

BARNESLEY CLINICAL COMMISSIONING GROUP

WHISTLEBLOWING POLICY

Version:	1.4
Approved By:	Governing Body
Date Approved:	13 February 2014 31 March 2016, 29 March 2018 (reviewed)
Name of originator / author:	Head of Governance & Assurance
Name of responsible committee/ individual:	Governing Body (Approval) Audit Committee (review)
Name of executive lead:	Head of Governance & Assurance
Date issued:	April 2018
Review Date:	2 years from approval / last review
Target Audience:	Barnsley CCG staff

**THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY
IMPACT ASSESSMENT**

Amendment Log

Version No	Type of Change	Date	Description of change
DRAFT		January 2014	
1	Final	13 February 2014	Approved by Governing Body
1.1	Review	9 February 2016	<p>Policy reviewed by Head of Assurance:</p> <ul style="list-style-type: none"> • Minor corrections and clarifications: • Also reference to NHSCFA becoming a 'prescribed person' for NHS whistleblowers • Clarification of roles of NHSE and CCG with respect to primary care • Change references to CSU Workforce Team to Human Resources Team • Updated the list of related policies
1.2	Final	31 March 2016	Amendments approved by Audit Committee
1.3	Final	June 2016	Very minor further changes to Appendix 4 proposed by LCFS incorporated and circulated round Audit Committee – not treated as a formal review so next review date remains March 2018.
1.4	Review	February / March 2018	Routine 2 yearly review identified some typos, added some detail re role of staff side in supporting staff, updated references to NHS Protect, and updated some external contact details. Changes approved by Audit Committee March 2018.

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Whistle Blowing Policy - Executive Summary (i)

Introduction

Individual workers have a right and a duty to raise matters of concern they may have about health service issues, associated with the delivery of care or services to a patient or client within the organisation or by healthcare staff in organisations where services are commissioned by Barnsley CCG where patient safety issues or frauds may exist. The whistleblowing policy sets out the process for doing so.

Scope

All people working at the CCG are covered by the policy (employees, temporary staff, volunteers, self-employed people or contractors supervised by the CCG). The CCG will also take seriously any concerns associated with the delivery of care or services to patients or clients raised by employees of providers of healthcare primarily commissioned by the CCG.

The policy does not cover:

- Concerns about an employee's terms and conditions of employment, or other work related issues, which will be considered under the CCG's grievance policy
- Clinical and non-clinical complaints received from members of the public, which will instead be handled under the provisions of the CCG's complaints policy.

Qualifying disclosures

The policy provides protection for employees who raise legitimate concerns where they reasonably suspect a concealment (or 'cover up') of any of the following is being or is likely to be committed:

- 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.

How to raise a concern

Where a member of staff has a concern they should raise it as follows (see also the flow charts overleaf):

Informal Stage

- Raise the concern with their line manager, verbally or in writing.

Formal Stage

If the staff member feels the issue has not been adequately addressed at the informal stage (or if they do not feel able to raise the matter with their line manager) they are free to escalate the issue formally via a 3 stage process:

- *Stage 1:* Raise the concern with a **Senior Manager**.

If not adequately addressed move to...

- *Stage 2:* Raise the concern with the **Chief Officer**.

If not adequately addressed move to...

- *Stage 3:* Raise the concern with the **Chair of the Governing Body or Audit Committee**.

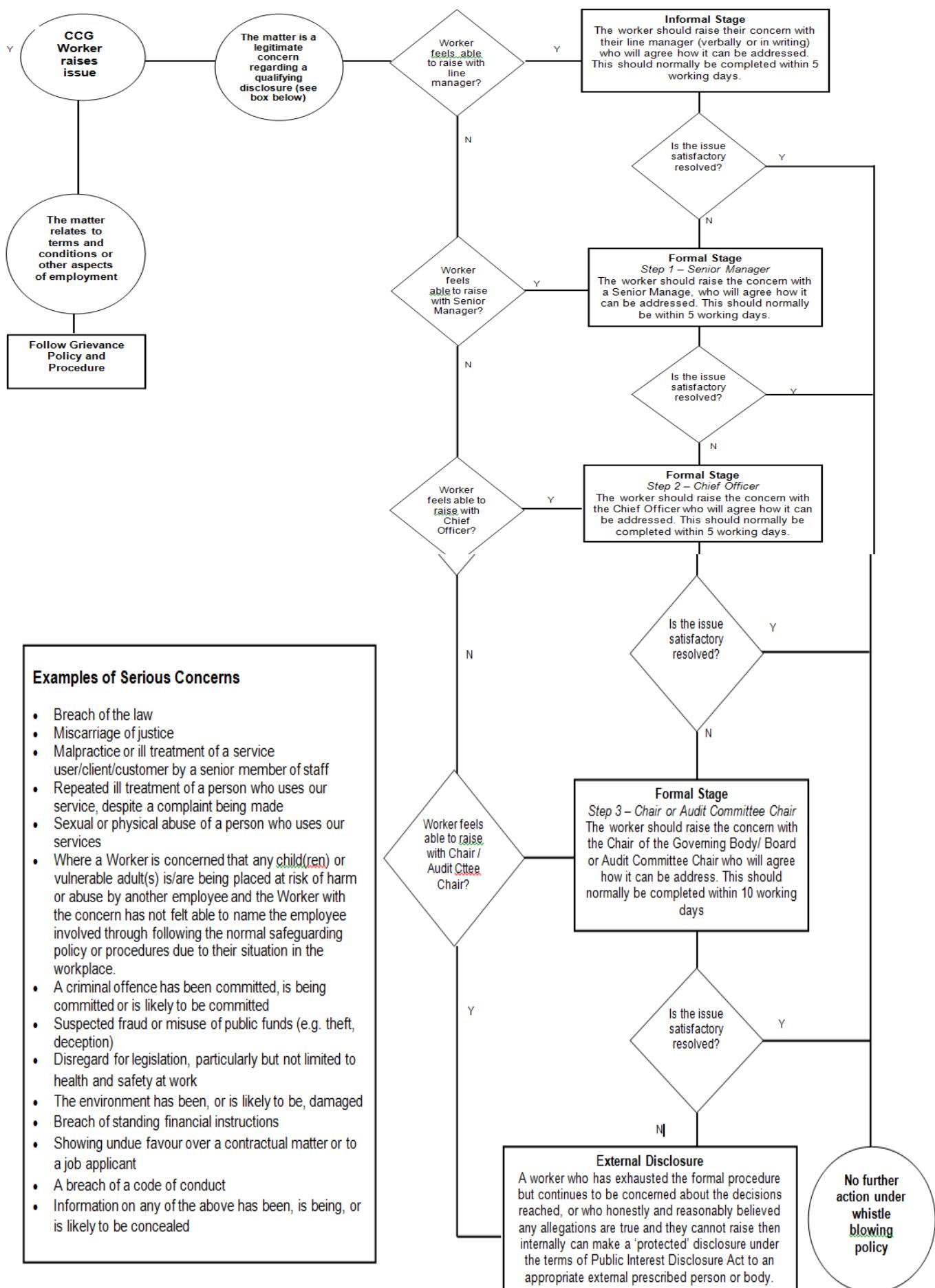
External disclosure

If the staff member feels unable to raise the matter internally, or believes the informal and formal process outlined above has not satisfactorily addressed the issue, they are able to make a protected disclosure to a legal adviser, an MP, a Minister of the Crown, a Statutory Health and Safety representative, the Police, the Counter Fraud Specialist, the NHS Counter Fraud Authority (NHS CFA) via the National Fraud and Corruption Reporting Hotline, or other external regulators.

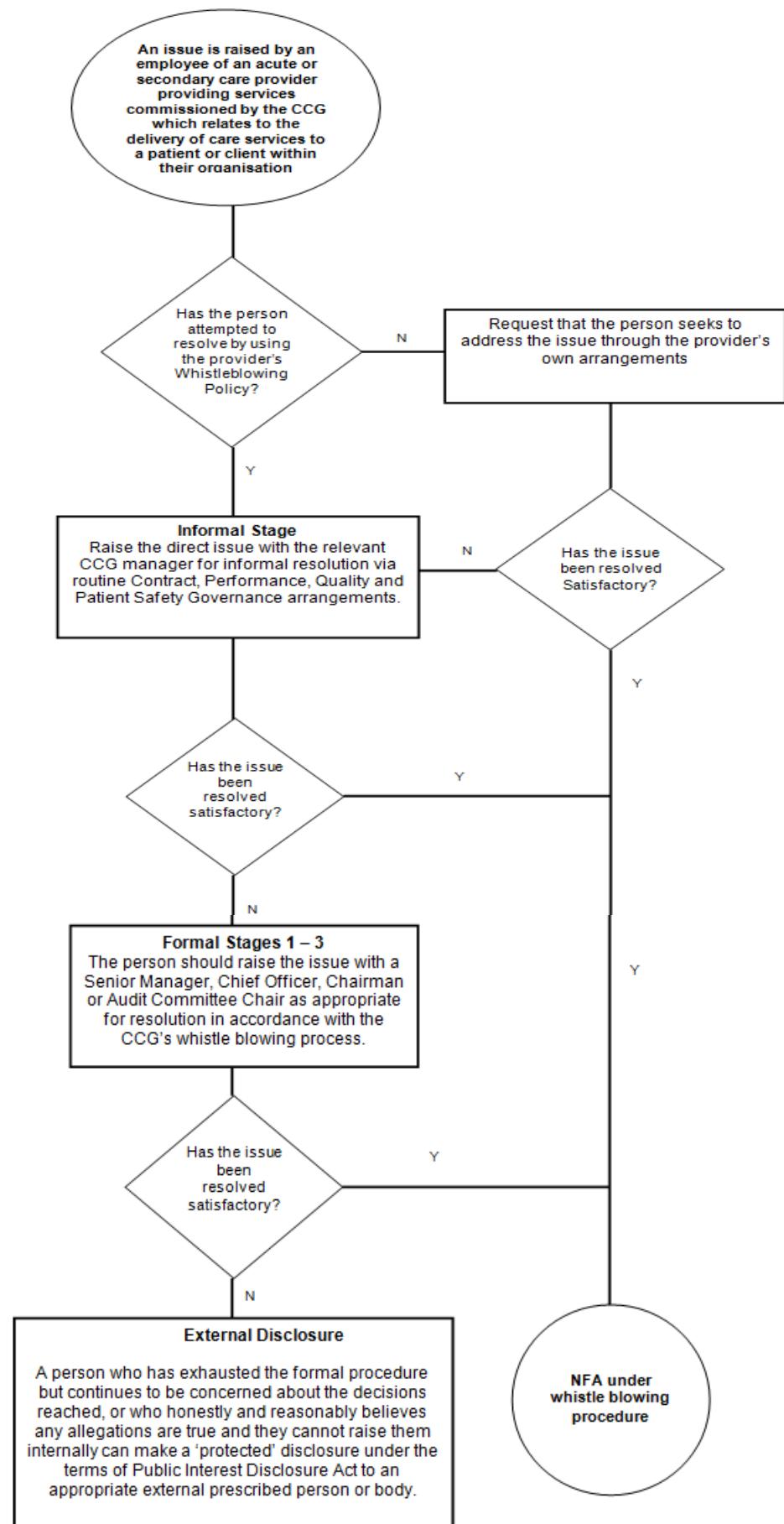
Other points to note are:

- Employees raising a concern are entitled to be accompanied by a staff side representative or colleague at all stages of the process
- Staff can enter the process at any stage if they feel that for any reason they cannot raise the issue at a lower level
- At each stage the matter should be considered and addressed within 5 working days.

Procedure for handling matters raised by workers of the CCG (ii)



Procedure for handling matters raised by employees of organisations providing health care primarily commissioned by the CCG (BHNFT, SWYPFT, BMBC) (iii)



POLICY

1. PURPOSE

- 1.1 Individual workers have a right and a duty to raise matters of concern they may have about health service issues, associated with the delivery of care or services to a patient or client within the organisation or by healthcare staff in organisations where services are commissioned by Barnsley CCG where patient safety issues or frauds may exist. This purpose of the policy is to enable any worker to raise concerns safely, at the earliest opportunity and in the right way. The organisation welcomes the raising of concerns and is committed to dealing with them responsibly and professionally under this or other policies. If an individual raises a concern, the matter will always be given serious consideration. This policy has been drawn up in order to assist workers on how to voice any concerns they may have and to ensure there is a procedure available whereby issues can be addressed quickly and effectively.
- 1.2 The policy aims to:
- encourage workers to feel confident in raising serious concerns regarding the practice of the Organisation
 - provide avenues for workers to raise those concerns and receive feedback on any action taken
 - raise awareness of examples of the range and types of concern that should be raised through this procedure
 - ensure that workers receive a response to their concerns
 - reassure workers that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they should make any disclosure.

2. SCOPE

- 2.1 This policy covers all workers in the organisation. The definition of “workers” for the purposes of this policy includes:
- Employed staff
 - Temporary agency staff
 - Persons on training courses
 - Self-employed staff or Contractors who are working for and supervised by the organisation
 - Volunteers
 - Workers employed in partner organisation’s carrying out duties in the organisation
 - Governing Body members.
- 2.2 The policy covers qualifying disclosures as defined at paragraph 3.4 below. Concerns about the worker’s individual terms and conditions of employment, or about actions taken in relation to themselves relating to the allocation of work, the working environment, opportunities for career development or the way they have been managed, will be considered under the CCG’s grievance policy.

- 2.3 In addition to matters raised by its own workers, the CCG will also take seriously any concerns associated with the delivery of care or services to patients or clients raised by employees of providers of healthcare primarily commissioned by the CCG:
- Matters relating to *primary health care* - NHS England retains its functions in relation to complaints management and is responsible for taking decisions in relation to the management of complaints, including whistleblowing in relation to a GP practice or individual performer. The CCG will immediately notify the Local NHS England Team of all complaints received by or notified to the CCG, and will co-operate fully with NHS England in relation to any complaint and any response to such complaint.
 - The CCG would expect that matters relating to *services commissioned by the CCG which are provided by acute and secondary care providers* will be handled under those organisation's own policies and procedures. However, where for whatever reason the person raising the issue feels unable to use the provider's processes, that person will have the opportunity to raise the issue via the CCG's informal and formal procedure (see the flow chart at Appendix 3).
- 2.4 Clinical and non-clinical complaints received from members of the public are not covered by this policy, but will instead be handled under the provisions of the CCG's complaints policy.

3. PRINCIPLES

- 3.1 The safety of workers, service users and their relatives is of paramount importance. The organisation is committed to encouraging a culture of openness where workers can express their ideas and / or concerns and these will be welcomed by the Chief Officer, Senior Managers and Governing Body as a meaningful contribution towards improving services.
- 3.2 In particular, we should all be vigilant for any issue that impacts on the duty we all have for safeguarding and promoting the welfare of children and vulnerable adults. Workers must be aware of the organisation's procedure for raising concerns about the welfare of anyone with whom they have contact. This policy helps provide an alternative route if you believe your concerns have not been adequately addressed.
- 3.3 This Policy is guided by the principle legislation on the matter - The Public Interest Disclosure Act 1998 which became law on 2 July 1999. This Act gives significant statutory protection to workers who disclose information reasonably and responsibly in the public interest and who may be victimised as a result.

- 3.4 The Act provides protection for employees who raise legitimate concerns about specified matters known as “qualifying disclosures”. A qualifying disclosure is one made 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 and corruption;
 - financial fraud or mismanagement;
 - unauthorised disclosure of confidential information; or
 - a concealment (or ‘cover up’) of any of the above is being or is likely to be committed.

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

- 3.5 The common term for a protected disclosure of information in the public interest is *Whistleblowing*. A widely accepted definition of *Whistleblowing* is provided by Lord Borrie QC in 1995, as follows:

“...the disclosure by an employee (or professional) of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or of fellow employees.”

- 3.6 More recently the Enterprise and Regulatory Reform Act 2013, whilst being a wide ranging piece of legislation, includes one specific aspect concerning reforms and changes to *Whistleblowing*. (For a summary of these changes in this Act see Appendix 1 for more detail).
- 3.7 In consideration of the above, the common principles that will be adhered to include;
- 3.7.1 Any matter raised under this policy and procedure will be investigated thoroughly, promptly and confidentially and the outcome of the investigation reported back to the worker who raised the issue.
 - 3.7.2 All workers will be made aware of the policy on joining the organisation and will be encouraged to read and understand its process. All existing workers and managers will be made aware of the policy through regular training sessions.
 - 3.7.3 Workers who have concerns about their individual terms and conditions of employment will not be covered by this policy. Such concerns should be raised through the organisation’s existing grievance procedure. A grievance is usually a complaint by an employee about an action taken in relation to themselves.

- 3.7.4 No worker will be victimised under this procedure for raising a legitimate concern.
- 3.7.5 In the event that misconduct is discovered as a result of any investigation under this procedure the organisation's disciplinary procedure will be invoked in addition to any external measures.
- 3.7.6 Where it can be demonstrated that a worker knowingly supplied false information when raising a concern the organisations disciplinary procedure will be invoked.
- 3.7.7 The Organisation will treat all 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. 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.

4. ACCOUNTABILITY

- 4.1 The Chief Officer is accountable for this policy.

5. ROLES AND RESPONSIBILITIES

5.1 'Workers' / Employees

- 5.1.1 Understand their responsibilities under this policy and their statutory regulatory, contractual and / or professional responsibilities.
- 5.1.2 Raise any genuine concern about a risk, malpractice or wrong doing at work, which may affect patients, the public, other staff, or the organisation itself, at the earliest reasonable opportunity.
- 5.1.3 Comply with any subsequent investigation into any issues raised under this policy.

5.2 Line Managers / Service and Senior Managers

- 5.2.1 Support all workers in raising concerns about safety, malpractice or wrongdoing at work, responding to and, where necessary, investigating the concerns raised at the appropriate steps in the procedure.
- 5.2.2 Ensure this policy is brought to the attention of all workers within their area of responsibility including through the induction process for new starters.

5.3 Human Resources Team

- 5.3.1 Work in partnership with Managers and Employee Representatives to ensure workers are treated fairly and consistently within the framework of the policy.
- 5.3.2 Make this policy available to all workers and ensure a high level of awareness within the organisation.
- 5.3.3 Assist individuals to raise issues under this policy.
- 5.3.4 Provide advice and support to Managers and/or Investigating Officers.

5.4 Chief Officer / Chair of the Governing Body

- 5.4.1 The Chief Officer or a designated Deputy will consider and investigate referrals at the appropriate formal steps in this policy and procedure.
- 5.4.2 The Chair of the Governing Body or their designated Governing Body representative will be responsible for hearing and ensuring an investigation of referrals at the final step in the formal procedure.

5.5 Trade Unions / Staff Side Representatives

- 5.5.1 Provide advice on the procedure and assist workers to raise appropriate concerns under this policy.

5.6 Independent / Professional Advice

- 5.6.1 At any point either before raising the concern or at any stage in this procedure a worker may involve a Trade Union or Professional Association Representative (ie) GMC, RCN or NMC who will be able to provide help and advice.
- 5.6.2 Free, independent and confidential advice can be obtained from the Whistleblowing Helpline for NHS and Social Care on 08000 724 725.
- 5.6.3 Support and advice is available from Public Concern at Work and the NAO Comptroller and Auditor General at the following addresses:

Public Concern at Work CAN Mezzanine 7 - 14 Great Dover Street London SE1 4YR 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 Telephone: 020 7798 7999
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6. ASSURANCES AND CONFIDENTIALITY

- 6.1 The Chief Officer, other senior officers and the Governing Body are committed to this policy. Workers raising a genuine concern under this policy will not be at risk of losing their job or suffering any form of retribution as a result. Workers acting in the public's best interests, having an honest and reasonable suspicion that malpractice has occurred, is occurring, or is likely to occur, can be assured that their concerns will be taken seriously even if ultimately the worker was mistaken. However the CCG does not extend this assurance to any employee who maliciously raises a matter they know to be untrue. Unfounded allegations made with malicious intent will be dealt with through the organisation's disciplinary procedures. Similarly, victimising members of staff who have expressed or intend to express their concerns, or deterring them from raising a concern about fraud or abuse, is a serious disciplinary offence.
- 6.2 Individual workers have a contractual obligation to safeguard all confidential information to which they have access. Patient and client identifiable information is strictly confidential under **all** circumstances. If a concern is raised in connection to personal information about patients or clients, measures must be taken to ensure the information is anonymous and not traceable to an individual. Careful consideration therefore needs to be given to how the details of concerns are communicated. Managers should remind staff of the importance of this requirement.
- 6.3 Unauthorised disclosure of personal information about any patient or client will be regarded as a serious matter which may warrant disciplinary action. This applies even where a worker believes that he or she is acting in the best interests of a patient or client by disclosing personal information. Workers should also guard against inadvertent disclosure of personal information, where this can be overheard by a third party.
- 6.4 The identity of the worker 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).
- 6.5 Any worker 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. This may also include attendance at Court in the event of a criminal investigation. In addition, they may be asked to explain their allegations during any disciplinary proceedings that may result from them.
- 6.6 Victimisation of workers who raise concerns reasonably and responsibly is prohibited under both the Public Interest Disclosure Act 1998 and reaffirmed through the Enterprise and Regulatory Reform Act 2013.

- 6.7 The above legislation gives workers the right:
- (a) not to be penalised or put at any disadvantage, short of dismissal, by your employer as a result of making a protected disclosure;
 - (b) to be automatically treated as having been unfairly dismissed if the reason for your dismissal was that you made a protected disclosure.

The whistle-blowing provisions also address the matter of compensation for suffering disadvantage or unfair dismissal as a result of making a protected disclosure.

- 6.8 The organisation will ensure that staff receive the full rights and protections afforded them in law when making any such qualifying disclosure.

7. ANONYMOUS CONCERNs

- 7.1 This policy encourages workers to put their name to an allegation wherever possible. Concerns expressed anonymously will be considered at the discretion of the organisation, bearing in mind the:

- seriousness of the issues raised
- credibility of the concern
- likelihood of confirming the allegation

8. RELATED POLICIES

- 8.1 The *Nolan Principles*, published in May 1995, set out the 7 principles of public life which all those who work in the public sector should be aware of, and act in accordance with. The Nolan Principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 8.2 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 should be aware of the Standards of Business Conduct Policy which forms part of the CCG's corporate manual.
- 8.3 Also, under the NHS Constitution, all staff have responsibilities to the public, their patients and colleagues and staff should aim to be open with patients, their families, carers or representatives, including if anything goes wrong; welcoming and listening to feedback and addressing concerns promptly and in a spirit of co-operation. Staff should contribute to a climate where the truth can be heard and the reporting of, and learning from errors is encouraged.
- 8.4 The organisation has a range of other related policies and procedures that deal with standards of behaviour at work. Managers and workers need to ensure they are clear about how to raise concerns at work and where they can obtain support and advice in order to ensure that the appropriate policy is used in the appropriate situation. If in doubt advice should be sought from the HR team or the appropriate line manager in the first instance.

Of particular relevance are the:

- Internet Policy (which sets out the CCG's policy on the appropriate use of the internet including social media)
- Grievance Policy
- Acceptable Standards of Behaviour Policy
- Equality and Diversity Policy
- Standards of Business Conduct, Managing Conflicts of Interests, and Acceptance of Sponsorship, Gifts and Hospitality Policy
- Fraud, Bribery and Corruption Policy
- Incident and Near Miss Reporting Policy
- Complaints Policy
- Safeguarding Vulnerable Clients Policy.

9. IMPLEMENTATION AND MONITORING

- 9.1 The Governing Body formally approved this policy in the first instance. Following approval the policy was disseminated to staff via the intranet.
- 9.2 The Audit Committee is responsible for monitoring compliance with this policy and reviewing the policy after two years. The Audit Committee can approve minor changes to the policy but more significant changes will be escalated to Governing Body for approval.
- 9.3 The policy and procedure will be reviewed every two years and this will be a joint review involving the HR team, management, the Local Counter Fraud Specialist and Trade Union representatives (where applicable). Where a review is necessary due to legislative change, this will happen immediately.
- 9.4 The organisation will ensure all those responsible for implementing this policy and its procedures receives thorough and appropriate training in order for them to undertake their specific roles and responsibilities.

10. EQUALITY STATEMENT AND EQUALITY IMPACT ASSESSMENT

- 10.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 10.2 A single Equality Impact Assessment is used for all policies and procedures and a template for this is attached as Appendix 5

PROCEDURE

A. HOW TO RAISE A CONCERN INTERNALLY

- A1.1 Generally, workers would have the right to be accompanied by a Trade Union / Staff Organisation representative, or a colleague not acting in a legal capacity; however this is not usual at the informal stage.
- A1.2 Additionally, consideration will be given to any request from a member of staff to have support at an informal meeting if it can be demonstrated that they may suffer a detriment or be disadvantaged by attending alone. Examples might include where the employee has a disability, or where English is not their first language.
- A1.3 The following procedure should only be used in cases where an employee has identified a concern about a health service issue connected with the delivery of care or services provided to a patient or client of the organisation, or has a legitimate concern about a qualifying disclosure as defined at paragraph 3.4 of this policy. This procedure does not replace other procedures such as the Grievance Policy.
- A1.4 There are two main stages in this procedure **Informal** and **Formal**. (The process is set out in flow chart form at Appendix 3).
- The **Informal** Stage enables the individual to firstly raise the matter with their line or professional manager.
 - The 3 step **Formal** Stages enable the matter to then be raised with a Senior Manager. It may then, if necessary, progress to be dealt with by the Chief Officer or designated Deputy and lastly by the Chair or designated Governing Body or appropriate Committee representative.
- A1.5 Concerns may be raised verbally or in writing.

B. STAGE 1 – INFORMAL APPROACH

- B1.1 The aim should always be for workers' concerns about health service issues to be resolved informally, between the individual and his / her line or professional manager. Most concerns will normally be successfully resolved in this way.
- B1.2 Where the concern involves the line manager, the worker should raise the issue informally with the next level of management. Where the manager is not available (e.g. out of hours) and the matter is sufficiently urgent then it may be appropriate to contact the 'on call' manager.

- B1.3 When a worker raises a concern, particularly which they consider is damaging to the interests of a patient or client, managers should try to resolve the problem as soon as possible. Where a worker's concern can be acted upon, action should be taken promptly and the worker notified quickly of the action taken.
- B1.4 Where action is not considered practicable, appropriate, or in cases where workers concerns are groundless, the worker should be given a prompt and thorough explanation of the reasons for this. If the concern cannot, at the present time, be discussed or disclosed into the public domain, then the worker will be advised by their manager concerning the reason for this.
- B1.5 The process should normally be completed within five working days of receipt of the concern. If the nature of the concern means this is not possible the worker should be given an approximate timeframe for this to happen and agreement made as to how they will be kept up to date. The worker should also be advised about the further procedural stages, which are available under this policy.

Staff would continue to be protected under the Public Interest Disclosure Act if they have followed this policy and procedure and the response given is unreasonable in the circumstances or in the opinion of the worker unsatisfactory.

C. STAGE 2 – A 3 STEP FORMAL APPROACH

- C1.1 If a worker feels that the issue has not been addressed by the informal approach or they feel they cannot raise it with their line manager, then they may invoke the formal Stage 2 of this procedure and refer their concern to their next level of management.
- C1.2 Depending on the nature of the concern, there may be occasions when other policies or procedures may then need to be introduced. If at any stage there is sufficient concern to require a formal investigation, the Whistleblowing meeting should be terminated and an explanation given about the steps to be taken for the investigation. The outcome of these procedures may need to remain confidential.
- C1.3 Should an individual worker (for whatever reason) not wish to give their name, their concern will be addressed as far as possible. Workers should appreciate in this situation that it will be more difficult for management to look into the matter, protect the person's position or give feedback.

It must be explained to them that the organisation will do everything they can to ensure their confidentiality is maintained but that this cannot always be guaranteed, for instance if the concern led to a disciplinary investigation, or there was a legal requirement to disclose it. There would have to be very exceptional circumstances for an individual who was implicated not to be able to see and challenge evidence against them. Under this procedure individuals will be protected from any reprisals arising from raising a legitimate concern.

- C1.4 Where the formal stage of the policy and the 3 step procedure are invoked a record will be made of the key details at each appropriate step and shared with the individual. All management decisions will be confirmed in writing.

At the conclusion of each step in the formal procedure the worker will be advised that the timescale is five working days for invoking the next step of the procedure. If the worker fails to invoke the next step after the five days, it will be assumed they are satisfied with the outcome and do not wish to proceed to the next step. These time limits may be extended with the agreement of both parties for example, if further information or authority regarding the issue is required.

- C1.5 At any step in the formal procedural stages workers may request the assistance of their Trade Union or professional association representative or a workplace colleague and they may be accompanied at any meeting arranged to consider their concern.

C1.6 Formal Step 1 – Referral to a Senior Manager

C1.6.1 If the worker is not satisfied with the line manager's response at the informal stage or they feel they cannot raise it with their line manager then they may raise their concern with a senior manager.

C1.6.2 The senior manager may consult relevant parties and arrange a meeting with the worker promptly, normally within five working days of receipt of the concern (this may not always be practicable but the meeting must not be unreasonably delayed). The worker will be allowed to further clarify and explain their concern and the senior manager will give a written response normally within five working days of the meeting.

If a more protracted enquiry is required, the Senior Manager will need to ensure that the individual is kept informed of the progress of the investigation throughout the process. These time limits may be extended with the agreement of both parties for example, if further information or authority regarding the issue is required.

If the worker is not satisfied with the senior manager's response or they feel they cannot raise the issue with the senior manager then they may raise their concern with the Chief Officer or a designated deputy

C1.7 Formal Step 2 – Referral to the Chief Officer or a designated deputy

C1.7.1 If the worker is not satisfied with the senior manager's response they will have 5 days during which they may raise their concern with the Chief Officer or a designated deputy.

C1.7.2 The Chief Officer or a nominated deputy may consult relevant parties, and will arrange a meeting with the worker, normally within five working days of receipt of the concern. The member of staff will be allowed to further clarify and explain their concern and the Chief Officer or a nominated deputy will give a written response within five working days of the meeting. This may not always be practicable and would be subject to any necessary investigation but the process must not be unreasonably delayed.

C1.8 Formal Step 3 – Referral to the Chair of the Governing Body or designated Committee representative.

C1.8.1 If the individual worker remains dissatisfied with the outcome, or when they initially raise their concern they do not feel (for whatever reason) that they can raise their concern through the normal procedure outlined above they may instead refer the matter directly to the Chair or designated Governing Body or Committee representative who has been designated to hear issues or concerns under this procedure. This would, where possible, be the Chair of the Audit Committee.

C1.8.2 The Chair or designated representative will normally meet the worker within ten working days of receipt of the concern and wherever practical will give a written response within ten working days of the meeting.

D. REFERRAL OF A CONCERN TO AN EXTERNAL BODY

D1.1 It is hoped that concerns can be dealt with internally. A worker who has exhausted the formal procedure but continues to be concerned about the decisions reached, or who honestly and reasonably believes any allegations are true and that they cannot raise them internally can make a “protected” disclosure under the terms of the Public Interest Disclosure Act 1998.

D1.2 This protected disclosure should be made to an appropriate prescribed person, depending on the nature of the concern. Examples include:

- a legal adviser (made in the course of obtaining legal advice);
- a Member of Parliament;
- a Minister of the Crown;
- a statutory Health and Safety representative
- the Police
- The Counter Fraud Specialist
- NHSCFA, via the National Fraud and Corruption Reporting Hotline
- External regulators.

D1.3 Disclosure of concerns to the media should be seen as a last resort when all other options have been exhausted. Individuals are advised that they should seek advice from their trade union, professional association or legal representative before approaching the media.

Staff may face disciplinary actions for any unjustifiable disclosure that might undermine public confidence in the health service. For example where the employee discloses an unbalanced picture or is vindictive in their disclosures they would not be protected by the above legislation.

- D1.4 This policy and procedure exists to ensure that staff concerns can be addressed and dealt with without reference to any bodies outside the organisation. The broad aim of the Public Interest Disclosure Act 1998 is to encourage staff to disclose information through appropriate internal channels first rather than going directly to an outside body. As such, the Act makes it more difficult for staff to disclose information to the press and gain protection without first following the above procedures.

APPENDIX 1

Whistleblowing - Summary of Key Legislative Provisions

Police Reform Act 2002 Section 37

Employment Rights Act 1996 Section 103A

Employment Rights Act 1996 Sections 43A to 43L

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

Regulation 14

Public Interest Disclosure Act 1998

Public Interest Disclosure (Compensation) Order 1999 (SI 1999/1548)

Public Interest Disclosure (Prescribed Persons) Order 1999 (SI 1999/1549)

Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 (SI 2003/1993)

Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2004 (SI 2004/3265)

Public Interest Disclosure (Prescribed Persons)(Amendment) Order 2005 (SI 2005/2464)

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 (SI 2010/131)

Enterprise and Regulatory Reform Act 2013 – Whistleblowing

- Section 43B of the Employment Rights Act 1996 has been amended so that a worker who makes a disclosure will only be protected if the disclosure is in the 'public interest'. The Enterprise and Regulatory Reform Act 2013 also takes away the requirement for a disclosure to be made in 'good faith'. However, if the disclosure is not made in 'good faith' the employment tribunal will have the discretion to reduce any compensation awarded to the claimant by up to 25%. This will address the situation where a disclosure might be in the public interest but is made for an ulterior motive.
 - Employers are now vicariously liable for any detriment that one worker received from another because they have made a protected disclosure. However, a statutory defence has also been added which will protect employers who take all reasonable steps to prevent any such detriment occurring.
- The above changes came into force on 25 June 2013 and do not apply to disclosures before then.
- There has also been a change to the scope of 'worker' for the purposes of making a whistleblowing claim. This will ensure that various NHS workers who had been excluded from the legislation are now covered. Although this was not initially part of the changes to be introduced on 25 June 2013, it did go ahead on that date. The change does not apply to disclosures before then.

APPENDIX 2

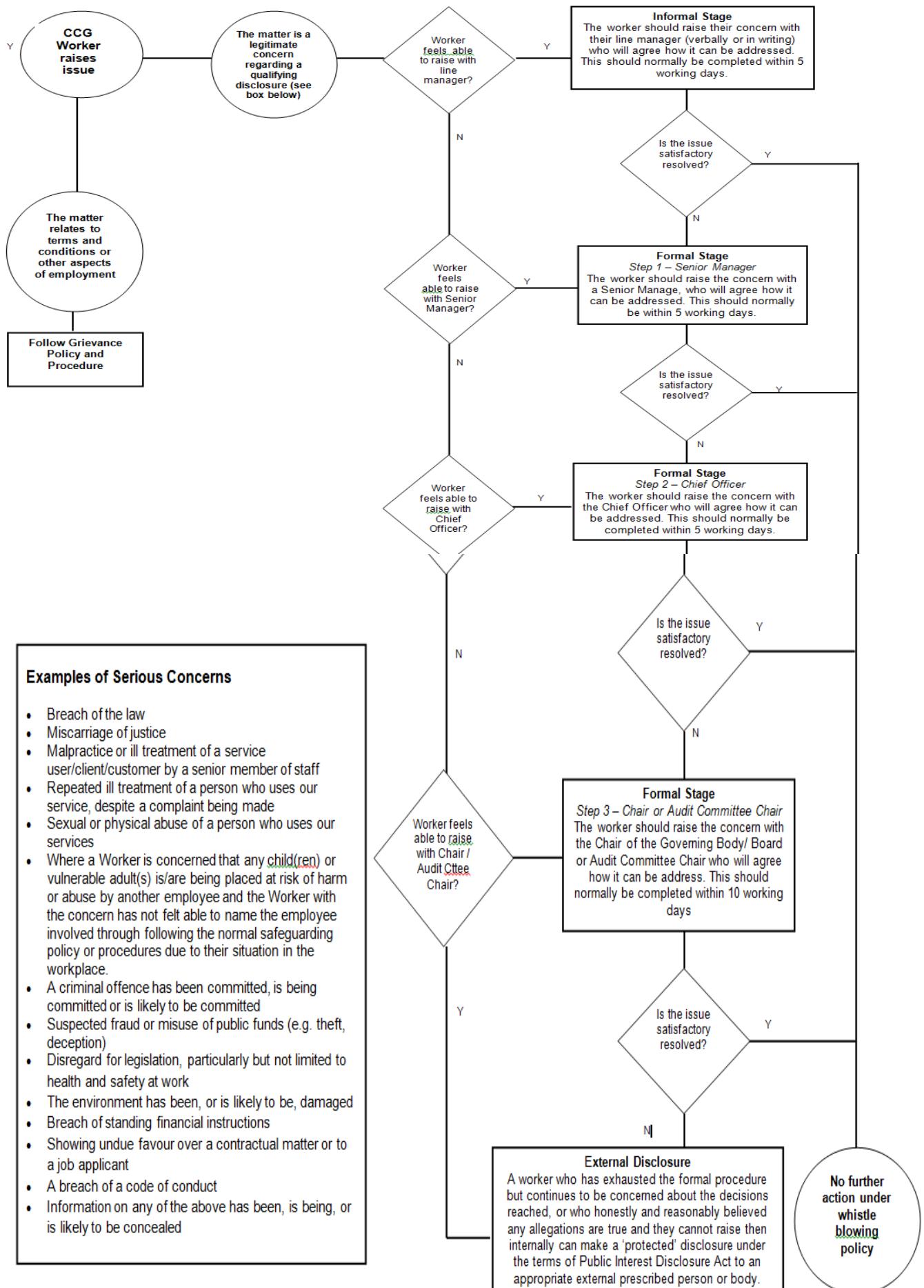
Examples of Serious Concerns

- Breach of the law
- Miscarriage of justice
- Malpractice or ill treatment of a service user/client/customer by a senior member of staff
- Repeated ill treatment of a person who uses our service, despite a complaint being made
- Sexual or physical abuse of a person who uses our services
- Where a worker is concerned that any child(ren) or vulnerable adult(s) is/are being placed at risk of harm or abuse by another employee and the worker with the concern has not felt able to name the employee involved through following the normal safeguarding policy or procedures due to their situation in the workplace.
- A criminal offence has been committed, is being committed or is likely to be committed
- Suspected fraud, bribery or corruption or misuse of public funds (e.g. theft, deception)
- Disregard for legislation, particularly but not limited to health and safety at work
- The environment has been, or is likely to be, damaged
- Breach of standing financial instructions
- Showing undue favour over a contractual matter or to a job applicant
- A breach of a code of conduct
- Information on any of the above has been, is being, or is likely to be concealed

(The above list is not meant to be exhaustive).

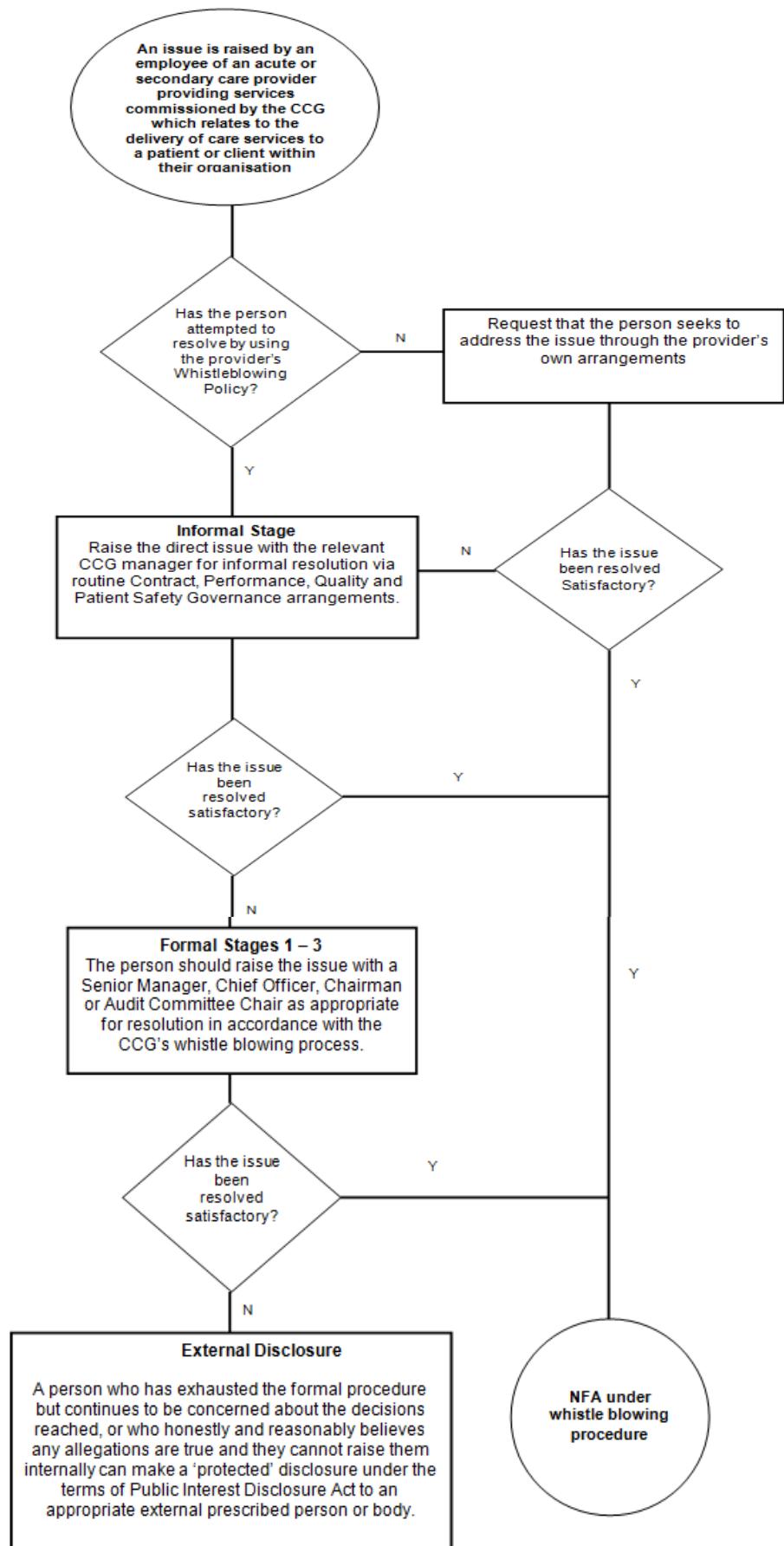
APPENDIX 3A

Procedure for Handling matters raised by workers of the CCG



APPENDIX 3B

Procedure for handling matters raised by employees of organisations providing health care primarily commissioned by the CCG (BHNFT, SWYPFT,BMBC)



APPENDIX 4

Further Advice and References

Workers should consider the following in seeking further advice and/or reference to relevant and appropriate information and guidance;

1. Professional & Representative Bodies :

All staff have the right to consult, seek guidance and support from their professional organisation or Trade Union, and from statutory bodies such as the Nursing & Midwifery Council (NMC) for Nursing, Midwifery and Health Visiting; General Medical Council and the Council for Professions Supplementary to Medicine etc and Public Concern at Work Publication –

Speak Up For A Healthy NHS – How to Implement and Review Whistleblowing Arrangements in your Organisation

<http://www.pcaw.org.uk/files/SpeakupNHS.pdf>

2. NHS:

Workers can refer to the NHS Constitution for guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170656/NHS_Constitution.pdf

NHS England considers a complaint to be any expression of dissatisfaction with a service we provide. This might arise from the actions of a member of staff, or from an area or programme of work carried out by NHS England.

If you have a complaint concerning the treatment or service provided by the NHS, please contact us:

By telephone: 0300 311 2233 (lines are open Monday to Friday 8.00am – 6.00pm, excluding bank holidays)

By email: England.contactus@nhs.net

Further information can be obtained from the NHS website.

<http://www.nhsemployers.org/>

or

<http://www.nhsemployers.org/practice/whistleblowing.cfm>

The NHS and Social Care Whistleblowing Helpline: 08000 724 725 or

enquiries@wbhelpline.org.uk

The Care Quality Commission <http://www.cqc.org.uk/> or Tel: 03000 616161

Email: enquiries@cqc.org.uk

NHS Employers together with the Independent Healthcare Advisory Services (IHAS) has recently issued the following Guidance in July 2013 for employers which focuses on sharing information about healthcare workers where a risk to public or patient safety has been identified

<http://www.nhsemployers.org/Aboutus/Publications/Documents/guiding-principles-for-sharing-information.pdf>

3. Fraud Bribery & Corruption:

If a worker suspects any fraud, bribery or corruption then he or she should refer to the organisation's separate Fraud, Bribery and Corruption Policy for guidance but as a minimum;

- Make a note of all details
- Ring the NHS Fraud, Bribery and Corruption Reporting Line on 0800 028 40 60; or
- Report your suspicions to your Local Counter Fraud Specialist or Chief Finance Officer as soon as possible. Contact details for the LCFS are available on the intranet (<http://nww.barnsleyccg.nhs.uk/governance>).

4. Personnel/HR Advice

The Chartered Institute of Personnel & Development (CIPD) provides a wealth of legislative and practitioner information covering whistleblowing and related topic; <http://www.cipd.co.uk/hr-resources/employment-law-faqs/whistleblowing-legislation.aspx>

5. Other Public Bodies and Independent Advice

Independent advice can be sought from Public Concern at Work at any stage of the process. <http://www.pcaw.co.uk/>

The Home Office - Disclosure and Barring Service:

<https://www.gov.uk/disclosure-barring-service-check/contact-disclosure-and-barring-service>

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into the Disclosure and Barring Service in Dec 2012.

Local Health and Safety Executive 0191 202 6200

The Health and Safety Executive (national information line) 0845 345 0055

The Environment Agency 08708 506 506

National Benefit Fraud Hotline 0800 854 440

Customs and Excise 0800 595 000

Equality Impact Assessment

Title of policy or service:	Whistle Blowing policy	
Name and role of officer/s completing the assessment:	A Richards – HR Manager (<i>The EIA was completed in July 2014. It has been reviewed but not amended as part of the policy reviews in Feb 2016 and Feb 2018 as the proposed changes to the Policy are minor.</i>)	
Date of assessment:	20/01/2014	
Type of EIA completed:	Initial EIA 'Screening' <input checked="" type="checkbox"/> or 'Full' EIA process <input type="checkbox"/>	(select one option - see page 4 for guidance)

1. Outline	
Give a brief summary of your policy or service • Including partners national or regional	HR policy implemented to outline a consistent procedure for raising concerns and issues in relation to Whistleblowing. It is part of a suite of HR Policies held by the CCG. The policy will be reviewed and as such we will ensure that any changes are fit for purpose, that the policy is legally compliant, complies with NHS LA standards and takes account of best practice and Employment Law and National Law.
What outcomes do you want to achieve	
Give details of evidence, data or research used to inform the analysis or impact	A draft of this policy has been circulated for review by the following:- <ul style="list-style-type: none">• BCCGs Information Governance Manager,• BCCGs Equality and Diversity Lead,• Staff Side Union Representative,• Local Counter Fraud Officer• BCCG staff.

	The final policy has been signed off by BCCGs Chief Nurse and the Equality and Engagement Committee.
Give details of all consultation and engagement activities used to inform the analysis of impact	As above

Identifying impact:

- **Positive Impact:** will actively promote or improve equality of opportunity;
- **Neutral Impact:** where there are no notable consequences for any group;
- **Negative Impact:** negative or adverse impact causes disadvantage or exclusion. If such an impact is identified, the EIA should ensure, that as far as possible, it is either justified, eliminated, minimised or counter balanced by other measures. This may result in a 'full' EIA process.

2. Gathering of Information

This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty.*

(Please complete each area)	What key impact have you identified?			For impact identified (either positive or negative) give details below:	
	Positive Impact	Neutral impact	Negative impact	How does this impact and what action, if any, do you need to take to address these issues?	What difference will this make?
Human rights	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Carers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
Marriage and civil partnership (only eliminating discrimination)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	

Other relevant groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	
HR Policies only: Part or Fixed term staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	

IMPORTANT NOTE: If any of the above results in ‘negative’ impact, a ‘full’ EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.

Having detailed the actions you need to take please transfer them to onto the action plan below.

3. Action Plan				
Issues/impact identified	Actions required	How will you measure impact/progress	Timescale	Officer responsible
No anticipated detrimental impact has been identified on any equality group. The policy is applicable to all employees and adheres to NHS LA Standards, statutory requirements and best practice and makes all reasonable provision to ensure equity of access to all staff.	There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic – therefore there is no required action identified.	The policy will be consulted on widely and will be monitored via the Equality and Diversity Steering Group/Management Team.		

4. Monitoring, Review and Publication				
When will the proposal be reviewed and by whom?	Lead / Reviewing Officer:	The policy will be reviewed 2 years after its implementation date and every 2 years thereafter by the Head of Governance & Assurance supported by the HR Manager, E&D Lead, LCFS, Staff Side and other staff as appropriate.	Review Date	February 2014, February 2016, February 2018
			Date of next Review:	February 2020

Once completed, this form **must** be emailed to the Equality Lead for sign off barnsleyccg.equality@nhs.net:

Equality Lead signature: Date: 03/04/2018	
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