

# Freedom to Speak up Policy

Document Reference:	HR 29
Document Title:	Freedom to Speak up Policy
Version:	7.0
Supersedes:	6.0
Author:	NHS Midlands and Lancashire CSU HR Team Sarah Mattocks
Authors Designation:	NHS Midlands and Lancashire CSU HR Team Corporate Affairs and Governance Manager
Consultation Group:	Audit Committee
Date Ratified:	May 2020
Review Date:	May 2021

## Version Control

Version	Date	Author	Status	Comment / Details of Amendments
0.1	25.06.15	Midlands and Lancashire CSU HR Team	Draft	Policy drafted
2.0	21.06.16	Corporate Affairs and Governance Manager	Final	Policy reviewed and updated in line with advice from MIAA counter fraud team on changes since the policy was last published.
3.0	August 2017	Corporate Affairs and Governance Manager	Final	Policy reviewed and updated to reflect roles and responsibilities for managers and employees, assurances received around governance processes and training to be extended in relation to Freedom To Speak Up Guardian.
4.0	August 2018	Corporate Affairs and Governance Manager	Final	Policy reviewed and updated including that the Guardian will report to the Audit Committee on an annual basis
5.0	June 2019	Corporate Affairs and Governance Manager	Final	Updated to include additional safeguarding detail, updated counter fraud contact details and some counter fraud, HR and Audit Committee enhancements
6.0	Feb 2020	Corporate Affairs and Governance Manager	Final	Policy updated at 4.6 to reflect that the Freedom to Speak up Guardian for the CCG will also represent GP practices for the CCG area.

7.0	April 2020	Corporate Affairs and Governance Manager	Final	Anti Fraud contact details updated
-----	------------	--	-------	------------------------------------

### **Circulation List**

Prior to Approval, this Policy was circulated to the following for consultation:

- Freedom to speak up Guardian
- Audit Committee
- MLCSU HR team

Following Approval this Policy Document will be circulated to:

- All CCG 'employees' (as described at 2.1)

### **Equality Impact Assessment**

This document has been impact assessed by the CCG. No issues have been identified in relation to Equality, Diversity and Inclusion. The Equality Impact Assessment can be found at Appendix 6 of this policy.

## Contents

2.0	SCOPE OF THE POLICY .....	6
3.0	GENERAL PRINCIPLES .....	7
4.0	ROLES AND RESPONSIBILITIES .....	8
	Role of Employee Managers .....	8
	Role of all Employees .....	9
5.0	PROCEDURE .....	10
	Raising Concerns in Confidence or Anonymously .....	10
	Internal Disclosures – Level 1 .....	10
	Internal Disclosures - Level 2.....	11
	Fraud (or Suspicions of Fraud) .....	11
	External and Regulatory Disclosures .....	11
	Advice and Guidance.....	13
	Frequently Asked Questions .....	14
6.0	EQUALITY .....	14
7.0	MONITORING AND REVIEW .....	14
	Appendix 1: Summary of the Main Provisions of the Public Interest Disclosure Act 1998 .....	15
	Appendix 2: Guidelines for Initial Discussion (For use by CCG Employee Managers) .....	16
	Appendix 3: Legislation .....	17
	Appendix 4: Frequently Asked Questions.....	19
	Appendix 6: Equality Impact Analysis Initial Assessment .....	22
	Appendix 6: Equality Analysis Initial Assessment .....	21

## 1.0 POLICY STATEMENT

- 1.1 The CCG is committed to the highest standards of probity and integrity. It values the principles of openness and seeks to create a culture where resolution of problems takes priority over apportioning blame, in order to bring about continuous improvement. Following the “Freedom to Speak up Review” by Sir Robert Francis it was recommended that all NHS organisations foster a culture of safety and learning in which staff feel safe when raising concerns.
- 1.2 The CCG recognises there are times when employees have a duty to raise concerns about matters of probity, malpractice or potential risks to the public. It is the organisation’s policy to create a climate in which such matters can be raised without fear of recrimination. The CCG will not tolerate the harassment or victimisation of anyone raising a concern.
- 1.3 This policy provides a framework for employees to raise concerns and for those concerns to be dealt with promptly, sympathetically and seriously. The CCG will endeavour to make sure that employees are kept fully informed of any action taken/not taken and the reason for this.
- 1.4 The CCG is committed to the principle of public accountability including ensuring its responsibilities under the Duty of Candour are adhered to. The ‘Duty of Candour’ is a contractual requirement on NHS providers to be open with patients and their families and provide them with information on any investigations and lessons learned when things go wrong with their healthcare. The contractual Duty of Candour, which forms part of the Government’s plans to modernise the NHS by making it more accountable and transparent, will be an enforceable duty on NHS providers.

All employees should also be aware of the Principles for Public Life, also known as the Nolan Principles:-

- **Selflessness** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- **Objectivity** Holders of public office should make choices on merit when carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits.
- **Accountability** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

- **Honesty** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** Holders of public office should promote and support these principles by leadership and example.

1.5 This policy should be read in conjunction with the following documents which are available on the CCG website:

- GOV07 Managing Conflicts of Interest Policy
- GOV 10 Anti-Fraud Bribery and Corruption Policy and Response Plan
- GOV11 Hospitality Sponsorship and Gifts Policy

1.6 Section 5.0 of this policy covers the procedure for Freedom to speak up disclosures to be made.

1.7 The CCG is responsible for having clear policies and procedures in place for responding to and dealing with concerns regarding allegations against people working with children and adults with care and support needs.

## **2.0 SCOPE OF THE POLICY**

2.1 This policy applies to all staff employed by the organisation, to those who work for the organisation temporarily (such as through an agency or as a contractor), and also GP Directors elected as members of the Governing Body, and Governing Body lay members. For the purposes of this policy these shall be collectively referred to as “employees”.

2.2 Freedom to Speak up refers to circumstances and situations when someone who works in or for the organisation raises a concern about a possible fraud, crime, danger or other serious risk, serious misconduct, malpractice including bullying and harassment, which could threaten patients or service users, colleagues, the public or the organisation’s reputation.

2.3 The CCG encourages all employees to raise any concerns they may have about the conduct of others in the organisation, independent contractors, or organisation with which the CCG has a relationship/contract.

2.4 The Caldicott principles are included on the Information Governance documents section of the CCG intranet.

### Safeguarding scope

2.4 ‘PiPoT’ refers to a person in a position of trust. The Care Act 2014 established the requirement that all relevant Safeguarding Adult Board and its partners should have policies and procedures for responding to concerns against any person who works

with adults, in either paid or unpaid capacity, in positions of trust. This applies to all organisations commissioned to provide services by them, so they respond appropriately to allegations made.

- 2.5 A concern/allegation about abuse or neglect by a professional, or volunteer will be managed via this policy.
- 2.6 A concern about the quality of care or practice provided by the person in a position of trust, that do not meet the criteria for a safeguarding enquiry will be raised as quality issues initially to management within the organisation.
- 2.7 A complaint will be dealt with via the CCG's complaints policies and procedures which are separate from this policy.
- 2.8 'LADO' refers to Local Authority Designated Officer. 'Working Together to safeguard Children 2018' identifies that organisations and agencies working with children and families should have clear policies for dealing with allegations against people who work with children. Such policies should make a clear distinction between an allegation, a concern about the quality of care or practice or a complaint.
- 2.9 An allegation may relate to a person who works with children who has:
  - behaved in a way that has harmed a child, or may have harmed a child
  - possibly committed a criminal offence against or related to a child
  - behaved towards a child or children in a way that indicates they may pose a risk of harm to children

### **3.0 GENERAL PRINCIPLES**

- 3.1 The Public Interest Disclosure Act 1998 (PIDA) places a responsibility on public sector employers to remind staff of their responsibility to disclose suspected malpractice without fear of recrimination. Any employee who discloses information reasonably and responsibly in the public interest under the PIDA will be protected from any detriment in relation to any allegations that are made. An overview of the PIDA is shown at Appendix 1.
- 3.2 All employees have a duty of confidentiality and there is an implied duty of mutual trust and confidence between the individual employee and their employer. As such, all employees are encouraged to attempt to resolve issues internally wherever possible. In certain circumstances, however, it will be appropriate to raise concerns externally.
- 3.3 Employees may use this policy to raise concerns which fall under one or more of the following (however this is not an exhaustive list):

- That a criminal offence has been committed, is being committed or is likely to be committed
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject
- That a miscarriage of justice has occurred, is occurring or is likely to occur
- That the health or safety of any individual has been, is being or is likely to be endangered
- That the environment has been, is being or is likely to be damaged
- That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

3.4 Under normal circumstances, employees should follow the procedure as set out in section 5 to ensure their concern is addressed appropriately. Where, exceptionally, the individual legitimately feels they are unable to use the normal levels of the procedure or the matter relates to senior manager employees, they may contact the Chief Officer, CCG Clinical Chair, Freedom to Speak Up Guardian, or HR Team (Midlands and Lancashire Commissioning Support Unit) which will identify the appropriate course of action. This may involve a range of options, including referral to or involvement of outside agencies.

3.5 If the employee does not follow the procedure set out, which encompasses the requirements of the Public Interest Disclosure Act 1998, the protection against detriment will not apply. Disclosing information in an inappropriate way (for example, contacting the media) or deliberately making a false or malicious allegation could result in disciplinary action being taken against the employee, which could include dismissal.

3.6 Where staff witness incidents that represent a risk, but do not fall under the serious nature of concerns covered by this policy, they should complete an incident report form, which will ensure the matter is properly reported and investigated. The incident reporting process can be found in the CCG policy 'Incident, Accident and Near Miss Policy and Procedure (GOV 02)' which is stored on the CCG intranet.

3.7 It is not appropriate for employees to raise concerns about their personal work situation under this policy. These should be raised using the organisation's grievance policy and/or the harassment and bullying at work policy.

## **4.0 ROLES AND RESPONSIBILITIES**

### **Role of Employee Managers**

4.1 It is the responsibility of employee managers to make sure staff are aware of this policy and if a member of staff raises a concern, to ensure that it is dealt with in the correct way. Employee managers should always:

- Consider staff concerns carefully and (when necessary and appropriate) undertake an investigation



- Understand the difficult position that the individual staff member may be in
- Seek appropriate advice in relation to the policy from the governance team
- Take prompt action to resolve the concern or refer it on to a member of the management executive team (MET) or Chair of the CCG
- Keep the member of staff informed about the on-going processes and/or proposed solution
- Regularly review situations that have been reported to them
- Ensure individuals who genuinely report concerns are not penalised or discriminated against in any way
- Be prepared by familiarising themselves with the Freedom to Speak up Policy and other relevant policies and ensuring that they are adequately trained and supported to conduct any necessary enquiries
- managers should be alert to spotting a Freedom to Speak up scenario when it arises.

Specific guidance for employee managers is set out in Appendix 2.

### **Role of all Employees**

4.2 Employees who have concerns about known or suspected wrongdoing or malpractice are encouraged to raise their concerns formally. In doing so, they should follow the procedures set out in this policy in section 5. Employees should :-

- Ensure that the best standards of care are achieved
- Report their concerns to a member of CCG staff as outlined in the procedure Raise concerns in the public interest where there is a true belief that poor standards of practice have occurred
- Under no circumstances should individual employee managers or employees investigate any issues relating to safeguarding as these should be referred to the Safeguarding team. The same applies to any concerns raised relating to any alleged criminality, including but not limited to fraud/bribery.
- Complete the mandatory training module 'Fraud and Bribery Awareness' available on the Electronic Staff Record System
- Seek additional training where needed

As per the NHS Constitution (section 4B), all staff have a responsibility to raise genuinely-held concerns at the earliest opportunity. Whistleblowers do not need to wait to be able to provide actual evidence or proof to enable the organisation to investigate a concern.

### **Role of the Chief Officer, Chief Finance and Contracting Officer, Governing Body Chair, Governing Body Vice Chair or other appropriate senior manager**

4.3 Senior managers, including those roles listed above, have a responsibility to listen to any Freedom to Speak up concerns raised and undertake an investigation and report back to the individual. Senior managers should encourage and signpost staff to this Freedom to Speak up Policy where indicated.

### **Role of Audit Committee**

4.4 The Audit Committee shall review the CCG's arrangements for their employees to

raise concerns, in confidence, about possible wrongdoing in financial reporting, clinical or safety matters or other matters. The Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action.

### **Role of the Freedom to Speak Up Guardian**

- 4.5 Following the 'freedom to speak up review' by Sir Robert Francis, it was recommended that all NHS organisations foster a culture of safety and learning in which staff felt safe when raising concerns. One of the recommendations to this effect is for the organisation to appoint a 'freedom to speak up guardian'.
- 4.6 This role has been apportioned to the lay member for Governance, whose details can be found in the 'your CCG Guardians' section on the CCG's website. This post holder will also represent the GP practices in the CCG area.
- 4.7 The Freedom to Speak Up Guardian will act as a support to the organisation in becoming a more open and transparent place to work, where all staff are actively encouraged and enabled to speak up safely.
- 4.8 The Freedom to Speak Up Guardian will ensure that a central register of all 'speak-up' referrals received is maintained by the governance team.
- 4.9 The Freedom to Speak Up Guardian will ensure that a report is produced for the Audit Committee on an annual basis providing details of any lessons learnt and best practice from the previous year. The guardian will also make a quarterly update to the Audit Committee on any referrals logged as per 4.8 above.
- 4.10 The Freedom to Speak Up Guardian will report back to each Audit Committee on any concerns which have been raised.

## **5.0 PROCEDURE**

### **Raising Concerns in Confidence or Anonymously**

- 5.1 In some cases, staff may prefer to raise their concerns under the Freedom to Speak up Policy in confidence, or anonymously. Where concerns are raised in confidence the organisation will respect this, and will not disclose an individual's identity without their agreement. However, it should be noted that this may limit the extent of investigation that is possible, and there may be circumstances (for example if the police become involved) where it is not possible to protect an individual's identity. Where a concern is raised anonymously, it will be more difficult to investigate and provide feedback. In these circumstances consideration will be given as to whether it is possible to pursue the concern under this policy.

### **Internal Disclosures – Level 1**

- 5.2 An employee should, in the first instance, raise issues of concern with their immediate or another line manager. Where an employee feels this is not appropriate due to the nature of the concern, or parties it may involve, they may proceed directly to level 2. This may be done verbally or in writing. The employee manager should make a record of the concerns raised and confirm that the

individual wishes to raise a concern under this policy. The manager will investigate promptly and thoroughly, seeking help if required, from an appropriate senior officer. Members of the Governing Body should report their concerns to the Chair or Vice Chair.

5.3 The employee manager should record their findings in writing and should also provide feedback on the outcome to the employee who raised the concern where reasonable and appropriate. This process should normally take no more than 10 working days, unless for practical reasons the investigation cannot be completed in this timescale. If this is the case the individual will be informed of the reason why and the likely timescale for completion.

#### **Internal Disclosures - Level 2**

5.4 If the matter cannot be resolved at level 1 as that level is not appropriate due to the nature of the concern, the member of staff should put their concern in writing to the Chief Officer, Chief Finance and Contracting Officer, Governing Body Chair, Governing Body Vice Chair (who is also the Freedom to Speak Up Guardian), or other appropriate senior manager.

5.5 If it is reasonable and appropriate (particularly if level 1 has not been completed) the person it has been reported to will undertake an investigation and report back to the individual. This will normally take place within 20 working days. If this is not possible the individual will be informed of the reason why and the likely timescale for completion.

5.6 This person will then meet with the individual and report their findings and any action taken. They will also confirm the outcome in writing. Where an employee remains dissatisfied with the outcome they can raise their concerns with a relevant prescribed regulatory body or the Chair of the CCG Audit Committee.

#### **Fraud (or Suspicions of Fraud)**

5.7 Where fraud is witnessed or suspected, the individual concerned should contact the Chief Finance and Contracting Officer, and/or the CCG's nominated Counter Fraud Specialist (CFS) whose details can be found at Appendix 5 of this policy.

Alternatively the individual concerned can contact the National Fraud and Corruption Reporting Line (0800 028 4060) or online [www.cfa.nhs.uk/reportfraud](http://www.cfa.nhs.uk/reportfraud). Issues relating to business conduct such as failing to disclose a material interest in a business transaction should be raised in the first instance with the CFS. ***Under no circumstances should individual employee managers investigate any fraud or corruption issues.*** Employees should refer to the CCG's anti-fraud, bribery and corruption policy which can be found on the CCG website. An overview of the Fraud Act 2006 and the Bribery Act 2010 is set out in Appendix 3.

#### **External and Regulatory Disclosures**

5.8 In the interests of confidentiality and of resolving issues locally, employees who have a concern should, as a principle, follow the internal procedure set out in this

policy at the appropriate level. In some circumstances it may be appropriate for a member of staff to make a disclosure to an external body, detailed as follows.

- 5.9 There is protection under the Public Interest Disclosure Act 1998 for disclosures in good faith to bodies prescribed under the Act, which include, amongst others, the Care Quality Commission, NHS Improvement, NHS England, the Health and Safety Executive, the Public Sector Audit Appointments Ltd, and the HMRC.
- 5.10 Staff can raise concerns outside of the organisation. For example concerns can be raised with NHS England regarding the services they provide or commission such as; primary medical services (general practice), primary dental services; primary ophthalmic services, and local pharmaceutical services. Concerns regarding training and education in the NHS can be raised directly with Health Education England. Concerns can also be raised with the Department of Health via their Customer Service Centre (Tel: 0207 210 4850, or using a contact form via the following link: <http://www.dh.gov.uk/health/contact-dh/>)

#### **Disclosures to Ministers**

- 5.11 Where someone in the NHS makes a disclosure in good faith directly to the Secretary of State for Health, the disclosure is protected in the same way as an internal one.

#### **Wider Disclosures**

- 5.12 Wider disclosures includes bodies such as the police, MPs, and non-prescribed regulators. Provided they are not made for personal gain, wider disclosures are protected if, in addition to the tests for internal disclosures, the whistleblower can prove they meet the following conditions:

- They reasonably believe they would be victimised if they raised the matter internally or with the prescribed regulator
- They reasonably believe a cover-up was likely and there was no prescribed regulator
- They had already raised the matter internally or with a prescribed regulator (in which case the reasonableness of the response when this was initially raised will be particularly relevant)

#### **Disclosures to the Media**

- 5.13 The media are not a relevant external body. However in some circumstances individuals may feel this is the only option open to them but in doing this they should consider certain issues. These include:
- Whether it is an exceptionally serious concern
  - Whether the matter has already been raised
  - Whether there is good reason to believe that the individual will be subject to a detriment by his or her employer if the matter were raised internally or with the appropriate regulator
  - Whether disclosure was reasonable given all the circumstances

- Employees are urged to take advice if in doubt from any of the roles listed in this policy, in particular reference section 5.14 of this policy
- Whether it is in the public interest.

### **Advice and Guidance**

5.14 Independent and impartial advice for NHS staff is available from a number of sources including:-

- Whistleblowing helpline for NHS and social care, government funded helpline operated by MENCAP, 8.00am to 6.00pm weekdays. Call 08000 724 725. This service provides free, confidential advice for NHS staff who witness wrongdoing at work but who are unsure whether or not to raise their concern. It can be used to assist individuals to identify how best to raise their concern, and for advice on their rights under the Public Interest Disclosure Act 1998 (PIDA).
- Public Concern at Work (PCAW), the leading independent UK authority of whistleblowing. A provision for free, confidential advice to individuals who witness wrongdoing at work and are unsure how to raise a concern. Call 020 7404 6609 or visit [www.pcaw.org.uk](http://www.pcaw.org.uk).
- “Speak up for a healthy NHS” is a guide for NHS bodies written by PCAW in consultation with NHS Employers, trade unions and the Department of Health. [www.pcaw.org.uk/files/SpeakupNHS.pdf](http://www.pcaw.org.uk/files/SpeakupNHS.pdf).
- Some employees may also receive support from their trade unions where they are members.
- Human Resources team at the Commissioning Support Unit who can sign post to services such as; occupational health, employee health and wellbeing, counsellors, and employee assistance services.
- Speakup.direct

5.15 Additional guidance and support has also been provided for staff by a number of regulatory bodies, as follows:

- British Medical Association (BMA) - guidance for doctors and medical students: **Call** 0300 123 1233
- Nursing and Midwifery Council (NMC) - guidance and toolkits for nursing and midwifery: **Call** 0300 303 0444
- Health and Care Professions Council (HPC) - guidance for healthcare professionals: **Call**: 0800 328 4218 or 0207840 9814
- General Medical Council (GMC) - guidance for doctors on raising and acting on concerns and for employees where the concern relates to a clinician: **Visit** [www.gmc-uk.org/patientshelp](http://www.gmc-uk.org/patientshelp) or **Call** 0161 923 6399
- Care Quality Commission (CQC) - guidance for health and care staff about how you can contact CQC if you do not feel able to report your concern internally: **Visit** [www.cqc.org.uk/contact-us](http://www.cqc.org.uk/contact-us) or **Call** 03000 616161

## **Frequently Asked Questions**

5.16 Appendix 4 sets out some useful frequently asked questions.

## **6.0 EQUALITY**

6.1 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, in addition to offending background, trade union membership, or any other personal characteristic.

## **7.0 MONITORING AND REVIEW**

7.1 The policy and procedure will be reviewed annually to ensure that it remains fit for purpose. Where review is necessary due to legislative change, this will happen immediately.

7.2 The Governing Body will receive assurance on the governance processes around Freedom to Speak up via the Annual Governance Statement.

7.3 An annual review will be presented to the Audit Committee of any known Freedom to Speak up concerns, how these were managed, and any learning from these.

## Appendix 1: Summary of the Main Provisions of the Public Interest Disclosure Act 1998

This section gives more detail about the legal background to the policy. The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace. The Act protects “whistle blowers” from dismissal and victimisation and promotes the public interest. The Act applies to people at work raising genuine concerns about crime, civil offences, miscarriage of justice, danger to health and safety and the cover up of any of these.

There are a number of key principles under the PIDA:

- **Alerting a third party:** where a worker reasonably suspects malpractice (including a crime), he will be protected from victimisation where he raises the matter in good faith with a person who is legally responsible for the matter. Where someone in the NHS “blows the whistle” in good faith direct to the Department of Health the disclosure is protected in the same way as an internal one.
- **Involving a regulator:** where a worker reasonably suspects malpractice a disclosure to a prescribed regulator (such as the Health and Safety Executive) will be protected if it is made in good faith and he reasonably believes the information and any allegation in it are substantially true.
- **A wider, public disclosure:** where a worker reasonably suspects a cover-up of malpractice (such as a crime) is likely, a wider public disclosure will be protected if he reasonably believes the information and any allegation in it are substantially true and the disclosure is reasonable and in good faith.

Additional provisions to protect whistleblowers were introduced by the Enterprise and Regulatory Reform Act 2013, which specifically brought in: ‘the public interest’ requirement for a disclosure to be deemed as ‘protected’; removed the ‘in good faith’ requirement; and introduced personal liability and the vicarious liability by the employer if a whistleblower suffered detrimental treatment at the hands of a colleague for raising a concern.

## **Appendix 2: Guidelines for Initial Discussion (For use by CCG Employee Managers)**

Details are set out below of a suggested structure to support CCG Managers in gaining the relevant and appropriate information to enable them to make a decision about how to proceed with the concern.

1. Thank the staff member for telling you about their concern, even if they appear to be mistaken
2. Respect and heed legitimate staff concerns about their own position / career
3. Manage expectations and respect promises of confidentiality
4. Remember there are different perspectives to every story
5. Determine whether there are grounds for concern and investigate if necessary in line with the timescales outlined in the policy
6. Record the details of concern
  - What has happened?
  - When did it occur?
  - Where did it occur?
  - Who was involved?
  - How long has this been happening?
7. Are there any other witnesses?
8. Is there any supporting information?
9. How did the member of staff become aware of incident/occurrence?
10. Has the matter been raised with anyone else, if so whom?
11. Name of persons to whom disclosure made
12. Any actions agreed and anticipated timescales.

Managers are encouraged to take full notes of their discussion with the member of staff. However the notes should not make reference to the individual reporting the concern, in order to protect and maintain their confidentiality. Managers should not offer a view on what has been reported to them. This could be misinterpreted by the employee and could affect the outcome of the investigation.



## Appendix 3: Legislation

### 1. Fraud Act 2006

1.1 A person is guilty of fraud if he is in breach of any of the sections listed below (*which provide for different ways of committing the offence*):

- **section 2** (fraud by false representation)
- **section 3** (fraud by failing to disclose information)
- **section 4** (fraud by abuse of position)

1.2 **A person who is guilty of fraud is liable:** on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both); on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

2. **Section 2, Fraud Act 2006: Fraud by false representation** - A person is in breach of this section if they:

- dishonestly makes a false representation, and
- intends, by making the representation:
  - to make a gain for himself or another, or
  - to cause loss to another or to expose another to a risk of loss.

2.1 A representation is false if:

- it is untrue or misleading, and
- the person making it knows that it is, or might be, untrue or misleading.

2.2 **Representation** means any representation as to fact or law, including a representation as to the state of mind of:

- the person making the representation, or
- any other person.

2.3 A representation may be express or implied.

2.4 For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3. **Section 3, Fraud Act 2006: Fraud by failing to disclose information** –

3.1 A person is in breach of this section if they:

- dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- intends, by failing to disclose the information:
  - to make a gain for himself or another, or

- to cause loss to another or to expose another to a risk of loss.

#### **4. Section 4, Fraud Act 2006: Fraud by abuse of position**

4.1 A person is in breach of this section if he/she:

- occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
- dishonestly abuses that position, and
- intends, by means of the abuse of that position:
  - to make a gain for himself or another, or
  - to cause loss to another or to expose another to a risk of loss.

#### **5. Bribery Act 2010**

5.1 The above act makes it a criminal offence to give a promise or offer a bribe or request, or agree or receive a bribe. It also sets out a corporate offence of failing to prevent bribery by an organisation not having adequate preventative procedures in place. This includes operating through an “agent/subsidiary or other associated person”.

##### **5.2 *General bribery offences: Include-***

1. Offences of bribing another person
2. Offences relating to being bribed
3. Function or activity to which bribe relates
4. Improper performance to which bribe relates
5. Expectation test

##### **5.3 *Bribery of foreign public officials: Include-***

6. Bribery of foreign public officials

##### **5.4 *Failure of commercial organisations to prevent bribery: Include-***

7. Failure of commercial organisations to prevent bribery
8. Meaning of associated person
9. Guidance about commercial organisations preventing bribery

## **Appendix 4: Frequently Asked Questions**

### **Is Freedom to Speak up the same as making a complaint?**

No. Freedom to Speak up is different from a complaint or a grievance and usually refers to situations where a worker raises a concern about something they have witnessed at their workplace. People, who use services, their relatives or representatives, or others, can make complaints about a service using the CCGs complaints procedure. This is not whistleblowing. There is a separate policy for raising grievances in relation to HR related issues.

### **Why does the CCG need a Freedom to Speak up procedure?**

We commission healthcare and other services for our local population and as such we have a duty to foster an open culture where staff feel able to raise concerns.

Having an open culture will help staff to be more confident about raising concerns. Employees are more likely to raise concerns at an early stage if our policy and procedures are clear and easy to use. It is also easier for us to deal with concerns at an early stage. The lack of a clear policy may result in:-

- Bad practice could continue for longer than necessary.
- There may be more complaints from people who use the service or their representatives.
- Staff may leave or perform less well.
- Services may receive more negative reports.

### **Can I report my concerns anonymously?**

Yes. We can respect confidentiality and not disclose the identity of a whistleblower to anyone who is not required to know.

### **What is a protected disclosure?**

For the disclosure to be protected under PIDA the information must be of a qualifying nature as per section 3.3, be made in good faith, which means honest intent and without malice, believe the information to be true and be made using the right specified person or prescribed body.

### **What is a prescribed body?**

A prescribed body is one identified under PIDA as able to receive concerns. This includes most regulators including the CQC. Employees can raise concerns to a prescribed body if the concern is relevant to that body.

### **Does a gagging clause prevent me from raising concerns?**

In the UK gagging clauses in employment contracts and compromise agreements are void insofar as they conflict with PIDA protection.



## **Appendix 5: Details of the nominated Counter Fraud Specialist**

Where fraud is witnessed or suspected, the individual concerned should contact the Chief Finance and Contracting Officer, and/or the CCG's nominated Counter Fraud Specialist (CFS):

**Paul Mc Grath**  
**Mersey Internal Audit Agency**  
**St James House**  
**5<sup>th</sup> Floor**  
**Pendleton Way**  
**Pendleton**  
**Salford**  
**M6 5FW**

**Tel:** 0161 743 2036 or 2009

**Mobile:** 07584 774761

**Email:** [Paul.McGrath@miaa.nhs.uk](mailto:Paul.McGrath@miaa.nhs.uk)

## Appendix 6: Equality Impact Analysis Initial Assessment

### Title of the change proposal or policy:

Freedom to Speak up Policy

### Brief description of the proposal:

To ensure that the policy meets the needs of the CCG, is legally compliant, and takes account of best practice and Agenda for Change terms and conditions.

### Name(s) and role(s) of staff completing this assessment:

Sarah Mattocks, Corporate Affairs and Governance Manager, NHS Chorley and South Ribble and Greater Preston Clinical Commissioning Groups

**Date of assessment: 23/08/2018**

### Please answer the following questions in relation to the proposed change:

#### Will it affect employees, customers, and/or the public? Please state which:

Yes, it will affect all CCG employees

#### Is it a major change affecting how a service or policy is delivered or accessed?

No

#### Will it have an effect on how other organisations operate in terms of equality?

No

### If you conclude that there will not be a detrimental impact on any equality group, caused by the proposed change, please state how you have reached that conclusion:

From an assessment of this policy and consideration of employees with protected characteristics under the Equality Act 2010 there is no anticipated detrimental impact on any equality group. The policy makes all reasonable provision to ensure equity of access for all staff. There are no statements or conditions within this policy or requirements of this policy that disadvantage any particular group of people with a protected characteristic.

The above statement from the EIA from July 2015 still stands, as no changes made in version 4 of this policy will affect the implementation of the Equality Act 2010.