

External Whistleblowing Policy

NHS England INFORMATION READER BOX**Directorate**

Medical	Operations and Information	Specialised Commissioning
Nursing	Trans. & Corp. Ops.	Commissioning Strategy
Finance		

Publications Gateway Reference: 05816

Document Purpose	Policy
Document Name	External Whistleblowing Policy
Author	NHS England
Publication Date	Monday 26th June 2017
Target Audience	CCG Clinical Leaders, CCG Accountable Officers, Care Trust CEs, Foundation Trust CEs, Medical Directors, Local Authority CEs, All NHS England Employees, GPs, NHS Trust CEs
Additional Circulation List	
Description	Policy setting out NHS England responsibilities as a Prescribed Person
Cross Reference	
Superseded Docs (if applicable)	Interim External Whistleblowing Policy
Action Required	
Timing / Deadlines (if applicable)	
Contact Details for further information	Neil Churchill Director of Patient Experience

Document Status

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet.

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 2 of 11

External Whistleblowing Policy

Version number: 4

First published: July 2014

Updated: September 2016

Revised: February 2017

Policy Owner: Chief Nursing Officer

Prepared by: Director of Patient Experience

Next review date: March 2018

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 3 of 11

Contents

1.	Introduction	5
2.	Definition of Whistleblower	5
3.	Is NHS England the right organisation?	6
3.1	Primary Care	6
3.2	Clinical Commissioning Groups	6
3.3.	Secondary and Tertiary Care	7
3.4	Referral to other bodies	7
3.5	Directly Commissioned Services	7
4	Raising a concern	8
5	Handling concerns	8
	5.4 Providing feedback to whistleblowers	9
	5.5 Confidentiality and anonymity	9
	5.6 Sharing information	10
	5.7 Review of the case	10
	5.8 Signposting independent advice	10
6.	Recording and reporting information	10
7	Support, Training and Guidance	11

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 4 of 11

1. Introduction

The NHS aspires to be the safest health system in the world. Achieving that ambition will require us to listen to staff and patients. Where staff have concerns, we want to encourage all NHS workers to raise them with their organisation directly and at an early stage. We recognise, however, that there will be times when NHS workers will want to approach NHS England as an external body. This may occur where for some reason staff are not able to raise a concern internally or feel they have been ignored.

Whistleblowers contact us in a number of ways, including through the Serious Incident Policy, via the Framework for Managing Performer Concerns, via the Customer Contact Centre, by writing to the Chief Executive or to any one of our Directors, by letter or email or via a telephone call. This policy is intended to help staff throughout NHS England to recognise a potential whistleblowing concern and to help us to deliver a proportionate, fair and consistent approach as to how we deal with the information these individuals provide. This document is for NHS England staff who may handle or receive a concern from an NHS worker. It is also to support and guide staff in primary care organisations who wish to raise a concern outside of their organisation. We have a separate [policy](#) for colleagues who work for us.

The basic elements of the policy are relevant for all staff and are set out in sections 1 – 3. More detailed information for those involved in handling concerns is set out in sections 4 – 6.

2. Definition of Whistleblower

A whistleblower is an individual who works for an NHS organisation and contacts an external body like NHS England with a concern about that organisation and its services. The definition includes agency workers, temporary workers, students and volunteers. Some may identify as whistleblowers. Most, however, will not describe themselves as whistleblowers when they first make contact to share their concern. It is nevertheless important that we record them as whistleblowers, if they meet the definition. This is necessary because NHS England has become a Prescribed Person under the Public Interest Disclosure Act. This provides some legal protection to whistleblowers and requires us to record concerns raised with us and publish an annual report.

NHS England is only a Prescribed Person for Primary Care Organisations. These are:

- General Practice;
- Local Dentistry;
- Opticians; and
- Community Pharmacy Services.

Patients or carers are not whistleblowers. Where they have concerns, they should be handled according to our [complaints policy](#).

Primary Care organisations should have Freedom To Speak Up Guardians in place by September 2017 who will ensure that organisations have clear policies for raising concerns and that it is clear to staff where they should go to report them.

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 5 of 11

Whistleblowing does not apply to personal grievances, including employment issues, which should be dealt with through internal organisational policies. It would generally be applied to:

- Concerns about unsafe patient care;
- Poor clinical practice or other malpractice which may harm patients;
- Failure to safeguard patients;
- Maladministration of medications;
- Untrained staff;
- Unsafe working conditions
- Lack of policies;
- A bullying culture;
- Staff who are unwell or stressed and not seeking help.

These types of concerns are sometimes referred to as 'Protected Disclosures' under the Public Interest Disclosure Act 1998.

3. Is NHS England the right organisation?

3.1 Primary Care

Staff working in general practice, local dentistry, opticians and community pharmacy services may contact NHS England with a concern about those services. This is because NHS England commissions (or co-commissions) Primary Care services for local communities, and manages the performers list, and because we are a Prescribed Person. Therefore we may be the best organisation to investigate and act on these concerns.

Staff in Central Teams should refer any whistleblowing concerns they receive to the Customer Contact Centre, who will liaise with the Corporate Governance team to ensure that these are passed on to the appropriate team for investigation.

For staff in regional teams, whistleblowing concerns should be referred to the nominated whistleblowing lead who has been identified by the Medical Director.

Examples of a concern which NHS England can investigate can be found in [section two](#).

3.2 Clinical Commissioning Groups

Staff working in Clinical Commissioning Groups (CCGs) may contact NHS England with a concern about those organisations, where internal routes have been exhausted, and the situation still seems to be taking place, or if the concern is about the Local Governing Board, Accountable Officer or Chair. This is because NHS England assures the operations of CCGs.

Where necessary, NHS England will jointly commission an independent investigation with the relevant CCG to ensure ownership and transparency.

For staff in Central teams, whistleblowing concerns should be referred to the Customer Contact Centre, who will liaise with the Corporate Governance team to ensure that these are referred to the appropriate team for investigation.

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 6 of 11

For staff in regional teams, whistleblowing concerns should be referred to the nominated whistleblowing lead who has been identified by the Medical Director.

Examples of a concern which NHS England can investigate are detailed in [section two](#)

3.3. Secondary and Tertiary Care

NHS England has limited powers to intervene directly in NHS provider organisations, where the services are not commissioned directly by us. Staff working in secondary and tertiary care should be signposted to the organisations internal policy or the most relevant organisation better placed to consider and if necessary investigate their concerns. Secondary and tertiary care services includes hospital care, mental health services, out-of-hours GP services and community services such as district nursing. This will include any concerns raised about responsible officers – doctors who are responsible for ensuring other doctors are fit to practice - in these organisations. [The Framework for managing concerns about Responsible Officers who have a prescribed connection to a higher level Responsible Officer of NHS England](#) will provide more information about this.

3.4 Referral to other Bodies

With the whistleblower's consent, we can refer the issue to an alternative external body such as the following:

- Fraud and corruption – **NHS Protect**
- Serious patient safety issues or issues relating to condition of registration – **Care Quality Commission**
- Allegations regarding a clinician's fitness to practice – **relevant professional regulator or healthcare body (CQC)**
- Where local resolution has not been possible – **NHS Improvement**
- Offender Health – details of prescribed persons for Police and Justice Services can be found on the [Whistleblowing Prescribed Persons Pages](#).
- The National Offender Management Service has its own Reporting Wrongdoing Hotline, which is 01527 544777
- Safeguarding- Issues will be dealt with in accordance with NHS England safeguarding policies.

3.5 Directly Commissioned Services

NHS England may receive a concern about services we directly commission, for example: Offender Health; Health and Justice; or military and Veterans' Health. Where these organisations are part of other large NHS Trusts, we would expect them to investigate in accordance with that Trust's own Policy. Where this is not appropriate. We will work with the Whistleblower to agree a suitable route. This may include for example referral to the CQC for services commissioned in the prison service, as the CQC has a joint inspection regime in place with Her Majesty's Inspector of Prisons.

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 7 of 11

4. Raising a concern

All concerns should be raised centrally in the first instance. Contact details are

Telephone: 0300 311 22 33

Email: england.contactus@nhs.net

General Post: NHS England, PO Box 16738, Redditch, B97 9PT

We will endeavour to make the necessary reasonable adjustments in order to receive, investigate and respond to any concern. For people whose first language is not English, we have access to a translation and telephone interpreting service. We can also accept and respond to concerns in alternative formats such as braille.

5. Handling Concerns

- 5.1 Concerns raised through the Contact Centre will be triaged and where appropriate, issued to the regional lead for investigation. Decisions about what action to take will ordinarily be taken locally. An individual disclosure may not in itself trigger an investigation, but may when considered with other data.

The Contact Centre will provide the whistleblower will be provided with written confirmation of receipt of the concern within five working days.

The whistleblower will be informed if it is appropriate for NHS England or another official body to look into the concerns as well as, or instead of, us, as soon as possible, and preferably within 18 days from the first communication being sent.

The whistleblower can expect to be kept up to date with the progress of the case.

If the concern being raised is within NHS England's remit, we may need to follow-up with the whistleblower for more information about the matters raised.

- 5.2 For illustration, the type of questions we may ask are as follows:

- What the individual has witnessed to indicate there may be wrongdoing or malpractice;
- What or who is put at risk;
- Whether their concern has been raised and if so with which individual or organisation(s);
- Any information about an existing investigatory process;
- Whether the concern is ongoing, anticipated or has already taken place;
- What the individual thinks should be done to address the concern.

- 5.3 In order to address a concern with us, we will want as much information about the problem as possible but we should not:

- Ask that the whistleblower provide us with evidence or proof, although we accept this if offered;
- Require that the concern has been raised internally with the relevant service before approaching us, although we should ask why the concern cannot be raised internally if this is the case;

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 8 of 11

- Require that the caller provides their personal information in order to raise a concern with us but we should explain the difference between raising a concern openly, confidentially or anonymously (see below).

5.4 Providing feedback to whistleblowers

It is good practice for whistleblowers to be given some feedback during the course of the investigation, or when the case is closed, about what has happened regarding the concerns they have raised. Clearly, this needs to be handled with sensitivity. Sometimes only limited information about action taken in response to the issues raised can be provided. The Whistleblower will be advised if this is the case. In other instances, the whistleblower will be contacted outlining any action taken following consideration of the information in due course.

The length of time it will take to be able to reach the stage when the whistleblower can be notified outlining what has happened in response to the concern, will depend upon the nature of the concern and the type of action, if any, taken. However, local teams should indicate to the whistleblower whether:

- An investigation has taken place and the concern found to be justified, or not;
- The information was used or will be used in the course of a commissioning visit;
- Changes have been made (whether voluntary or enforced);
- The information is being held on file and considered alongside other performance intelligence.

Any of these circumstances could indicate a closed case.

Whistleblowers may want to demonstrate that they raised a concern with NHS England as a Prescribed Person. This may be especially important if they have been victimised or suffered detriment in their workplace for raising a concern. If we are asked, we should provide whistleblowers with confirmation of the date on which they raised the concern with us.

5.5 Confidentiality and anonymity

It is best if a concern is raised openly as it helps our investigation and enables us where necessary to be sensitive to the whistleblower's personal position. However, we recognise that there may be circumstances when a whistleblower will wish to report a concern confidentially, i.e. they give their personal information to NHS England but it is not shared with any third party as part of our investigation unless we are required by law to do so. Whistleblowers may also chose to provide information to NHS England anonymously, which is where they do not provide any identifying information at all.

- *Confidentiality.* If a whistleblower provides us with their personal information, we will confirm with them whether they wish for us to treat it openly or confidentially. If they ask for confidentiality, they should be informed clearly that we will not share their information without their consent unless required by law to do so. An example of where we might be required to disclose identifying information would be where there is a safeguarding issue which we must refer to a third party. We should

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 9 of 11

explain to the individual that protecting their identity may in some circumstances mean we are unable to resolve a concern without revealing their identity, for example where their personal evidence is essential. In such cases, we should discuss with the individual whether and how the matter can best proceed.

Anonymity. If a concern is raised with us anonymously, it will be much more difficult for us to look into the matter, provide any feedback on our investigation or be sensitive to the whistleblower's personal position, but we will look into the substance of the information provided.

5.6 Sharing information

Appropriate details of the concern should be shared with colleagues locally as part of existing procedures for sharing information on quality and safety concerns. This allows the concern to be considered alongside other information, which collectively may warrant investigation.

5.7 Review of the case

The National Freedom to Speak Up Guardian has the authority to review the handling of any case.

5.8 Signposting independent advice

If the individual is unsure about whether or how to raise a concern about a service assured or commissioned by NHS England, there are various sources of advice we can refer them to, including independent charities, their union or their professional body. Details for the NHS Whistleblowing Helpline and Public Concern at Work are set out below:

NHS Whistleblowing Helpline

The Whistleblowing Helpline is a free-phone service for employees, and organisations working within the NHS and social care sector.

Telephone: 08000 724 725

Web: www.wbhelpline.org.uk

Email: enquiries@wbhelpline.org.uk

Public Concern at Work

PCaW is a charity that provides free, confidential legal advice to people who are concerned about wrongdoing at work and not sure whether, or how, to raise their concern.

Telephone: 020 7404 6609

Web: www.pcaw.org.uk

Email: whistle@pcaw.org.uk

6. Recording and Reporting Information

Records are important in enabling us to identify patterns of concerns which might warrant an investigation. NHS England is also a prescribed person for NHS staff raising concerns regarding primary care organisations and as such we are required to keep records.

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 10 of 11

An information record will need to be created on the local recording system for each concern we receive. In addition to information needed to respond to the concern, the 2015 Prescribed Persons regulations require us to record the following data about each concern raised with us:

- Is this a case of whistleblowing, according to the definition set out in section 2?
- Is it within the remit of NHS England and which sector does it relate to, i.e:
 - General Practice;
 - Primary Dental Services;
 - Primary Ophthalmic Services;
 - Local Pharmaceutical Services,
 - Clinical Commissioning Groups.
- What action was taken, i.e.:
 - Investigation,
 - Use in commissioning, e.g. informal follow-up with provider;
 - Retained as commissioning intelligence;
 - No action.
- Is it beyond the remit of NHS England, i.e. any other NHS service? Did we refer the case on, if so to whom?
 - Care Quality Commission;
 - NHS Improvement;
 - NHS Protect;
 - Professional Regulator, eg. GMC, GDC.

If the whistleblower fears they will suffer detriment or have already suffered detriment because of the information shared with NHS England, we should make a record of this at the time the individual contacts us.

An extract containing this information should be submitted to the Corporate Governance Team, which will allow us to comply with the Prescribed Person regulations. This information will be aggregated and published In the NHS England Annual Report

7. Support, Training and Guidance

Training resources on handling whistleblowing concerns have been published by [Health Education England](#) and [Public Concern at Work](#).

If you have questions about the policy or the legal context in which we are working, please contact:

Linda White, Corporate Governance Team; england.whistleblowing@nhs.net

Neil Churchill, Director for Patient Experience; england.whistleblowing@nhs.net

Policy Owner: Chief Nursing Officer	Prepared by: Director of Patient Experience	First Published: July 2014
Document Number: TCO_1016	Issue Date: August 2016	Version Number: 2.2
Status: Approved	Next Review Date: 1.4.2018	Page 11 of 11