

# **NHS Southport and Formby Clinical Commissioning Group and NHS South Sefton Clinical Commissioning Group**

## **Whistleblowing/Raising Concerns Policy**

### **Freedom to Speak Up**

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Any changes made to this policy should be outlined in the below Review and Amendment Log. In the event of any changes to relevant legislation or statutory procedures this policy will be automatically updated to ensure compliancy without consultation. Such changes will be communicated.

Version No	Type of Change	Date(s)	Description of change
V1		Feb 2019	Specific CCG details included
V2		April 2019	Updated to reflect comments from SSCCG Audit Committee
V3		January 2020	Updated to reflect views of MIAA Counter Fraud lead
V4		March 2021	Updated in accordance with previously agreed review date and in accordance with the Audit Committee's responsibility to review the policy annually

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## **1. Introduction**

NHS South Sefton CCG and NHS Southport and Formby CCG are committed to ensuring the highest possible standards of service and the highest possible ethical standards in delivering this service. It is the responsibility of all staff to ensure that if they become aware that the actions of other employees or officers or anyone working for, with, or connected to it, might compromise this objective, they will be expected to raise the matter.

The CCGs encourage all individuals to raise any concerns that they may have about the conduct of others in the organisation, independent contractors, or organisations with which the CCGs have a relationship/contract.

The recommendations of “Freedom to Speak Up”, the independent review commissioned by the Secretary of State and chaired by Sir Robert Francis QC into whistleblowing in the NHS were published in 2015. The purpose of the review was to provide independent advice and recommendations on creating a more open and honest reporting culture in the NHS.

The review recommended a ‘standard integrated policy’, aimed at improving the experience of whistleblowing/raising concerns in the NHS.

The CCGs’ local processes have been integrated into this single policy resulting in the “Whistleblowing Policy/Raising Concerns – Freedom to Speak Up” policy,

The Public Interest Disclosure Act (PIDA) 1998 ensures protection for employees who have concerns about the organisation they work for. This policy is created to encourage a climate of openness and dialogue, recognising that actively encouraging staff to raise concerns about health care, probity and quality matters responsibly and without delay, ensures that the interests of patients are always put first.

## **2. Scope**

In accordance with PIDA, this policy applies to ‘workers’ of the CCGs, including substantive and temporary staff, bank staff, agency staff, contracted staff and trainees. The policy applies to volunteers and students, although they are not covered by PIDA protection.

This policy will be applied equally to all staff covered by the policy and in accordance with the CCGs’ Equality and Diversity Policy.

Staff private employment matters such as personal employment contract disputes and grievances are outside the scope of this policy and PIDA.

## **3. Policy Statement**

The CCGs have a responsibility as an employer to ensure that staff are aware of their right to raise concerns about potential poor practices or wrong-doing within their organisation this is often referred to as “whistleblowing”.

## **4. Responsibilities**

### **4.1 Responsibilities of the CCGs**

- To monitor this procedure and the concerns/issues that are raised as a result.
- To provide a point of contact for staff who wish to raise concerns under the provision of this policy and who feel it is inappropriate to raise the matter through their Line Manager.

### **4.2 Responsibilities of Managers**

- Consider staff concerns carefully and (where necessary) to undertake an investigation. Any investigation in respect of a whistleblowing/raising concerns matter must only be undertaken once the concern has been reported to any of the key leads specified in this policy and then an investigation can be arranged in accordance with section 7.3 of this policy. Consideration must also be given whether any external investigation is required in parallel or in advance (i.e. by the Police or Health and Safety Executive (HSE)). Internal investigations must be conducted by experienced and appropriate personnel, depending on the nature of the issue.
- Understand the difficult position that the individual staff member may be in.
- Seek appropriate advice from Freedom to Speak Up Guardian
- Take prompt action to resolve the concern or refer it on to Freedom to Speak Up Guardian
- Keep the member of staff informed about the ongoing processes and/or proposed solution.
- Regularly review situations that have been reported to them.
- Ensure individuals who genuinely report concerns are not penalised or discriminated against in any way.

### **4.3 Responsibilities of Employees**

- Ensuring that the best standards of care are achieved.
- Report their concerns to a member of CCGs' staff as outlined in this procedure
- Raising concerns in the public interest with a genuine belief that poor standards of practice have occurred or that one of the following has taken place:
  - that a criminal offence has been committed, is being committed or is likely to be committed,
  - that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
  - that a miscarriage of justice has occurred, is occurring or is likely to occur,
  - that the health or safety of any individual has been, is being or is likely to be endangered,
  - that the environment has been, is being or is likely to be damaged, or
  - 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.

#### **4.4 Responsibilities of Human Resources**

- To advise the employee of the options open to them and the relevant Policy to follow.
- To advise the Freedom to Speak Up Guardians in respect of the relevant HR policies that need to be followed as and when required
- To support any employee who wishes to raise a concern and bring it to the attention of the CCGs.
- To monitor the implementation of the policy and to ensure that procedures are managed fairly and consistently across the CCGs. The Freedom to Speak Up Guardians will provide guidance and support to line managers on the operation of this policy at all stages.

#### **5. Speak up – we will listen**

Speaking up is about anything that gets in the way of providing good care. When things go wrong organisations need to make sure that lessons are learnt and things are improved. Workers must feel able to speak up so that potential harm is prevented. Even when things are good, but could be even better, workers should feel able to say something and should expect that their suggestions are listened to and used as an opportunity for improvement. Speaking up about any concern you have at work is really important. In fact, it's vital because it will help us to keep improving the services we commission for all patients and the working environment for our staff.

You may feel worried about raising a concern, and senior leaders across the CCGs understand this. But please don't be put off. In accordance with our duty of candour, our senior leaders and entire governing bodies are committed to an open and honest culture. We will look into what you say and you will always have access to the support you need.

#### **6. Policy**

##### **6.1 What concerns can I raise?**

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

- unsafe patient care
- unsafe working conditions
- inadequate induction or training for staff
- lack of, or poor, response to a reported patient safety incident
- suspicions of fraud (which can also be reported to our local counter-fraud team on 0151 285 4500. Employees who wish to speak with complete confidentiality can also contact the NHS Fraud and Corruption Reporting Line on 0800 028 40 60 or [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk) to report their concerns. Callers may remain anonymous if they wish.
- a bullying culture (across a team or organisation rather than individual instances of bullying).

- Any of the items listed at 4.3 above.

For further examples, please see the [Health Education England video](#).

Remember that if you are a healthcare professional you may have a professional duty to report a concern. **If in doubt, please raise it.**

Don't wait for proof. We would like you to raise the matter while it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.

This policy is not for people with concerns about their employment that affect only them – that type of concern should be progressed through the CCGs' grievance policies.

## **6.2 Feel safe to raise your concern**

If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of reprisal as a result. We will not tolerate the harassment or victimisation of anyone raising a concern. Nor will we tolerate any attempt to bully you into not raising any such concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action.

Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

We do not however extend this assurance to someone who maliciously raises a concern that they know is untrue. Any such conduct may be liable to disciplinary action or other appropriate action.

Raising a concern will not, in itself, halt any on-going disciplinary action or redundancy procedure that may have already started.

## **6.3 Confidentiality**

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

## **6.4 Who can raise concerns?**

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

## 6.5 Who should I raise my concern with?

In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager. If raising it with your line manager does not resolve matters, or you do not feel able to raise it with them, you can contact one of the following people:

- our Freedom to Speak Up Guardians are Moira Harrison, [moira.harrison@southportandformbyccg.nhs.uk](mailto:moira.harrison@southportandformbyccg.nhs.uk) and Sarah McGrath, [sarah.mcgrath@southportandformbyccg.nhs.uk](mailto:sarah.mcgrath@southportandformbyccg.nhs.uk) These are important roles identified in the Freedom to Speak Up review to act as an objective and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including the Chief Officer, or if necessary, outside the organisation

If you still remain concerned after this, you can contact:

- The Chief Officer who has the executive responsibility for whistleblowing /raising concerns– Fiona Taylor,– 07977986166 or at [fiona.taylor@southseftonccg.nhs.uk](mailto:fiona.taylor@southseftonccg.nhs.uk)
- South Sefton CCG’s Governing Body Lay Member with responsibility for whistleblowing/raising concerns – Alan Sharples, Lay Member – 0151 317 8456 or at [alan.sharples@southseftonccg.nhs.uk](mailto:alan.sharples@southseftonccg.nhs.uk)
- Southport and Formby CCG’s Governing Body Lay Member with responsibility for whistleblowing/raising concerns – Helen Nichols, Lay Member – 0151 317 8456 or at [helen.nichols3@nhs.net](mailto:helen.nichols3@nhs.net)

All these people have been trained in receiving concerns and will give you information about where you can go for more support.

## 7. Process

### 7.1 How should I raise my concern?

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

### 7.2 What will we do?

We are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns and will respond in line with them (see Appendix 3). If your concern suggests a Serious Incident has occurred, an investigation will be carried out in accordance with the [Serious Incident Framework](#).

We are committed to listening to our staff, learning lessons and improving patient care. On receipt, the concern will be recorded and you will receive an acknowledgement

without unreasonable delay. The central record will record the date the concern was received, whether you have requested confidentiality, a summary of the concerns and dates when we have given you updates or feedback.

The central record shall be held and maintained by the CCG's Executive Lead for this policy, the Chief Officer.

### **7.3 Investigation**

Where you have been unable to resolve the matter quickly (usually within a few days) with your line manager, we will carry out a proportionate investigation – using someone suitably independent (usually from a different part of the organisation) and properly trained – and we will reach a conclusion within a reasonable timescale (which we will notify you of). Wherever possible we will carry out a single investigation. The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring.

We may decide that your concern would be better looked at under another process; for example, our process for dealing with bullying and harassment and we will discuss this with you if necessary.

Any employment issues (that affect only you and not others) identified during the investigation will be considered separately.

At the point it is apparent that a concern has not been able to be resolved with your line manager, the CCG's Executive Lead for this policy, the Chief Officer shall be responsible for appointing an appropriate investigation lead either internally or externally as and when appropriate to do so. In the event of any conflict in that respect, either one of the CCGs' Lay Members for Governance shall be responsible for appointing an appropriate investigation lead as and when appropriate to do so, either internally or externally.

An investigation lead shall be identified and appointed within ten working days of it becoming notified that a concern has not been resolved at line manager stage. The terms of reference for the investigation will be approved by either the Chief Officer or either of the CCGs' Lay Members for Governance as appropriate.

Anti-fraud related concerns and subsequent investigations are at all times the responsibility of the CCGs Accountable Officer for Fraud (Chief Finance Officer/Deputy Chief Officer) in conjunction with the CCGs independent Anti-Fraud Specialist.

### **7.4 Communicating with you**

All individuals involved in receiving your concern or for investigating your concerns are responsible for acknowledging and dealing with them seriously. They will discuss your concerns with you to ensure they understand exactly what you are worried about. They will tell you how long they expect the investigation to take and keep you up to date with its progress, periodically.

Wherever possible, they will endeavour to share the full investigation report with you (while respecting the confidentiality of others). However, this may not always be practical or appropriate; for example, if other enquiries are ongoing and if these may be prejudiced; or, if some of the information contained in the report is sensitive or confidential. In such circumstances, a summary report and/or a verbal briefing on the findings, conclusions and any subsequent intended actions may be provided alternatively.

## **7.5 How will we learn from your concern?**

Where an investigation identifies improvements that can be made, we will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

## **7.6 Governing Body oversight**

On behalf of the Governing Body, the Audit Committee will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high-level information in the Audit Committee's annual report. The Governing Body will receive a six monthly report showing themes and learning. The Governing Body supports staff raising concerns and wants you to feel free to speak up.

## **7.7 Role of the Audit Committee**

To ensure that there are appropriate governance arrangements in place to support any external reporting requirements including those to the National Guardian Office, the Audit Committee shall receive a quarterly report on all concerns raised through this policy and a detailed report on all contacts made to the Freedom to Speak Up Guardians. The Audit Committee's role is to scrutinise each report and to ensure that all concerns are being processed and investigated through the correct CCG procedures. The Audit Committee shall further ensure that appropriate actions are being taken to substantiate and address each and every concern. This is to firstly provide assurances concerns are treated seriously and are investigated with diligence and to also ensure that any malicious complaints are identified and excluded from external reporting.

Following scrutiny the Audit Committee will make a definitive determination in respect of what information will be submitted to the National Guardians' Office.

The CCG's Freedom to Speak Up Guardian(s) shall personally present the report that details the concerns reported to them and ensure the report includes information on the number and types of cases they deal with, barriers to speaking up, and details of opportunities for learning and improving.

The Audit Committee shall also form a view as to whether there are any risks to a culture of bullying emerging. In doing so the committee will take account the number and nature of incidents, any barriers to reporting and the effectiveness of the learning from incidents.

The Audit Committee comprises membership that includes the Lay Member for Governance and also the Lay Member for Patient and Public Involvement (PPI) who is also the CCGs Governing Body level Wellbeing Guardian. That role will further support the committee in identifying any emergence of a bullying culture.

A Wellbeing Guardian is a senior leader that looks at the organisation's activities from a health and wellbeing perspective and acts as a critical friend. The role is to question and challenge decisions which might impact on the health and wellbeing of staff.

## **7.8 Chief Officer over sight**

The CCG's Chief Officer is the executive lead for this policy. The CCG's Freedom To Speak Up Guardians shall provide a quarterly report to the Chief Officer before this is submitted to Audit Committee. The Chief Officer is also available to provide ongoing and regular support to the Freedom To Speak Up Guardians

## **7.7 Safeguarding Concerns**

Any potential issues/concerns relating to the safety and welfare of a child and/or adult at risk will be referred for advice and guidance to the CCGs' Safeguarding Leads for Children and/or Adults.

Where it is considered that a child and/or adult is at risk of abuse or neglect a referral to the Local Authority must be made in line with the agreed multi-agency safeguarding policies and procedures.

## **7.8 Raising your concern with an outside body**

Alternatively, you can raise your concern outside the organisation with:

- NHS Improvement for concerns about:
  - how NHS trusts and foundation trusts are being run
  - other providers with an NHS provider license
- NHS procurement, choice and competition, the national tariff
- Care Quality Commission for quality and safety concerns
- NHS England for concerns about:
  - primary medical services (general practice)
  - primary dental services
  - primary ophthalmic services
  - local pharmaceutical services
- Health Education England for education and training in the NHS
- NHS Counter Fraud Authority for concerns about fraud and corruption
- Nothing in this policy excludes raising a concern with an appropriate external

(i.e. non-NHS) body, such as the police or HSE, or potentially a local MP, usually if all reasonable NHS avenues of reporting concerns have been exhausted without the concern being resolved.

## **7.9 Making a ‘protected disclosure’**

There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise a concern (to be able to claim the protection that accompanies it). There is also a defined list of ‘prescribed persons’, similar to the list of outside bodies on page 11, who you can make a protected disclosure to. To help you consider whether you might meet these criteria, please seek independent advice from the Whistleblowing Helpline for the NHS and social care, Public Concern at Work or a legal representative.

## **8. Advice and support**

Advice and support is available from:

- The NHS and Social Care Whistleblowing Helpline ([www.wbhelpline.org.uk](http://www.wbhelpline.org.uk)) on 08000 724 725. This service offers free, confidential advice to all staff within the NHS and Social care. The helpline will be able to clarify whether you have a whistleblowing concern and talk you through the processes to raise your concern; or will advise you on how to escalate the concern, if you feel that the issues raised have not been dealt with appropriately.
- Public Concern at Work helpline [www.pcaaw.co.uk](http://www.pcaaw.co.uk)
- Your professional body or trade union representative

## **9. National Guardian Freedom to Speak Up**

The National Guardian can independently review how staff have been treated having raised concerns where NHS trusts, CCGs and foundation trusts may have failed to follow good practice, working with some of the bodies listed above to take action where needed. Further information can be found at [www.nhsemployers.org/freedom-to-speak-up-guardian](http://www.nhsemployers.org/freedom-to-speak-up-guardian).

## **10. Associated Documentation and References**

### **Relevant Legislation**

Employment Rights Act 1996 (ERA)

Public Interest Disclosure Act (1998)

Fraud Act 2006

Freedom of Information Act

Equality Act (2010)

Enterprise and Regulatory Reform Act 2013

Public Interest Disclosure (Prescribed Persons) Order 2014

## **11. Associated Policies and Guidance Documents**

Disciplinary Policy

Grievance Policy

Complaints Policy

Bullying and Harassment Policy

Incident Reporting

Anti-Fraud Policy

## **12. Policy Governance**

### **12.1 Equality and Diversity**

The CCGs are committed to an environment that promotes equality and embraces diversity in its performance as an employer. They will adhere to legal and performance requirements and will mainstream equality and diversity principles through their policies, procedures and processes. This policy should be implemented with due regard to this commitment.

To ensure that the implementation of this policy does not have an adverse impact in response to the requirements of the Equality Act 2010 this policy has been screened for relevance during the policy development process and a full impact assessment conducted where necessary prior to consultation. The CCGs will take action when necessary to address any unexpected or unwarranted disparities and monitor workforce and employment practices to ensure that this policy is fairly implemented.

The CCGs will endeavour to make reasonable adjustments to accommodate any employee with particular equality and diversity requirements in implementing this policy and procedure. This may include accessibility of meeting venues, providing translation, arranging an interpreter to attend meetings, extending policy timeframes to enable translation to be undertaken, or assistance with formulating any written statements.

### **12.2 Management and Review of Policy**

The Audit Committees in Common have overall responsibility for the maintenance and operation of this policy and for reviewing the effectiveness and actions taken in response to concerns raised under this policy.

The effectiveness of this policy and local process will be reviewed at least annually, with the outcome published and changes made as appropriate.

## **Appendix 1: Process for raising and escalating a concern**

### **Step one**

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

### **Step two**

If you feel unable to raise the matter with your line manager for whatever reason, please raise the matter with our local Freedom to Speak Up Guardians:

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

### **Step three**

If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact the Chief Officer or either of the CCGs' Governing Body Lay Members for Governance

### **Step four**

You can raise concerns formally with external bodies – see section 7.8

## **Appendix 2: The Role of the Speak Up Guardian**

These individuals have been given special responsibility and training in dealing with whistleblowing/raising concerns. They will:

- treat your concern confidentially unless otherwise agreed
- ensure you receive timely support to progress your concern
- escalate to the CCG's Chief Officer any indications that you are being subjected to detriment for raising your concern, or in the event of any conflict, escalate concerns to either of the CCGs' Lay Members for Governance.
- remind the organisations of the need to give you timely feedback on how your concern is being dealt with
- ensure you have access to personal support since raising your concern may be stressful.
- Ensure that the individual raising the concern is not victimized by the organization, or its employees, for doing so by escalating such instances to the CCGs' Chief Officer or in the event of a conflict either of the CCGs Lay Members for governance

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

## Appendix 3: A vision for raising concerns in the NHS



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