

TRUST WIDE DOCUMENT

DOCUMENT TITLE:	Raising Concerns at Work Policy
DOCUMENT NUMBER:	ELHT/HR20 version 5

DOCUMENT PURPOSE:	<p>ELHT is committed to ensuring the highest standards of service and the highest ethical standards in delivering this service.</p> <p>This policy has been developed to support and assist staff in raising concerns without fear of discrimination or reprisal. The Trust will deal with all disclosures consistently, fairly and confidentially.</p>
SUPPORTING REFERENCES	<ul style="list-style-type: none"> • Public Interest Disclosure Act 1998 • Bribery Act 2010 • ELHT HR09 Disciplinary Procedure • ELHT Procurement Policies and Procedures • NHS Constitution • Bribery Act 2011 • Enterprise & Regulatory Reform Act 2013 • Equality Act 2010
TARGET AUDIENCE:	All Trust Personnel/Agency Staff
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AUTHOR(S):	Staff Guardian
EXECUTIVE DIRECTOR RESPONSIBLE:	Chief Executive

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1. Introduction and Scope of Policy

We recognise that staff may wish to raise concerns about a safety issue, a risk, malpractice or wrong doing at work which may affect patients, visitors or the public, other staff, themselves, volunteers or contractors on our sites, or, the reputation of the organisation. We are committed to promoting a culture which encourages open communication between staff and their managers to ensure that questions and concerns can be raised and wherever possible quickly resolved.

1.1 The Public Interest Disclosure Act 1998 (PIDA) protects workers from dismissal or victimisation. In the event that they disclose some sort of wrong-doing to East Lancashire NHS Hospitals Trust (ELHT) or other appropriate body, “worker” in this context includes not only those who are directly employed by ELHT, but also other individuals such as agency staff and contractors or other agencies working in conjunction with ELHT. Anyone working at the Trust under any type of contract or agreement will fall within the scope of the protection.

1.2 There are very specific criteria that need to be met for an individual to be covered. The Act protects workers who make a disclosure of relevant information through one of the specified disclosure channels. A disclosure made in this way is referred to as a “protected disclosure”.

“Relevant information” is information which the worker reasonably believes tends to show one or more “relevant wrongdoings” and which came to his attention through his employment.

The Act sets out an exhaustive definition of “relevant wrongdoings”, which includes:

- the commission of a criminal offence;
- the failure to comply with a legal obligation (including the Bribery Act 2010*);
- the occurrence of a miscarriage of justice;
- the endangerment of the health or safety of an individual;
- damage to the environment;
- the unlawful or improper use of public funds/monies;
- maladministration/gross mismanagement by a public official; and
- the concealment or destruction of information tending to show any of the above.

The national strategy sets out that staff can raise a concern about risk, malpractice or wrongdoing that they think is impacting on the service that the organisation delivers. The examples mentioned in the national policy include:

- Unsafe patient care
- Unsafe working conditions
- Inadequate induction or training for staff
- Lack of or poor response to a reported patient safety incident
- Suspicions of fraud (which can also be reported to our local counter fraud team)

- A bullying culture (across a team or organisation)

Further examples can be found on the Health Education England website.

Employees are encouraged to raise matters that they are concerned about; it does not matter if you are mistaken, as long as you are genuinely troubled. However concerns about individual's employment that affect only them are better suited to our grievance policy.

*A bribe is defined as the giving or taking of a reward in return for acting dishonestly and/or in breach of the law under the Bribery Act 2010. There are four possible offences:-

- 1) bribing another person
- 2) being bribed
- 3) bribing a foreign public official
- 4) failure to prevent bribery

It is a criminal offence, the Trust has a Local Counter Fraud and Corruption Policy (ELHT/F19 Version 1.3) and allegations of fraud or bribery should be reported to the Trust's Anti-Fraud Specialist or NHS Protect (see Appendix 1 for details).

1.3 Managers will need to recognise that there is a difference between a grievance and a protected disclosure. A grievance will concern an employee personally i.e. the individual may be aggrieved about:-

- their pay or working hours.
- the amount of work they are expected to do,
- working conditions
- being bullied or harassed by fellow workers or managers.

1.4 Relationships with other Trust Policies and Procedures.

The Trust has a range of policies and procedures which deal with standards of behaviour and conduct at work.

- HR07 Policy against bullying and harassment at work
- HR09 Disciplinary Policy and Procedure
- HR18 Grievance Procedure

2. Responsibilities

2.1 Where employees raise concerns they must do so with a true belief that a malpractice has occurred. It is important to note that whilst some employees may choose to raise concerns in writing; this is by no means compulsory and they are able to bring their concerns to the attention of managers verbally. Open referrals are preferred, however anonymous disclosures will be considered on a case by case basis, although protection cannot be provided to anonymous referees.

Trust managers have a duty to:

- Take the employees concerns seriously and acknowledge the difficult position they may be in. Consider them carefully identify whether the matter relates to protected disclosure and provide a copy of this policy, if necessary to the employee.
- Seek appropriate advice from Human Resources and undertake an investigation.
- Take prompt action to resolve the concern or refer it on to an appropriate person.
- Keep the employee informed of the process, where appropriate to do so.
- Inform senior managers.
- Ensure individuals who genuinely report concerns are not penalised in any way unless it is later proved that the information provided by the individual(s) was false to his or her knowledge. Any individual who makes a disclosure of wrongdoing or malpractice will be treated with respect and will be afforded protection against victimisation. Anyone who victimises a whistle-blower will be subject to the organisation's disciplinary procedure and may be personally liable for any detriment caused to a colleague under the Enterprise and Regulatory Reform Act 2013. Employing organisations can also be held vicariously liable for the actions of their employees.

2.2 The Trust recognises the difficulty employees may face in voicing concerns, and assures them of support. All attempts will be made to maintain confidentiality during the initial investigation process but employees who raise matters of concern should recognise that this may not always be possible and that they may need to provide evidence as part of an official investigation.

2.3 If employees are unsure about raising concerns or would like independent support and advice please contact the Trust Staff Guardian or one of the prescribed persons as listed in section 3.1. Contact details are in Appendix 1.

2.4 Any employee who makes allegations into concerns that turn out to be unfounded will not be penalised for being genuinely mistaken.

2.5 The Quality Committee is responsible for monitoring this procedure and the concerns or issues that are raised as a result.

2.6 The Trust is committed to providing training and briefings for senior managers and all those with line management responsibilities.

3. Procedure for Reporting (also see Appendix 5)

3.1 Employees should use these policies and procedures as outlined in section 1.4 where necessary or discuss their concerns with their Line Manager when a concern arises. However, situations may arise where it may not be appropriate or staff feel unable to raise a concern through the usual management channels. If this is the case, staff can raise their concern(s) with the Staff Guardian, their Human Resources Business Partner, trade union representative or a 'prescribed person'. The prescribed persons at ELHT are:-

- The Staff Guardian
- The Director of Human Resources and Organisational Development
- Non-Executive Director of Trust Board
- Senior Independent Director

See Appendix 1 for contact details.

3.2 Managers will endeavour to reassure employees and maintain confidentiality. If employees request to protect their identity by remaining anonymous, the Trust will not disclose their details without consent. If the situation arises where it is not possible to resolve the concern without revealing an individual's identity (for instance; when evidence is needed in court or for a disciplinary investigation) this will be discussed with the employee as to whether and how the Trust can proceed. In the event that employees are not willing to be identified and the Trust cannot proceed with any further action, the allegation will be confidentially recorded. The whistle-blower does not need to provide actual evidence to enable the organisation to investigate their concerns.

3.3 Where possible, concerns about health service issues should be resolved informally i.e. between the employee and his/her line manager or professional head.

3.4 Managers will take the concern seriously and consider the issues fully and sympathetically. Managers may seek advice from health care professionals where necessary. They will acknowledge that raising a concern can be a difficult experience for some employees.

3.5 If employees wish, they are entitled to be accompanied by a work colleague or staff-side representative and/or the Staff Guardian when meeting to discuss any such issue they wish to raise.

3.6 The manager will be required to initiate a thorough investigation of the allegations using appropriate support from Human Resources, Senior Managers and if appropriate, a counter fraud specialist, if the matter relates to financial crime.

Managers should also consider if the matter requires immediate referral to an appropriate authority i.e. the Police. On receipt of a concern raised, the manager should endeavour to respond to the employee as soon as appropriate action has been taken, both to reassure them and thank them for their disclosure. Please refer to Appendix 2.

3.7. The person raising a concern will be told what was found out and what action is being taken and that a plan to monitor the situation will be put in place. They should be kept informed on a regular basis of the process and progress being made and be re-assured that it is being dealt with in an appropriate manner.

3.8 In the event that the inappropriate activity continues, employees will have the right to escalate the issue to the Trust Board. Employees should be reassured that the issue will be resolved as speedily as possible. Managers will endeavour to complete investigations within 20 working days. Where this it is not possible, the employee will be kept informed of progress and reasons for delay.

3.9 Whilst pursuing the aim of openness, it is imperative that patient confidentiality is maintained and that confidence in the services provided by the Trust is not unreasonably undermined. Similarly, as employees have certain obligations and loyalties to the Trust as their employer, it is important that the employer/employee relationship is not compromised.

3.10 Concerns about the Chief Executive/Chairman

Where a complaint is about the Chief Executive of the Trust an employee should raise the issue with the Chairman. If however, concerns relate to the Chairman of the Trust, these can be raised with the Senior Independent Director (contact details in Appendix 1) who will decide on how the investigation will proceed. This may include an external investigation.

3.11 Trade Union Representatives

The Trust recognises that some employees may wish to raise their concerns initially with their staff side representative. The staff side representative will ascertain as many facts as possible from the individual and raise the issue with the appropriate manager. The manager will then follow the procedure as laid out above.

4. Safeguards against malicious allegations

Where the investigation concludes that malicious allegations have been made it will be necessary to take action under the Trust's Disciplinary Policy and Procedure (ELHT/HR09 Version 4.1).

5. Disclosure outside the Trust

5.1 An employee who, having exhausted procedures within the Trust, remains dissatisfied, has the right to pursue the matter in the public arena through disclosure to 'prescribed persons' or 'prescribed bodies'. Please see Appendix 1 for contact details.

5.2 Disclosure to other persons, for example the Press, Legal Adviser or MP will be protected under the Act, provided that the individual who makes the disclosure reasonably believes the information to be true and does not make the disclosure for personal gain and provided that he/she

- believes that if he/she were to disclose matter to his/her employer they would be subject to detrimental treatment.
- believes that evidence relating to the subject matter of the disclosure would be concealed or destroyed if the disclosure is made to his/her employer and remains dissatisfied having exhausted all internal procedures.

or

- the employee has already disclosed the information to his/her employer and the inappropriate activity/issue has/is continuing.

5.3 In exceptional circumstances e.g. where there is possible danger to life, employees have the right to make public disclosure to an appropriate authority **without** going through Trust procedures. However, the Trust would encourage the employee to also raise the matter with the designated persons or senior manager.

5.4 Employees are reminded that disclosure, even where warranted, does not give the right to disclose confidential information of ELHT e.g. patient records/information, personal details etc. Professional organisations e.g. NMC, GMC also have Codes of Conduct relating to the use and disclosure of privileged information and confidentiality.

6. Dismissal

6.1 If an employee is dismissed or selected for redundancy because he or she has made a protected disclosure, the dismissal will be automatically unfair.

6.2 In most cases of dismissal, the dismissed employee must have at least a year's continuous service with the employer to be eligible to bring a claim of unfair dismissal to an employment tribunal. If, however, the reason or principal reason for the dismissal is that the employee made a protected disclosure, no minimum length of service is required.

6.3 The dismissed employee will, however, need to be able to present sufficient evidence to the tribunal to counteract any alternative reason for dismissal put forward by the employer.

6.4 Although only employees (and not other workers) can bring complaints of unfair dismissal, a worker who is not an employee can complain that he or she has been subjected to a detriment if his or her contract is terminated for whistleblowing.

6.5 Where the Trust uses settlement agreements, it will consider in every case whether or not it is appropriate to use 'confidentiality clauses'. In all cases the Trust will make it explicitly clear to the employee, within the written agreement, that the agreement does not prevent them from raising legitimate concerns about patient safety, or other issue, in the public interest under the terms of PIDA.

7. Detriment

7.1 A claim for detriment following raising concerns can be based on any form of victimisation, including:

- Disciplinary action
- Denial of a work-related benefit
- Non-payment of a bonus, or allocation of an unreasonably low bonus
- Denial of a promotion
- Being demoted or transferred to less interesting work
- Verbal or physical abuse at work by management or colleagues
- Any form of bullying or harassment
- Being allocated all the worst jobs or forced to work excessive overtime

7.2 Workers are entitled to complain to an employment tribunal if they experience this type of detrimental treatment because they have made a protected disclosure.

7.3 To claim detriment, a worker must have sufficient evidence to demonstrate that the way in which he or she was treated was linked to the fact that he or she had previously made a protected disclosure.

7.4 It does not matter where in the world the alleged wrongdoing has occurred (is occurring, or is likely to occur). The person making the disclosure will be protected provided that he or she is employed in Great Britain.

8. The routes of disclosure that are protected

8.1 The law lays down clear principles about how a potential whistle-blower must make a disclosure if the disclosure is to be protected. The purpose of these rules is primarily to encourage workers to raise their concerns through appropriate channels rather than, for example, publicising their allegations in the newspapers. There are six routes that may attract protection, these being a disclosure:

- To the employer directly
- To a legal adviser, if made in the course of obtaining legal advice
- To a Minister of the Crown, where the worker is engaged in Crown or public employment
- To a 'prescribed person' (see Disclosures to a 'prescribed person' in Appendix 1)
- Elsewhere in defined circumstances (see Disclosures elsewhere below)
- Elsewhere in exceptionally serious cases (see Disclosures in exceptionally serious cases below)

9. Disclosures elsewhere (when all other reporting options have been exhausted, both internally and externally)

9.1 A disclosure made elsewhere - for example, to the police, an MP or a non-prescribed regulator - may qualify as a protected disclosure if:

- The worker reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body
- The worker had previously disclosed his or her concerns to the employer or a prescribed body
- In circumstances where there is no prescribed body, the worker reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice

Certain other conditions must also be met. These are that:

- disclosure is in the public interest
- The person making the disclosure must reasonably believe that the information disclosed is substantially true
- The person making the disclosure must not have done so for personal gain
- It must be reasonable in the circumstances for the person to have made the disclosure in that way

10. Disclosures in exceptionally serious cases

10.1 If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. 'Exceptionally serious' is not defined in the legislation, but is likely to be restricted to matters where disclosure would serve the public interest.

The worker making the disclosure must:

- Reasonably believe it is in the public interest
- Reasonably believe that the information being disclosed is substantially true
- Not be disclosing the information for financial gain.

10.2 It must also be reasonable in all circumstances for the person to make the disclosure.

10.3 NHS Duty of Candour

Patient safety is of paramount importance and all workers have a duty to report bad practice or mistreatment. The organisation wants to promote an open and transparent culture where concerns can be raised safely (refer to ELHT/C75 Openness and Honesty When Things Go Wrong – incorporating the requirements of Duty of Candour).

10.4 Policy Review and Monitoring

The Staff Guardian is the custodian of the Raising Concerns Register and will populate it and maintain it accordingly. The Staff Guardian will prepare reports for the Director of HR&OD to present to the Quality Committee quarterly. The report will include numbers of concerns raised, the current status of those concerns and emerging

themes. The Staff Guardian is responsible for taking the lead on raising awareness of the Policy across the organisation in conjunction with staff side representatives, HR Business Partners and Prescribed Persons outlined in section 3.1.

The Staff Guardian is the author of the Policy and will review the Policy within the stated timescales or in accordance with statute or national guidance.

Appendix 1

ELHT Prescribed Persons:

Staff Guardian Mrs Lynne Barton (lynne.barton@elht.nhs.uk)

Director of HR & OD: Mr Kevin Moynes (kevin.moynes@elht.nhs.uk)

Senior Independent Director: Mr Peter Rowe (peter.rowe@elht.nhs.uk)

Non-Executive Director: Mrs Elizabeth Sedgley(Elizabeth.sedgley@elht.nhs.uk)

Prescribed Bodies for reporting Public Interest Disclosures:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

The Health and Safety Executive
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

The Environment Agency
National Customer Contact Centre
PO BOX 544
Rotherham
S60 1BY
T:0800 80 70 60

The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS
T: 020 7066 1000

Department of Health
T: 0207 210 4850
<http://www.dh.gov.uk/health/contract-dh/>

Other Key Contacts:

Public Concern at Work
For information about the Public Interest
Disclosure Act 1998, please visit:
www.pcaw.co.uk/law/uklegislation.htm

ELHT Anti-Fraud Specialist
Jacqui Procter
Mersey Internal Audit Agency (MIAA)
T: 0151 285 4798
E: Jacqui.Procter@miaa.nhs.uk

Report NHS fraud online at www.reportnhsfraud.nhs.uk or call the Confidential Reporting Line 0800 028 4060

Care Quality Commission (CQC)
Finsbury Tower
103–105 Bunhill Row
London EC1Y 8TG
Tel: 020 7448 9200

National Patient Safety Agency (NPSA)
4–8 Maple Street
London W1T 5HD
Tel: 020 7062 1620

Whistleblowing Helpline

Tel: 0800 0724 725

E: enquiries@wbhelpline.org.uk

www.wbhelpline.org.uk

Appendix 2 – Managers Responsibilities and Guidelines for Initial Discussion with Employee

This sheet is not intended to be used as a pro-forma. It is a suggested structure to support you in gaining as much information as possible. Depending on the nature of the concern some of the points may not be appropriate.

Details of concern e.g.

What has happened

When did it occur

Where did it occur

Who was involved

How long has this been happening

Are there any other witnesses

Is there any supporting information

How did the employee become aware of incident/occurrence.

Has the matter been raised with anyone else, if so whom.

Name of persons to whom disclosure made.

Appendix 3

Handling disclosures

Dos and don'ts

Do adopt an objective and balanced approach towards any allegations made under a whistleblowing policy.

Do face the substance of any disclosure square on.

Do take prompt action to investigate any allegations made under a whistleblowing policy (or make sure another appropriate person instigates an investigation).

Do encourage an individual who has come forward to disclose some sort of wrongdoing to explain fully the evidence that he or she has of the wrongdoing.

Do ask the whistle-blower to provide specific examples of the conduct that he or she has observed or the evidence obtained to support the allegations of malpractice.

Do distinguish between facts and opinions.

Do appreciate that it can be very stressful for the person alleging wrongdoing.

Do let the whistle-blower know that he or she has the organisation's support.

Don't get angry or defensive if an individual raises allegations of malpractice within the organisation.

Don't allow personal views about the whistle-blower to influence the assessment of the allegations that he or she is making.

Don't react negatively to a disclosure, or adopt a judgmental attitude.

Don't dismiss an employee's disclosure as an exaggeration, or as trivial, unless there is clear evidence that the allegations are unfounded.

Don't attempt to suppress evidence of wrongdoing.

Don't penalise an individual for making a disclosure that proves unfounded if, despite making a mistake, he or she acted in good faith in making the disclosure.

Do listen actively to what the employee has to say and take it on board.

Do inform/record/log the concerns raised for senior Trust management

Appendix 4

