

WEST ESSEX CLINICAL COMMISSIONING GROUP

Confidential Reporting (Whistleblowing) Policy

WE CCG Policy Reference:

WECCG36

Target Audience	Board members, Board committee and sub-committee members and all staff working for, or on behalf of, the CCG
Brief Description (max 50 words)	<p>The Public Interest Disclosure Act 1998 encourages people to raise concerns about malpractice in the workplace. This policy sets out the context for whistleblowing and the procedure for people to follow in the event of such concerns being raised.</p> <p>The purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it and we will give you as much feedback as we can.</p>

Version Number	Version 2.2
Accountable Officer	Chief Officer
Responsible Officer	Director of Finance, Contracting and Performance
Date Approved	March 2018
Approved By	West Essex CCG Board
Review Date	March 2020
Stakeholders engaged in development/review	Safeguarding Adults Lead, Safeguarding Children's Lead, Executive Committee, HR Lead, Counter Fraud, Policy Review Group, Governance Team, Director of Finance, Contracting and Performance, Audit Committee.
Equality Impact Assessment	<p><u>EQUALITY IMPACT ASSESMENT</u></p> <p>This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This policy is applicable to all in scope of the policy irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, marriage or civil partnership.</p>

Amendment History

Version	Date	Reviewer	Comments
1.0	26/11/2014	Kerry Franklin	
1.1	5/12/2014	Kerry Franklin	Updated following comments from Kate Wilson – HR, Suzanne Duffy – Counter Fraud, Grainne Stephenson – Governance & Risk Manager and Dannii Owens – Governance Officer
1.2	11/12/2014	Kerry Franklin	Incorporation of accepted changes
1.3	29/12/2014	Kerry Franklin	Watermark and version control updated following Executive Committee's approval – now to be reviewed by Audit Committee
1.4	29/1/2015	Kerry Franklin	Board approval provided – with change of Lay Member telephone number noted
1.5	8/12/2015	Associate Director of Governance and Corporate Services	Updated policy following review
1.6	31/12/2015	Associate Director of Governance and Corporate Services and Governance Officer	Further updated with clarity on public interest and genuine concern with additional references to Anti-Fraud and Bribery Policy, inclusion of office holders in the scope of the policy and updating of other sections including section 4.
1.7	7/1/2015	Associate Director of Governance and Corporate Services and Governance Officer	Executive Committee recommendation to approve version 1.6 for recommendation to the Audit Committee and thereafter to the Board with addition included on guidance where reports may be received regarding other organisations – covered in point 3.3 with section 3 also receiving an overall strengthening regarding process following Counter Fraud specialist further comments. Version 1.7 issued to Audit Committee virtually for any further changes prior to presentation to January Board for approval.
1.8	18/1/2016	Associate Director of Governance and Corporate Services	Board approved – January 2016
1.9	28/12/2016	Head of Governance and Corporate Services	Amendments to: - Paragraph - 4.7 - a new paragraph referencing NHS E guidance <i>Freedom to speak up in Primary Care</i> . - Paragraph - 5.6 - Chief Officers name.
2.0	05/01/2018	Head of Governance and Corporate Services	Amendments to: An update to the CCG's Sustainability Statement. Paragraphs: 1.5, 2.4, 3.4, 4.3, 4.5, 4.6, 4.7, 5.1, 5.8, 7, 10 and Appendix A.
2.1	January	Governance and Risk	Comments made throughout document

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	2018	Manager	
2.2	February 2018	Governance Officer	Comments accepted and further changes made – pages 1, 4, 6, 7, 8, 9 and 10

SUSTAINABILITY STATEMENT: We declare that NHS West Essex Clinical Commissioning Group will demonstrate commitment to promoting environmental and social sustainability through our actions as a corporate body and as a commissioner. We aim to reduce our carbon footprint by 28% from a 2013 baseline by 2020.

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1. INTRODUCTION

The scope of this policy includes all members of the Board, its sub-committees and Programme Boards and all staff working for, or on behalf of, the CCG including agency, contractors and consultants, those on secondment, trainees and volunteers and all those listed under the Equality Act 2010.¹

We can all, at one time or another, have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about unlawful conduct, financial malpractice, breaches of codes of conduct, ill-treatment of patients, disregard of health and safety rules, dangers to the public or the environment or any other similar matter, it can be difficult to know what to do.

You may be worried about raising such issues or may want to keep the concerns to yourself, perhaps feeling it's none of your business or that it's only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the NHS West Essex Clinical Commissioning Group (CCG). You may decide to say something but find that you have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next. You may also be afraid of recriminations or have concerns about your personal safety, should your identity be disclosed to the subject(s) of your concern.

The CCG promotes a climate of openness and dialogue in which all working for the CCG are encouraged to feel able to raise concerns without fear of reprisals or victimisation reflecting the Public Interest Disclosure Act 1998, which offers a framework of protection against victimisation, disciplinary action or dismissal for staff who raise genuine concerns.

If something is troubling you which you think we should know about or look into, please use this procedure. If, however, you are aggrieved about your personal position, please use the Grievance Policy and Procedure - which you can obtain from the intranet. This policy and procedure is primarily for concerns where the interests of others or of the CCG itself are at risk. **If in doubt - raise it!**

The CCG is committed to achieving the highest possible standards of service and the highest ethical standards in public life and in all of its practices. Certain standards and values are expected from everyone involved in the public sector. These standards are known as the Seven Principles of Public Life and were set out by the Nolan Committee in 1995, they can be viewed [here](#).

The CCG has therefore introduced this policy and procedure to encourage freedom of speech and to enable you to raise your concerns about such malpractice at an early stage and in the right way. We would rather that you raised the matter when it is just a concern rather than wait for proof.

This policy should be read in conjunction with the CCG's Anti-Fraud and Bribery Policy, Business Code of Conduct, Dignity at Work Policy and Safeguarding policies.

2. OUR ASSURANCES TO YOU

2.1 Statutory Protection

¹ The regulatory & reform act 2013 widened this to also cover the following groups of staff: student nurses, doctors, social workers and health care workers; volunteers and interns; priests; foster carers; non-executive directors; public appointments; LLP members and all categories of workers listed under the Equality Act 2010.

The Public Interest Disclosure Act 1998 (see Appendix A) encourages people to raise concerns about malpractice in the workplace and in doing so requires employers to respond by addressing the message rather than acting against the messenger. It does this by preventing an employer taking disciplinary action against, or victimising a member of staff who genuinely raises a concern that is in the public interest. The Enterprise and Regulatory Reform Act 2013 amended section 43b of the Employment Rights Act so that a worker who makes a disclosure is only protected if it is in the 'public interest'. The Act also introduces the clause that an employer can be vicariously liable for the actions of other staff members if they victimise someone for making a protected disclosure.

2.2 Your Safety

The CCG is committed to this policy. If you raise a genuine concern under this policy as per The Public Interest Disclosure Act 1998, that is a disclosure in good faith if you have a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur, you will not be at risk of losing your job or suffer any form of retribution as a result. Provided you are acting in good faith, it does not matter if you are mistaken. To be protected, the disclosure must be in the public interest, the worker must have a reasonable belief that the information shows that one of the categories of wrongdoing listed in the legislation has occurred or is likely to occur, and the concern must be raised in the correct way.

We do not extend this assurance to someone who maliciously raises a matter they know is untrue - the CCG may choose to discipline such individuals under these circumstances.

2.3 Your Confidence

The CCG will not tolerate the harassment or victimisation of anyone raising a concern. However, we recognise that you may nonetheless want to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. The exception is when we may be obliged to reveal your identity, on legal advice, where investigation of serious allegations leads to the establishment of an external enquiry, police action against individuals, or potential dismissal of employees. If it becomes clear that any of these may apply, we will discuss with you how we can proceed.

2.4 Raising concerns anonymously

The CCG has a duty to protect those who raise concerns in good faith, see chapter 2.2 for further information, but recognises that there may be times when the referrer wishes to remain anonymous. This policy applies to all concerns raised, whether anonymous or not. The referrer should be aware that if they chose to remain anonymous the investigation could be more difficult. In addition, it would not be possible for the referrer to be provided with any feedback on the outcomes of the investigation.

3. HOW WE WILL HANDLE THE MATTER

Once you have told us of your concern, we will look into it to assess initially what action should be taken. This may involve an internal enquiry or a more formal investigation. The investigation will be objective and evidence based and will produce a report that focuses on learning lessons to prevent problems recurring. We will tell you who is handling the matter, how you can contact him / her and whether your further assistance may be needed. If you request it, we will write to you summarising your concern and setting out

how we propose to handle it. Please note, however, that we may not be able to tell you the precise action we take where this would infringe a duty of confidence owed by us to someone else.

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 within two working days. 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.

If the concern relates to another organisation we will advise you to report the matter to one of the whistleblowing contact points in the organisation to which the matter refers, see chapter 5 and 6.

Once an investigation has taken place and if it is a case where there has been evidence of malpractice the options for possible sanctions include:

- Criminal Prosecution; and / or
- Civil Proceedings; and / or
- Disciplinary Action; and / or
- Refer to Professional Body

Staff are encouraged to make reference to the relevant Human Resource policies, and our HR Business Partners.

When you raise your concern you may be asked how you think the matter might best be resolved. If you do have any personal interest in the matter, we do ask that you tell us at the outset. If your concern falls more properly within the Grievance Procedure we will tell you.

The purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it and we will give you as much feedback as we can.

4. ROLES AND RESPONSIBILITIES

4.1 Managers

Managers are responsible for:

- Ensuring that all staff and those engaged by the CCG are familiar with and have access to this policy and complying with the CCG's procedures and principles as outlined.
- Ensuring concerns raised are taken seriously, being responsive to the matter and responding to concerns in a timely and appropriate fashion.
- Evaluating the basis of any claim brought to their attention and referring upwards to a more senior manager if appropriate.
- Ensuring that new staff and those engaged by the CCG are made aware of this policy and how they can access it.

4.2 Human Resources

Human Resources are responsible for:

- Advising managers and individuals in the application of the policy and procedure.

4.3 Director of Finance, Contracting and Performance and the Director of Nursing and Quality

Director of Finance, Contracting and Performance and the Director of Nursing and Quality will keep records, monitoring and auditing the number and nature of claims made and the actions taken and report this to the Audit Committee. They will monitor the application of the policy to ensure it is applied in a fair and consistent way to each concern raised.

4.4 Audit Committee

The Audit Committee will review the effectiveness of the whistleblowing arrangements and will receive an annual report summarising any cases of whistleblowing.

4.5 Staff

In addition to the general duty of staff and those engaged by the CCG to disclose malpractice to their employer, they should keep records where possible of any incidents and potential witnesses. Most professional NHS staff are also under obligation to their statutory bodies Codes of Conduct to take positive steps to disclose any concerns about colleagues which may affect the care provided. Details can be obtained from the relevant professional body. Staff should also make reference to the CCG's Business Code of Conduct regarding individual staff responsibilities.

Should staff have any questions concerning the content of this policy, they can either seek clarification from the line manager or one of our Human Resource advisers.

4.6 Local Counter Fraud Specialist (LCFS)

The LCFS is responsible for taking forward all anti-fraud work locally in accordance with national standards and reports directly to the Director of Finance, Contracting and Performance.

Adhering to NHS Counter Fraud Authority standards is important in ensuring that the organisation has appropriate whistleblowing procedures in place and the LCFS can effectively respond to system weaknesses and investigate allegations of fraud, bribery and corruption.

It is the LCFS's role to investigate any allegations of fraud, bribery, corruption or financial irregularity. When investigating, the LCFS may need to liaise with employees and Human Resources to obtain relevant documentation which may support allegations of fraud. The LCFS will conduct risk assessments in relation to their work to prevent fraud, bribery and corruption.

4.7 Primary Care

In November 2016, NHS England published *Freedom to speak up in Primary Care – Guidance to primary care providers on supporting whistleblowing in the NHS*. Within this document there is a template policy to be used by those providing NHS primary care services.

NHS England advised that they would work with CCGs, LPNs and LRCs to support local nominations to establish local Freedom to Speak Up Guardians. In the interim, those seeking to raise concerns within

primary care via an independent external source can do so via one of the prescribed organisations, or alternatively they may use the CCGs whistleblowing contacts within chapter 5. The most recent list of prescribed organisations is available [here](#).

5. HOW TO RAISE A CONCERN INTERNALLY

If a member of staff would like to have an informal, confidential conversation internally in the first instance, the CCG has trained Contact Officers who are available to listen and advise you of the procedure to follow for reporting your concerns.

Step One

If you have a concern about fraud, bribery, corruption or financial irregularity then you should report your concern to the Local Counter Fraud Specialists:

Charlie Roberts
Charlie.Roberts@mazars.co.uk or
Charlie.Roberts2@nhs.net
Telephone: 07881 283 949

Katie Miles
Katie.Miles@mazars.co.uk or
Katie.Miles2@nhs.net
Telephone: 07881 283 928

Or contact the CCG's Director of Finance, Contracting and Performance or the NHS Counter Fraud Authority on telephone 0800 028 4060 or online at <https://cfa.nhs.uk/reportfraud> where an anonymous report can be made.

Step Two

If you feel unable to raise this matter with your manager, for whatever reason, please raise the matter with:

- a) Director of Finance, Contracting and Performance – Dean Westcott (Telephone - 01992 566142) or
- b) Director of Nursing and Quality – Jane Kinniburgh (Telephone - 01992 566157)

Please say if you want to raise the matter in confidence so that they can make appropriate arrangements.

Either the Director of Finance, Contracting and Performance or the Director of Nursing and Quality will arrange to meet with you within 5 working days (or within another mutually convenient timeframe) to discuss the matter further. This will involve asking whether you would like your concern and any proposed action to address that concern, summarised in writing. This would include, where practicable, a proposed timetable for resolution.

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, one of the Lay Members Stephen King has been nominated by the Board and can be contacted via stephen.king5@nhs.net or by telephone on 07799772220.

You may also write directly to the Chief Officer at the following address:

Andrew Geldard
Chief Officer
NHS West Essex CCG
Building 4 Spencer Close,

St Margaret's Hospital
The Plain,
Epping
CM16 6TN

In this instance either the Lay Member or the Chief Officer will arrange to meet with you within 10 working days (or within another mutually agreed timeframe) to discuss the matter further. This will involve asking whether you would like your concern and any proposed action to address that concern, summarised in writing and would include, where practicable, a proposed timetable for resolution.

If appropriate you may also raise the matter with the Secretary of State for Health.

6. CONCERNS ABOUT THE MOST SENIOR PERSON AT THE CCG

If your concern is about the most senior person in the CCG, you should raise your concern with the Chair of the Board, who will decide on how the matter shall be taken forward. The Chairman's contact details are Rob Gerlis – robgerlis@nhs.net or on 01992 566141.

7. INDEPENDENT ADVICE

If you are unsure whether to use this procedure or you want independent advice at any stage you may contact:

- Your union; or
- The independent charity Public Concern at Work on 020 7404 6609 or whistle@pcaw.org.uk (<http://www.pcaw.org.uk>). Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

8. EXTERNAL CONTACTS

Whilst we hope this policy gives you the reassurance you need to raise such matters internally, we would rather you raised a matter with the appropriate regulator or, where appropriate, with the Police, then not at all. Public Concern at Work will be able to advise you on such an option and on the circumstances in which you may be able to contact an outside body safely. However, we would expect you to contact the CCG's Chief Officer before taking any matter to the press, to give an opportunity for the CCG to resolve the issue through the use of this policy.

9. IF YOU ARE DISSATISFIED

If you are unhappy with our response remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that we will respond to all matters in the way that you might wish, we will try to handle the matter fairly and properly. By using this policy you will help us to achieve this.

10. MONITORING

This policy and procedure will be monitored and reviewed regularly by the Director of Finance, Contracting and Performance, and by the Local Counter Fraud Specialist (please see relevant contact details at paragraph 5.1).

APPENDIX A - PUBLIC INTEREST DISCLOSURE ACT 1998

The Public Interest Disclosure Act 1998 (PIDA) encourages employees to raise concerns about malpractice in the workplace. The Act applies to genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), danger to health and safety or the environment and the cover up of any of them. It applies whether or not the information is confidential.

In addition to employees, it covers trainees, agency staff, contractors, homeworkers, trainees and every professional in the NHS.

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work (see page 10).

A disclosure in good faith to a manager or employer will be protected if the whistle-blower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. To be protected, the disclosure must be in the public interest, the worker must have a reasonable belief that the information shows that one of the categories of wrongdoing listed in the legislation has occurred or is likely to occur, and the concern must be raised in the correct way.

The Act protects disclosures made in good faith to 'prescribed bodies' where the whistle-blower reasonably believes that the information or any allegation is substantially true.

Prescribed bodies relevant to NHS employees can be found [here](#).