staff and their accredited trade union representatives. The Trust is keen to promote an environment which enables staff everywhere to feel able to raise concerns which are in the public interest in a responsible way without fear of victimisation.	
Date of Assessment:	8th January 2015
Contact person for assessment: Sajjad Iqbal	
Members of the assessment group: Joyce Inoniyegha, Diljit Sidhu, Sandra Williams, Clive Martinez, Mandi Sehmi.	

Stage 1

Questions	Answers
1. Does the policy link to others?	Counter fraud, bullying and harassment, grievance, disciplinary.
2. Who is intended to benefit from the policy and in what way?	Patients and other recipients of Trust services by providing a means whereby workers may raise concerns and contribute to the improvement of services.
3. Are there any concerns that this policy could have an impact with regard to equality and human rights legislation, that has not been addressed as part of the policy- SPECIFICALLY in relation to:-	
	Yes No
Age	X
Disability	X
Gender reassignment	X
Marriage and civil partnership	X
Pregnancy and maternity	X
Race	X
Religion and belief	X
Sex	X
Sexual orientation	X
Human rights	X
4. If Yes, to any of the above, please briefly state evidence:	
5. Do the differences amount to discrimination?	Yes / No
6. If Yes, could it be justifiable e.g. on grounds of promoting equality of opportunity for one group? Note: indirect discrimination can be justifiable if it is as a result of using proportionate means to achieve a legitimate aim	Yes / No

7. If Yes, please give reasons:

8. From the initial Stage 1 of the EqlA (i.e. the answers to questions 3, 4, 5, 6 and 7) should a full EqlA be carried out to ensure those areas identified are addressed? No.
If Yes, specify which areas need to be addressed: