

WHISTLEBLOWING POLICY

April 2017

Authorship:	Corporate Services Manager			
Committee Approved:	Senior Management Team			
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	Relevant	Screening	Full / Completed	Outcome
Equality Impact Assessment	Yes	Yes	Yes	<i>No Issues Identified</i>
Sustainability Impact Assessment	Yes		Yes	<i>No Issues Identified</i>
Privacy Impact Assessment	No	No	No	<i>Not Relevant</i>
Bribery Checklist	Yes		Yes	<i>No Issues Identified</i>
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Version Number:	V.2.0			
Publication/Distribution	Website	Email Staff		Others (i.e. SBC)
	Yes	Yes		Yes

The on-line version is the only version that is maintained. Any printed copies should, therefore, be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by & Date	Date on website
V1		New policy	Governing Body	11/13
V2		Updated policy incorporating new national guidance regarding Speak Up Guardian	SMT	04/17

Approval Record

Applicable <input checked="" type="checkbox"/>	Committee / Group	Consultation / Information/ Ratification	Date taken to group	Date last Approved
<input type="checkbox"/>	Audit and Governance Committee	Choose an item.		
<input type="checkbox"/>	Business Committee	Choose an item.		
<input type="checkbox"/>	Communications and Engagement Committee	Choose an item.		
<input type="checkbox"/>	Council of Clinical Representatives	Choose an item.		
<input type="checkbox"/>	Finance and Contracting Committee	Choose an item.		
<input checked="" type="checkbox"/>	Governing Body	Ratification	Nov 13	Nov 13
<input type="checkbox"/>	Primary Care Co-Commissioning	Choose an item.		
<input type="checkbox"/>	Quality and Performance Committee	Choose an item.		
<input type="checkbox"/>	Remuneration Committee	Choose an item.		
<input checked="" type="checkbox"/>	Senior Management Team	Ratification	Apr 17	Apr 17
<input type="checkbox"/>	All Employees	Choose an item.		
<input checked="" type="checkbox"/>	Yorkshire and Humber Social Partnership Forum	Consultation	Jan 14	Jan 14
<input type="checkbox"/>	Other	Choose an item.		

Note: A new policy only needs to be ratified by the appropriate Committee (and the Governing Body if new) and for information only to the other committees after consultation.

Policies should follow the following ratification process. The delegated committee for ratification is specified in Section 16.

Version control should also be managed as outlined below where x = current version number and y = the new version number.

Consultation and Ratification Process	Version Number
Reviewed policies should be circulated to staff for comment prior to ratification	V x.1
HR policies and policy changes directly impacting on staff should be sent to the Social Partnership Forum for Union consultation prior to ratification	V x.2
Reviews and minor amends should be ratified by the delegated Committee	V x.3
All new policies and policies where significant changes have been made should be ratified by the delegated Committee and Governing Body	V x.4
Ratified policy is circulated and published (if appropriate) on the website	V y.0

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1 INTRODUCTION

- 1.1** NHS Scarborough and Ryedale Clinical Commissioning Group (CCG) has introduced this policy to enable you to raise your concerns or suspicions about any issues of malpractice at an early stage and in the right way. We know from experience that to be successful we must all try to deal with issues on their merits. The CCG welcomes your genuine concerns and is committed to dealing responsibly, openly and professionally with them. Without your help, we cannot deliver a safe service and protect the interests of patients, staff and the CCG. If you are worried, we would rather you raised it when it is just a concern than to wait for proof.
- 1.2** All of us at one time or another have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about patient care or patient services, professional practice, unlawful conduct, dishonesty, financial malpractice, or a danger to health, safety or the environment, or a cover up of any of these, it can be difficult to know what to do.
- 1.3** You may be worried about raising a concern and we understand this or may want to keep the concerns to yourself, perhaps feeling it is none of your business or that it is only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the CCG. You may have said something but found that you have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next.
- 1.4** If something is troubling you which you think we should know about or look into, please use this procedure. However, if you are aggrieved about your personal position then this is not the appropriate procedure and you should seek advice from your manager, a member of the HR team, Trade Union representative or Whistleblowing Hotline.
- 1.5** This policy is primarily for concerns where the interests of others, most especially patients, or of the CCG itself, are at risk. It can also be used by staff in order to raise allegations against colleagues in terms of safeguarding children or adults. It can be used by volunteers, trainees, agency workers, home workers, contractors and independent consultants as well as all CCG employees. It is recognised that employees of the CCG's commissioned services might want to raise concerns directly with the CCG. This policy also describes how these would be managed.
- 1.6** Concerns can be raised about risk, malpractice or wrongdoing that is harming the service we commission. 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 should be reported to our local counter-fraud team (see Appendix One for contact details)
 - A bullying culture (across a team or organisation rather than individual instances of bullying).

1.7 For further examples, please click here to see Health Education England video. (<https://www.youtube.com/watch?v=zjau1Ey0di8>)

1.8 **If in doubt – raise it!**

1.9 This policy aims to:

- encourage employees to feel confident in raising serious concerns regarding the practice of the CCG,
- provide avenues for employees to raise those concerns and receive feedback on any action taken,
- ensure that employees receive a response to their concerns,
- reassure employees that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they have made any disclosure in good faith.

1.10 The CCG also has separate policies to cover fraud and safeguarding concerns which provide further guidance and details separate procedures for reporting suspected cases of fraud. If your concern relates to a suspected incidence of fraud or safeguarding then please refer to the fraud or safeguarding policies respectively. Please note that the principles of this policy will still apply.

1.11 Employees of the CCG's commissioned services should normally raise their concerns under their employer's Whistleblowing Policy, which will afford the employee their rights under Whistleblowing legislation. However, it is recognised that provider employees may feel they need to raise their concerns directly with commissioners or with other regulators, such as the Care Quality Commission. This policy ensures that the CCG will act on any such genuine concerns raised from outside of the CCG.

2 **ENGAGEMENT**

2.1 Consultation on this policy has taken place with the employees of the CCG, and with the membership of the Social Partnership Forum/Policy Sub-Group.

2.2 This Policy has also been approved by the CCG Governing Body.

3 **IMPACT ANALYSES**

3.1 The following impact assessments have been completed in respect of this policy:

- Data Protection Impact Assessment – No issues identified
- Equality Impact Assessment – No issues identified
- Sustainability Impact Assessment – No issues identified

3.2 These assessments are recorded in the relevant registers and available to view on the CCG website.

The Bribery Act 2010

3.3 CCG employees should be aware that this process can be open to situations of bribery and abuse therefore the Bribery Act 2010 is particularly relevant to this policy. Under the Bribery Act it is a criminal offence to:

- Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
- Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so.

3.4 These offences can be committed directly or by and through a third person and other related policies and documentation (as detailed on the CCG website) should be referred to when considering whether to offer or accept gifts and hospitality and/or other incentives.

3.5 Anyone with concerns or reasonably held suspicions about potentially fraudulent activity or practice should refer to the Local Anti-Fraud and Corruption Policy and contact the Local Counter Fraud Specialist.

3.6 The CCG follows good NHS business practice as outlined in the Business Conduct Policy and has robust controls in place to prevent bribery. Due consideration has been given to the Bribery Act 2010 in the development (or review, as appropriate) of this policy document and no specific risks were identified.

4 SCOPE

4.1 This policy applies to:-

- All employees of the CCG
- CCG Governing Body
- Contracted third parties (including eMBED and agency staff)
- Students and trainees
- Staff on secondment and other staff on placement with the CCG.

5 POLICY PURPOSE AND AIMS

5.1 The purpose and objectives of this policy are to protect the CCG along with its customers, service users, staff and other stakeholders, as well as the assets of the CCG, whilst ensuring delivery of its strategic and corporate objectives which are:

- To commission high quality services
- To engage patients, carers and other organisations in our planning and decision process
- To ensure value for money
- To be open and honest in our transactions, and accountable to our communities
- To respect our staff and promote a learning environment
- To improve health outcomes.

5.2 The CCG is committed to the principle of public accountability. The CCG will investigate genuine and reasonable concerns expressed by employees relating to malpractice within the CCG and will ensure that employees are not discriminated against or suffer a

detriment as a result of making such a disclosure, as laid down by the Public Interest Disclosure Act 1998 (PIDA).

- 5.3** The CCG encourages all individuals to raise any concerns that they may have about the conduct of others in the CCG or the way in which it is run.
- 5.4** This policy applies to all employees and any agency or contract staff whilst they are working at the CCG, and is in accordance with the CCG's Equality and Diversity policy.
- 5.5** This policy incorporates the requirements of the Public Interest Disclosure Act 1998 (PIDA) and the Bribery Act 2010. Where instances of fraud are identified these should be reported immediately to the Chief Finance Officer or the Local Counter Fraud Specialist (see Appendix One) who, where appropriate, will arrange for the matter to be referred to the police for investigation and notified to NHS Protect. One of the basic principles of public sector organisations is the proper use of public funds and this would include the assets bought through public funds. It is therefore important that all CCG employees are aware of the rules against any acts involving bribery, dishonesty, corruption or damage to CCG property. For simplicity all such offences are hereafter referred to as "fraud".
- 5.6** Where safeguarding concerns are raised these should be reported immediately to the responsible safeguarding officer in line with the safeguarding policy.
- 5.7** The three fundamental public service values underpinning the NHS and all public sector work, specified by the NHS Code of Conduct for Boards published by the NHS Executive in April 1994 are Accountability, Probity and Openness. All those who work in the public sector should be aware of, and act in accordance with, these values. Acting with honesty and integrity forms a cornerstone of the public sector values.
- 5.8** The CCG is a public sector body and its employees are required to be honest and impartial in the conduct of their business. All employees of the CCG should be aware of the Standards of Business Conduct Policy which is available on the CCG's website. The Governing Body is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the CCG.
- 5.9** All employees have a duty to report instances where they witness others failing to demonstrate the expected levels of integrity in their working life. This will include bribery, fraud, corruption or bringing the CCG, the NHS or wider public service in to disrepute.
- 5.10** This policy should be read in conjunction with the guidance in Appendix One.
- 5.11** Appendix Two provides a summary of the PIDA Act 1998.
- 5.12** This policy encompasses the national 'Standard Integrated Policy' (NHS Improvement and NHS England, April 2016) which was aimed at improving the experience of whistleblowing in the NHS.

6 PRINCIPLES

- 6.1** Any matter raised under this policy will be investigated thoroughly, promptly and confidentially and the outcome of the investigation reported back to the employee who raised the issue.

- 6.2** All employees will be made aware of the policy on joining the organisation and will be encouraged to read and understand it's process. All existing staff will be made aware of the policy and regular training sessions will be organised for management of staff.
- 6.3** No employee will be victimised for raising a matter under this procedure for raising a legitimate concern. Co-workers who harass or bully someone on the grounds they have made a protected disclosure are personally liable, and the employer is vicariously liable for such actions (subject to a defence they have taken 'all reasonable steps' to prevent workers acting this way).
- 6.4** In the event that misconduct is discovered as a result of any investigation under this procedure the organisation's disciplinary procedure will be invoked.
- 6.5** Where it can be demonstrated that an employee knowingly supplied false information when raising a concern the organisations disciplinary procedure will be invoked.
- 6.6** The CCG will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation, or unless the CCG is required to disclose it by law, e.g. by the police. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.
- 6.7** This policy encourages individuals to put their name to any disclosures they make. You can choose to raise your concern anonymously but that may make it more difficult for the CCG to investigate thoroughly and give you feedback on the outcome. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the CCG.
- 6.8** In exercising this discretion, the factors to be taken into account will include:
- The seriousness of the issues raised
 - The credibility of the concern
 - The likelihood of confirming the allegation from attributable sources
- 6.9** Disclosures from outside of the CCG will be treated sensitively. The CCG encourages external individuals to put their name to any disclosures they wish to make to the CCG. Any external disclosures, whether identifiable or anonymous, will be reviewed at the discretion of the CCG as part of its role to monitor the health of the local health economy, recognising that the CCG may have limited powers to act. Where a credible concern is raised that falls within the remit of the CCG, the CCG will review such issues.

7 THE PUBLIC INTEREST DISCLOSURE ACT 1998

- 7.1** The Act provides protection for employees who raise legitimate concerns about specified matters. These are called "qualifying disclosures". A qualifying disclosure is one made in good faith by an employee who reasonably suspects:
- a criminal offence;
 - a miscarriage of justice;
 - an act creating risk to health and safety;

- an act causing damage to the environment;
- a breach or failure to comply with any legal or professional obligation or regulatory requirement
- bribery
- financial fraud or mismanagement
- unauthorised disclosure of confidential information
- abuse in care
- patient safety
- a concealment of any of the above is being or is likely to be committed.

7.2 It is not necessary for the employee to have proof that such an act is being, has been, or is likely to be committed, a reasonable belief is sufficient.

7.3 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' who individuals can make a protected disclosure to. To help individuals to consider whether they might meet these criteria, please seek independent advice from the Whistleblowing Helpline, Public Concern at Work or a legal representative.

8 CONFIDENTIALITY

8.1 Employees raising a concern should be aware of the need to follow this procedure and in particular to maintain confidentiality. Allegations of Breaches in Confidentiality will be dealt with using the appropriate procedures, through the use of the CCG Disciplinary Policy.

8.2 The identity of the individual who has raised a concern will be protected on request and will not be disclosed without consent. Whether and how to proceed will be discussed with the whistleblower if the situation arises where the concern cannot be resolved without revealing their identity (for example, because there is an internal investigation or evidence is needed in court).

8.3 Any employee raising a concern must be aware that they may be asked to present evidence to substantiate any allegations made, and/or to provide a written statement. In addition, they may be asked to explain their allegations during any disciplinary proceedings that may result from them.

8.4 Employees who raise a genuine concern under this policy, will not be at risk of losing their job or suffering any form of reprisal as a result. The CCG will not tolerate the harassment or victimisation of anyone raising a concern and will not tolerate any attempt to bully anyone who raises such a concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action. Provided an employee raising a concern is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.

8.5 The CCG is 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 Three 'A Vision for Raising Concerns in the NHS').

9 HOW TO RAISE A CONCERN

9.1 We all have a responsibility and duty (often reinforced in Professional Codes of Conduct) to draw to the attention of CCG management any anxieties or concerns which we may have in respect of the conduct of another employee where we consider that this conduct may be detrimental to the interests of patients and/or employees of the CCG. This includes instances which compromise or appear to compromise the standards laid down by the CCG, including Health and Safety, ethical behaviour, clinical governance, corporate governance or probity protocols. There may be implications for you as an individual if you do not raise your concerns with CCG management or, as a minimum, discuss the matter with your professional organisation.

9.2 The CCG is committed to the principles of the 'Freedom to Speak Up' Review, and its vision for raising concerns. We are committed to listening to our staff, learning lessons, and improving patient care.

9.3 On receipt the concern will be recorded by the Associate Director of Corporate Affairs who will send an acknowledgment of the concern within two working days. The central record will record the date the concern was received, if the individual has requested confidentiality, a summary of the concerns and dates when the individual has been updated or given feedback.

Step One

9.4 If you have a concern about any issue, we hope you will feel able to raise it in the first instance with your manager. This may be done orally or in writing.

Step Two

9.5 If you don't feel Step One is appropriate or it hasn't worked, please raise the matter with one of our local 'Freedom to Speak Up' Guardians. **Please see Appendix Four 'Raising Concerns - Local 'Freedom to Speak Up' Guardian'.**

9.6 Please say if you want to raise the matter in confidence so that they can make appropriate arrangements. We will ask if you would like us to write to you summarising your concern and the action we propose to take.

9.7 Senior Managers / Directors have been given special responsibility and training in dealing with whistleblowing concerns. They will:

- treat the concern confidentially unless otherwise agreed.
- ensure the individual receives timely support to progress the concern
- escalate to the Governing Body any indications that individuals are being subjected to a detriment as a result of raising a concern
- remind the CCG of the need to give timely feedback to the individual on how the concern is being dealt with
- ensure that individuals who raise a concern have access to support as raising a concern may be stressful.

9.8 If you are unsure who to contact please ask one of the advice bodies listed below (see Appendix Four for contact details).

Step Three

- 9.9** If Step One and/or Step Two 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:
- NHS Scarborough and Ryedale CCG Executive Nurse
- 9.10** If steps 1 – 3 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 you can raise your concern outside of the CCG with:
- NHS Improvement for concerns about:
 - How NHS trusts and foundation trusts are being run
 - Other providers with an NHS provider licence
 - NHS procurement, choice and competition
 - The national tariff.
 - Care Quality Commission for quality and safety concerns
 - NHS England for concerns about:
 - Primary medical services (general practice)
 - Primary dental services
 - Primary ophthalmic services
 - Local pharmaceutical services
 - Health Education England for education and training in the NHS
 - NHS Protect for concerns about fraud and corruption.
- 9.11** This procedure is intended to provide employees with an opportunity within the CCG to raise concerns. If, however, they are not satisfied with any action taken and feel it is right to take the matter outside the CCG, they should ensure that they do not disclose information which should properly remain confidential. Employees will need to confirm this with the person or organisation they decide to contact.
- 9.12** In light of the procedure laid down in this Policy it is expected that all employee concerns can be addressed and dealt with internally or externally, and without reference to the media. An employee who has exhausted all the locally established procedures and who has taken account of any initial advice which they may have been given may, as a last resort, consider speaking to the media. If the employee considers that the involvement of the media is appropriate they should seek advice (or further advice) from professional or other representative organisations and preferably discuss matters further with their manager before taking this step.
- 9.13** Such action, if entered into unjustifiably, could unreasonably undermine public confidence in the services provided by your colleagues and the CCG. Employees are, therefore, strongly advised to first seek further specialist guidance as noted above.
- 9.14** Concerns raised from outside of the CCG will be reviewed by the Executive Director with responsibility for Safeguarding or a Lay Member of the CCG in the first instance. This will determine what steps are taken in light of the concerns raised and the scope of the CCG's role.

10 INVESTIGATION PROCESS

- 10.1 Due to the varied nature of these sorts of complaints, which may involve internal investigators and/or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.
- 10.2 The HR team shall advise those involved in the investigation in matters of employment law and other procedural matters.
- 10.3 Any potential disciplinary matters will be dealt with by the CCG in conjunction with relevant external bodies, where appropriate.
- 10.4 If the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Executive Nurse or one of the designated persons described above.
- 10.5 If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the CCG recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive or, where justified, other relevant external bodies).

11 HELP AND ADVICE

- 11.1 At any point either before raising the concern or at any stage in this procedure an employee may involve a Trade Union or Professional Association Representative who will be able to provide help and advice.
- 11.2 Free, independent and confidential advice can be obtained from the Whistleblowing Helpline for NHS and Social Care on 08000 724 725.
- 11.3 Support and advice is available from Public Concern at Work and the NAO Controller and Auditor General at the following addresses:

Public Concern at Work 3 rd Floor, Bank Chambers 6 – 10 Borough High Street London SE1 9QQ Tel: 020 7404 6609 Website: http://www.pcaw.co.uk	The Comptroller and Auditor General National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP Tel: 020 7798 7999
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12 RESPONSIBILITIES

- 12.1 **Chief Officer** - The Chief Officer will have an overview of the issues involved and will keep the Governing Body informed of the progress of any investigation as necessary.
- 12.2 **Freedom to Speak Up Guardian** - The CCG's Freedom to Speak Up Guardian will be responsible for reporting to the Senior Management Team on the numbers of concerns,

updating staff of a regular basis on how they go about reporting a concern, and identifying themes or areas for further training.

- 12.3 Audit Committee** - The Audit Committee will review any reports submitted to it in respect of this policy, and consider any necessary recommendation.
- 12.4 HR Team** - The HR team will be responsible for the provision of advice in relation to employment law and the CCG's HR policies and procedures.
- 12.5 Managers** - Concerns will normally be reported to an employee's line manager. The manager will be responsible for passing the details to the CCG's Freedom to Speak Up Guardian and the CCG Chief Officer, or in cases of fraud to the LCFS or Chief Finance Officer unless it is clear that the concerns are groundless.
- 12.6 Staff** - All staff are responsible for being aware of this policy and for raising any concerns they have using appropriate procedure.
- 12.7** 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. The CCG would like you to raise the matter whilst it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled
- 12.8 National Freedom to Speak Up Guardian** - The new National Guardian can independently review how staff have been treated having raised concerns where NHS trusts and foundation trusts may have failed to follow good practice, working with some of the bodies listed within the policy to take action.

13 IMPLEMENTATION

- 13.1** This policy will be communicated to all staff via team meetings, Staff Newsletter and available on the CCG website.
- 13.2** Failure to comply with this policy would be considered to be a breach of the terms and conditions of employment and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure.

14 TRAINING AND AWARENESS

- 14.1** The senior management team and line managers are responsible for ensuring that all staff are aware of the policy which is available on the CCG website.
- 14.2** Training will be provided for individuals named in this policy. Any further training needs will be identified via the annual appraisal process and training needs analysis.

15 MONITORING AND AUDIT

- 15.1** Line managers are responsible for monitoring individual's compliance with this policy.
- 15.2** The implementation of this policy will be reviewed on an annual basis by the Senior Management Team and reported to the Governing Body.

16 POLICY REVIEW

- 16.1** The policy and procedure will be reviewed at least annually by the CCG in conjunction with managers, staff and Trade Union representatives if appropriate, with changes made as required and the outcome published. Where review is necessary due to legislative change, this will happen immediately.
- 16.2** The implementation of this policy will be audited on an annual basis by the CCG and reported to CCG Governing Body. The Governing Body will also be given high level information about all concerns raised by CCG staff through the policy and what the CCG are doing to address any problems. The CCG will include similar high level information in the annual report.

17 APPENDICES

- Appendix One – Guidance to Staff
- Appendix Two – Summary of the Public Interest Disclosure Act 1998
- Appendix Three – A Vision for Raising Concerns in the NHS
- Appendix Four – Raising Concerns – Local Freedom to Speak Up Guardian

18 ASSOCIATED DOCUMENTATION

- Equality Impact Assessment
- Sustainability Analysis

19 APPENDIX ONE: GUIDANCE

Guidance to Staff

Q - What should you do if you suspect malpractice?

Do make an immediate note of your concerns

Do convey your suspicions to someone with the appropriate authority and experience

Do deal with the matter promptly

Do tell the LCFS (Steven Moss or Glyn Thomas on 01904 725145/01904 725166), or the Chief Finance Officer or contact the NHS National Fraud & Corruption reporting line on 08000 724 725 or report online at www.reportnhsfraud.nhs.uk)

Don't do nothing

Don't be afraid of raising your concerns

Don't accuse any individuals directly

Don't try to investigate the matter yourself

Don't tell anyone about your suspicions other than those with the proper authority.

Guidance to Managers

Do be responsive to staff concerns

Do note details

Do try to evaluate the allegation objectively

Do deal with the matter promptly

Do advise the appropriate person:

- Line Manager
- HR Team
- Chief Finance Officer.
- Local Counter Fraud Specialist
- Safeguarding Officer

Don't ridicule suspicions raised by staff

Don't approach or accuse any individuals directly

Don't convey your suspicions to anyone other than those with the proper authority

Don't try to investigate the matter yourself.

20 APPENDIX TWO: SUMMARY OF THE PUBLIC INTEREST DISCLOSURE ACT 1998

- 20.1** The Act applies to the public, private and voluntary sectors. It aims to improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker.
- 20.2** The Act sets out the circumstances in which a disclosure of information may be protected. In brief, to obtain that protection, workers must act reasonably and responsibly. An employee who makes a rash disclosure (to the media for example, of a matter which could and should have been raised internally) will not be protected.
- 20.3** Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

Malpractice

- 20.4** The Act applies to people at work raising genuine concerns about crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment, and the cover up of any of these. In the NHS this includes a worker raising concerns about risks to patients or about financial malpractice. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals Covered

- 20.5** In addition to employees, the Act covers other workers, trainees, agency staff, homeworkers and all self-employed NHS professionals (i.e. doctors, ophthalmologists, dentists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, army or police officers.

Internal Disclosures

- 20.6** A disclosure to the employer will be protected if the employee (often referred to as a “whistleblower”) has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the malpractice, this same test applies to disclosures made to it.

Legal Advice

- 20.7** To ensure that people concerned about malpractice can get independent and confidential advice about how the Act works, disclosures to lawyers are protected.

NHS and Quangos

- 20.8** To promote accountability in public life, the same protection as for internal disclosures applies where someone in the NHS or a public organisation blows the whistle direct to

the sponsoring department. There is no requirement that such concerns be raised internally first.

Regulatory Disclosures

20.9 Special provision is made for disclosures to organisations, which are prescribed under the Act. Those relevant to the NHS are:

- Public sector finance – Audit Commission
- Fraud and fiscal irregularities – Serious Fraud Office, Inland Revenue, Customs and Excise
- Health and Safety dangers – the relevant enforcing authority (Health & Safety Executive or Local Authority)
- Environmental dangers – the Environment Agency
- Others – Charity Commission, Occupational Pensions Regulatory Authority

20.10 Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

Wider Disclosures

20.11 First, the concern must have been raised with the employer or a prescribed regulator, unless:

20.12 The worker reasonably believed s/he would be victimized if s/he did do

20.13 There is no prescribed regulator and the worker reasonably believed there would be a cover-up

20.14 The matter was exceptionally serious

20.15 If one of the above pre-conditions is met, and the Tribunal is satisfied that disclosure was reasonable, the whistleblower will be protected.

20.16 Wider disclosures (e.g. to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and the following provisions are met:

- In deciding the reasonableness of the disclosure the Tribunal will consider the identity of the person it was made to, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence the employer owed a third party.
- Where the concern had been raised with the employer or a prescribed regulator, the Tribunal will also consider the reasonableness of their response.
- Finally, if the concern had been raised with the employer, the Tribunal will consider whether any whistleblowing policy in the organization was or should have been used.

Full Protection

20.17 Where a worker or employee is victimised for blowing the whistle in breach of the Act, s/he can bring a claim at an Employment Tribunal. The usual limits on awards in employment law will not apply under the Public Interest Disclosure Act. Workers and employees who lose their jobs in breach of the Act will be fully compensated for their

losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

20.18 Where an employee (but not other workers) is dismissed for blowing the whistle, s/he may apply within seven days for an interim order. Where the Tribunal considers that the employee is likely to win at the full hearing, it will order that s/he keeps his/her job or is paid his/her wages pending the full hearing.

20.19 The provisions on interim relief do not apply to self-employed professionals in the NHS. Nor can a tribunal make a Re-employment Order where the contract of a self-employed professional has been terminated in breach of the Act. However, as such workers will be entitled to recover their full losses at an Employment Tribunal; re-employment may well be an option the employer may wish to consider in the event of a claim under the Act.

Gagging Clauses

20.20 Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Criminal Offences

20.21 Where the disclosure of that information was itself a criminal offence, such as under the Official Secrets Act, the whistleblower will not be protected under the Act if s/he has or would have been convicted of the offence.

[Extract from the Public Concern at Work Briefing Pack]



22 APPENDIX FOUR: RAISING CONCERNS - LOCAL FREEDOM TO SPEAK UP GUARDIAN

22.1 If you want to raise a concern, you should follow the steps set out below (and outlined in Section 9 of this policy).

Step 1

22.2 If you have a concern about any issue, we hope you will feel able to raise it in the first instance with your manager. This may be done orally or in writing.

Step 2

22.3 If you don't feel Step One is appropriate or it hasn't worked, please raise the matter with our 'Freedom to Speak Up' Guardians (details below). Please say if you want to raise the matter in confidence so that they can make appropriate arrangements. We will ask if you would like us to write to you summarising your concern and the action we propose to take.

22.4 The CCG and the Partnership Commissioning Unit have agreed local 'Freedom to Speak Up' contacts as follows:

Scarborough and Ryedale CCG

Sally Brown
Associate Director of Corporate Affairs
Scarborough and Ryedale CCG
Scarborough Town Hall - York House
St Nicholas Street
Scarborough, North Yorkshire, YO11 2HG
Tel:
Email:

Partnership Commissioning Unit

First contact:

Stephanie Porter
Deputy Director of Estates and Capital Programmes
Partnership Commissioning Unit
Sovereign House
Unit 5 Kettlestring Lane
Clifton Moor
York, YO30 4GQ
Tel:
Email

Second contact:

Victoria Pilkington
Head of PCU
Partnership Commissioning Unit
Sovereign House
Unit 5 Kettlestring Lane
Clifton Moor
York, YO30 4GQ
Tel:
Email

Step Three

22.5 If Step One and/or Step Two 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:

Carrie Wollerton
Executive Nurse, Freedom to Speak Up Guardian
Scarborough and Ryedale CCG
Scarborough Town Hall - York House
St Nicholas Street
Scarborough, North Yorkshire
YO11 2HG
Tel:
Email

22.6 If steps 1 – 3 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, Section 9.10 sets out how you can raise your concern outside of the CCG.