

# The Newcastle upon Tyne Hospitals NHS Foundation Trust

## Speak Up – We’re Listening Policy (Voicing Concerns about Suspected Wrongdoing in the Workplace)

Version No.:	8
Effective From:	02 January 2019
Expiry Date:	02 January 2022
Date Ratified:	10 December 2018
Ratified By:	Heads of HR

### 1 Introduction

- 1.1 The Policy complies with the content of the Enterprise and Regulatory Reform Act 2013 and the Public Interest Disclosure Act 1998 which encourages employees to raise any concerns initially with their employers. The Act gives legal protection against dismissal and other adverse actions (such as victimisation including victimisation or harassment of a co-worker) should an employee disclose what they honestly and reasonably believe to be wrongdoing and against the public interest.
- 1.2 Employees who raise such concerns and who have an honest and reasonable belief that a wrongdoing has occurred, is occurring, or is likely to occur and the disclosure is made in the public interest, have the assurance of the Trust that they will be supported to raise their concerns, and will not be penalised or victimised in any way for raising their concerns.
- 1.3 The Trust proactively fosters an open and transparent culture of safety and learning to protect patients and staff. It recognises that the ability to engage in this process and feel safe and confident to raise concerns is key to rectifying or resolving issues and underpins a shared commitment to continuous improvement.
- 1.4 Steps will be taken to investigate alleged wrongdoing in an appropriate and fair manner. If an employee raises a concern and wishes to remain anonymous, this will be accommodated as far as it is reasonably practicable to do so

### 2 Scope

- 2.1 This policy covers raising concerns about wrongdoing in the work place by managers, employees, contractors engaged by the NHS, agency staff and anyone else engaged to work in the Trust, including trainees, students and volunteers. If the wrongdoing is concerning person(s) not employed by the Trust, e.g. if the worker’s contract is with an agency, the Trust will expect their employer to take appropriate action.
- 2.2 The policy covers raising concerns about alleged wrongdoing in the work place and in any work-related setting outside the workplace, e.g. business trips and work-related social events.

- 2.3 The policy is for disclosures about matters other than a breach of an employee's own contract of employment. If an employee is concerned that their own contract has been, or is likely to be, broken, they should use the Trust's Grievance Procedure.
- 2.4 If it is discovered that an employee deliberately disclosed information to create damage or embarrassment to the Trust (e.g. by leaking confidential information to the media, or discrediting a fellow employee, or a third party), or knowingly disclosed something that they knew to be untrue, the employee may be investigated under the Trust's Disciplinary policy/procedure.

### **3 Aims**

To ensure allegations/ concerns raised are investigated and, if/where necessary, action is taken to prevent further allegations/ concerns, and action is also taken (as necessary) in accordance with other relevant policies and procedures (e.g. Discipline, Fraud, Safeguarding).

### **4 Duties (Roles and responsibilities)**

- 4.1 The Executive Team is accountable to the Trust Board for ensuring Trust-wide compliance with this policy.
- 4.2 Directorate Managers are responsible for ensuring policy implementation within their Directorates and for encouraging a culture of openness by engaging with the policy and dealing with concerns raised in the appropriate manner.
- 4.3 Heads of Department/Service are responsible for ensuring policy implementation within their Department/Service and for encouraging a culture of openness by engaging with the policy and dealing with concerns raised in the appropriate manner.
- 4.4 All staff are responsible for complying with the policy.
- 4.5 Professionally registered staff have a duty to raise concerns in accordance with their Professional Code of Conduct/Practice

### **5 Definitions**

#### **5.1 Qualifying disclosure**

A disclosure made in the public interest that shows one or more of the following:

- Criminal offences that have been, are being, or are about to be committed
- Breaches of legal obligation (e.g. a breach of a statutory requirement)
- Miscarriages of justice (applies in cases before the Courts)
- Danger to health and safety of any individuals and /or patients

- Damage or possible damage to the environment
- Deliberate concealing or likely to be deliberate concealing of these subjects.

## 5.2 **Protected disclosure**

A disclosure will be protected if it is a qualifying disclosure and made to the employer (or other responsible person), a legal advisor or a prescribed person (as determined within the Employment Rights Act, 1996).

## 5.3 **Prescribed person/body**

A person or body prescribed by an Order made by the Secretary of State

## **6 Practices about which the Trust will have concerns**

6.1 There are certain practices which, if it was known were being carried out, would give the Trust (and its employees) great concern. The list below, though not exhaustive, gives examples:

- Abuse or ill treatment of patients (intended or otherwise).
- Discriminatory practices such as bullying or harassment towards colleagues, patients or visitors
- Unfair recruitment or promotion practices
- Suspicious behaviour of employees at work arousing concerns of acute stress
- Misuse, stealing or pilfering of equipment, food, etc.
- Unofficial approaches to the media (outside of Section 6)
- Wrongful disclosure of confidential information regarding patients or employees
- Concerns about health and safety matters (e.g. failure to wear protective clothing)
- Concerns about clinical matters or malpractice
- Wilful misuse of a position within the Trust to encourage patients to be treated privately
- Employees, agents or consultants or any person or body acting on the Trust's behalf making an offer, promise or giving, requesting, agreeing to receive, or accepting any bribes
- Fraudulent completion of claim forms, records, medical notes, performance monitoring data
- Concerns surrounding "sexualised behaviour" which may be considered to include either excessively familiar behaviour inappropriate to a clinical setting, or the performance of sensitive or intimate examinations in a fashion which is unprofessional or which causes distress either to the examinee or others
- Concerns regarding safeguarding and/or radicalisation

6.2 The Trust has policies and procedures in place that cover standards of behaviour at work and contain provisions for dealing with concerns related to the above - see Disciplinary Procedure, Grievance Procedure, Dignity and

Respect at Work policy, Standards of Business Conduct, Dress, Appearance and Uniform policy, Employee Wellbeing policy, Fraud Policy and Response Plan. Employees are encouraged to use the relevant policy or procedure to raise their concerns. It is recognised that there may be occasions when a matter is extremely sensitive, or an employee does not wish to use the normal management reporting channels. In such cases, employees may wish to raise the matter with any of the persons listed in the sections below.

- 6.3 Professionally registered staff also have a duty to make any concerns known in accordance with their Professional Code of Conduct/Practice where concerns are identified.

## **7 How should an employee disclose his/her concerns and to whom?**

Staff can seek help and advice from the following:

- a staff or union representative, Trust Contact Officers or Chaplains
- the 'Speak in Confidence' anonymous dialogue system to notify senior managers of a concern – [speakup.nuth.nhs.uk](http://speakup.nuth.nhs.uk)
- the Trust 'Freedom to Speak Up Guardian' - [newcastle.speakupguardian@nhs.net](mailto:newcastle.speakupguardian@nhs.net)
- Whistleblowing Helpline advice from NHS and Social Care T: 08000 724 725 or E: [enquiries@wbhelpline.org.uk](mailto:enquiries@wbhelpline.org.uk)
- Public Concern at Work (PCaW) W: [www.pcaw.co.uk](http://www.pcaw.co.uk) or T: 020 7404 6609.
- [NSPCC Whistleblowing Advice Line](http://www.nspcc.org.uk): 0800 028 0285 developed to provide support to employees wishing to raise concerns over how child protection issues are being handled.

### **7.1 Internal Disclosure, i.e. within the Trust**

7.1.1 If an employee is concerned about the practices or intended practices of a fellow employee, or another person with access to the services provided by the Trust, then he/she should approach his/her line manager with those concerns. If the individual believes their concerns have not been dealt with, or if the employee does not wish to approach the line manager (for example it may be that it is the line manager about whom they are concerned) they can approach one of the following:

- Directorate Manager/Head of Department/Service (either inside or outside of own Directorate/Department/Service)
- Head of Human Resource Services
- Chief Executive
- Executive Director
- Freedom to Speak Up Guardian
- If there are concerns about the Chief Executive or any Executive Director they can be raised with the Chair of the Trust

7.1.2 If an employee is concerned about practices or intended practices of a fellow employee, or another person with access to the services provided by the Trust, and would prefer to report those concerns to a person operationally independent of Trust Management, concerns can be raised with the Freedom to Speak Up Guardian.

7.1.3 If an approach is subsequently made to any of the persons named above, the employee making the approach will be informed:

- How their concerns will be investigated and an anticipated timescale for investigation
- How their identity will be kept confidential if they so wish and as far as it is reasonably practicable
- How they will be provided with advice and support (if required) through the process
- That they have the right to be 'protected' e.g. not to be dismissed, or passed over for promotion, or refused to be given training or victimised (including harassment from co-workers), if they have an honest and reasonable belief that the disclosure is in the public interest

## 7.2 External Disclosure, i.e. to organisations or persons outside the Trust

7.2.1 Employees making a disclosure of wrongdoing in the workplace to their legal advisor whilst obtaining legal advice would be deemed a protected disclosure.

7.2.2 Employees making a disclosure of wrongdoing in the workplace to a government minister would be protected provided the disclosure is made reasonably believing it is in the public interest.

7.2.3 Employees may contemplate disclosing their concerns outside the Trust with the [Prescribed Bodies or Persons](#). Such action is protected by the Public Disclosure Act, provided the individual reasonably believes: the disclosure is made in the public interest; is substantially true; and is the right person or body

7.2.4 Employees may contemplate disclosing their concerns outside the Trust to others not listed as a prescribed body or person, for instance, to the media. Such action is protected by the Public Disclosure Act, provided:

- the concern had been raised with the Trust, or a prescribed regulator and the response was inadequate  
**or**
- the employee reasonably believed the evidence was likely to be concealed or destroyed  
**or**
- there were reasonable grounds for believing the employee would be victimised, if he/she had raised the matter internally or with a prescribed person

**or**

- the matter was exceptionally serious **and**, in making the disclosure the employee:
  - reasonably believes it is in the public interest
  - believes the information is substantially true
  - is not acting for personal gain
  - is acting reasonably taking into account the circumstances

7.2.5 If a possibility of disclosure to a non-specified body such as the media is contemplated, employees are asked to think very seriously about this before making a decision; e.g. take advice if necessary from their trade union or professional body, or from one of the organisation referred to in Section 7 above.

### 7.3 **Acting on Concerns**

The individual to whom a concern has been reported must obtain a signed statement of the concern from the person reporting the concern (the person 'speaking up'). If the person reporting the concern does not wish to sign a statement or wishes to remain anonymous, this should be noted.

The manager to whom the complaint is reported will decide who should carry out the investigation in conjunction with the Directorate Manager / Head of Department / Medical Director / Nursing and Patient Services Director (as appropriate). The investigating officer should not be the line manager of the person who has raised the concern.

Due to the varied nature of complaints, it is not possible to lay down precise timescales for such investigations. However, investigating the concern should be a priority, and the designated investigating officer should ensure that the investigation is undertaken as quickly as possible without affecting the quality and depth of those investigations.

The investigating officer should send a written acknowledgement of the concern to the complainant as soon as possible and report back, in writing, the outcome of the investigation and any action that is proposed (within the relevant confidentiality boundaries, data protection, information governance etc.). If the investigation is prolonged, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded. Email correspondence is acceptable.

The outcome will be reported to the complainant, ideally this should be in person and documented.

### 7.4 **Anonymity of the Employee**

If an employee raises a concern and wishes to remain anonymous, this will be accommodated as far as it is reasonably practicable to do so. They will be asked to sign a statement of their concerns which will be kept by the person the matter was reported to. If they do not wish to sign such a statement, then a note of their refusal will be made.

## **7.5 Role of Staff and Union Organisations or their Representatives**

An employee who raises a concern about wrongdoing may request to be accompanied at any meetings by a staff/union representative or a work colleague.

## **7.6 What Does Protection of the Employee mean?**

7.6.1 The Trust will ensure that an employee who raises a concern about an alleged wrongdoing which has happened, is happening, or is about to happen, and the concern has been raised in the public interest, will be supported, and will not suffer any detriment or penalty connected with their job or the environment within which they work.

7.6.2 This will include any attempted victimisation or harassment. If an employee or worker subjects another employee or worker to a detriment on the ground of having made a protected disclosure, the Trust will take appropriate steps to prevent that detrimental treatment, if necessary, through investigation under the Disciplinary Policy and Procedure.

7.6.3 An employee is also given the protection of the law through complaining to an Employment Tribunal if they are dismissed or suffer any other adverse treatment due to raising concerns about an alleged wrongdoing which is in the public interest as set out above. This protection will normally apply if the matter has been raised internally first, or if the circumstances set out in Section 6 apply.

## **8 Training**

Training will be provided upon request by the Freedom to Speak up Guardian or the Human Resources Department.

## **9 Equality and Diversity**

The Trust is committed to ensuring that, as far as is reasonably practicable, the way services are provided and the way staff are treated reflects their individual needs and does not unlawfully discriminate against individuals or groups. This policy has been properly assessed.

## 10 Monitoring Compliance

Standard / process / issue	Monitoring and audit			
	Method	By	Committee	Frequency
Ensure that disclosures are received seriously and investigated thoroughly.	Review of concerns raised and recorded on ESR or Speak in Confidence System in the period	Director of Human Resources	Risk Management and Assurance Committee	Quarterly
	Bi-annual report	Freedom to Speak up Guardian	Trust Board	

## 11 Consultation and review

This policy has been reviewed in consultation with the Employment Policies and Procedures Consultative Group

## 12 Implementation (including raising awareness)

A summary of the key changes will be notified to managers following implementation. Further advice and guidance will be available from the Human Resources Department.

## 13 References

- Public Interest Disclosure Act (1998) – PIDA
- Employment rights act (1996) – ERA
- Enterprise and Regulatory Reform act (2013)

## 14 Associated Documentation

- [Disciplinary Policy/Procedure](#)



The Newcastle upon Tyne Hospitals NHS Foundation Trust  
**Equality Analysis Form A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

**PART 1**

1. **Assessment Date:**

2. **Name of policy / strategy / service:**

Speak Up - We're Listening Policy – (Voicing Concerns about Suspected Wrongdoing in the Workplace)

3. **Name and designation of Author:**

Karen Pearce, Senior HR Manager (Projects)

4. **Names & Designations of those involved in the impact analysis screening process:**

EPPCG, HR Heads, Natalie Cowan – HR Manager (Projects)

5. **Is this a:** Policy  Strategy  Service

**Is this:** New  Revised

**Who is affected:** Employees  Service Users  Wider Community

6. **What are the main aims, objectives of the policy, strategy, or service and the intended outcomes? (These can be cut and pasted from your policy)**

To outline the procedure to follow to raise genuine concerns of wrongdoing or malpractice, which are in the public interest.

To define when it is appropriate to use the whistleblowing policy and when it is appropriate to use other Trust policies, for example, the grievance procedure (i.e. if the concern is regarding a personal complaint).

To ensure that the confidentiality of individuals who raise genuine concerns is maintained and that they are protected from action from others which may have a detrimental impact. The policy provides assurance that such individuals will not be penalised or victimised in anyway for raising their concerns.

To identify that concerns, which are raised maliciously and are known by the individual to be untrue, will be dealt with in accordance with the Trust's Disciplinary policy and procedure.

7. Does this policy, strategy, or service have any equality implications? Yes  No

If No, state reasons and the information used to make this decision, please refer to paragraph 2.3 of the Equality Analysis Guidance before providing reasons:

See below

8. Summary of evidence related to protected characteristics

Protected Characteristic	Evidence i.e. What evidence do you have that the Trust is meeting the needs of people in various protected Groups related to this policy/service/strategy – please refer to the Equality fact files available via the link below <b>(add link)</b>	Does evidence/engagement highlight areas of direct or indirect discrimination? If yes describe steps to be taken to address <i>(by whom, completion date and review date)</i>	Does the evidence highlight any areas to advance opportunities or foster good relations. If yes what steps will be taken? <i>(by whom, completion date and review date)</i>
Race / Ethnic origin (including gypsies and travellers)	The policy is clear that it does not discriminate on the grounds of a protected characteristic	No	
Sex (male/ female)	As above	No	
Religion and Belief	As above	No	
Sexual orientation including lesbian, gay and bisexual	The policy is clear that it does not discriminate on the grounds of sexual orientation.	No	

<b>people</b>			
<b>Age</b>	As above	No	
<b>Disability – learning difficulties, physical disability, sensory impairment and mental health. Consider the needs of carers in this section</b>	As above	No	
<b>Gender Re-assignment</b>	As above	No	
<b>Marriage and Civil Partnership</b>	As above	No	
<b>Maternity / Pregnancy</b>	As above	No	

9. Are there any gaps in the evidence outlined above. If 'yes' how will these be rectified ?

No

10. Engagement has taken place with people who have protected characteristics and will continue through the Equality Delivery System and the Equality Diversity and Human Rights Group. Please note you may require further engagement in

respect of any significant changes to policies, new developments and or changes to service delivery. In such circumstances please contact the Equality and Diversity Lead or the Involvement and Equalities Officer.

Do you require further engagement      Yes              No

11. **Could the policy, strategy or service have a negative impact on human rights? (E.g. the right to respect for private and family life, the right to a fair hearing and the right to education?)**

The policy actively encourages the right to freedom of expression.

## **PART 2**

### **Signature of Author**

Karen Pearce

### **Print name**

Ms Karen Pearce

### **Date of completion**

30/5/2018

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified, please refer to the Policy Author identified above, together with any suggestions for action required to avoid/reduce the impact.)