

# WHISTLEBLOWING POLICY

**September 2016**

HR Policy:	HCCG 01
Date Issued:	TBC
Date to be reviewed:	3 years or if statutory changes are required

<b>Policy Title:</b>	<b>Whistleblowing Policy</b>	
<b>Supersedes:</b>	All previous Whistleblowing Policies	
<b>Description of Amendment(s):</b>	New Policy for CCG employees Updated to reflect national NHS Whistleblowing policy	
<b>This policy will impact on:</b>	All staff	
<b>Financial Implications:</b>	No change	
<b>Policy Area:</b>	Quality and Clinical Governance	
<b>Version No:</b>	10	
<b>Issued By:</b>	NHS Hull CCG	
<b>Author:</b>	eMBED Health consortium	
<b>Document Reference:</b>	HCCG 01	
<b>Effective Date:</b>	TBC	
<b>Review Date:</b>		
<b>Impact Assessment Date:</b>		
<b>APPROVAL RECORD</b>	SPF Sub Group	
	SPF	
	Governing Body	January 2017
<b>Consultation:</b>	SLT Members	July 2016
	All Staff via intranet	July 2016
	Specialist Advice from Shaun Fleming <i>East Coast Audit Consortium (ECAC)</i>	May 2013
	Rosemary Crockett Policy Manager - Whistleblowing Helpline	June 2013

## Contents

1.0	POLICY STATEMENT	4
2.0	PRINCIPLES	5
3.0	IMPACT ANALYSES	6
4.0	MONITORING AND REVIEW	7
5.0	PROCEDURE	7
6.0	INTRODUCTION	7
7.0	THE PUBLIC INTEREST DISCLOSURE ACT 1998	8
8.0	CONFIDENTIALITY	9
9.0	HOW TO RAISE A CONCERN	9
10.0	INVESTIGATION PROCESS	11
11.0	HELP AND ADVICE	11
12.0	RESPONSIBILITIES	12
	APPENDICES	
APPENDIX 1	GUIDANCE TO STAFF AND MANAGERS	13
APPENDIX 2	SUMMARY OF PUBLIC INTEREST DISCLOSURE ACT 1998	14
APPENDIX 3	WHISTLEBLOWING PROCESS	17
APPENDIX 4	EQUALITY IMPACT ASSESSMENT	18

## **1. POLICY STATEMENT**

- 1.1 The CCG is committed to the principle of public accountability. The CCG will investigate genuine and reasonable concerns expressed by employees relating to malpractice within the CCG and will ensure that employees are not discriminated against or suffer a detriment as a result of making such a disclosure, as laid down by the Public Interest Disclosure Act 1998 (PIDA).
- 1.2 The CCG encourages all individuals to raise any concerns that they may have about the conduct of others in the CCG or the way in which it is run.
- 1.3 This policy applies to all employees and any agency or contract staff whilst they are working at the CCG, and is in accordance with the CCG's Equality and Diversity policy.
- 1.4 This policy incorporates the requirements of the Public Interest Disclosure Act 1998 (PIDA) and the Bribery Act 2010. Where instances of fraud are identified these should be reported immediately to the Chief Finance Officer or the Local Counter Fraud Specialist (see Appendix 1) who, where appropriate, will arrange for the matter to be referred to the police for investigation and notified to NHS Protect. Please refer to the fraud policy. One of the basic principles of public sector organisations is the proper use of public funds and this would include the assets bought through public funds. It is therefore important that all CCG employees are aware of the rules against any acts involving bribery, dishonesty, corruption or damage to CCG property. For simplicity all such offences are hereafter referred to as "fraud".
- 1.5 Where safeguarding concerns are raised these should be reported immediately to the responsible safeguarding officer in line with the safeguarding policy.
- 1.6 The three fundamental public service values underpinning the NHS and all public sector work, specified by the NHS Code of Conduct for Boards published by the NHS Executive in April 1994 are Accountability, Probity and Openness. All those who work in the public sector should be aware of, and act in accordance with, these values. Acting with honesty and integrity forms a cornerstone of the public sector values.
- 1.7 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 of the CCG should be aware of the Standards of Business Conduct documentation published on the CCG's intranet. The Governing Body is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the CCG.
- 1.8 All employees have a duty to report instances where they witness others failing to demonstrate the expected levels of integrity in their working life. This will include bribery, fraud, corruption or bringing the CCG, the NHS or wider public service in to disrepute.

- 1.9 This policy should be read in conjunction with the guidance in appendix 1.
- 1.10 Appendix 2 provides a summary of the PIDA Act 1998.
- 1.11 Individuals from outside of the CCG raising genuine concerns will have their concerns reviewed by the CCG as part of the CCG's role on public accountability and being a responsible commissioner.

## **2. PRINCIPLES**

- 2.1 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially and the outcome of the investigation reported back to the employee who raised the issue.
- 2.2 All employees will be made aware of the policy on joining the organisation and will be encouraged to read and understand it's process. All existing staff will be made aware of the policy and regular training sessions will be organised for management of staff.
- 2.3 No employee will be victimised for raising a matter under this procedure for raising a legitimate concern. Co-workers who harass or bully someone on the grounds they have made a protected disclosure are personally liable, and the employer is vicariously liable for such actions (subject to a defence they have taken 'all reasonable steps' to prevent workers acting this way).
- 2.4 In the event that misconduct is discovered as a result of any investigation under this procedure the CCG's disciplinary procedure will be invoked in addition to any external measures.
- 2.5 Where it can be demonstrated that an employee knowingly supplied false information when raising a concern the CCG's disciplinary procedure will be invoked.
- 2.6 The CCG will treat all such 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 or unless the CCG is required to disclose it by the law (for example, by the police). 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.
- 2.7 This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the CCG.
- 2.8 In exercising this discretion, the factors to be taken into account will include:
- The seriousness of the issues raised
  - The credibility of the concern
  - The likelihood of confirming the allegation from attributable sources.

- 2.9 Disclosures from outside of the CCG will be treated sensitively. As with 2.7, the CCG encourages external individuals to put their name to any disclosures they wish to make to the CCG. Any external disclosures, whether identifiable or anonymous, will be reviewed at the discretion of the CCG as part of its role to monitor the health of the local health economy, recognising that the CCG may have limited powers to act. Where a credible concern is raised that falls within the remit of the CCG, the CCG will review such issues.
- 2.10 This policy will be communicated to staff via team meetings/team brief and approved policies will be published on the CCG's website.
- 2.11 Training and support will be available to all Line Managers in the implementation and application of this policy.
- 2.12 This policy encompasses the national 'Standard Integrated Policy' (NHS Improvement and NHS England, April 2016) which was aimed at improving the experience of whistleblowing in the NHS.

### **3.0 IMPACT ANALYSES**

#### **3.1 Equality**

- 3.2 In applying this policy, the CCG 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.
- 3.3 In developing this policy, an Equality Impact Analysis has been undertaken and is attached at Appendix 4. As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage.

#### **3.4 Bribery Act 2010**

- 3.5 The CCG follows good NHS business practice as outlined in the Business Conduct Policy and has robust controls in place to prevent bribery.

- 3.6 Under the Bribery Act 2010, it is a criminal offence to:

- Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
- Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity

would then be performed improperly, or as a reward for having already done so.

- 3.7 Due consideration has been given to the Bribery Act 2010 in the development of this policy document and consistent application of this policy will mitigate bribery in relation to this policy.

#### **4. MONITORING & REVIEW**

- 4.1 The policy and procedure will be reviewed and audited periodically in conjunction with the senior leadership team and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.
- 4.2 The implementation of this policy and local process will be audited annually and reported to the CCG Governing Body. The Board will also be given high level information about all concerns raised by CCG staff through the policy and what the CCG are doing to address any problems. The CCG will include similar high level information in the annual report.

#### **5. PROCEDURE**

#### **6.0 INTRODUCTION**

- 6.1 All of us at one time or another have concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about patient care or patient services, professional practice, unlawful conduct, dishonesty, financial malpractice, or a danger to health, safety or the environment, or a cover up of any of these, it can be difficult to know what to do.
- 6.2 You may be worried about raising such issues or may want to keep the concerns 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, managers or to the CCG. 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.
- 6.3 NHS Hull Clinical Commissioning Group (CCG) has introduced this policy to enable you to raise your concerns or suspicions about any issues of malpractice at an early stage and in the right way. We know from experience that to be successful we must all try to deal with issues on their merits. The CCG welcomes your genuine concerns and is committed to dealing responsibly, openly and professionally with them. Without your help, we cannot deliver a safe service and protect the interests of patients, staff and the CCG. If you are worried, we would rather you raised it when it is just a concern than to wait for proof.
- 6.4 If something is troubling you which you think we should know about or look into, please use this procedure. However, if you are aggrieved about your personal position then this is not the appropriate procedure and you should seek advice from

your manager, a member of the HR team , Trade Union representative or Whistleblowing Hotline.

6.5 This policy is primarily for concerns where the interests of others, most especially patients, or of the CCG itself, are at risk. It can also be used by staff in order to raise allegations against colleagues in terms of safeguarding children or adults. It can be used by volunteers, trainees, agency workers, home workers, contractors and independent consultants as well as all CCG employees. It is recognised that employees of the CCG's commissioned services might also raise concerns directly with the CCG. This policy describes the process as to how these will be managed as well.

6.6 Concerns can be raised about risk, malpractice or wrongdoing that is harming the service we commission. A few examples of this might include (but are by no means restricted to):

- 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 should be reported to our local counter-fraud team (see appendix 1 for contact details)
- A bullying culture (across a team or organisation rather than individual instances of bullying).

For further examples, [please click here to see Health Education England video.](https://www.youtube.com/watch?v=zjau1Ey0di8)  
(<https://www.youtube.com/watch?v=zjau1Ey0di8>)

#### **If in doubt – raise it!**

6.7 This policy aims to:

- encourage employees to feel confident in raising serious concerns regarding the practice of the CCG,
- provide avenues for employees to raise those concerns and receive feedback on any action taken,
- ensure that employees receive a response to their concerns,
- reassure employees that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they have made any disclosure in the public interest.

6.8 The CCG also has separate policies to cover fraud and safeguarding concerns which provide further guidance and details separate procedures for reporting suspected cases of fraud. If your concern relates to a suspected incidence of fraud or safeguarding then please refer to the fraud or safeguarding policies respectively. Please note that the principles of this policy will still apply.

6.9 Employees of the CCG's commissioned services should normally raise their concerns under their employer's Whistleblowing Policy, which will afford the

employee their rights under Whistleblowing legislation. However, it is recognised that provider employees may feel they need to raise their concerns directly with commissioners or with other regulators, such as the Care Quality Commission. This policy ensures that the CCG will act on any such genuine concerns raised from outside of the CCG.

## **7.0 THE PUBLIC INTEREST DISCLOSURE ACT 1998**

7.1 The above act provides protection for employees who raise legitimate concerns about specified matters. These are called “qualifying disclosures”. A qualifying disclosure is one made in the public interest 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;
- financial fraud or mismanagement;
- unauthorised disclosure of confidential information;
- abuse in care;
- patient safety;
- a concealment of any of the above is being or is likely to be committed.

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

7.3 Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

7.4 The CCG cannot offer employee protection for issues raised by employees from outside of the CCG but can review any genuine concerns raised with it sensitively and within the scope of powers of the CCG.

## **8.0 CONFIDENTIALITY**

8.1 Employees raising a concern should be aware of the need to follow this procedure and in particular to maintain confidentiality. Allegations of Breaches in Confidentiality will be dealt with using the appropriate procedures, through the use of the CCG Disciplinary Policy.

8.2 The identity of the individual 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).

- 8.3 Any employee 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. In addition, they may be asked to explain their allegations during any disciplinary proceedings that may result from them.
- 8.4 Employees who raise a genuine concern under this policy, will not be at risk of losing their job or suffering any form of reprisal as a result. The CCG will not tolerate the harassment or victimisation of anyone raising a concern and will not tolerate any attempt to bully anyone who raises such a concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in investigation. Provided an employee raising a concern is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.
- 8.5 The CCG are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns, and will respond in line with them (see Appendix 3).

## **9.0 HOW TO RAISE A CONCERN**

- 9.1 We all have a responsibility and duty (often reinforced in Professional Codes of Conduct) to draw to the attention of CCG management any anxieties or concerns which we may have in respect of the conduct of another employee where we consider that this conduct may be detrimental to the interests of patients and/or employees of the CCG. This includes instances which compromise or appear to compromise the standards laid down by the CCG, including health and safety, ethical behaviour, clinical governance, corporate governance or probity protocols. There may be implications for you as an individual if you do not raise your concerns with CCG management or, as a minimum, discuss the matter with your professional organisation.
- 9.2 The CCG are committed to listening to our staff learning lessons and improving patient care. On receipt the concern will be recorded by the CCGs Director of Quality and Clinical Governance who will send an acknowledgment of the concern within two working days. The central record will record the date the concern was received, if the individual has requested confidentiality, a summary of the concerns and dates when the individual has been updated or given feedback.

### **9.3 Step One**

If you have a concern about any issue, we hope you will feel able to raise it in the first instance with your manager.

### **9.4 Step Two**

If you don't feel Step one is appropriate or it hasn't worked, please raise the matter with a CCG Senior Officer or Director. Please say if you want to raise the matter in confidence so that they can make appropriate arrangements. We will ask if you would like us to write to you summarising your concern and the action we propose to take.

**9.5 Senior Managers / Directors have been given special responsibility and training in dealing with whistleblowing concerns. They will:**

- treat the concern confidentially unless otherwise agreed.
- ensure the individual receives timely support to progress the concern
- escalate to the Board any indications that individuals are being subjected to a detriment as a result of raising a concern
- remind the CCG of the need to give timely feedback to the individual on how the concern is being dealt with
- ensure that individuals who raise a concern have access to support as raising a concern may be stressful.

9.6 If you are unsure who to contact please ask one of the advice bodies listed (see section 11 for contact details).

**9.7 Step Three**

If step one and/or step two 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:

- Director of the CCG (Sarah Smyth, Director of Quality and Clinical Governance/Lead Nurse, (01482) 344619) or
- CCG Lay Member (Karen Marshall, 01482 344700)
- Chair of the CCG (Dr Dan Roper, 01482 344700).

9.8 This procedure is intended to provide employees with an opportunity within the CCG to raise concerns. If, however, they are not satisfied with any action taken and feel it is right to take the matter outside the CCG, they should ensure that they do not disclose information which should properly remain confidential. Employees will need to confirm this with the person or organisation they decide to contact.

9.9 If steps 1 – 3 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 you can raise your concern outside of the CCG with:

- NHS Improvement for concerns about:
  - How NHS trusts and foundation trusts are being run
  - Other providers with an NHS provider licence

- NHS procurement, choice and competition
- The national tariff.
  
- Care Quality Commission for quality and safety concerns
  
- NHS England for concerns about:
  - Primary medical services (general practice)
  - Primary dental services
  - Primary ophthalmic services
  - Local pharmaceutical services
  
- Health Education England for education and training in the NHS
  
- NHS Protect for concerns about fraud and corruption.

9.10 In light of the procedure laid down in this Policy it is expected that all employee's concerns can be addressed and dealt with internally or externally, and without reference to the media. An employee who has exhausted all the locally established procedures and who has taken account of any initial advice which they may have been given may, as a last resort, consider speaking to the media. If the employee considers that the involvement of the media is appropriate they should seek advice (or further advice) from professional or other representative organisations and preferably discuss matters further with their manager before taking this step.

9.11 Such action, if entered into unjustifiably, could unreasonably undermine public confidence in the services provided by your colleagues and the CCG. Employees are therefore strongly advised to first seek further specialist guidance as noted above.

9.12 Concerns raised from outside of the CCG will be reviewed by the Chair of the CCG or a CCG Director in the first instance. This will determine what steps are taken in light of the concerns raised and the scope of the CCG's role.

## **10.0 INVESTIGATING PROCESS**

10.1 Due to the varied nature of these sort of complaints, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

10.2 The HR team shall advise those involved in the investigation in matters of employment law and other procedural matters.

10.3 Any potential disciplinary matters will be dealt with by the CCG and, where appropriate, relevant external bodies.

- 10.4 If the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Chief Officer / Chair, or one of the designated persons described above.
- 10.5 If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the CCG recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive) or, where justified, other relevant external bodies.

## 11.0 HELP & ADVICE

- 11.1 At any point either before raising the concern or at any stage in this procedure an employee may involve a Trade Union or Professional Association Representative who will be able to provide help and advice.
- 11.2 Free, independent and confidential advice can be obtained from the Whistleblowing Helpline for NHS and Social Care on 08000 724 725.
- 11.3 Support and advice is available from Public Concern at Work and the NAO Controller and Auditor General at the following addresses:

Public Concern at Work 3rd Floor, Bank Chambers 6 - 10 Borough High Street London, SE1 9QQ Tel: 020 7404 6609 Website: <a href="http://www.pcaw.co.uk">http://www.pcaw.co.uk</a>	The Comptroller and Auditor General National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP Telephone: 020 7798 7999
--	--

- 11.4 Employees are able to approach Occupational Health as a means of support when concerns have been raised

## 12.0 RESPONSIBILITIES

### 12.1 Director of Quality and Clinical Governance / Executive Nurse

The **Director of Quality and Clinical Governance / Executive Nurse** will have an overview of the issues involved and will keep the Governing Body informed of the progress of any investigation as necessary. The Director of Quality and Clinical Governance / Executive Nurse will arrange training for all staff who are likely to receive concerns to be appropriately trained.

### 12.2 Integrated Governance and Audit Committee

The Integrated Governance and Audit Committee will review any reports submitted to

it in respect of this policy, and consider any necessary recommendation.

### 12.3 **HR Team**

The Human Resources team will be responsible for the provision of advice in relation to employment law and the CCG's policies and procedures.

### 12.4 **Managers**

Concerns will normally be reported to an employee's line manager. The manager will be responsible for passing the details to the Director of Quality and Clinical Governance team, or in cases of fraud to the LCFS or Chief Finance Officer unless it is clear that the concerns are groundless.

### 12.5 **Staff**

All staff are responsible for being aware of this policy and for raising any concerns they have using appropriate procedure.

### 12.6 **National Guardian Freedom to Speak Up**

The new National Guardian (once fully operational) can independently review how staff have been treated having raised concerns where NHS trusts and foundation trusts may have failed to follow good practice, working with some of the bodies listed within the policy to take action

**GUIDANCE TO STAFF****Q - What should you do if you suspect malpractice?**

**Do** make an immediate note of your concerns

**Do** convey your suspicions to someone with the appropriate authority and experience

**Do** deal with the matter promptly

**Do** in cases of suspected fraud tell the LCFS (Shaun Fleming or Nikki Cooper on 01482 866800/01652 251154), or the Chief Finance Officer or contact the NHS National Fraud & Corruption reporting line on 08000 724 725 or report online at [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk) in cases of fraud.

**Don't** do nothing

**Don't** be afraid of raising your concerns

**Don't** accuse any individuals directly

**Don't** try to investigate the matter yourself

**Don't** tell anyone about your suspicions other than those with the proper authority

**GUIDANCE TO MANAGERS**

**Do** be responsive to staff concerns

**Do** note details

**Do** try to evaluate the allegation objectively

**Do** deal with the matter promptly

**Do** advise the appropriate person:

- Line Manager
- YHCS Workforce Team
- Local Counter Fraud Specialist
- Safeguarding Officer
- Director of Quality & Clinical Governance /.Executive Nurse

**Don't** ridicule suspicions raised by staff

**Don't** approach or accuse any individuals directly

**Don't** convey your suspicions to anyone other than those with the proper authority

**Don't** try to investigate the matter yourself

## **SUMMARY OF THE PUBLIC INTEREST DISCLOSURE ACT 1998**

The Act applies to the public, private and voluntary sectors. It aims to improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker.

The Act sets out the circumstances in which a disclosure of information may be protected. In brief, to obtain that protection, workers must act reasonably and responsibly. An employee who makes a rash disclosure (to the media for example, of a matter which could and should have been raised internally) will not be protected.

Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

### **Malpractice**

The Act applies to people at work raising genuine concerns about crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment, and the cover up of any of these. In the NHS this includes a worker raising concerns about risks to patients or about financial malpractice. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

### **Individuals Covered**

In addition to employees, the Act covers other workers, trainees, agency staff, homeworkers and all self-employed NHS professionals (i.e. doctors, ophthalmologists, dentists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, army or police officers.

### **Internal Disclosures**

A disclosure to the employer will be protected if the employee (often referred to as a “whistleblower”) has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the malpractice, this same test applies to disclosures made to it.

### **Legal Advice**

To ensure that people concerned about malpractice can get independent and confidential advice about how the Act works, disclosures to lawyers are protected.

## **NHS and Quangos**

To promote accountability in public life, the same protection as for internal disclosures applies where someone in the NHS or a public organisation blows the whistle direct to the sponsoring department. There is no requirement that such concerns be raised internally first.

## **Regulatory Disclosures**

Special provision is made for disclosures to organisations, which are prescribed under the Act. Those relevant to the NHS are:

- Public sector finance – Audit Commission
- Fraud and fiscal irregularities – Serious Fraud Office, Inland Revenue, Customs and Excise
- Health and Safety dangers – the relevant enforcing authority (Health & Safety Executive or Local Authority)
- Environmental dangers – the Environment Agency
- Others – Care Quality Commission, Charity Commission, Occupational Pensions Regulatory Authority

Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

## **Wider Disclosures**

First, the concern must have been raised with the employer or a prescribed regulator, unless:

- The worker reasonably believed s/he would be victimized if s/he did do
- There is no prescribed regulator and the worker reasonably believed there would be a cover-up
- The matter was exceptionally serious

If one of the above pre-conditions is met, and the Tribunal is satisfied that disclosure was reasonable, the whistleblower will be protected.

Wider disclosures (e.g. to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and the following provisions are met:

- In deciding the reasonableness of the disclosure the Tribunal will consider the identity of the person it was made to, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence the employer owed a third party.
- Where the concern had been raised with the employer or a prescribed regulator, the Tribunal will also consider the reasonableness of their response.
- Finally, if the concern had been raised with the employer, the Tribunal will consider whether any whistleblowing policy in the organization was or should have been used.

### **Full Protection**

Where a worker or employee is victimised for blowing the whistle in breach of the Act, s/he can bring a claim at an Employment Tribunal. The usual limits on awards in employment law will not apply under the Public Interest Disclosure Act. Workers and employees who lose their jobs in breach of the Act will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

Where an employee (but not other workers) is dismissed for blowing the whistle, s/he may apply within seven days for an interim order. Where the Tribunal considers that the employee is likely to win at the full hearing, it will order that s/he keeps his/her job or is paid his/her wages pending the full hearing.

The provisions on interim relief do not apply to self-employed professionals in the NHS. Nor can a tribunal make a Re-employment Order where the contract of a self-employed professional has been terminated in breach of the Act. However, as such workers will be entitled to recover their full losses at an Employment Tribunal; re-employment may well be an option the employer may wish to consider in the event of a claim under the Act.

### **Gagging Clauses**

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

### **Criminal Offences**

Where the disclosure of that information was itself a criminal offence, such as under the Official Secrets Act, the whistleblower will not be protected under the Act if s/he has or would have been convicted of the offence.

### **[Extract from the Public Concern at Work Briefing Pack]**

**Step One—Contact your Line Manager**  
If you have any concerns relating to this policy we would hope that in the first instance you are able to raise it with your line manager



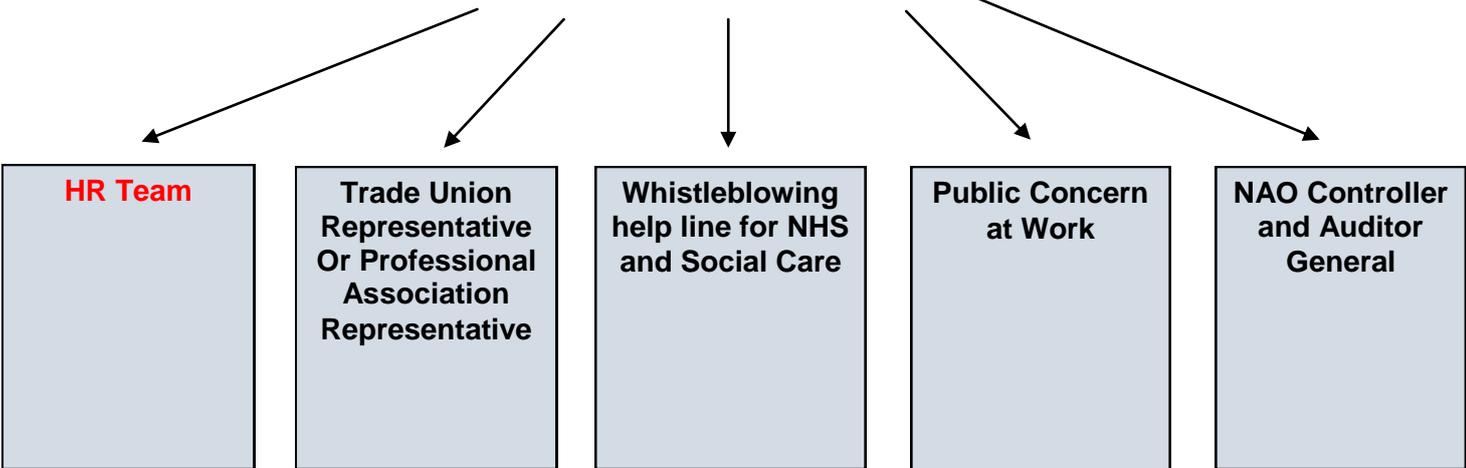
If you don't feel that step one is appropriate, or it hasn't worked, please continue to step two



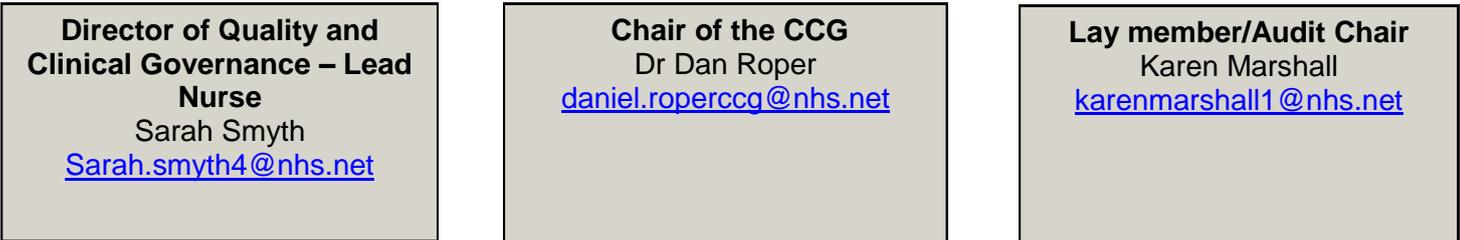
**Step Two— CCG Senior Officer or Director**  
Please say if you want to raise this matter in confidence so that appropriate arrangements can be made. We will ask if you would like us to write to you summarising your concern and the action we propose to take

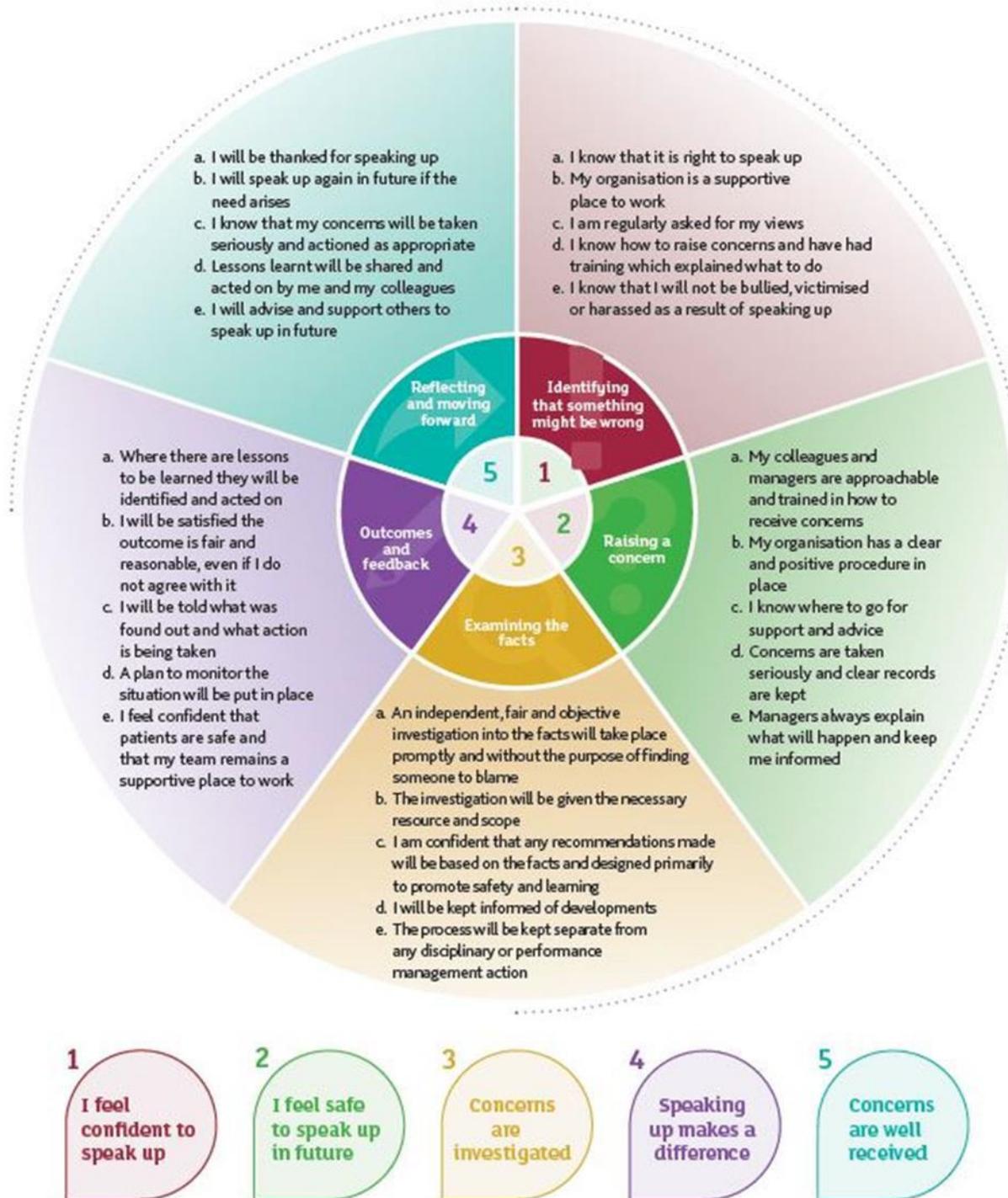


If you are unsure who to contact please ask one of the following bodies for advice (contact details within the policy body (page 12))



If step one and/or step two have been followed and you still have concerns or if you feel that the matter is so serious that you cannot speak with any of the above bodies please contact:





# Equality Impact Assessment: Whistleblowing Policy

## Equality Impact Assessment:

<b>Equality Impact Analysis:</b>	
<b>Policy / Project / Function:</b>	Whistleblowing policy
<b>Date of Analysis:</b>	October 2016
<b>This Equality Impact Analysis was completed by: (Name and Department)</b>	Emma Kirkwood, eMBED Health Consortium
<b>What are the aims and intended effects of this policy, project or function ?</b>	<p>The aim of this policy is to:</p> <ul style="list-style-type: none"> <li>• Encourage employees to feel confident in raising serious concerns regarding the practice of the CCG</li> <li>• Provide avenues for employees to raise those concerns and receive feedback on any action taken</li> <li>• Ensure that employees receive a response to their concerns</li> <li>• Reassure employees that they will be protected from possible reprisals, subsequent discrimination, victimisation or disadvantage if they have a reasonable belief that they have made any disclosure in the public interest</li> </ul>
<b>Please list any other policies that are related to or referred to as part of this analysis</b>	<ul style="list-style-type: none"> <li>• Fraud and Bribery (Public Interest Disclosure)</li> <li>• Disciplinary Policy</li> <li>• Equality and Diversity Policy</li> <li>• Standards of Business Conduct</li> </ul>
<b>Who does the policy, project or function affect ?</b>  Please Tick ✓	<p>Employees ✓</p> <p>Service Users</p> <p>Members of the Public</p> <p>Other (List Below) ✓</p> <p>Agency and Contract Staff</p>

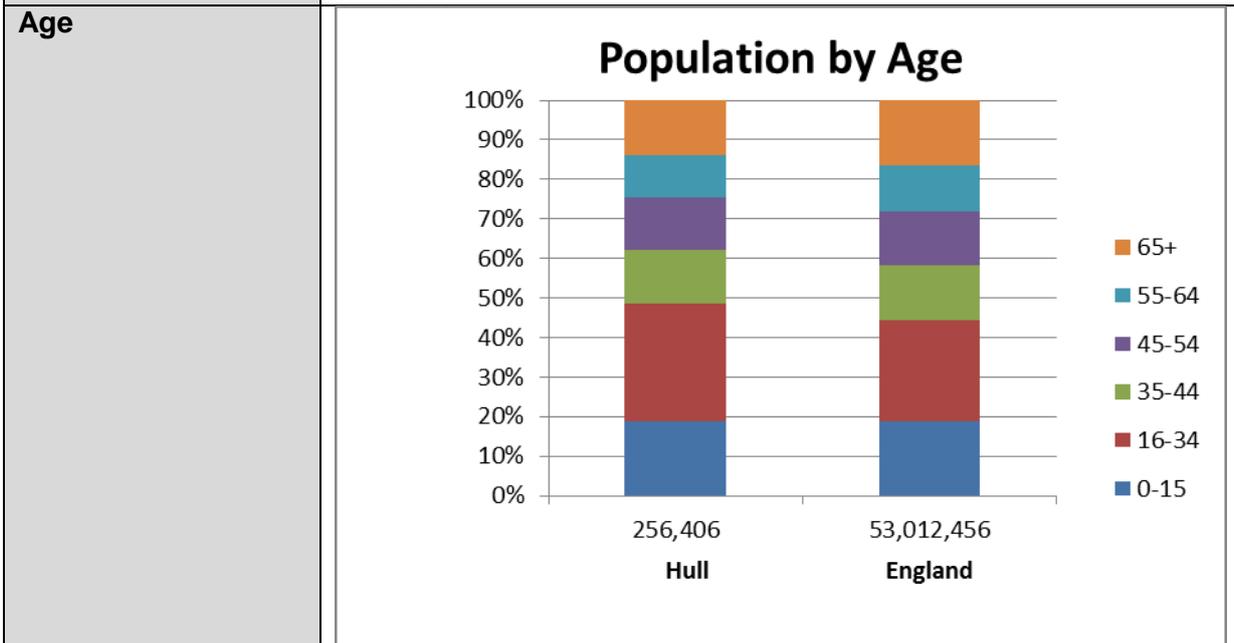
## Equality Impact Analysis:

Local Profile/Demography of the Groups affected (population figures) Relevant data can be found in the attached Knowledge Management Toolkit (Employee data as at Oct 14)

**General**

There are 52 GP practices in the Hull area which spans 7,154 hectares and, as a city, has relatively tight geographical boundaries with most of the 'leafy suburb' areas outside Hull's boundaries in East Riding of Yorkshire. As a result, Hull has a relatively high deprivation score, as measured by the Index of Multiple Deprivation 2010, with Hull ranked as the 10th most deprived local authority out of 326 (bottom 4%).

The resident population of Hull is 256,406 based on the 2011 Census data and 265,369 residents based on estimates from the local GP registration file as at October 2011. This equates to approximately 37 residents per hectare. The Joint Strategic Needs Assessment (JSNA) identifies considerable inequalities in health between Hull and England, and between populations within Hull.



Compared to England, Hull has lower percentages of residents aged 10-19 years and 55+ years, but slightly higher percentages aged under 5, 20-34 years and 45-54 years. There is a relatively large difference between Hull and England for the age group 20-34 years, due to Hull's colleges and Universities.

There were 2,869 live births occurring to Hull residents in 2001, but this has increased steadily to 3,771 for 2010. The number of deaths occurring to Hull residents has decreased from 2,571 to 2,310 between 2001 and 2010. ONS estimated the resident population to be 243,596 in 2001 compared to 260,424 residents based on the GP registration file, with the difference between these estimates narrowing over time. So, whilst it is difficult to quantify the exact

	<p>increase in Hull's population, it has increased over recent years. Between 2010 and 2030, ONS estimate that Hull's population will increase from 266,100 to 311,900 residents, an increase of 17%.</p> <p>The figure above shows the population of Hull (2011 Census Data).</p>																		
<b>Race</b>	<p>The percentage of the population from Black and Minority Ethnic (BME) groups has increased substantially since 2001. For the 2001 Census, it was estimated that 3.3% of Hull's population was not White British or White Irish, whereas Census data shows that this figure increased to 10.2% for 2011. There is no single BME group in Hull with much higher percentages compared to other groups. The 2011 census data shows:</p> <p>White British - 89.7%  White Other - 4.4%  Mixed - 1.3%  Asian - 2.5%  Black - 1.2%  Other - 0.8%</p>																		
<b>Sex</b>	<p>The gender split in Hull is approximately 50.1% men and 49.9% women. For 2008-2010, life expectancy in Hull was 75.7 years for men and 80.2 years for women compared to 78.6 years and 82.6 years for men and women respectively in England.</p>																		
<b>Gender reassignment</b>	<p>No local information provided.</p>																		
<b>Disability</b>	<p>According to the 2011 Census, it is estimated that approximately 19.7% of the Hull population lives with a long term health problem or disability compared with 17.6% for England. This information can be broken down further (Source: Projecting Older People Population Information System and Projecting Adult Needs and Service Information) to include learning disabilities, physical disabilities, hearing impairments and visual impairments, as follows:</p> <table border="1"> <thead> <tr> <th>2012 Estimates</th> <th>Hull</th> </tr> </thead> <tbody> <tr> <td>Learning Disability (Age 18 – 64)</td> <td>4,078</td> </tr> <tr> <td>Learning Disability (Age 65 and over)</td> <td>762</td> </tr> <tr> <td>Physical Disability – Moderate (Age 18 – 64)</td> <td>12,222</td> </tr> <tr> <td>Physical Disability – Serious (Age 18 – 64)</td> <td>3,491</td> </tr> <tr> <td>Visual Impairment (Age 18 – 64)</td> <td>108</td> </tr> <tr> <td>Visual Impairment (Age 65 and over)</td> <td>3,263</td> </tr> <tr> <td>Hearing Impairment – Moderate or Severe (Age 18 – 64)</td> <td>5,765</td> </tr> <tr> <td>Hearing Impairment – Moderate or Severe (Age 65 and over)</td> <td>15,707</td> </tr> </tbody> </table>	2012 Estimates	Hull	Learning Disability (Age 18 – 64)	4,078	Learning Disability (Age 65 and over)	762	Physical Disability – Moderate (Age 18 – 64)	12,222	Physical Disability – Serious (Age 18 – 64)	3,491	Visual Impairment (Age 18 – 64)	108	Visual Impairment (Age 65 and over)	3,263	Hearing Impairment – Moderate or Severe (Age 18 – 64)	5,765	Hearing Impairment – Moderate or Severe (Age 65 and over)	15,707
2012 Estimates	Hull																		
Learning Disability (Age 18 – 64)	4,078																		
Learning Disability (Age 65 and over)	762																		
Physical Disability – Moderate (Age 18 – 64)	12,222																		
Physical Disability – Serious (Age 18 – 64)	3,491																		
Visual Impairment (Age 18 – 64)	108																		
Visual Impairment (Age 65 and over)	3,263																		
Hearing Impairment – Moderate or Severe (Age 18 – 64)	5,765																		
Hearing Impairment – Moderate or Severe (Age 65 and over)	15,707																		

	Hearing Impairment – Profound (Age 18 – 64)	49																				
	Hearing Impairment – Profound (Age 65 and over)	402																				
<b>Sexual Orientation</b>	There are no local statistics for how many Lesbian, Gay or Bisexual (LGB) people live within Hull however, nationally, the Government estimates that 5% of the population are lesbian, gay, bi and transgender communities.																					
<b>Religion, faith and belief</b>	<p>According to the 2011 Census, 54.9% of the population have identified themselves as Christian and 3.1% of the population is made up of other religions. The remainder of the population did not state anything (7.2%) or stated 'no religion' (34.8%).</p> <table border="1"> <thead> <tr> <th>Religion</th> <th>2011</th> </tr> </thead> <tbody> <tr> <td>Christian</td> <td>54.9%</td> </tr> <tr> <td>Buddhist</td> <td>0.3%</td> </tr> <tr> <td>Hindu</td> <td>0.2%</td> </tr> <tr> <td>Jewish</td> <td>0.1%</td> </tr> <tr> <td>Muslim</td> <td>2.1%</td> </tr> <tr> <td>Sikh</td> <td>0.1%</td> </tr> <tr> <td>Other Religion</td> <td>0.3%</td> </tr> <tr> <td>No Religion</td> <td>34.8%</td> </tr> <tr> <td>Religion Not Stated</td> <td>7.2%</td> </tr> </tbody> </table>		Religion	2011	Christian	54.9%	Buddhist	0.3%	Hindu	0.2%	Jewish	0.1%	Muslim	2.1%	Sikh	0.1%	Other Religion	0.3%	No Religion	34.8%	Religion Not Stated	7.2%
Religion	2011																					
Christian	54.9%																					
Buddhist	0.3%																					
Hindu	0.2%																					
Jewish	0.1%																					
Muslim	2.1%																					
Sikh	0.1%																					
Other Religion	0.3%																					
No Religion	34.8%																					
Religion Not Stated	7.2%																					
<b>Marriage and civil partnership</b>	This protected characteristic generally only applies in the workplace. Data from the Office of National Statistics covering the period 2008-2010 indicates that there were 18,049 Civil Partnerships in England and Wales during this three-year period – 52% men and 48% women.																					
<b>Pregnancy and maternity</b>	There were 2,869 live births occurring to Hull residents in 2001, but this has increased steadily to 3,771 for 2010.																					

## Equality Impact Analysis:

<p><b>Is any Equality Data available relating to the use or implementation of this policy, project or function ?</b></p> <p>Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine <i>Protected Characteristics</i> – referred to hereafter as ‘<i>Equality Groups</i>’.</p> <p>Examples of <i>Equality Data</i> include: (this list is not definitive)</p> <p>1: Application success rates <i>Equality Groups</i></p> <p>2: Complaints by <i>Equality Groups</i></p> <p>3: Service usage and withdrawal of services by <i>Equality Groups</i></p> <p>4: Grievances or decisions upheld and dismissed by <i>Equality Groups</i></p>	<p>Yes Yes employee data has been used to support the monitoring of the impact of this policy in the future. The employee data is not included due to the low number of CCG employees and concern around anonymity</p> <p>No <input type="checkbox"/></p> <p>Where you have answered yes, please incorporate this data when performing the <i>Equality Impact Assessment Test</i> (the next section of this document).</p>
<p><b>List any Consultation e.g. with employees, service users, Unions or members of the public that has taken place in the development or implementation of this policy, project or function</b></p>	<p>Consultation has taken place both locally and nationally with Trade Unions and staff</p> <ul style="list-style-type: none"> <li>• SLT</li> <li>• CCG Employees</li> <li>• SPF Sub group</li> <li>• SPF</li> <li>• Governing Body (approval)</li> </ul>
<p><b>Promoting Inclusivity</b></p> <p>How does the project, service or function contribute towards our aims of eliminating discrimination and promoting equality and diversity within our organisation</p>	<p>This Policy does not directly promote inclusivity, however should any concerns be raised about discrimination in the use of the policy, it will provide a tool to address such concerns.</p>

### Equality Impact Assessment Test:

**What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?**

Protected Characteristic:	No Impact:	Positive Impact:	Negative Impact:	Evidence of impact and if applicable, justification where a <i>Genuine Determining Reason</i> exists
<b>Gender</b> (Men and Women)	✓			This has been considered and has neutral impact. The policy applies to all staff regardless of gender
<b>Race</b> (All Racial Groups)	✓			<p>As the policy is written in English there is a potential impact on employees whose first language is not English and therefore may struggle reading the policy. However this potential impact is minimised due to the publicised confidential helpline which can explain the process and inform the employee as will the action set out in the action plan development of the 'portal' facilities.</p> <p>The consultation process established that there is a Trade Union view that BME staff may be reluctant to use the policy on the basis of fear of victimisation/discrimination of this group. This is as result of some high profile cases reported in the press. The NHS Constitution and Whistleblowing Constitution Report September 2011 established that 48% responders perceived that there are barriers to achieving equitable protection for staff. However these concerns were notable related to age, disability and language barriers.</p> <p>15% of Whistleblowers are dismissed (source PCaW)</p> <p>Whilst the CCG recognise the Trade Union view, the CCG believe that the policy and any associated policies will be applied to all staff regardless of their race. However, the CCG will continue to monitor the use of the policy and other associated policies to ensure its</p>

				application is applied consistently to all staff regardless of any protected characteristics.
<b>Disability</b> (Mental and Physical)	✓			Access to information regarding the procedure is available via the intranet and other communications. All communications are available in accessible formats on request e.g. in Braille and larger print and the current staff 'portal' is under development (see action)
<b>Religion or Belief</b>	✓			This has been considered and has neutral impact. The policy applies to all staff regardless of their individual religion or belief
<b>Sexual Orientation</b> (Heterosexual, Homosexual and Bisexual)	✓			<p>The consultation process established that there is a Trade Union view that staff whose sexual orientation is not heterosexual may be reluctant to use the policy in the basis of fear of victimisation/discrimination of this group. This is as result of some high profile cases reported in the press. The NHS Constitution and Whistleblowing Constitution Report September 2011 established that 48% responders perceived that there are barriers to achieving equitable protection for staff. However these concerns were notable related to age, disability and language barriers.</p> <p>15% of Whistleblowers are dismissed (source PCaW)</p> <p>Whilst the CCG recognise the Trade Union view, the CCG believe that the policy and any associated policies will be applied to all staff regardless of their race. However, the CCG will continue to monitor the use of the policy and other associated policies to ensure its application is applied consistently to all staff regardless of any protected characteristics.</p>

<b>Pregnancy and Maternity</b>	✓			This has been considered and has neutral impact. The policy applies to all staff regardless of being pregnant or on maternity leave
<b>Transgender</b>	✓			This has been considered and has neutral impact. The policy applies to all staff regardless of gender reassignment
<b>Marital Status</b>	✓			This has been considered and has neutral impact. The policy applies to all staff regardless of their individual religion or belief
<b>Age</b>	✓			This has been considered and has neutral impact. Age-related impairers such as degeneration in sight and hearing will affect older employee disproportionately. However, the accessible formats available to all employees will mediate any potential impact this may have on older workers.

**Action Planning:**

**As a result of performing this analysis, what actions are proposed to remove or reduce any risks of adverse outcomes identified on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?**

<b>Identified Risk:</b>	<b>Recommended Actions:</b>	<b>Responsible Lead:</b>	<b>Completion Date:</b>	<b>Review Date:</b>
As the policy is written in English there is a potential impact on employees whose first language is not English and therefore may struggle reading the policy.	The CCGs Communication Team is developing the 'portal' to signpost individuals to alternative formats.	CCG Communications	TBC	Next policy review
The policy will be monitored to ensure it is applied equitable	Monitor the use of the policy and report to SLT on a six monthly basis	CCG	Six monthly (based on ratification date)	Annual Policy Update

Equality Impact Findings:	
<b>Analysis Rating:</b>	Green
<b>Red – Stop and remove the policy</b>	<b>Red:</b> As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i> . It is recommended that the use of the policy be suspended until further work or analysis is performed.
<b>Red Amber – Continue the policy</b>	As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i> . However, a genuine determining reason may exist that could legitimise or justify the use of this policy and further professional advice should be taken.
<b>Amber – Adjust the Policy</b>	As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the <i>Action Planning</i> section of this document.
<b>Green – No major change</b>	As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.

<b>Brief Summary/Further comments</b>	As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.
---------------------------------------	--

<b>Other Comments:</b>	
<b>Confirmed by (Manager): (Name and Title)</b>	
<b>Date:</b>	06.10.16