

## Formally Raising Concerns at Work (Whistleblowing) Policy – Trust Policy No. 5

### Introduction and Benefits

1. The Public Interest Disclosure Act (1998) came into force on the 2<sup>nd</sup> July 1999. It encourages staff initially to use internal channels to report malpractice and introduces specific protection rights to those who disclose such information.
2. It is the duty of every member of staff to speak up about genuine concerns in relation to criminal activity, breach of a legal obligation (including negligence, clinical negligence, breach of contract and breach of administrative law), miscarriage of justice, danger to health & safety and the environment, and the cover up of any of these in the workplace. It applies whether or not the information is confidential.
3. The Oxford Radcliffe Hospitals NHS Trust is committed to ensuring that any staff concerns of this nature will be taken seriously and investigated. A disclosure to the Trust will be protected if the member of staff has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. If a member of staff raises concerns reasonably and responsibly they will not be penalised in any way.

### Application

4. This policy is for people employed by the ORH NHS Trust – this is someone who is:
  - 4.1. Employed on a permanent or fixed term contract of employment, or zero hours contract.
  - 4.2. On a temporary contract or employed through an agency to work for the Trust.
  - 4.3. Contractors and suppliers of services to the Trust.
  - 4.4. Independent consultant offering services to the Trust.
  - 4.5. On secondment to the Trust.
  - 4.6. Providing volunteer services to the Trust.
5. This policy does not replace the Trust's existing policies and procedures regarding adverse incident reporting, grievance, reporting cases of potential fraud or corruption or complaints, nor does it replace the normal lines of communication between staff and their managers so that matters of concern may still be dealt with through normal management channels.

## Purpose

6. The purpose of this policy is to establish clear guidance on how concerns should be raised at work in line with current legislation. The policy sets out the routes to reporting concerns internally and how and when concerns should be reported to external agencies.

## Policy Statement

7. The key principal of this policy is to give all Trust staff every opportunity to report concerns regarding wrongdoing at work in a confidential manner in order that others can investigate.
8. Staff are not expected to investigate or prove wrongdoing but should have a reasonable belief that wrongdoing has taken place, either currently or in the past or is likely to take place in the future.
9. To ensure that this policy is adhered to, and assure staff that their concerns will be taken seriously the ORH will:
  - 9.1. Not allow the person raising the concern to be victimised for doing so.
  - 9.2. Treat victimisation of whistle blowers as a serious matter that may lead to disciplinary action which may result in dismissal.
  - 9.3. Not attempt to conceal evidence or unacceptable practice.
  - 9.4. Take disciplinary action if an employee destroys or conceals evidence or if evidenced, poor or unacceptable practice or misconduct is found.
  - 9.5. Ensure confidentiality clauses in employment contracts do not restrict, forbid or penalise whistle blowing.
  - 9.6. Give feedback to the person raising the concern to confirm that appropriate action has been taken.
  - 9.7. Liaise with other organisations to who staff report malpractice.
  - 9.8. Treat concerns raised solely for malicious intent as a disciplinary matter.
10. Concerns raised will be investigated promptly by an appropriate individual to assess what, if any, action is required. Feedback will be given to those raising concerns to ensure the matter has been addressed and duly investigated.

## Responsibilities

11. The Trust Board has overall responsibility for this policy.
  - 11.1. All staff have a duty to report any concerns at work via the procedure outlined within this policy.
  - 11.2. Managers have a duty to investigate any concerns raised and ensure staff are aware of the procedures for raising concerns at work.
  - 11.3. The HR Policy Group is responsible for undertaking an equality impact assessment and reviewing the policy.
  - 11.4. The HR Directorate will provide advice on the use of this policy and support individuals and managers as necessary.

## Monitoring and Review

12. The outcomes of whistleblowing incidents will be brought to the attention of the board on a regular basis via the Director of HR.
13. This policy will be reviewed every three years by the HR Policy Group unless legislative changes prompt an earlier review.

## Training and Development

14. One to one advice is available via the HR Department and independent advice can be sought via Trades Union Representatives.

## Associated Documents and Policies

15. This policy links to:
  - 15.1. Appendix 1 – Formally Raising Concerns at Work (Whistleblowing) Procedure

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## Formally Raising Concerns at Work (Whistleblowing) Procedure

### Introduction

1. It is recognised that not all concerns expressed by staff are being done so formally under the whistleblowing procedure and may be an informal concern for consideration which does not require formal feedback.
2. It should be agreed during initial discussions as to whether the concern is formally invoking the whistleblowing procedure.
3. If staff are reporting concerns under the whistleblowing procedure their concerns should be treated as outlined below.

### What is Whistleblowing?

4. Whistleblowing may be described as a process of reporting matters of concern and wrongdoing and covers issues such as:
  - 4.1. Poor quality care
  - 4.2. Unprofessional conduct
  - 4.3. Clinical negligence
  - 4.4. Criminal offences
  - 4.5. Fraud or corruption
  - 4.6. Breach of Contract
  - 4.7. Negligence
  - 4.8. Other Civil Law issues, such as racial and sexual discrimination
  - 4.9. Miscarriage of Justice
  - 4.10. Danger to Health and Safety
  - 4.11. Environmental issues (e.g. pollution)
  - 4.12. Abuse of IT resources, such as accessing offensive or terrorist related material

### Procedure of How to Formally Raise a Concern Internally

5. The following options are available:
  - 5.1. Option 1 – If you feel able to, raise the matter with your team or line manager so it can be resolved locally.

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- 5.2. Option 2 – If you don't feel Option 1 is appropriate or it has not worked, other routes of help are available. Help available within the Trust are your manager's manager, Staff Side Chair of the Joint Staffs Consultation and Negotiation Committee (JSCNC), Chair of the Medical Staff Council (MSC), Chair of the Local Negotiating Committee (LNC), Trade Union Representative or Safety Representative; also you can raise concerns about Health and Safety with the Trust's Corporate Risk Team (telephone numbers in Addendum A). The person to whom concerns are raised will then raise them with the appropriate Divisional Manager who will invoke the investigative stage (see para 9).
  - 5.3. Option 3 – If the above options have been followed but not worked, or you feel that the matter is so serious or sensitive that you cannot discuss it with any of the above, please contact a Director, Non-Executive Director or the Chairman of the Trust. If you wish to report a concern out of office hours you can contact the Duty Executive who will be on-call (telephone numbers in Addendum A). The person to whom concerns are raised will then raise them with the appropriate Divisional Manager who will invoke the investigative stage (see para 9).
  6. For suspected financial malpractice the Trust's Counter Fraud Department should be contacted.
  7. To aid any investigation you are asked to make a confidential record of your concern using the form found in Addendum B to be provided to the person you report your concerns to.

### **What Happens When a Concern is Formally Raised?**

8. The Trust will treat all matters raised under this procedure as serious and will address all matters fairly and thoroughly.
9. An appropriate person will be identified as being responsible for investigating the issue raised promptly, in order to gather all relevant facts and speak to anyone involved before memories fade.
10. The Trust would expect investigation to take place within 14 calendar days however it is noted that this may take longer in more complex situations.
11. The member of staff who raised the concern should be given feedback promptly following completion of the investigation of actions taken as a result of their concern. If the investigation is taking longer than 14 working days or if there is a protracted delay in addressing the issue concerned the member of staff should be kept informed of this.

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12. Where action is not appropriate or practicable the Trust will endeavour to provide a thorough explanation of the reasons for this, for example investigation may reveal that all current procedures are being followed and no further action is required.

### **Confidentiality**

13. If you ask that your identity should not be disclosed, the Trust will not do so without your agreement first. If the situation arises where the Trust are not able to resolve the concern without revealing your identity (for instance because your evidence is needed in court), the Trust will discuss with you whether and how they can proceed.
14. If staff raise a genuine concern they will be safeguarded by the Trust. However it should be understood that if staff are unwilling to identify themselves and wish to remain anonymous the Trust will be less able to protect them and feedback will be difficult.
15. If staff are victimised in any way for raising a genuine concern they should inform their line manager or use the Trust's grievance procedure.

### **What Should Staff do if a Concern is Ignored?**

16. Whilst the Trust encourages staff to tell us of their concerns it does not negate the role of other agencies. However these agencies should normally only be involved if the internal procedures have been exhausted.
17. Unless there are exceptional circumstances staff are expected to follow the Trust's internal process as outlined in this procedure, before involving external agencies and before considering any course of action involving the media.
18. Addendum C gives information as to when it is appropriate to make a wider disclosure or contact agencies other than those listed in the procedure for raising concerns internally.

### **Sources of Independent Advice**

#### **Internal**

19. If you are unsure whether or how to raise a concern or want free independent advice you may contact your Trade Union representative or your professional body.

#### **External**

20. The charity for Public Concern at Work can be contacted. Their lawyers can give you independent, confidential and free advice at any stage regarding whistle blowing.

21. For Health and Safety matters, the H&S National Executive can be contacted. The Advisory, Conciliation and Arbitration Service (ACAS) give free advice.

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## List of Contacts

### Internal

#### **Chairman and Non-Executive Directors**

Dame Fiona Caldicott (Chairman), [Fiona.Caldicott@orh.nhs.uk](mailto:Fiona.Caldicott@orh.nhs.uk)

Prof Sir John Bell,

Alisdair Cameron,

Geoffrey Salt,

Anne Tutt,

Peter Ward,

All of the above can be reached via their PA, Linda Oliver, on 01865 221184 or via email

[Linda.Oliver@orh.nhs.uk](mailto:Linda.Oliver@orh.nhs.uk)

#### **Directors**

Sue Donaldson, Director of Human Resources, [Sue.Donaldson@orh.nhs.uk](mailto:Sue.Donaldson@orh.nhs.uk), 01865 740360

Graham Bennett, Interim Director of Finance and Procurement, [Graham.Bennett@orh.nhs.uk](mailto:Graham.Bennett@orh.nhs.uk), 01865 221817

Mike Fleming, Director Horton Hospital, [Mike.Fleming@orh.nhs.uk](mailto:Mike.Fleming@orh.nhs.uk), 01295 229058

Ian Humphries, Director of Estates and Facilities, [Ian.Humphries@orh.nhs.uk](mailto:Ian.Humphries@orh.nhs.uk), 01865 222100

Paul Brennan, Interim Chief Operating Officer, [Paul.Brennan@orh.nhs.uk](mailto:Paul.Brennan@orh.nhs.uk), 01865 743217

Dr James Morris, Medical Director, [James.Morris@orh.nhs.uk](mailto:James.Morris@orh.nhs.uk), 01865 221343

Elaine Strachan-Hall, Director of Nursing and Clinical Leadership, [Elaine.Strachan-Hall@orh.nhs.uk](mailto:Elaine.Strachan-Hall@orh.nhs.uk), 01865 221850

Andrew Stevens, Director of Planning and Information, [Andrew.Stevens@orh.nhs.uk](mailto:Andrew.Stevens@orh.nhs.uk), 01865 221745

The Chief Executive Officer can be contacted via Diana Garrod on 01865 221000, [Diana.Garrod@orh.nhs.uk](mailto:Diana.Garrod@orh.nhs.uk)

**Duty Executive** - via hospital switchboards - John Radcliffe 01865 741166, Churchill 01865 741841, Horton 01295 275500.

**Joint Staffs Consultation and Negotiation Committee Staff Side Joint Chairman** - Debbie Pearman and Rosemary Belton, via hospital switchboards - John Radcliffe 01865 741166, Churchill 01865 741841, Horton 01295 275500

**Local Negotiating Committee Chairman** - Simon Chamberlain, via hospital switchboards - John Radcliffe 01865 741166, Churchill 01865 741841, Horton 01295 275500

**Medical Staff Council Chairman** – Grant Bates or Graham Walker via hospital switchboards – John Radcliffe 01865 741166, Churchill 01865 741841, Horton 01295 275500

**ORH Corporate Risk Team** (Health & Safety) on 01865 222566

**Trade Union Representatives** via hospital switchboards – John Radcliffe 01865 741166, Churchill 01865 741841, Horton 01295 275500. Details are also on the HR intranet site under ‘Trade Unions’.

**Trust’s Counter Fraud Dept** on 01993 811634 or 07779 030920

### External

**Audit Commission for local authorities and NHS in England and Wales** on 020 7828 1212.

**Advisory, Conciliation and Arbitration Service (ACAS)** free advice on 0845 747 4747.

**Health & Safety Executive** on 020 7717 6000.

**NHS Fraud and Corruption** reporting line on 08000 284060.

**National Patient Safety Agency** on 02079279500 or web [www.npsa.nhs.uk/nrls/reporting](http://www.npsa.nhs.uk/nrls/reporting)

**Public Concern at Work** free advice on 020 7404 6609, email [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk) or web [www.pcaw.co.uk](http://www.pcaw.co.uk)

Updated September 2009

**Formally Raising a Concern under the Whistleblowing Procedure**

The content of this report will be used by the person your concern is being raised with to help them to decide on the most appropriate form of action. The Investigating Officer will receive a copy of this report.

You do not have to give your name or state where you work if you wish to remain anonymous; however it will not be possible to give you feedback and it may make it difficult to take the matter forward.

Your name: .....

Department: .....

Date concern raised: .....

Name of person/persons you are raising a concern about (if applicable):  
.....

Details of your concern. You should include dates, times and what happened. Please feel free to attach additional sheets.

Were there any witnesses? If so please give details.

Signature: ..... Date:.....

**Following section to be completed by the person to whom the concern is raised:**

Discussion held on: .....

Action agreed:

Outcome:

Name: .....

Department: .....

Date .....

## Wider Disclosures

Wider disclosures (e.g. to the police, the media, MPs and agencies other than those listed in the procedure) are protected if the following conditions are met:

Firstly the member of staff must:

- Make the disclosure in good faith
- Reasonably believe that the information, and any allegation contained in it, are substantially true, and
- Not act for personal gain.

In addition, one or more of the following conditions must be met:

- The member of staff has previously disclosed substantially the same information to the Trust or to a prescribed person and there has been reasonable opportunity for the Trust to have responded to the information that has been given.
- The member of staff must reasonably believe that they would be subjected to a detriment by the Trust if disclosure were to be made to the Trust or to a prescribed person.
- In the absence of an appropriate prescribed person, the member of staff reasonably believes that disclosure to the Trust would result in the destruction or concealment of information about the wrongdoing.

In order to see a list of all agencies that fall under the title of prescribed person/bodies please download the document entitled 'Blowing the whistle to a prescribed person – a list of prescribed people or bodies' available on the Directgov website using the following link:

[http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG\\_175821](http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/Whistleblowingintheworkplace/DG_175821)