WHISTLE BLOWING POLICY - SAFELY RAISING CONCERNS ABOUT RISK, MALPRACTICE OR WRONG DOING AT WORK

<table>
<thead>
<tr>
<th>Author:</th>
<th>Head of HR - Policy &amp; Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Lead Executive Director:</td>
<td>Director of Human Resources</td>
</tr>
<tr>
<td>Endorsing Body:</td>
<td>Human Resources Forum</td>
</tr>
<tr>
<td>Governance or Assurance Committee:</td>
<td>Staff Governance Committee</td>
</tr>
<tr>
<td>Implementation Date:</td>
<td>December 2015</td>
</tr>
<tr>
<td>Version Number:</td>
<td>3</td>
</tr>
<tr>
<td>Review Date</td>
<td>December 2021</td>
</tr>
<tr>
<td>Responsible Person:</td>
<td>Head of HR – Policy &amp; Governance</td>
</tr>
</tbody>
</table>
CONTENTS

i) Consultation and Distribution Record
ii) Change Record

1. Introduction

2. Aim, Purpose and Outcomes

3. Scope
   3.1 Who is the Policy Intended to Benefit or Affect
   3.2 Who are the Stakeholders

4. Principal Content

5. Roles and Responsibilities

6. Resource Implications

7. Communication Plan

8. Quality Improvement – Monitoring and Review

9. Equality and Diversity Impact Assessment

10. Summary

11. References

12. Appendices
i) CONSULTATION AND DISTRIBUTION RECORD

<table>
<thead>
<tr>
<th>Contributing Author / Authors</th>
<th>Ruth Hibbert – Head HR - Policy &amp; Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation Process / Stakeholders:</td>
<td>Liz Airns - GMB</td>
</tr>
<tr>
<td></td>
<td>Elaine Anderson – HR Manager</td>
</tr>
<tr>
<td></td>
<td>Tom Bryce – General Manager</td>
</tr>
<tr>
<td></td>
<td>Margo Cranmer – Unison</td>
</tr>
<tr>
<td></td>
<td>Sharon Hannah – RCM</td>
</tr>
<tr>
<td></td>
<td>Christine Jack – Operational Manager</td>
</tr>
<tr>
<td></td>
<td>Cathy McGinty - Unison</td>
</tr>
<tr>
<td></td>
<td>Gwen Macintyre – Senior Nurse</td>
</tr>
<tr>
<td></td>
<td>Annette Shorts – Senior OH Nurse Advisor</td>
</tr>
<tr>
<td></td>
<td>Sylvia Stewart - Unite</td>
</tr>
<tr>
<td></td>
<td>Tom Wilson - RCN</td>
</tr>
<tr>
<td>Distribution:</td>
<td>NHSL Intranet: Firstport</td>
</tr>
</tbody>
</table>

ii) CHANGE RECORD

<table>
<thead>
<tr>
<th>Date</th>
<th>Author</th>
<th>Change</th>
<th>Version No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>May’18</td>
<td>Deputy HRD</td>
<td>GDPR statement added into section 3 and updated name of Data Protection Act</td>
<td>3</td>
</tr>
</tbody>
</table>
Whistle Blowing Policy

1. INTRODUCTION

This policy is for staff who wish to raise a qualifying disclosure under the Public Interest Disclosure Act 1998, the details of which are included as Appendix A. If a member of staff has concerns about misconduct or wrong doing and they feel that it is something which NHS Lanarkshire should know about or look into, they should use this policy. If, however, a member of staff wishes to make a complaint about their employment or how they have been treated, they should follow NHS Lanarkshire’s policy entitled Grievances & Disputes policy or alternatively, NHS Lanarkshire’s Preventing & Dealing with Bullying, Harassment & Victimisation policy.

2. AIM, PURPOSE AND OUTCOMES

This policy has been introduced to reassure staff that it is safe and acceptable to raise concerns and to describe the correct process for staff to follow.

3. SCOPE

3.1 This policy applies to all directly employed staff, including bank/temporary staff and staff on secondments. It also applies to workers (including students on placements), volunteers and ex-employees of the organisation who may have concerns about misconduct or wrongdoing.

The policy applies to all staff irrespective of age, sex, ethnicity/race, marital or civil partnership status, sexual orientation, religion or belief, pregnancy or maternity or gender reassignment.

This policy does not replace Codes of Professional Conduct. Where an issue arises that should be reported under, for example: the NMAHPs "raising care concerns" or the GMC’s Code of Professional Conduct, then this is the appropriate route to follow.

NHS Lanarkshire takes care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at www.nhslanarkshire.scot.nhs.uk or ask a member of staff for a copy of our Data Protection Notice.

3.2 Who are the Stakeholders

Employees, workers (including students on placements), secondees or ex-employees of NHS Lanarkshire.

4. PRINCIPAL CONTENT

4.1 COMMITMENT TO STAFF RAISING A CONCERN

Staff should remember that they do not need to have firm evidence before raising a concern. However, they should explain as fully as possible the information or circumstances that gave rise to the concern.
Whistle Blowing Policy

It is recognised that there may be circumstances when staff would prefer to speak to someone in confidence first. If this is the case, the member of staff raising the concern should say so at the outset. If the organisation is asked not to disclose someone’s identity, we will not do so without that person’s consent unless required by law. Staff should however understand that there may be times when the organisation will be unable to resolve a concern without revealing someone’s identity, for example where personal evidence is essential. In such cases, it will discuss with the member of staff whether and how the matter can best proceed.

It should be remembered that if staff do not disclose their identity, it will be much more difficult for NHS Lanarkshire to look into the matter. It will also not be possible to protect the staff member’s position or give them feedback. Accordingly, a member of staff raising a concern should not assume that the Board can provide the same assurances where a concern is reported anonymously.

If a member of staff raises a genuine concern under this policy, they will not be at risk of losing their job or suffering any detriment (such as a reprisal or victimisation). Providing the staff member acts in good faith, it does not matter if they are mistaken or if there is an innocent explanation for their concerns. A member of staff raising a concern will not be asked to prove their claim. However, this assurance will not be extended to a member of staff who maliciously raises a matter they know to be untrue. In circumstances such as this the member of staff concerned may be subject to NHS Lanarkshire’s Effective Management of Employee Conduct policy.

4.2 HOW TO RAISE A CONCERN

If a member of staff has a concern about a risk, malpractice or wrongdoing at work, it is hoped that they will feel able to raise it first with their line manager or lead clinician. This may be done verbally or orally or in writing.

If a member of staff feels unable to raise the matter with their line manager or lead clinician, for whatever reason, they should raise the matter with one of the following:

Director of Acute Services, Chief Officer North Lanarkshire Health & Social Care Partnership, Chief Officer South Lanarkshire Health & Social Care Partnership, Director of Finance.

These people have been given special responsibility for dealing with whistleblowing concerns. If the matter is to be raised in confidence, then the staff member should advise this at the outset so that appropriate arrangements can be made.

If these channels have been followed and the member of staff still has concerns, or if they initially feel that the matter is sufficiently serious, they may contact the Chief Executive of NHS Lanarkshire, the Director of NMAHPs or NHS Lanarkshire’s Medical Director.

NHS Lanarkshire has established the role of a non executive whistleblowing “champion”.

The role of the non executive “champion” is to act predominantly as an oversight and assurance mechanism, as well as a conduit to ensure that internal mechanisms within NHS Lanarkshire are working effectively to support both whistleblowing arrangements and staff in raising concerns. Where staff believe that their concerns have not been addressed
Whistle Blowing Policy

by the individuals listed above, they should contact the non executive “champion” via the Board Secretary’s office on 01698 858 180.

A national confidential alert line is now in place through the Scottish Government Health Directorate. Details of this can be found in appendix B. If a member of staff feels unable to raise their concern with NHS Lanarkshire, they should raise their concerns by contacting the National Alert Line (0800 008 6112).

ADVICE FOR MANAGERS RESPONDING TO A CONCERN

- Thank the staff member for raising the concern, even if they may appear to be mistaken;
- Respect and heed staff concerns about their own position or career;
- Manage expectations and respect promises of confidentiality;
- Discuss reasonable timeframes for feedback with the member of staff;
- Remember there are different perspectives to every story;
- Determine whether there are grounds for concern and investigate if necessary as soon as possible. If the concern is potentially very serious or wide-reaching, consider who should handle the investigation and know when to ask for help. If asked, managers should put their response in writing;
- Managers should bear in mind that they may have to explain how they have handled the concern;
- Consider need to escalate to higher level of management.
- Feed back to the whistleblower any outcome and/or proposed remedial action, but be careful if this could infringe any rights or duties which may be relevant to other parties;
- Consider reporting to the Board and/or an appropriate regulator the outcome of any genuine concern where malpractice or a serious safety risk was identified and addressed; and
- Remind staff of support available during process.
- Record-keeping - it is prudent to keep a record of any serious concern raised with those designated under the policy, and these records should be anonymous where necessary.

4.3 HOW A CONCERN WILL BE ADDRESSED

Once a concern has been raised with one of the individuals listed in section 4.2, it will be assessed, and consideration will be given as to what action may be appropriate. This may involve an informal review, an internal inquiry or a more formal investigation. The member of staff raising the concern will be advised who will be handling the matter, how they can
Whistle Blowing Policy

contact them, and what further assistance may be needed. The organisation will write to the member of staff summarising the concern and advising how they propose to handle it, and providing a timeframe for feedback. If the concern has been misunderstood, or there is any information missing, the member of staff should highlight this.

When raising a concern, it would be helpful to know how the member of staff thinks the matter might best be resolved. If the member of staff has any personal interest in the matter, they should confirm this at the outset. If it is felt that the concern falls more properly within the scope of one of the other of the Board’s policies, this will also be explained to the member of staff.

Managers will give feedback on the outcome of any investigation. However, it should be noted that it may not be possible to give details of the precise actions taken, where this would infringe a duty of confidence owed to another person. While it cannot be guaranteed that all matters will be responded to in the way that the member of staff might wish, NHS Lanarkshire will strive to handle the matter fairly and properly.

If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation will be conducted in accordance with the provisions of the Effective Management of Employee Conduct procedure. Should it be thought necessary to suspend an employee during the course of any such investigation, the procedure outlined in NHS Lanarkshire’s Effective Management of Employee Conduct policy will be followed.

The investigation will be concluded without unreasonable delay. However, the organisation allows for flexibility given the possible complexity of concerns raised. Timescales should be reasonable and communicated to all parties.

At all stages of the process any employee involved will have the right to be accompanied by a colleague or trade union/professional organisation representative.

4.4 EXTERNAL CONTACTS

The emphasis of this policy is to encourage employees to raise their concerns internally, as this is the quickest way to resolve concerns and to enable NHS Lanarkshire to provide appropriate support if required. Whilst NHS Lanarkshire hopes this policy gives employees the reassurance they need to raise such matters internally, it is recognised that there may be circumstances where they can properly report matters to outside bodies, such as those detailed in Appendix C. If an employee chooses to make a disclosure to an outside body, they must have an honest and reasonable suspicion that malpractice has occurred, is occurring or is likely to occur, and must believe the information to be substantially true.

Although the internal process, as detailed in Section 4.2 (How to raise a concern), exists for disclosure, in exceptional circumstances wider disclosures, i.e. to the police, Members of the Scottish Parliament or Members of Parliament may be justified. Employees will be protected under the Public Interest Disclosure Act 1998 if they meet the above criteria, have not made the disclosure for personal gain and have first raised the concern within NHS Lanarkshire or a prescribed regulatory body, as detailed in Appendix C. The only exceptions to this are if the employee believes they would have been victimised as a result
Whistle Blowing Policy

of making such a disclosure; a prescribed regulator is not applicable; or if there is reasonable belief that there would be an attempt to cover up the matter causing concern.

The charity Public Concern at Work and any trade union or professional organisation will be able to advise an employee on such an option and the circumstances in which they may be able to contact an outside body safely. It is strongly recommended that any employee seeks advice from such parties before making an external disclosure.

4.5 INDEPENDENT ADVICE

If any member of staff is unsure whether to use this policy, or if they require confidential advice at any stage, they may contact their trade union/professional organisation.

If members of staff are unsure about raising a concern, they can get independent advice at any stage from their trade union/professional organisation, or from one of the organisations listed at the end of this policy (Appendix C). Staff should also remember that they do not need to have firm evidence before raising a concern. However, they should explain as fully as possible the information or circumstances that gave rise to the concern.

NHS Lanarkshire recognises its accountability within NHS Scotland. In light of this you can also contact:

Scottish Government Health Directorate,
St Andrew’s House,
Edinburgh, EH1 3DG
Tel: (0131) 556 8400

5. ROLES AND RESPONSIBILITIES

5.1 Employees must ensure they are familiar with this policy and that they understand the difference between whistleblowing and raising a grievance.

5.2 Managers must ensure that they are familiar with this policy and that their staff understand how to access and implement the policy. They should always seek advice from their HR Business Partner prior to advising staff.

5.3 Trade Union Representatives are encouraged to support staff in the implementation of this policy by providing advice and support where appropriate.

5.4 Human Resources staff are responsible for providing advice about the policy and monitoring its implementation, including the provision of reports to the Staff Governance Committee.

6. RESOURCE IMPLICATIONS

None identified

7. COMMUNICATION PLAN & TRAINING

- This policy will be launched using the weekly staff briefing and it will be available on Firstport.
Whistle Blowing Policy

- This policy will also be discussed at the appropriate management team meetings and local partnership fora.

- This policy will be raised at Staff Induction, both corporate & locally by the line manager.

- This policy will be discussed during management development training.

- A report will be provided on an annual basis to the Staff Governance Committee on the implementation of this policy. In particular, information will be provided on the number of complaints raised, outcomes and adherence to this policy, number of times this policy has been accessed on NHS Lanarkshire’s Intranet.

8. QUALITY IMPROVEMENT – Monitoring and Review

Periodic audits of the effectiveness of whistleblowing arrangements will be carried out and will include the following:

- The number of types of concerns raised and outcomes of investigations
- Feedback from individuals who have used the arrangements
- Complaints of victimisation
- Other existing reporting mechanisms
- Adverse incidents that could have been identified by staff (eg patient complaints, publicity or wrongdoing identified by third parties)
- Any relevant litigation
- Staff awareness, trust and confidence in arrangements

This policy will be reviewed every 3 years via the Joint Policy Forum

9. EQUALITY AND DIVERSITY IMPACT ASSESSMENT

This policy meets NHS Lanarkshire’s EDIA

10. SUMMARY

This policy distinguishes between raising a whistleblowing complaint and raising a grievance. It ensures protection for staff who wish to raise a concern about a risk, malpractice or wrongdoing at work and provides a framework within which staff can safely raise a concern. The policy also provides details of external contacts and support.

11. REFERENCES

- General Data Protection Regulations 2018
- Public Interest Disclosure Act 1998
- NHS Lanarkshire’s Grievance & Disputes Policy
- NHS Lanarkshire’s Bullying, Harassment & Victimisation Policy
- Public Concern at Work
12. APPENDICES
Appendix A: Legal Framework
Appendix B: National Confidential Alert Line & Flow Chart
Appendix C: List of external organisations
The Public Interest Disclosure Act 1998 (PIDA) amended the Employment Rights Act 1996 to protect the public by providing a remedy for individuals who suffer a detriment by any act or any deliberate failure to act by their employer for raising a genuine concern, whether it be a risk to patients, financial malpractice, or other wrongdoing. These are called “qualifying disclosures”. A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that one of the following is being, has been, or is likely to be, committed:

- A criminal offence;
- A miscarriage of justice;
- An act creating risk to health and safety;
- An act causing damage to the environment;
- A breach of any other legal obligation;
- Concealment of any of the above.

The Act’s tiered disclosure regime promotes internal and regulatory disclosures, and encourages workplace accountability and self-regulation.

Under the Act, workers who act honestly and reasonably are given automatic protection for raising a matter internally. In NHSScotland, an internal disclosure can go up to the highest level. Protection is also readily available to individuals who make disclosures to prescribed regulators such as Audit Scotland.

In certain circumstances, wider disclosures (for example to an MSP, an MP or the media) may also be protected. A number of additional tests apply when going wider, including:

- Whether it is an exceptionally serious concern;
- Whether the matter has already been raised;
- Whether there is good reason to believe that the individual will be subject to a detriment by their employer if the matter were raised internally or with the appropriate regulator;
- Whether disclosure was reasonable given all the circumstances.

The Act covers all workers including temporary agency staff, persons on training courses and self-employed staff who are working for and supervised by NHSScotland. It does not cover volunteers. PIDA also makes it clear that any clause in a contract that purports to gag an individual from raising a concern that would have been protected under the Act is void.

To enable a whistleblowing policy to work in practice and to avoid unnecessary damage, it is important to ensure that policies authorise all staff, not just health and medical professionals, to raise a concern, and identifies who they can contact.

Legal protection is very important if staff are to be encouraged to raise a concern about wrongdoing or malpractice. However, it is vital that employers develop an open culture that
Whistle Blowing Policy

recognises the potential for staff to make a valuable contribution to the running of public services, and to the protection of the public interest.

Where an individual is subjected to a detriment by their employer for raising a concern or is dismissed in breach of PIDA, they can bring a claim for compensation under PIDA to an Employment Tribunal. Awards are uncapped and based on the losses suffered.
1. Public Concern at Work will establish the nature of the concern and provide advice tailored to individual circumstances.

2. Public Concern at Work will categorise each call as either public interest or private (individual employment issue).

3. Public Concern at Work will encourage individuals to raise their concern with their employer. Individuals will be advised that employers will respect confidentiality but will not accept concerns raised anonymously.

4. In all cases categorised as individual employment issues, Public Concern at Work will direct the caller to their employer.

5. Where Public Concern at Work considers that there is a public interest issue and the internal process appears to have been exhausted, or the individual has sound reasons for not raising the concern with their employer, they will either direct the individual to the appropriate regulator or at the individual’s request will make the initial approach to the regulator on the individual's behalf. If Public Concern at Work determine that the issue should be referred to Healthcare Improvement Scotland then this will always be referred by Public Concern at Work rather than the individual themselves.

6. Public Concern at Work are able to refer anonymous cases or, where the regulator is unable to accept anonymous concerns (Audit Scotland will accept anonymous concerns, HSE will not), will act as an intermediary for information.

7. Public Concern at Work and the regulators will respect callers’ confidentiality.

8. Public Concern at Work will record cases electronically. For management information purposes each case will be closed by PCaW after providing advice to the individual on who they should raise their concern with or on completion of any follow up work we have been asked to do by the individual. This may include contacting either the employer or the regulator and seeking feedback.

9. Reporting back on the action taken by the employer or regulator will be to the individual who raised the concern. In the case of Healthcare Improvement Scotland, which is not a regulator, they will report back to the individual and Public Concern at Work.

10. The regulators’ responsibility is to the individual who raises the concern and will only report to Scottish Government on cases where investigation confirms that there is a concern that needs to be addressed. In the case of Healthcare Improvement Scotland, which is not a regulator, their responsibility is to Public Concern at Work since they would refer the case to Healthcare Improvement Scotland [and through Public Concern at Work to the Scottish Government as commissioner of the Alert Line].
Whistle Blowing Policy

PCaW receive, assess and categorise call.

Is the call a public interest concern?

If yes, encourage called to pursue with NHS Board.

If yes, call (PCaW may make initial approach) contacts appropriate person in NHS Board.

NHS Board deals with concern in line with it’s policy and reports back to caller.

If issue not resolved to callers satisfaction, PCaW to give advice on next steps.

If no, advise caller to pursue with NHS Board and that Trade Unions can provide support.

If internal process exhausted or caller wants to raise with regulator, caller (PCaW may make initial approach) contacts prescribed regulator, including Healthcare Improvement Scotland (HIS)

Prescribed regulator, including HIS, deals with case in line with established procedure.
External Organisations

Further information may be available from:

• BSI Code of Practice on Whistleblowing Arrangements Organisations can download a free copy of the 2008 British Standards Institution’s Code of Practice on Whistleblowing Arrangements from www.pcaw.co.uk/bsi

• Public Concern at Work For information about the Public Interest Disclosure Act 1998, please visit: www.pcaw.co.uk/law/uklegislation.htm

• NHSScotland Counter Fraud Service (CFS) Fraud Hotline on - 08000 15 16 28 www.cfs.scot.nhs.uk

• Health Improvement Scotland Elliott House 8-10 Hillside Crescent Edinburgh EH7 5EA Call 0131 623 4300 www.healthcareimprovementscotland.org

• Audit Scotland 110 George Street Edinburgh EH2 4LH Tel: 0845 146 1010 www.audit-scotland.gov.uk/

• General Chiropractic Council 44 Wicklow Street London WC1X 9HL www.gcc-uk.org
  Tel: 020 7713 5155

• General Dental Council 37 Wimpole Street London W1G 8DQ www.gdc-uk.org
  Tel: 020 7887 3800

• General Medical Council GMC Scotland 5th Floor The Tun 4 Jackson’s Entry Edinburgh EH8 8PJ www.gmc-uk.org
  Tel: 0131 525 8700

• General Optical Council 41 Harley Street London W1G 8DJ www.optical.org
  Tel: 020 7580 3898

• General Osteopathic Council 176 Tower Bridge Road London SE1 3LU www.osteopathy.org.uk
  Tel: 020 7357 6655

• Health Professions Council 184 Kennington Park Road London SE11 4BU www.hpc-uk.org
  Tel: 0845 300 4472 or 020 7840 9802

• Nursing and Midwifery Council 23 Portland Place London W1B 1PZ www.nmc-uk.org

• Royal Pharmaceutical Society of Great Britain 1 Lambeth High Street London SE1 7JN www.rpsgb.org.uk
  Tel: 020 7735 9141