Burton Hospitals
NHS Foundation Trust

WHISTLEBLOWERS POLICY

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On: 7 September 2016
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Clinical / Non Clinical Non Clinical
Department Responsible for Review: Human Resources
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Signature: Helen Scott-South
Date: 7 September 2016

Chief Executive
<table>
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<tr>
<th>Title:</th>
<th>Whistleblowers Policy</th>
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<tr>
<td>Original Issue Date:</td>
<td>January 2004</td>
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<tr>
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<td>Inclusion of Freedom to speak up: raising concerns (whistleblowing) policy for the NHS – April 2016</td>
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| Linked Trust Policies: | Complaints Policy  
Disciplinary Policy  
Grievance Policy  
Bullying & Harrasment Policy  
Health & Safety Policy  
Performance Management of Medical and Dental Staff  
Managing Allegations of Abuse against Staff who work with Children  
Being Open Policy  
Equality & Diversity  
Managing Performance & Supporting Staff Policy  
Anti-Fraud & Bribery Policy  
Complaints Policy |
| E & D Impact assessed | EIA 094 |
| Responsible Group / Committee | Board of Directors |
| Consulted | All Managers  
All Staff via Staff Side Representatives |
### REVIEW AND AMENDMENT LOG

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<td>Jan 12</td>
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<td>Inclusion of Monitor and Professional organisations contact details</td>
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<td>Inclusion of Safeguarding details</td>
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## WHISTLEBLOWERS POLICY

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BURTON HOSPITALS NHS FOUNDATION TRUST
WHISTLEBLOWERS POLICY

1. INTRODUCTION

1.1 All of us at one time or another has concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about unlawful conduct, financial malpractice, dangers to the public or the environment, or the conduct of colleagues or contracts it can be difficult to know what to do.

1.2 The Trust is committed to the highest standards of openness, integrity and accountability. All persons working for, or with this organisation must feel safe and supported in order to express their concern. Speaking up about any concern is really important, in fact it is vital because it will help improve services for all patients and the working environment for staff.

1.3 It is recognised that the decision to report a concern is a difficult one to make. Harassment or victimisation will not be tolerated and the Trust will take appropriate action in order to protect you when you raise a concern in good faith. The Trust introduced this policy to reassure you that it is safe and acceptable to speak up and to enable you to raise any concern you may have at an early stage and in the right way. Rather than wait for proof, we would expect you to raise the matter when it is still a concern. In accordance with the duty of candour, the Trusts senior leaders and entire board are committed to an open and honest culture.

1.4 This document provides guidance where concerns are raised related to the conduct of individuals in a position of trust within the organisation which can be detrimental to the safety and wellbeing of children, young people and vulnerable adults (See Safeguarding section of this document).

1.5 If you wish to make a complaint about your employment or how you have been treated, please use the Trust’s Human Resources Policies - Grievance Policy, Equality & Diversity Policy, Bullying & Harassment Policy, Health and Safety Policy and Sickness Absence Policy which you can obtain from the Trust’s Intranet site, your manager, or Human Resources.

1.6 If you have a concern about financial misconduct or fraud, please see the Trust’s Anti-Fraud & Bribery Policy, or contact Human Resources or our Local Counter Fraud Specialist or Director of Finance.

1.7 If you have a concern about the Trust’s Foundation status, please contact NHS Improvement via email on nhsi.enquiries@nhs.net, telephone 020 3747 0000 or write to: NHS Improvement, Wellington House, 133-155 Waterloo Road, London, SE1 8UG.

1.8. WHO IS COVERED IN THIS POLICY?

This policy and the protection it provides applies to all staff employed or who have worked for Burton Hospitals NHS Foundation Trust or for an independent
organisation that provides NHS services. This includes locums, agency staff, bank staff, students, contractors, volunteers, governors or staff from other organisations working on our site. For issues raised by patients/visitors please refer to the Complaints Policy.

2  GOOD CORPORATE CITIZEN

It is in everyone’s interests in a healthy and transparent society that people feel safe to raise issues of genuine concern in a secure environment without the fear of retribution, so that they can be addressed, especially where public money and patient safety are concerned.

If you have concerns regarding the quality of care a patient has, or has not received, this would be an appropriate issue to raise through the Whistleblowers policy. Healthcare professionals may also have a professional duty to report concerns in line with their professional body. If in doubt please raise it.

3.  BACKGROUND

3.1 Public Interest Disclosure Act 1998 (PIDA) amended the Employment Rights Act 1996 to provide protection for workers who raise legitimate concerns about risk, malpractice or wrongdoing which is harming service delivery. These are called ‘qualifying disclosures’. A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach of any other legal obligation;
- or concealment of any of the above;

is being, has been, or is likely to be, committed. It is not necessary for the worker to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient. The worker has no responsibility for investigating the matter - it is the organisation’s responsibility to ensure that an investigation takes place.

3.2 A worker who makes such a protected disclosure has the right not to be dismissed, or subjected to victimisation, because they have made the disclosure.

3.3 If you are not sure whether to raise a concern, you can discuss the issue with your Line Manager, Freedom to Speak Up Guardian, trade union representative or the Director of Human Resources if you would like to.

3.4 Encouraging staff to raise concerns early on, as part of everyday practise, will help the Trust to facilitate informal and formal resolutions of concerns raised. For example, inviting open conversation about what went well and what didn’t go well as part of any staff briefings, 1-1s, team meetings, etc. This will be key to fostering an open and transparent approach to dealing with some of the issues raised.
3.5 Alternative Employment
It may be necessary that, where deemed appropriate, efforts should be made to redeploy staff involved in the raising of a concern, regardless of whether they are the whistleblower or the accused.

4. ANONYMOUS ALLEGATIONS

4.1 When a concern is raised anonymously it is difficult to investigate and difficult to clarify ambiguity. The whistleblower is not held to account for raising the concern however this policy encourages staff to raise concerns as part of their professional role/responsibility. Protection of confidentiality as outlined in the PIDA is forfeit in these circumstances. For these reasons this policy does not encourage anonymity however if this is what the employee wants it will be upheld unless required to disclose it by law. If a whistleblower feels they cannot raise concerns through the internal or external routes detailed in Appendix 1, they can contact a Non-Executive Director.

5. FALSE ALLEGATIONS

5.1 Under PIDA if a whistleblower raises a concern under this policy, s/he will not be at risk of any form of retribution or victimisation provided s/he has acted in good faith. The Trust will not tolerate the harassment or victimisation of anyone raising a concern. Nor will the Trust tolerate any attempt to bully employees into raising any such concern. This assurance does not extend to someone who raises a concern they know to be untrue. These cases will be dealt with under the Trust’s Disciplinary Policy – “If following an investigation it is shown that a concern has been raised deliberately, falsely and/or with malicious intent either internally or externally (i.e. the press), then it may be necessary to consider disciplinary action against the whistleblower who raised the concern, if employed by the Trust”. Provided the employee is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.

6. SAFEGUARDING

6.1 Examples of concerns an individual may have about the conduct of individuals in a position of Trust within the organisation are:

- Unprofessional behaviour
- Bullying by staff
- Any form of abuse (physical, sexual, emotional or neglect)
- Name calling
- Personal contact with children, young people and vulnerable adults which is contrary to the organisations policies and codes of conduct
- Any form of racial abuse
- Inappropriate sexualised behaviour
• Knowledge about an individual’s personal circumstances which may indicate they could be a risk to children or unsuitable to work with children and vulnerable adults

Please note this list provides examples and is not exhaustive

7. CONFIDENTIALITY

All concerns will be treated in confidence, however, there may be a need for the whistleblower to give evidence e.g. if you have witnessed a crime or in regard of any disciplinary procedures which may ensue.

8. COUNSELLING

Whistleblowing puts a lot of pressure on the whistleblower, and they may need significant support. They should be regularly offered counselling which can be booked directly through Occupational Health.

9. MONITORING, REVIEW AND AUDITING

For monitoring and auditing purposes a log of all concerns received whether by Human Resources, Staff Side Official Representatives or Trust Auditors will be kept by the Director of Human Resources for a period of 12 months after the file is closed. This ensures that a mechanism is created for the effective acknowledgement, monitoring and progress reporting of all such concerns.

The board will be given high level information about all concerns raised by staff through this policy and what is being done to address any problems. This will include similar high level information in the Trust’s annual report. The board supports staff raising concerns and wants staff to feel free to speak up.

This policy will be reviewed at least annually or earlier by joint agreement between management and staff side or if legislation dictates. Should there be a delay in the renewal of this policy it will remain in force until superseded.

10. FREEDOM TO SPEAK UP GUARDIAN

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

The local Freedom to Speak Up Guardian has specific training and responsibility in dealing with whistleblowing concerns. They will:

• Treat a concern in confidence unless otherwise agreed
• Provide support around the progress of a concern
- Escalate to the Board any incidents that are being subjected to detriment for raising the concern
- Ensure timely feedback on how the concern is being dealt with
- Ensure access to personal support is given to those raising concerns
Appendix 1

Procedure for the Management of Concerns Raised

1. Introduction

The Trust is committed to the highest standards of quality, openness and accountability. In demonstrating this commitment the Trust encourages members of staff who have concerns involving danger (to patients, public or colleagues), professional misconduct or financial malpractice, to come forward and express their concerns.

2. Principles

2.1 The Manager/Lead Clinician/Director will treat the matter seriously.

2.2 The matter will be treated confidentially within already stated limitations.

2.3 Everyone should be aware of the importance of preventing and eliminating wrong doing at work. Workers should be watchful for illegal, fraudulent or unethical conduct and report anything of that nature about which they become aware.

2.4 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially and the outcome of the investigation reported back to the worker who raised the issue.

2.5 No worker will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the worker will not be prejudiced because they have raised a legitimate concern.

2.6 The victimisation of a worker for raising a qualified disclosure is a disciplinary offence. If misconduct is discovered as a result of any investigation under this procedure the disciplinary procedure will be used, in addition to any appropriate external measures.

2.7 An instruction to cover up wrong doing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a Manager or a Director, the worker should not agree to remain silent, but report the matter in line with stage 3 of the procedure below.

2.8 The Trust is committed to listening to staff, learning lessons and improving patient care. On receipt, the concern will be recorded and acknowledgement sent within two working days.

2.9 An investigation report should be completed within 21 calendar days of the concern being raised. If a full report is not possible within the timescale a progress report with details of proposed action to be taken, will be provided within 21 calendar days.

2.10 All staff have the right to be accompanied by a companion who is either a fellow employee or Trade Union/Professional Body Representative.
2.11 The investigation will be objective and evidence-based and will focus on identifying and rectifying any issues and learning lessons to prevent problems recurring.

3. Internal Process

3.1 Stage 1 - Informal

In the first instance, any concerns should be raised with the employees' Line Manager, unless they reasonably believe their Line Manager to be involved in the wrong doing, or if for any other reason they do not wish to approach their Line Manager. The Line Manager may ask the employee how they think the matter may best be resolved or advise that the matter is one for the grievance or bullying and harassment procedure. If the employee believes the Line Manager to be involved, or for any reason do not wish to approach their Line Manager, then they can contact the Trust’s Freedom to Speak Up Guardian. This is an independent and impartial source of advice which can be given to staff at any stage of raising a concern. If the employee remains concerned after this proceed straight to stage 3. Issues at this stage may be raised verbally or in writing.

If the concern relates to Safeguarding Children the named professional/named doctor for Safeguarding Children should be informed. Any concern regarding child protection must be referred to external agencies for investigation. If there are concerns that an adult working with children may have abused a child, or be unsuitable to work with children (refer to Managing Allegations against Staff who work with Children) the Local Authority Designated Officer (LADO) will be informed. Managers are encouraged to contact a LADO directly for discussion and advice.

Concerns relating to vulnerable adults, the Matron Safeguarding Vulnerable Adults or Adult Safeguarding lead should be informed. Referral to adult protection and the Police will need to be considered.

3.2 Stage 2 - Formal

If the concern raised cannot be dealt with at the Stage 1 Informal then the Line Manager or Freedom to Speak Up Guardian will arrange an investigation of the matter (either by investigating the matter personally or immediately passing the issue to an appropriate colleague). The investigation may involve the employee and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. The whistleblowers statement will be taken into account and they will be asked to comment on any additional evidence obtained. The Line Manager (or the person who carried out the investigation) will then report to the Director of Human Resources/Chief Executive, who will take any necessary action, including reporting the matter to the Board and any appropriate government department or regulatory agency. If disciplinary action is required, this will be recommended in the report, following a discussion with the Chief Executive and Human Resources.

On conclusion of any investigation, the employee raising concerns will be told the outcome of the investigation and what action has been taken or is proposed,
subject to the normal requirements to protect the confidentiality of colleagues. If no action is to be taken, the reason for this will be explained. Feedback will be in writing and will normally be within 21 calendar days of the concern being received.

3.3 Stage 3

If an employee is concerned that their Line Manager is involved in the wrong doing, has failed to make a proper investigation, has failed to report the outcome properly, do not wish to involve their Line Manager for any reason and have spoken with the Trust’s Freedom to Speak Up Guardian they should inform the Chief Executive about their concerns. The Chief Executive will take appropriate action, which may include arranging for another manager to review the investigation carried out, making further enquiries and making a report to the Board, as appropriate.

If it is considered not appropriate to approach the Chief Executive for any reason, the employee should approach the Freedom to Speak Up Guardian or the Director of Human Resources who will liaise with the nominated Non-Executive Director of the Trust, about an investigation. If they do not consider it appropriate to approach either the Freedom to Speak Up Guardian, Chief Executive or the Director of Human Resources for any reason, they may approach the nominated Non-Executive Director directly, but will need to explain their grounds for not approaching either the Chief Executive or the Director of Human Resources.

The Chief Executive, the Director of Human Resources or nominated Non-Executive Director may ask how the individual raising the concerns think may be best to resolve or advise that the matter is one for the grievance or bullying and harassment procedure. Any approach at this stage will be treated with the strictest confidence and your identity will not be disclosed without your prior consent.

On conclusion of any investigation, the individual raising the concern will be told the outcome of the investigation and what action has been taken or is proposed, subject to the normal requirements to protect the confidentiality of colleagues. If no action is to be taken, the reason for this will be explained.

4. External process

If on conclusion of stages 1, 2 and 3 it is reasonably believed that the appropriate action has not been taken, then the individual should report the matter to the proper outside body. These include:

NHS Improvement – for concerns around how the Trust is run
Care Quality Commission – for quality and safety concerns
NHS England – for concerns on general practices and service concerns
Health Education England – for education and training in the NHS
NHS Protect – for concerns about fraud and corruption

Independent advice

If you are unsure whether to use this procedure or you want confidential independent advice at any stage, you may contact your trade union,
Whistleblowing Helpline for the NHS and social care, Public Concern at Work or a legal representative.