

NHS Waltham Forest
Clinical Commissioning Group
Whistleblowing Policy

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Amendments to Version 4 <ul style="list-style-type: none">- Updated LCFS details- Reflects best practice as identified by WFCCG Local Counter Fraud Specialist (LCFS)- Referenced Conflicts of Interest policy as supporting documentation	Amendments made by: David Pearce, Head of Governance Gemma Higginson, WFCCG Local Counter Fraud Specialist (LCFS)
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V2	Executive Management Team	May 2013
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1.0 Introduction

1.1 All of us at one time or another have concerns about what is happening at work. Usually these are easily resolved. However, when the concern feels serious because it is about a possible:

- Danger;
- Professional misconduct;
- Unsafe practice;
- Conflict of interest;
- Breaches of standards or regulations; or
- Financial malpractice

that might affect patients, colleagues, or the organisation itself, it can be difficult to know what to do.

1.2 You may be worried about raising such an issue and may think it best to keep it 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, to managers or to the organisation. 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.

1.3 The Governing Body of NHS Waltham Forest CCG is committed to running the organisation in the best way possible and to do so we need your help. We have introduced this policy to reassure you that it is safe and acceptable to speak up and to enable you to raise any concern you may have at an early stage and in the right way. Rather than wait for proof, we would prefer you to raise the matter when it is still a concern.

1.4 The CCG has appointed Terry Huff, Accountable Officer, as Nominated Official to take responsibility for ensuring implementation of the whistleblowing arrangements.

1.5 This policy applies to all those who work for us: whether full-time or part-time, self-employed, employed through an agency or as a volunteer.

1.6 If something is troubling you which you think we should know about or look into, please use this procedure. If, however, you wish to make a complaint about your employment or how you have been treated, please use the grievance policy or bullying/harassment policy, which you can obtain from your manager or HR Business Partner. This Whistleblowing policy is primarily for individuals who work for us and have concerns where the interest of others or of the organisation itself are at risk.

If in doubt – raise it!

2.0 Definition of Whistleblowing – Protected Disclosure

2.1 Whistleblowing, or public interest disclosure, occurs when a worker (see Section 3.2) with reasonable belief reports the actual or prospective improper actions of his /her organisation or colleagues.

2.2 The Public Interest Disclosure Act clearly defines the types of disclosure that qualify the worker disclosing them for protection against dismissal and detriment. These are known as 'protected' disclosures and cover allegations of six types of wrongdoing which may be occurring, have occurred or may occur and are:

- A criminal offence
- Failure to comply with any legal obligation
- A miscarriage of justice
- Risks to health and safety or;
- Environmental damage
- The deliberate concealment of information which would constitute evidence of any of the above

See 3.3 for examples of whistleblowing

2.3 For a whistle-blower to be protected under the Act, the disclosure needs to be both a qualifying and a protected disclosure. To be protected, disclosures must be made with reasonable belief, meaning that the motivation for making a disclosure should be an honest and reasonable one and to be qualifying must be made in the public interest. Disclosures made to a member of parliament or prescribed person are also protected under the Public Interest Disclosure Regulations as long as the malpractice falls within the matters for which the person is prescribed and that any allegation contained within it is substantially true.

2.4 Disclosures under 2.2 will be a qualifying disclosure protected under the Act unless the person making the disclosure commits an offence by making the disclosure e.g. it breaches the Official Secrets Act.

3.0 Scope

3.1 This applies to all “workers” or staff directly employed by Waltham Forest CCG, and anyone who works for the CCG under any type of contract e.g. any contractor, consultant, agency, temporary, and casual staff. It also covers ex-employees, suppliers, service users, employees and committee members of organisations funded by the CCG and employees and principals of partner organisations. This ensures that concerns raised about CCG practice identified by these external parties can be reported directly to the CCG rather than requiring those parties to utilise external reporting lines.

3.2 Since the legislation defines staff covered by this act as “workers” this term has been used throughout the policy. It is important to note that the Public Interest Disclosure Regulations only offer protection to employees, not to volunteers or self-employed people.

3.3 The whistleblowing procedure is appropriate for raising public concerns only. Where an individual has a personal grievance, the appropriate policy (e.g. Grievance Procedure, Harassment, Bullying and Discrimination, Diversity) should be consulted.

Before proceeding to raise an issue under this policy, line managers and workers should recognise that there is a difference between a grievance and a protected disclosure.

A protected disclosure will concern the conduct of another person in the workplace (whether or not that conduct affects the complainant personally), in circumstances where the complainant genuinely believes e.g. that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment etc

Examples of the difference between a grievance and a protected disclosure may include, but are not limited to:	
Grievance: employee complains about:	Protected disclosure – individual discloses
the type of work being asked to do, e.g. if it is not covered by his/her contract	being instructed to carry out actions that he/she genuinely believes to be illegal, e.g. falsify tax returns
Not receiving sufficient safety training	that safety rules within the workplace are routinely being flouted, thus endangering safety

4.0 Policy Statement – Disclosure and Protection

4.1 NHS Waltham Forest CCG is committed to achieving the highest possible standards of service and ethical standards in public life and recognises the value of operating a whistleblowing policy to help sustain this. Thus this policy is to ensure for instance:

- Active support of the Act by management at the highest level of the organisation
- A route for workers to report wrongdoing that should be disclosed or raising genuine concerns about possible malpractice internally, without feeling intimidated
- That any worker expressing concerns of this nature will be taken seriously and their concern investigated
- That evidence of poor or unacceptable practice or misconduct is not concealed
- That disciplinary action is taken if a worker destroys or conceals such evidence
- Liaison with the Nominated Official, Terry Huff, (see Section 6) in cases where staff report malpractice to the Department

4.2 By encouraging a culture of openness and accountability within the CCG, it is believed NHS Waltham Forest CCG can help prevent such situations occurring. NHS Waltham Forest CCG expects all workers to maintain high standards in accordance with our policies and procedures and to report any wrongdoing that falls short of these

fundamental principles. It is the responsibility of all workers to raise any concerns that they might have about malpractice within the Waltham Forest CCG.

- 4.3** The Act and NHS Waltham Forest CCG policy provides that workers can where appropriate disclose the improper action, internally, to the Nominated Official, Terry Huff, to one of a number of external regulators, or more widely if none of the other options is appropriate. Waltham Forest CCG has a set procedure in this policy to help workers determine the most appropriate course of action bearing in mind the provisions under Section 2 of this policy.
- 4.4** NHS Waltham Forest CCG aims to ensure that workers have confidence in the fairness and impartiality of its procedures for registering concerns.
- 4.5** Workers should follow the internal procedures set down in this policy for whistleblowing and in most circumstances raise concerns internally to an appropriate person before making a disclosure to any external body. Only if a case is exceptionally serious, and there are good reasons for doing so, should a worker bypass these disclosure procedures. The key for the worker is to ensure that any disclosure of information is “reasonable in all the circumstances” and disclosed with reasonable belief that that it is made in the public interest.. The worker must always comply with Waltham Forest CCG policy for whistleblowing - (protection of the Public Interest Disclosure Act 1998 can be lost if internal policy is ignored). The policy may benefit from an explicit statement confirming that anonymity must be requested by the whistle-blower
- 4.6** NHS Waltham Forest CCG also has a duty to protect workers who raise concerns under this policy from less favourable treatment, such as dismissal, selection for redundancy or suffering a detriment such as disciplinary action, loss of work or pay. There is a liability for the CCG if they have failed to take reasonable steps to prevent the harassment or victimisation of whistle-blowers by their colleagues. All employees can be personally liable should they subject a whistleblower to detriment. Thus NHS Waltham Forest CCG will make every effort to ensure any whistle-blower suffers no adverse repercussions from individuals under its control as a result of making a disclosure. This will include;
- Keeping any disclosure made under this policy as confidential as possible. (See Section 7)
 - Treating any victimisation of a whistle-blower as a serious matter subject to the Disciplinary Procedure, including action up to and including dismissal (which in some circumstances may also result in criminal prosecution).
- 4.7** If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any detriment (such as a reprisal or victimisation). A 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following, but may not be restricted to:
- Criminal offence;
 - Breach of legal obligation;
 - An abuse of position;
 - Wilful neglect.
 - A failure to adhere to internal policies/procedures
 - Improper behaviour

- 4.8 What is reasonable will depend on all the circumstances, assessed from the perspective of the worker at the time of the disclosure, not with the benefit of hindsight, good faith (effectively this means honestly), it does not matter if you are mistaken or if there is an innocent explanation for your concerns. So please do not think we will ask you to prove it. Of course we do not extend this assurance to someone who maliciously raises a matter they know is untrue.
- 4.9 Workers who experience less favourable treatment can and should take any issues up through the appropriate NHS Waltham Forest CCG adopted Policies such the Bullying Harassment policy or the Grievance Policy and Procedure.
- 4.10 It should be noted that any worker who makes allegations in the reasonable belief that they are in the public interest, that turn out to be unfounded will not be penalised for being genuinely mistaken.
- 4.11 Equally, any worker who abuses the whistleblowing process by making a disclosure without reasonable belief e.g. raising unfounded allegations maliciously or for personal gain may be subject to disciplinary action up to and including dismissal.

5.0 General Principles and Procedure – Internal Disclosure

- 5.1 There is an obligation on every worker to report genuine concerns (e.g. possible security incidents and losses **must** be reported). In the majority of instances the most appropriate place to raise concerns will be with the line or more senior manager.

5.2 How to Raise a Concern

Step One

If you have a concern about a risk, malpractice or wrongdoing at work, we hope you will feel able to raise it first with your line manager or senior member of staff. This may be done verbally or in writing, at the earliest opportunity.

5.3 Step Two

If you feel unable to raise the matter with your line manager or senior member of staff, for whatever reason, please raise the matter with the WFCCG Lay Member for Public and Patient Engagement

The designated officer has been given special responsibility and training in dealing with whistleblowing concerns, including training on interview techniques and handling evidence. If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made. This procedure provides a route whereby workers can raise concerns over issues of impropriety and malpractice without going through the normal management structure and with confidence that those concerns will be thoroughly investigated and dealt with as appropriate. The worker should first ensure their concern constitutes a protected disclosure rather than a grievance (see sections 3.3) and is a public concern that is appropriate and reasonable to be raised under the whistleblowing procedure, (see section 2)

A worker wishing to raise their concern under this policy should preferably write to the member of the Waltham Forest CCG Governing Body entrusted with the duty of investigating staff concerns, who is the Lay Member for Public and Patient Engagement, sending their letter in a sealed envelope marked 'In Confidence'

In the absence of the Lay Member for Public and Patient Engagement, the alternative person to handle this concern will be the Deputy Chair to the Governing Body.

The worker may alternatively request a telephone call to raise their concerns and details of the call will be recorded in lieu of the letter.

The designated Governing Body Member will then handle this matter promptly after firstly acknowledging receipt of their letter to the worker and secondly assessing whether their concerns fall properly within the policy and his/ her remit. This acknowledgement will be in writing. It will be issued as soon as possible and within 5 working days unless not reasonably practicable.

If the concern falls under the policy, the Governing Body Member will then initiate a thorough investigation (either in person or to an appropriate delegate), and arrange for further evidence both from the concerned worker and Waltham Forest CCG management as appropriate.

The Governing Body Member will normally enlist the assistance of the Human Resources function supporting Waltham Forest CCG in gathering evidence and in some cases e.g. when there are financial or legal implications or where senior workers are under suspicion it may be appropriate to involve the Waltham Forest CCG Accountable Officer and / or the Waltham Forest CCG Local Counter Fraud Specialist, internal or external auditors.

5.4 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, please contact:

Terry Huff, Accountable Officer

5.5 Step Four

Public interest disclosure law protects workers disclosing malpractice at their workplace or formal workplace to a Member of Parliament, referred to as the prescribed person, if they feel that their attempts to raise the malpractice internally have not been satisfactorily addressed. In order for the disclosure to be protected, the worker must show that he or she reasonably believed that the malpractice falls within the matters for which the person is prescribed and that the information disclosed, and any allegation contained in it, are substantially true.

6.0 How We Will Handle the Matter

6.1 Once you have told us of your concern, we will assess it and consider what action may be appropriate. This may involve an informal review, an internal inquiry or a more formal investigation. We will tell you who will be handling the matter, how you can contact them, and what further assistance we may need from you i.e. if appropriate you may be asked to participate in an investigation. If you ask, we will write to you summarising your concern and setting out how we propose to handle it and provide a timeframe for feedback. If we have misunderstood the concern or there is any information missing, please let us know.

- 6.2 When you raise the concern it will be helpful to know how you think the matter might best be resolved. If you have any personal interest in the matter, we do ask that you tell us at the outset. If we think your concerns fall more properly within our Grievance, Prevention of Bullying and Harassment or other relevant procedure, we will let you know.

Whenever possible, we will give you feedback on the outcome of any investigation.

- 6.3 Please note, however, that we may not be able to tell you about the precise actions we take where this would infringe a duty of confidence we owe to another person. While we cannot guarantee that we will respond to all matters in the way that you might wish, we will strive to handle the matter fairly and properly. By using this policy you will help us to achieve this.
- 6.4 If for any reason the worker is dissatisfied with the handling of the concern e.g. reasonably believes NHS Waltham Forest CCG has failed to make a proper investigation, take proper action or has delivered an unsatisfactory outcome, the worker may raise this in other ways (See sections 6-8).
- 6.5 NHS Waltham CCG is committed to progressing whistleblowing allegations in a timely manner in order to minimise the distress caused to all parties. As such, a timescale will be established for each case. This will be monitored for compliance.

7.0 General Principles and Procedure – External Disclosure

- 7.1 The approach to Nominated Official should be detailed either by telephone or in writing marked "In Confidence" to the nominated official at NHS Waltham Forest CCG who will investigate the matter further. The contact details of the official are:

Terry Huff, Accountable Officer, (terry.huff@walthamforestccg.nhs.uk)

Or if their concern is about fraud or bribery, they can also contact the Trust Local Counter Fraud Specialist, Gemma Higginson, on 020 3201 8000 or by email at Gemma.Higginson@rsmuk.com or the NHS Fraud Hotline (Tel: 0800 028 40 60) or online at <https://www.reportnhsfraud.nhs.uk/>.

- 7.2 Workers should be aware that there are instances where issues of propriety and misconduct under the Public Interest Disclosure Act (1998) may also be raised with the Secretary of State for Health. These are when the worker reasonably deems that:
- It is inappropriate to use the internal process, (he /she may raise the issue with reasonable belief to the Nominated Official)
 - The response to the concerns raised with the Governing Body Member is not reasonable or satisfactory.

8.0 Confidentiality

- 8.1** NHS Waltham Forest CCG recognises that workers may want to raise a concern in confidence under this policy and NHS Waltham Forest CCG will work to sustain confidentiality in all disclosures by ensuring the anonymity / identity of the individual concerned will, so far as is possible, be kept confidential. Anonymity must be requested by the individual raising the concern in confidence.
- 8.2** Please remember that if you do not tell us who you are it will be much more difficult for us to look into the matter. We will not be able to protect your position or to give you feedback.
- 8.3** Accordingly you should not presume we can provide the assurances we offer in the same way if you report a concern anonymously.
- 8.4** The worker disclosing must realise that in some circumstances, there can realistically be no absolute promise of confidentiality following disclosure if this is to be investigated or the concern resolved.
- 8.5** Once a worker has made a disclosure they equally have a responsibility to maintain confidentiality about this disclosure since this could compromise the worker and the process.
- 8.6** NHS Waltham Forest CCG will not disclose the person's identity without first discussing this with the worker and outlining how this can proceed. This decision will not be taken without first having conducted a risk assessment, and appropriate steps will be taken to ensure that their working environment and/or working relationship is/are not prejudiced by the fact of the disclosure.
- 8.7** There will be some disclosures, that once disclosed, cannot be investigated or resolved without revealing the workers identity, and that Waltham Forest CCG will be obliged to continue to investigate and resolve. Workers may be required to attend a disciplinary or investigative hearing as a witness. It needs to be remembered that this was why the framework of legal protection for individuals who disclose information was required. The Public Interest Disclosure Act (1998) was devised to protect workers from suffering from detriment, discrimination, victimisation or dismissal if they criticise the working practices of the organisation which employs them (see section 4.1)

9.0 When External Disclosure is Reasonable and Appropriate

- 9.1** The aim of this policy is to provide a mechanism for reporting, investigating and remedying any potential wrongdoing internally and/or with Waltham Forest CCG as appropriate. It is therefore hoped that it will not be necessary for workers to alert external organisations.
- 9.2** However, in very serious circumstances, NHS Waltham Forest CCG recognises that it may be appropriate for a worker to report their concerns to an external body such as a regulator (see 9.3 below) where the alleged wrongdoing / malpractice falls within that body's remit, especially if on the conclusion of the above process (sections 5-6), the worker reasonably believes that the appropriate action has not been taken.
- 9.3** The Government has prescribed a list of appropriate external bodies for reporting certain matters, including (for example) the Environment Agency and the Health and

Safety Executive. A full list is available from Public Concern at Work, an independent charity. It will rarely be appropriate to go directly to the press.

9.4 Also, workers may make such a disclosure to the independent whistleblowing charity Public Concern at Work, on 0207 404 6609 or by email at whistle@pcaw.org.uk if, despite the best efforts of the organisation, workers believe that disclosure within the organisation is inappropriate or has been unsuccessful. Disclosures made to worker's legal advisors in the course of obtaining legal advice will be protected. Workers may also contact their union at any stage for free confidential advice if they are unsure of how to raise a concern.

9.5 'Exceptionally serious' is not defined in the legislation but is likely to be restricted to matters where disclosure would serve the public interest. – However, the worker making the disclosure **must**:

- Have reasonably believed, at the time of making the disclosure, that he/she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body;
- Comply with NHS Waltham Forest CCG policy for whistleblowing - (protection of the Public Interest Disclosure Act 1998 can be lost if internal policy is ignored)
- Have previously disclosed his/her concerns to the employer or a prescribed body; or;
- In circumstances where there is no prescribed body, have reasonably believed that, if he/she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice

10.0 Diversity and Equal Opportunities Monitoring

10.1 Human Resources will compile any records required in relation to the worker who made the disclosure in terms of race, gender, age and disabled status etc. and issues of concern. This information will be kept confidentially by Human Resources and will be used for no other purpose than to enable NHS Waltham Forest CCG to fulfil its obligations for monitoring and ensuring Equal Opportunities.

11.0 Responsibility

11.1 All workers / members of staff referred to within the scope of this Policy are required to adhere to the policy.

11.2 All line managers are responsible for ensuring that this Policy is applied within their own area. Any queries on the application or interpretation of this policy must be discussed with Human Resources prior to any action being taken.

11.3 Human Resources are responsible for ensuring the maintenance, regular review and updating of this Policy.

12.0 Related Policies

Disciplinary policy

Grievance policy

Harassment and Bullying policy

Complaints policy

Anti - Fraud and Bribery policy

Standards of business conduct and the management of conflicts of interest