

# **Whistleblowing Policy and Procedure: Raising Issues of Serious Concern at Work**

## CCG Policy Reference:

This policy replaces or supersedes Policy Ref:

<b>Target Audience</b>	Governing Body members, committee members and all staff working for, or on behalf of, the CCG
<b>Action Required</b>	Communication to CCG Employees

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## **1.0 Introduction**

All of us will have concerns about what is happening at work at one time or other, and usually these concerns can easily be resolved. However, where these concerns are about professional malpractice, unlawful conduct, financial discrepancies, or risks to patients, it can be difficult to know how to proceed, especially where a concern may only be a suspicion; there is loyalty to a colleague; or senior staff are thought to be involved.

The Public Interest Disclosure Act 1998 provides a framework for protection against victimisation, disciplinary action or dismissal for staff that raise genuine concerns about crime, failure to comply with any legal duty, miscarriage of justice, danger to health and safety of the environment or the deliberate concealment of any of the above (protected disclosure). Following the Ayling Report this includes concerns about incidents of sexualised behaviour (see Appendix 1 for a definition).

The NHS Constitution identifies 3 key expectations relating to whistle blowing;

- An expectation that staff should raise concerns at the earliest opportunity
- A pledge that NHS organisations should support staff by ensuring their concerns are fully investigated and that there is someone independent, outside of their team, to speak to
- Clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrong doing without suffering any detriment.

In order to assist the achievement of these principles, NHS Lewisham Clinical Commissioning Group (CCG) has introduced this policy and procedure to enable you to raise your concerns about any malpractice at an early stage and in the right way. We would prefer that you raise the matter when it is just a concern rather than wait for proof.

The three fundamental public service values underpinning the NHS and all public sectors are Accountability, Probity and Openness. The CCG has developed its own values of being an organisation that has Lewisham people at the centre of everything we do. Acting with honesty and integrity forms the cornerstone of public sector values.

## **2.0 Leading statutory authority and other authorities**

Employment Rights Act 1996

Public Interest Disclosure Act 1998

Health and Social Care Act 2008

## **3.0 Assurance of the Governing Body and Chief Officer**

The Governing Body and Chief Officer are committed to this policy. If a genuine concern is raised under this policy you will not be at risk of losing your job or suffering any form of retribution as a result.

Provided you have acted in the public interest, i.e. you have an honest and reasonable belief that malpractice has occurred, is occurring, or is likely to occur, which is not in the best interests of society or for the public good, it will not lead to disciplinary action being taken. In these circumstances the CCG will indemnify against civil action taken against you by an

individual you have identified under this policy. Deterring anyone from using the policy by bullying, isolating or otherwise victimising anyone who uses the policy in the public interest, and concealing or destroying information about malpractice are also disciplinary offences.

## **4.0 Equality Statement and Monitoring**

### **4.1 Equality Statement**

We are committed to a policy of equality in all our employment practices in accordance with the Equality Act and strive to eliminate unfair discrimination, harassment, bullying and victimisation. NHS Lewisham CCG will not unlawfully, unfairly or unreasonably discriminate or treat individuals less favourably on the grounds of gender or gender reassignment, marriage or civil partnership, pregnancy or maternity, sexual orientation, religion or belief, disability, age, race, nationality or ethnic origin.

### **4.2 Equality Monitoring**

The outcomes of this procedure will be recorded by HR and monitored to ensure it is operated fairly and consistently. Monitoring data and analysis will be reported to the joint staff consultative committee and the board; confidentiality will be maintained and no individual cases will be examined.

## **5.0 Scope**

This policy & procedure applies to;

- The CCG governing body
- CCG employees
- Bank and agency staff
- Self-employed staff
- Apprentices and trainees, and
- Contractors working on CCG premises
- The type of disclosures that qualify for protection under legislation are those which the individual reasonably believes tend to show one or more of the following:
  - > a criminal offence
  - > a failure to comply with a legal obligation
  - > a miscarriage of justice
  - > endangering the health and safety of any patient or individual
  - > damage to the environment
  - > concealment of information relating to any of the above
  - > safeguarding concerns about the protection of children or vulnerable adults

The cause for concern could be happening now, has happened in the past, or likely to happen in the future. However, the member of staff must be acting in good faith and have a reasonable belief that one of the above has occurred. Whilst staff must still be aware of

issues of patient confidentiality or information disclosed which is confidential to the CCG, these will qualify for protection if it falls within the definitions above.

For the avoidance of doubt if you are aggrieved about your own personal position, for example terms and conditions of service, then this is not the correct procedure. The CCG Grievance Policy and Procedure should be used. In such circumstances you should seek advice from your line manager or HR.

The CCG has separate policies to cover fraud and bribery concerns, which also provide further information and guidance as well as procedures for reporting suspected cases of fraud or bribery. If the concern relates to a suspected incidence of fraud or bribery workers should refer to these policies. The principles of this policy will still apply.

## **6.0 Aims and objectives**

- To encourage you to feel confident in raising serious concerns regarding the practice of the CCG;
- To provide avenues for you to raise those concerns and receive feedback on any action taken;
- Ensure that you receive a response to their concerns;
- Reassurance that you will be protected from reprisals, subsequent discrimination, victimisation or disadvantage if you have a reasonable belief that you have made a disclosure in the public interest;
- Concerns are taken seriously and dealt with quickly and appropriately

## **7.0 How will we handle the matter?**

Once an issue of concern is raised this will be assessed initially to decide how best to proceed and what action will be taken. This may involve an internal inquiry or a more formal and possible independent investigation. An initial response will be given in writing to the individual within 7 working days. This response will summarise the concerns raised and advise how the matter will be handled.

The individual will be advised who is responsible for handling the matter, how they can be contacted and whether further assistance may be required of the individual.

If individuals have any personal interest in the matter they should make this clear at the outset. If it is believed that the concern more properly falls within the Grievance or other procedure, the individual will be advised accordingly.

For any concerns regarding allegations of fraud, corruption or bribery, staff or other potential whistle-blowers should in the first instance be directed to the Anti-Bribery Policy and the Fraud Policy and Response plan for the CCG.

While the purpose of this policy and procedure is to enable the CCG to investigate possible malpractice and take appropriate steps to deal with it, feedback will be offered to the individual where it is possible to do so. It may not be possible to relate the precise details and action taken where this would infringe a duty of confidence owed by the CCG to a patient or third party.

## **8.0 Procedure**

### 8.1 How to raise a concern internally

#### Step One

- Any concern that you have regarding malpractice must be personally observed or experienced. If a friend or colleague tells you about malpractice you must encourage them to report it.
- Raise the concern as early as possible. This increases the chance of a speedy resolution, for example, via re-training.
- If you have a concern about malpractice, the CCG hopes that you will feel able to raise it first with your line manager. This may be done orally or in writing. Your line manager should investigate and report back to you in writing within 7 working days. You should ensure you keep a detailed record of all relevant events at the moment in time.

#### Step Two

- If you feel unable to raise your concern, or feel it isn't being properly progressed by your line manager, for whatever reason, you may raise the matter with either:

Chief Officer, or  
HR Representative, or  
Trade Union Representative

- Please say whether the matter is raised in confidence so that they can make appropriate arrangements. Whilst the matter may be raised in confidence, as a consequence of any investigations it may not be possible to maintain complete confidentiality.

#### Step Three

- If either or both the above steps have been followed and you still have concerns, or if you feel the matter is so serious that you cannot discuss it with any of the above, then please contact:

Chief Officer  
NHS Lewisham Clinical Commissioning Group  
Cantilever House  
Eltham Road  
London SE12 8RN

- or a member of the CCG Governing Body
- or Counter Fraud
- or NHS Fraud and Corruption Reporting Line (FCRL) on freephone 0800 028 4060 or at <https://www.reportnhsfraud.nhs.uk/>

- If appropriate you may raise your concern with:

The Secretary of State for Health  
Department of Health  
Richmond House  
79 Whitehall  
London  
SW1A 2NS  
Tel: 020 7210 4850

## 8.2 Independent Advice

If you are unsure whether to use this procedure, or you want independent advice at any stage, you may contact either:

- your trade union representative, or
- the independent charity - Public Concern at Work on 020 7404 6609, e-mail: [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk). Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

## 8.3 Child Protection/Protecting Vulnerable Adults

Different policies and procedures apply to reporting concerns about these issues and should be accessible to all NHS staff. If you require further information or wish to discuss a particular concern in confidence you should contact the Safeguarding Lead within the CCG. However, where you are concerned that the particular policies and procedures relating to the protection of children or vulnerable adults are not being followed then the Whistleblowing policy/procedure can be used.

## 9.0 External Contacts

While it is hoped that you would raise any matters of concern internally in the first instance, the CCG recognises that there may be circumstances where you can properly report matters to outside bodies such as regulators e.g. GMC, NMC or the police. Your trade union representative or Public Concern at Work (contact details above) will be able to advise you on such an option and on the circumstances in which it may be appropriate to contact an outside body.

### 9.1 Prescribed Authorities and Regulatory Organisations

Provided you are acting in good faith and you have evidence to back up your concern, you can also contact:

**Audit Commission for England and Wales** (incl. auditors appointed by the

Commission)

Concerning matters in respect of: The proper conduct of public business, value for money, fraud and corruption in local government and health service bodies.

<http://www.audit-commission.gov.uk>

### **Criminal Cases Review Commission**

Concerning matters in respect of: Actual or potential miscarriages of justice.

[www.ccrcc.gov.uk](http://www.ccrcc.gov.uk)

### **Her Majesty's Revenue and Customs**

Concerning matters in respect of: Value added tax, insurance premium tax, excise duties and landfill tax. The import and export of prohibited or restricted goods. Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay and statutory sick pay.

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### **National Audit Office**

Concerning matters in respect of: The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services.

<http://www.nao.org.uk/>

### **Information Commissioner's Office**

Concerning matters in respect of: Compliance with the requirements of legislation relating to data protection (Data Protection legislation regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information).

<http://ico.org.uk/>

### **Serious Fraud Office**

Concerning matters in respect of: Serious or complex fraud.

[www.sfo.gov.uk](http://www.sfo.gov.uk)

### **The Environment Agency**

Concerning matters in respect of: Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment including those relating to pollution, abstraction of water, flooding, the flow of rivers, inland fisheries and migratory salmon or trout.

[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

### **Health and Safety Executive**

Concerning matters in respect of: Matters which may affect the health or safety of any individual at work, matters which may affect the health and safety of any member of the public arising out of, or in connection with, the activities of persons at work.

[www.hse.gov.uk](http://www.hse.gov.uk)

### **Local Authorities**

The local authority which under the Health & Safety At Work Act 1974 is responsible for the enforcement of the relevant statutory provisions)

Concerning matters in respect of: Matters which may affect the health or safety of any individual at work; matters which may affect the health and safety of any member of the public arising out of, or in connection with, the activities of persons at work.

<http://www.royalgreenwich.gov.uk>

#### **The Pensions Regulator**

Concerning matters in respect of: Matters relating to occupational pension schemes and other private pension arrangements.

<http://www.thepensionsregulator.gov.uk/>

#### **Health & Care Professions Council**

Concerning matters relating to the registration of health, psychological and social care professions under the Care Standards Act 2000.

<http://www.hpc-uk.org/>

#### **Care Quality Commission**

Concerning matters relating to the provision of regulated care services, as defined in the Care Standards Act 2000.

<http://www.cqc.org.uk/>

### **10.0 Confidentiality of Information**

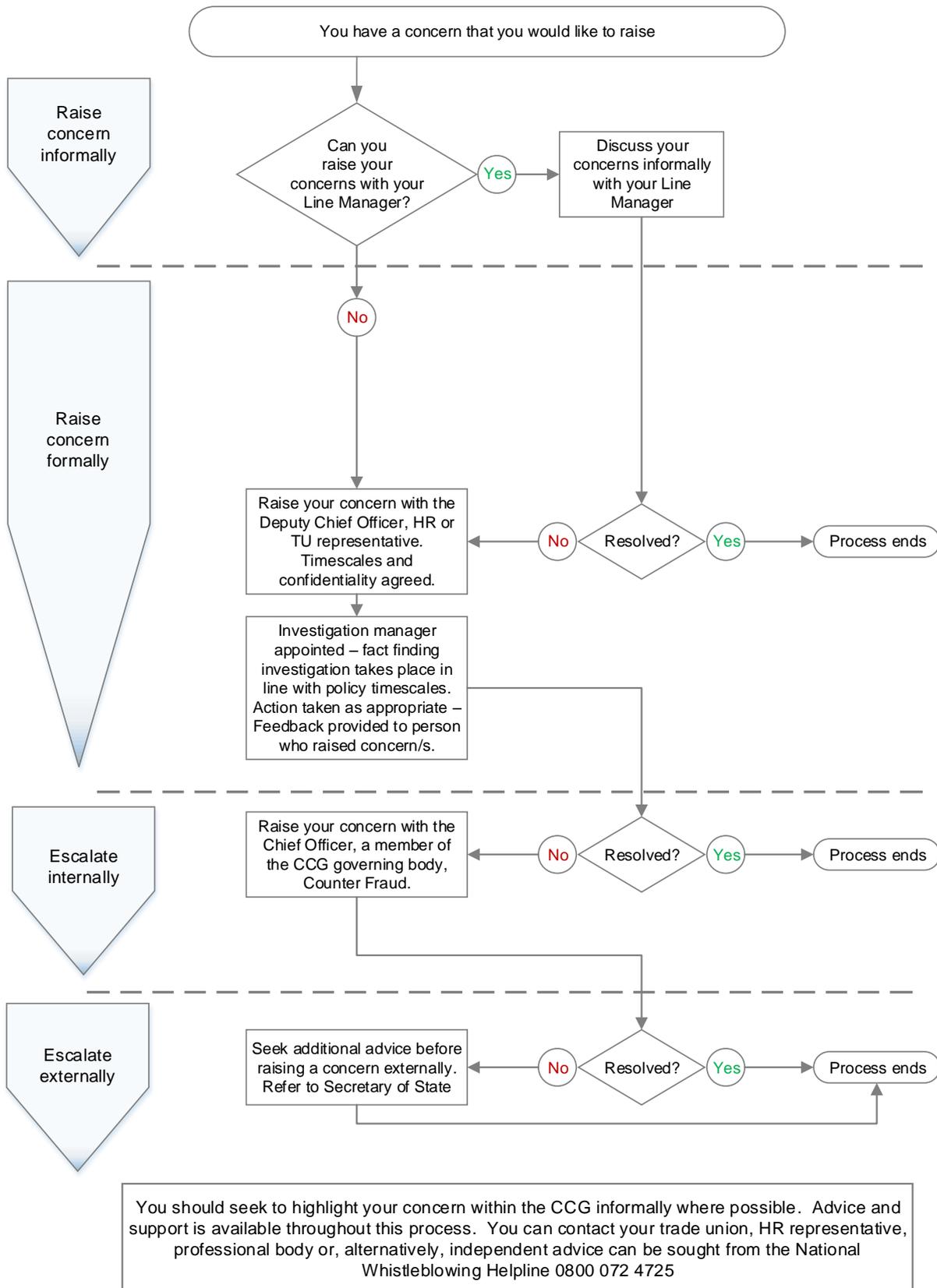
The CCG aims to be an open, fair and reasonable organisation, but we still have legal responsibilities to keep information about individuals, particularly patients, secure.

Your Contract of Employment with the CCG includes a requirement for Confidentiality in the use of information to which you have access. This covers medical, personal, financial and business information about clients, patients, staff and other individuals and organizations. If you choose to raise a concern with anyone external to the CCG, you must always keep this responsibility in mind. If there appears to be a conflict with the necessary reporting of your concern, you should seek advice to protect yourself and the CCG's obligations.

### **11.0 Other information**

If you are unhappy with the CCG's response to any concerns you raise, you can go to the other levels and bodies detailed in this policy and procedure. While the CCG cannot guarantee that we will respond to all matters in the way that you might wish, we aim to handle the matter fairly and properly. By using this policy you will help the CCG to achieve this.

## Appendix 1: Whistleblowing Flowchart



## Appendix 2: Summary of Public Interest Disclosure Act 1998

### 1. Introduction

This Act, which came into force on 2 July 1999, provides statutory protection for 'workers' who make a 'qualifying disclosure' through one of the 'specified methods' for disclosure. This summary provides basic definitions and an outline of the terms of the Act.

### 2. Definitions

#### 2.1. Worker

Under the Act the definition of a worker includes employees, agency workers and third party contractors whose work is basically controlled by the alleged employer.

#### 2.2. Qualifying Disclosure

A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

- a. that a criminal offence has been committed, is being committed or is likely to be committed;
- b. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject;
- c. that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d. that the health and safety of any individual has been, is being or is likely to be endangered;
- e. that the environment has been, or is being or is likely to be damaged; and/or
- f. that information tending to show any matter falling within any one of the above points has been, is being or is likely to be deliberately concealed.

In order to count as a qualifying disclosure it does not matter whether the perceived malpractice was in the past, is in the present or will be in the future.

### 3. Specified Methods of Disclosure

In order to qualify for protection under the Act the worker must have made his/her qualifying disclosure in one of the following ways:

- a. in good faith to his/her employer or to a third party named in the employer's whistleblowing procedure as a recognised external contact in such cases;
- b. in the course of obtaining legal advice;
- c. in good faith to a Minister of the Crown, where the worker's employer has been appointed by a Minister, e.g. NHS trust;
- d. in good faith to a 'prescribed person' - the details of these bodies/ people and the matters in respect of which they are prescribed are contained in the Public Interest Disclosure (Prescribed Persons) Order 1999; and

- e. in exceptional circumstances the above means can be bypassed and the disclosure made to another person/organisation where the worker can show that the disclosure is made in good faith, is of an exceptionally serious nature, is not made for the purposes of personal gain and it was not reasonable in the circumstances to use the above means of disclosure.

#### **4. Protection**

Where a worker has made a protected disclosure and he/she is dismissed or subjected to any other detriment as a result of the disclosure, this will be unlawful. Compensation for unfair dismissal, where appropriate, will be calculated in accordance with the Public Interest Disclosure (Compensation) Regulations 1999.

#### **5. Exceptions**

A disclosure will not qualify for protection under the Act if:

- a. the person making the disclosure commits an offence by making it, e.g. breaches the Official Secrets Act; or
- b. it is a disclosure in respect of which legal professional privilege would apply; or
- c. the disclosure is not appropriately made through one of the specified methods for disclosure.

## Appendix 3: Protection of Whistleblowers

The CCGs workers and agents will be personally liable if they victimise you. They will not be held responsible if they have a statement from the CCG confirming that their actions did not breach the Public Interest Disclosure Act. It must be reasonable for them to rely on it.

The CCG will also be liable if they fail to prevent any acts of victimisation, unless they can show that they took all reasonable steps to prevent it from happening.

### Public interest and whistleblowing

The law that protects whistleblowers is ultimately based on considerations of public interest rather than concern for the whistleblower – people can speak out if they find malpractice in the organisation knowing they're protected from losing their job and/or being victimised. This protection encourages them to report where they might have hesitated in the interests of self preservation. Whistleblowing is more formally known as 'making a disclosure in the public interest'.

### Who's protected?

You're protected from victimisation as a whistleblower if you meet all of the following conditions:

- You're a 'worker'
- You're revealing information of the right type (a 'qualifying disclosure')
- You reveal it to the right person, and in the right way (making it a 'protected disclosure')

### Who is a worker?

'Worker' has a special wide meaning for these protections. As well as employees, it includes the self-employed, agency workers and people who aren't employed but are in training with employers.

### What is a qualifying disclosure?

To be protected, you need to reasonably believe that malpractice or 'relevant failure' in the workplace is happening, has happened or will happen.

Protected disclosures must be made in the public interest. This means that you are raising the concern because it affects other people, e.g. members of the public. **It is no longer a legal requirement to make these in good faith.** However, an Employment Tribunal can reduce an award for compensation by up to 25% if you made it in bad faith. For example, you will be acting in bad faith if you make a disclosure because you have a grudge against your employer.

## Appendix 4: Form for Raising Serious Concerns at Work

### Whistleblowing Policy & Procedure Raising Issues of Serious Concern at Work

Please complete this form when raising a matter of concern under the CCG Raising Issues of Serious Concern at Work Policy and Procedure.

<b>Employee Name:</b>	
<b>Please note, if you wish to remain anonymous, please discuss this with the person to whom you are making the disclosure.</b>	
<b>Contact Details</b> , including home or work address and telephone number	
<b>Any relevant background and history to the concern</b>	
<b>Details of the concern</b> , including names, dates and locations where possible	

<b>Reason for particular concern</b>	
<b>Proposed changes, including what you would like to see happen</b>	
<b>Employee signature</b> Please leave it in blank if you have chosen not to be identified	
<b>Date</b>	

Please pass this form to your line manager in the first instance

## Appendix 5: Possible Sources of Further Advice and Information

### Public Concern at Work

Public Concern at Work is a registered charity that can be contacted for advice to assist a worker in raising concerns about poor practice at work. The charity also provides advice to employers as to the possible ways to address these concerns.

[www.pcaw.co.uk](http://www.pcaw.co.uk)

**Citizens Advice Bureau** [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

A **solicitor** or other **legal adviser**

**Nursing and Midwifery Council (NMC)** <http://www.nmc-uk.org>

**Health & Care Professions Council (HPC)** [www.hpc-uk.org](http://www.hpc-uk.org)

**General Medical Council (GMC)** [www.gmc-uk.org](http://www.gmc-uk.org)

**Care Quality Commission** <http://www.cqc.org.uk>

**Parliamentary and Health Service Ombudsman**  
[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

**Member of Parliament** [www.gov.uk](http://www.gov.uk)

**Secretary of State for Health** [www.dh.gov.uk](http://www.dh.gov.uk)

**NHS Fraud & Corruption Reporting Line** Telephone:  
0800 0284060 <https://www.reportnhsfraud.nhs.uk/>

## Appendix 6: Guidance for managers

Be clear to your staff what sort of behaviour is unacceptable and practise what you preach. Encourage staff to ask you what is appropriate if they are unsure before – not after – the event. If you find wrongdoing or a potential risk to patient safety, take it seriously and deal with it immediately.

### Responding to a concern

- Thank the staff member for telling you, even if they may appear to be mistaken.
- Respect and heed legitimate staff concerns about their own position or career.
- Manage expectations and respect promises of confidentiality.
- Discuss reasonable timeframes for feedback with the member of staff.
- Remember there are different perspectives to every story.
- Determine whether there are grounds for concern and investigate if necessary as soon as possible. If the concern is potentially very serious or wide-reaching, consider who should handle the investigation and know when to ask for help. If asked, put your response in writing.
- Always remember that you may have to explain how you have handled the concern.
- Feedback any outcome and/or remedial action you propose to take to the whistleblower but be careful if this could infringe any rights or duties you may owe to other parties.
- Consider reporting to the governing body and/or an appropriate regulator the outcome of any genuine concern where malpractice or a serious safety risk was identified and addressed.
- Record-keeping – it makes sense to keep a record of any serious concern raised with those designated under the policy, anonymising these where necessary.