

# Freedom to Speak Up; Raising Concerns Inclusive of Whistleblowing Policy

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Compliance with any other external requirements (e.g. Information Governance):	Freedom to Speak Up policy for the NHS
Associated Documents:	Resolution Policy
	Dignity at and Respect at Work Policy
	Information Governance Strategy and
	Policy (including Data Protoction and
	(including Data Protection and Confidentiality; Caldicott Guardian Function)
	Anti-Fraud, Bribery and Corruption Policy

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# **Version Control Table**

Version number and issue number	Date	Author	Reason for Change	Description of Changes Made
V4.00	September 2017	Counter Fraud	Update	Changes resulting from NHS Protect DoH consultation and contact details for Counter Fraud
V4.1	June 2019	Clare Hammond, HR Manager	Update	Contact details changes Minor amendment to wording regarding National Guardian
V4.2	25 March 2021	Clare Hammond	Change to section 4.1	Change the Non-Exec Director from Barry Nealon to Jackie Churchward- Cardiff.
V5	August 2022	Mark Roper, HR Advisor	Update	Contact details changes. Minor amendment to wording from NHS England and National Guardian Office
V5.1	May 2024	Clare Hammond	Update to name	

### **Consultation Table**

This document has been developed in consultation with the groups and/or individuals in this table:

Name of Individual or group	Title	Date
Speak Up Guardian's		August/September 2022
HR Advisors /HR Business		October 2022
Partners		
Workforce Policy Group		December 2022

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This information may be made available in alternative languages and formats, such as large print, upon request. Please contact the document author to discuss

#### 1. Introduction

#### Speak Up - we will listen

1.1Our People Strategy (<u>People Strategy (esht.nhs.uk</u>)), which is based on the NHS People Plan (<u>NHS England » NHS People Plan</u>), prioritises a culture that supports and grows our people.

Looking after our people means creating a positive, engaging working environment and keeping colleagues safe and healthy – both physically and psychologically. It is everyone's responsibility to contribute to an inclusive culture where all colleagues feel that they are treated according to trust values and demonstrate those values in our own compassionate behaviour, to inspire each one of us to thrive and develop to our full potential.

1.2 Speaking up about any concern you may have at work is really important. In fact, it is vital because it will help us to keep improving our services for all patients and the working environment for our staff.

1.3 You may feel worried about raising a concern and we understand this. But please don't be put off. In accordance with our duty of candour, our senior leaders and entire board are committed to an open and honest culture. We will look into what you say, and you will always have the support you need.

1.4 We have appointed Speak Up Guardians as a support for you to raise any concerns; details of and how to contact the Speak Up Guardians and the support available in raising concerns can be found on the extranet.

#### 2 Purpose

2.1 This policy is to deal with concerns that you have a reasonable belief are in the public interest.

This policy is not intended to deal with any concerns relating to you personally, as these would be covered under separate policies e.g. Resolution Procedure or Dignity and Respect at Work Policy.

2.2 This policy applies to all individuals working at all levels of the Trust including senior managers, casual and agency workers, volunteers, contractors, part time and fixed term workers trainees and those on work experience.

2.3 This policy does not form part of your contract of employment, and it may be amended at any time following the usual process for changing policies.

#### **3** Accountabilities and Responsibilities

3.1 You are responsible for ensuring you are aware of this policy

#### 4 Procedure and Actions to follow

#### 4.1 What concerns can I raise?

You can speak up about anything that gets in the way of patient care or affects your working life. That could be something which doesn't feel right to you: for example, a way of working or a process that isn't being followed; you feel you are being discriminated against; or you feel the behaviours of others is affecting your wellbeing, or that of your colleagues or patients. Speaking up is about all these things.Just 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
- Fraud or theft causing a loss to the trust or NHS
- Accepting a bribe to perform functions improperly, or attempting to bribe someone to do so
- Suspicions of Fraud Bribery or Corruption (which must be reported to our Local Counter Fraud team TIAA Ltd Tel: 0845 300 3333
- A bullying culture (across a team or the Trust rather than individual instances of bullying). This may include unlawful discrimination, harassment and victimisation of individuals or groups with protected characteristics as set out in the Equality Act 2010.
- Clinical incidents impacting on patient safety must be reported via the Trust's Datix incident reporting system. Staff can contact the Risk or Datix Teams to discuss how to report these incidents: 0300 131 4500 Ext: 770374 (Risk Team) or <u>esh-tr.datix@nhs.net</u> (Datix Team).

For further examples, please see the <u>Health Education England video</u> and the <u>National</u> <u>Guardian video</u>.

Remember that if you are a healthcare professional you may have a professional duty to report a concern. **If in doubt, please raise it.** We must also be mindful of our duty of candour and our requirement to be candid with patients and families about mistakes.

Don't wait for proof. We would like you to raise the matter while it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.

This policy, as previously stated is not for people with concerns about their employment that affect only them, these types of concerns have no public interest element – that type of concern is better suited to our Resolution Procedure or Dignity and Respect at Work Policy.

#### 4.2 Feel Safe to Raise your Concern

If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of reprisal as a result. We will not tolerate the harassment or victimisation of anyone raising a concern. Nor will we tolerate any attempt to bully you into not raising any such concern. Any such behaviour is a breach of our values as a Trust and, if upheld following investigation, could result in disciplinary action.

Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

#### 4.3 Confidentiality

The most important aspect of your speaking up is the information you can provide, not your identity.

You have a choice about how you speak up:

- **Openly:** you are happy that the person you speak up to knows your identity and that they can share this with anyone else involved in responding.
- **Confidentially:** you are happy to reveal your identity to the person you choose to speak up to on the condition that they will not share this without your consent.
- **Anonymously:** you do not want to reveal your identity to anyone. This can make it difficult for others to ask you for further information about the matter and may make it more complicated to act to resolve the issue. It also means that you might not be able to access any extra support you need and receive any feedback on the outcome.

In all circumstances, please be ready to explain as fully as you can the information and circumstances that prompted you to speak up

#### 4.4 Who can raise concerns?

Anyone who works at ESHT, including pharmacy, optometry, and dentistry. This encompasses any healthcare professionals, non-clinical workers, receptionists, directors, managers, contractors, volunteers, students, trainees, junior doctors, locum, bank and agency workers, and former workers.

#### 4.5 Who should I raise my concerns with?

In many circumstances the easiest way to get your concern resolved will be to raise it with your line manager (or your line manager's manager, lead clinician or tutor).

But where you don't think it is appropriate to do this, you can use any of the options set out below in the first instance.

If raising it with your line manager (or your line manager's manager, lead clinician, or tutor) does not resolve matters, or you do not feel able to raise it with them, you can contact one of the following people:

- one of our Speak Up Guardians this is an important role identified in the Freedom to Speak Up review to act as an independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including the chief executive, or if necessary, outside the organisation. More details can be found on the Speak Up Guardian page on the extranet or by e-mailing <u>esh-</u> <u>tr.speakupatESHT@nhs.net</u>
- our Risk management team Tel: 0300 131 4500 Ext: 77037

If you still remain concerned after this, you can contact:

- our executive director with responsibility for whistleblowing is the Chief Executive
- our non-executive director with responsibility for whistleblowing is Paresh Patel

All these people have been trained in receiving concerns and will give you information about where you can go for more support.

If for any reason your concern has not been resolved and you have exhausted all internal options; you can raise concerns with external bodies, listed on the Speak Up Guardian page of the extranet.

If you are concerned about Fraud Bribery or Corruption you can raise this with the Trust's Counter Fraud Team or with the NHS Counter Fraud Authority.

#### 4.6 Advice and Support

Details on the local support available to you can be found on the Speak Up Guardian page on the extranet.

You can also access a range of health and wellbeing support via NHS England:

- Support available for our NHS people.
- Looking after you: confidential coaching and support for the primary care workforce.

NHS England has a <u>Speak Up Support Scheme</u> that you can apply to for support.

You can also contact the following organisations:

- <u>Speak Up Direct</u> provides free, independent, confidential advice on the speaking up process.
- The charity **<u>Protect</u>** provides confidential and legal advice on speaking up.
- The <u>Trades Union Congress</u> provides information on how to join a trade union.
- The <u>Law Society</u> may be able to point you to other sources of advice and support.
- The <u>Advisory, Conciliation and Arbitration Service (ACAS)</u> gives advice and assistance, including on early conciliation regarding employment disputes.

#### 4.7 How should I raise my concern?

You can raise your concerns with any of the people listed above in person, by phone or in writing (including email).

Whichever route you choose, please be ready to explain as fully as you can the information and circumstances that gave rise to your concern.

We would encourage you to:

- Be as specific as possible
- If appropriate, keep a confidential diary of incidents e.g. dates, times, witnesses, what happened, who was involved etc.
- Keep copies of any relevant correspondence e.g. reports, letters, memos, notes of meetings, text messages etc. ensuring that they are securely retained in compliance with Data Protection (for more information please see the Information Governance Strategy and Policy (including Data Protection and Confidentiality; Caldicott Guardian Function)

It would also be very useful when raising a concern if you are able to outline what you believe to be a reasonable outcome or how best the matter can be resolved. If you have a personal interest in the concern being raised, you should let us know as soon as possible.

When raising a concern in writing, please make it clear whether you wish this to be dealt with informally or formally. We will not automatically assume that a concern you've raised in writing will be formal.

We may request you to provide further information if you haven't been clear on whether you wish your concern to be dealt with informally or formally or where we need more detail.

#### 4.8 What will we do?

The matter you are speaking up about may be best considered under a specific existing policy such as the Resolution Procedure or Dignity and Respect at Work Policy. If so, we will discuss that with you. If you speak up about something that does not fall into an HR or patient safety incident process, this policy ensures that the matter is still addressed.

Appendix B provides a flow-diagram of the process that will be followed when you speak up.

#### 4.9 Resolution and investigation

We support our managers/supervisors to listen to the issue you raise and take action to resolve it wherever possible. In most cases, it's important that this opportunity is fully explored, which may be with facilitated conversations and/or mediation. Where an investigation is needed, this will be objective and conducted by someone who is suitably independent (this might be someone outside the Trust or from a different part of the Trust) and trained in investigations. It will reach a conclusion within a reasonable timescale (which we will notify you of), and a report will be produced that identifies any issues to prevent problems recurring. Any employment issues that have implications for you/your capability or conduct identified during the investigation will be considered separately.

#### 4.10 Communicating with you

We will always treat you with respect and will thank you for speaking up. We will discuss the issues with you to ensure we understand exactly what you are worried about. If we decide to investigate, we will tell you how long we expect the investigation to take and agree with you how to keep you up to date with its progress. Wherever possible, we will share the full investigation report with you (while respecting the confidentiality of others and recognising that some matters may be strictly confidential; as such it may be that we cannot even share the outcome with you).

#### 4.11 How we learn from your speaking up

We want speaking up to improve the services we provide for patients and the environment our staff work in. Where it identifies improvements that can be made, we will ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

#### 4.12 Review

We will seek feedback from workers about their experience of speaking up. We will review the effectiveness of this policy and our local process annually, with the outcome published and changes made as appropriate.

#### 4.13 Senior leaders' oversight

Our most senior leaders will receive a report at least annually providing a thematic overview of speaking up by our staff to our FTSU guardian(s).

#### 4.14 Raising your concern with an outside body

If you do not want to speak up to someone within the Trust, you can speak up externally to:

- <u>Care Quality Commission</u> (CQC) for quality and safety concerns about the services it regulates.
- <u>NHS England</u> for concerns about:
  - GP surgeries
  - o dental practices
  - o optometrists
  - o pharmacies
  - how NHS trusts and foundation trusts are being run (this includes ambulance trusts and community and mental health trusts)
  - NHS procurement and patient choice
  - $\circ$  the national tariff.

NHS England may decide to investigate your concern themselves, ask the Trust or another appropriate organisation to investigate (usually with their oversight) and/or use the information you provide to inform their oversight of the relevant organisation. The precise action they take will depend on the nature of your concern and how it relates to their various roles.

Please note that neither the Care Quality Commission nor NHS England can get involved in individual employment matters, such as a concern from an individual about feeling bullied.

• <u>NHS Counter Fraud Agency</u> for concerns about fraud and corruption, using their online reporting form or calling their freephone line 0800 028 4060.

If you would like to speak up about the conduct of a member of staff, you can do this by contacting the relevant professional body such as the General Medical Council, Nursing and Midwifery Council, Health & Care Professions Council, General Dental Council, General Optical Council or General Pharmaceutical Council.

#### 4.15 False or Vexatious concerns

Allegations made in good faith which are either mistaken or have not been upheld are not considered to be false or vexatious.

We would consider any concerns raised which are deliberately malicious, vexatious or false to be serious and may result in disciplinary action being taken.

#### 4.16 Making a protected disclosure

The Public Interest Disclosure Act 1998 protects whistleblowers from detrimental treatment or victimisation after they have made a qualifying disclosure.

There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise a concern (to be able to claim the protection that accompanies it). There is also a defined list of 'prescribed persons', similar to the list of outside bodies on the Speak Up Guardian page of the extranet, who you can make a protected disclosure to.

For a disclosure to be protected it must be in the public interest, (for the public good) the disclosure must also be categorised as a 'Qualifying Disclosure', this means it must fit within one of six categories:

- Criminal offences
- Failure to comply with legal obligations
- Miscarriages of justice
- Threats to health and safety of an individual
- Damage to the environment or
- A deliberate attempt to cover up any of the above

To help you consider whether you might meet these criteria, please seek independent advice from the Speak Up Helpline for the NHS and social care, Public Concern at Work or a legal representative.

We would positively encourage you to raise your concern internally in the first instance; however, we accept that this either may not be possible; that you feel you have already tried this and believe the concern still exists, or you do not feel able to raise your concern internally.

Concerns raised with the media or the police must be more than a suspicion and are only protected in certain circumstances. Please be assured, we would rather you raise your concern and that however you choose to raise your concern, you will not be penalised or victimised for doing so.

#### 4.17 National Guardian Freedom to Speak Up

The National Guardian's office leads, trains and supports a network of Freedom to Speak Up Guardians in England and conducts speaking up reviews to identify learning and support improvement of the speaking up culture of the healthcare sector. The National Guardian's Office conducts surveys, commissions research and undertakes Speaking Up reviews to find out more about speaking up in health and provides guidance and practical tools to support organisations in fostering a speaking up culture.

#### 5. Equality Impact Assessment

An Equality Impact Assessment has been carried out and can be found at Appendix A.

#### 6 Training and Awareness

We will make the following training provisions:

- New employees will be made aware of this policy in induction
- Existing employees will have access to raising concerns resources though the Speak Up Guardians
- All employees will be made aware of this policy through communication bulletins

• Managers will be provided with training, support and advice in line with the Trust's Training Needs analysis

#### 7 Monitoring Compliance with the Document

Formal cases will be monitored by the Chief Executive, with support from Human Resources and reported to the Board at least every 6 months. Any issues arising will form part of the review process and will be discussed with the Executive team, Human Resources, Staff Side and Speak Up Guardians. It will also be used for the development of further organisational learning and action plans.

The findings from the annual staff survey related to raising concerns will also form part of the same review process towards improvements in both the policy itself and the application of it.

#### 8 Data protection

When managing employees under the Resolution Procedure, the Trust processes personal data collected in accordance with its Data Protection policy. Data collected from the point at which the Trust commences action under the procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their performance. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's Data Protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the Trust's Disciplinary procedure.

# Monitoring Table

Element to be Monitored	Lead	Tool for Monitoring	Frequency	Responsible Individual/Group/ Committee for review of results/report	Responsible individual/ group/ committee for acting on recommendations/action plan	Responsible individual/group/ committee for ensuring action plan/lessons learnt are Implemented
Concerns Raised	Speak Up Guardian	Central Record	Quarterly	Speak Up Guardian/Human Resources/Executive Team/Staff Side	Speak Up Guardian/Human Resources/Executive Team/Staff Side	Speak Up Guardian/Human Resources/Executive Team/Staff Side
Formal Cases	Human Resources	Selenity	Every six months	Human Resources/Executive Team	Human Resources/Executive Team	Human Resources/Executive Team
Staff Survey	Engagement & Wellbeing team	Staff Survey results	Annually	Engagement & Wellbeing team/Staff Side	Engagement & Wellbeing team/Human Resources/Executive Team/Staff Side	Engagement & Wellbeing team/Human Resources
Speak up Guardian Role	Speak up Guardian/Chairman	Speak Up report	Quarterly	Speak Up Guardian/Chairman	Speak Up Guardian/Human Resources/Executive Team/Staff Side	Speak Up Guardian/Human Resources/Executive Team/Staff Side

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#### 9. References

http://england.nhs.uk http://speakup.direct http://cqc.org.uk http://cfa.nhs.uk http://acas.org.uk http://lawsociety.org.uk http://tuc.org.uk http://protect-advice.org.uk

#### Appendix A: EIA Form



# Equality Impact Assessment Form 1. Cover Sheet

# Please refer to the accompanying guidance document when completing this form.

Strategy, policy or service name	Freedom to Speak Up; Raising Concerns Inclusive of Whistleblowing Policy
Date of completion	29 September 2022
Name of the person(s) completing this form	Mark Roper
Brief description of the aims of the Strategy/ Policy/ Service	This policy is to deal with concerns that you have a reasonable belief are in the public interest.
Which Department owns the strategy/ policy/ function	Speak Up Guardians and Human Resources
Version number	V5
Pre Equality analysis considerations	None
Who will be affected by this work?	Staff, Patients, Carers, Visitors
E.g. staff, patients, service users, partner organisations etc.	
Review date	3 yearly
If negative impacts have been identified that you need support mitigating please escalate to the appropriate leader in your directorate and contact the EDHR team for further discussion.	To whom has this been escalated? Name: Click here to enter text. Date: Click here to enter a date.
Have you sent the final copy to the EDHR Team?	No

# 2. EIA Analysis

	000	Evidence:				
Will the proposal impact the safety of patients', carers' visitors and/or staff? Safe: Protected from abuse and avoidable harm.	Positive	Policy provides a mechanism to safely raise concerns to encourage a safer experience for patients, carers, visitors and staff				
Equality Consideration		Race	Gender	Sexual orientation	Age	Disability & carers
Highlight the protected characteristic impact		Gender reassignment	Marriage & Civil Partnership	Religion and faith	Maternity & Pregnancy	Social economic
or social economic						
impact (e.g.						
homelessness, poverty, income or						
education)						

Is the proposal of change effective?	Positive	Policy provid encourage a and staff.			•	
Effective: Peoples care, treatment and support achieves good outcomes, That staff are enabled to work in an inclusive environment. That the changes are made on the best available evidence for all involved with due regards across all 9 protected Characteristics						
Equality		Race	Gender	Sexual orientation	Age	Disability & carers
<b>Consideration</b> Highlight the protected characteristic impact or social economic		Gender reassignment	□ Marriage & Civil Partnership	Religion and faith	Maternity & Pregnancy	Social economic
impact (e.g. homelessness, poverty, income or education)						
What impact will this have on people receiving a positive experience of care?	Positive	Policy provid encourage a and staff			•	
Equality		Race	Gender	Sexual orientation	Age	Disability & carers
<b>Consideration</b> Highlight the protected characteristic impact		Gender reassignment	Marriage & Civil Partnership	Religion and faith	Maternity & Pregnancy	Social economic
or social economic impact (e.g. homelessness, poverty, income or education)						

Does the proposal impact on the responsiveness to people's needs?	Positive	Policy provid encourage a and staff				
<i>Equality Consideration</i> Highlight the protected characteristic impact or social economic impact (e.g. homelessness, poverty, income or education)		Race Gender reassignment	Gender Marriage & Civil Partnership	Sexual orientation Religion and faith	Age Maternity & Pregnancy	Disability & carers
What	Positive Neutral	Policy provid concerns to e				
considerations have been put in place to consider the organisations approach on improving equality	Negative	carers, visito	•			
considerations have been put in place to consider the organisations approach on improving equality and diversity in the workforce and leadership?	Negative	carers, visito	rs and staff	Sexual orientation	Age	Disability & carers
considerations have been put in place to consider the organisations approach on improving equality and diversity in the workforce and leadership? Equality	Negative	carers, visito	rs and staff	Sexual		Disability

Could the proposal impact positively or negatively on any of the following:

•	Patient Choice	Neutral	
•	Access	Neutral	
•	Integration	Neutral	

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Found life -		Race	Gender	Sexual	Age	Dischility
Equality Consideration		Race	Gender	orientation	Age	Disability & carers
Highlight the						
protected		Gender reassignment	Marriage & Civil	Religion and faith	Maternity &	Social economic
		reassignment	Partnership	and latin	∝ Pregnancy	economic
characteristic impact						
or social economic impact (e.g. homelessness, poverty, income or education)						
Engagement and Involvement	Positive	Stakeholders	have been	involved ir	n amending	g the policy
How have you made sure that the views of stakeholders, including people likely to face exclusion have been influential in the development of the strategy / policy / service:						
Equality		Race	Gender	Sexual orientation	Age	Disability & carers
Consideration						
Highlight the		Gender	Marriage &	Religion	Maternity	Social
protected		reassignment	Civil	and faith	& Brognonov	economic
characteristic impact			Partnership		Pregnancy	
or social economic						
impact (e.g.						
homelessness,						
poverty, income or						
education)						
Duty of Equality	Positive					
Use the space below						
to provide more detail						
where you have						
identified how your						
proposal of change						
will impact.						
Characteristic	Rating	Description				
	© 8 ©					
Race	Positive	Policy provid	es a mecha	nism for al	l to safely r	aise
	1 051170	concerns to e carers, visito	encourage a	a safer exp		
Age	Positive	As above				

Disability and Carers	Positive	As above
Religion or belief	Positive	As above
Sex	Positive	As above
Sexual orientation	Positive	As above
Gender re- assignment	Positive	As above
Pregnancy and maternity	Positive	As above
Marriage and civil partnership	Positive	As above

Human Rights Please look at the table below to consider if your proposal of change may potentially conflict with the Human Right Act 1998

Articles		Y/N
A2	Right to life	N
A3	Prohibition of torture, inhuman or degrading treatment	N
A4	Prohibition of slavery and forced labour	N
A5	Right to liberty and security	N
A6 &7	Rights to a fair trial; and no punishment without law	N
A8	Right to respect for private and family life, home and correspondence	N
A9	Freedom of thought, conscience and religion	N
A10	Freedom of expression	N
A11	Freedom of assembly and association	N
A12	Right to marry and found a family	N
Protocol	8	
P1.A1	Protection of property	N
P1.A2	Right to education	Ν
P1.A3	Right to free elections	Ν

#### Appendix B: What will happen when I speak up?

