

WHISTLEBLOWING POLICY

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REVIEWERS

This document has been reviewed by:

NAME	DATE	TITLE/RESPONSIBILITY	VERSION
Don Ferguson	June 2013	LCFS	D1
Lay members	June 2013	Lay members	D1
Audit Committee	June / July 2013	Delegated responsibility	D2 and V1
Paul Capener	December 2016	Paul Capener Consulting LTD	V2
Emma Smith	December 2016	Governance Support Manager	V2
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APPROVALS

This document has been approved by:

NAME	DATE	VERSION
Audit Committee	July 2013	V1
Audit Committee	January 2017	V2

NB: The version of this policy posted on the intranet must be a PDF copy of the approved version.

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 the document are not controlled.

RELATED DOCUMENTS

These documents will provide additional information:

Bullying and Harassment Policy
Disciplinary Policy
Grievance Policy

APPLICABLE LEGISLATION

The Public Interest Disclosure Act 1998
General Data Protection Regulations (GDPR)
Managing Conflicts of Interest Statutory Guidance – NHS England
Freedom to Speak up Review – Sir Robert Francis QC

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1.0 Speak up - we will listen

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

2.0 This policy

- 2.1 This 'standard integrated policy' was one of a number of recommendations of the review by Sir Robert Francis into whistleblowing in the NHS, aimed at improving the experience of whistleblowing in the NHS. It is expected that this policy (produced by NHS Improvement and NHS England) will be adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns for the benefit of all patients.
- 2.2 Our local process has been integrated into this policy and provides more detail about how we will look into a concern. This is shown in Annex A.

3.0 What concerns can I raise?

- 3.1 You can raise a concern about risk, malpractice or wrongdoing you think is harming the service we commission. 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
 - suspicions of fraud (which can also be reported to our local anti-fraud team)
 - a bullying culture (across a team or organisation rather than individual instances of bullying).
- 3.2 Remember that if you are a healthcare professional you may have a professional duty to report a concern. If in doubt, please raise it.
- 3.3 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.
- 3.4 This policy is not for people with concerns about their employment that affect only them -that type of concern is better suited to our grievance policy.

4.0 Feel safe to raise your concern

- 4.1 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 an organisation and, if upheld following investigation, could result in disciplinary action.
- 4.2 Provided you are acting honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

5.0 Confidentiality

- 5.1 We hope you will feel comfortable raising your concern openly, but we also appreciate that you may want to raise it confidentially. This means that while you are willing for your identity to be known to the person you report your concern to, you do not want anyone else to know your identity. Therefore, we will keep your identity confidential, if that is what you want, unless required to disclose it by law (for example, by the police). You can choose to raise your concern anonymously, without giving anyone your name, but that may make it more difficult for us to investigate thoroughly and give you feedback on the outcome.

6.0 Who can raise concerns?

- 6.1 Anyone who works (or has worked) in the NHS, or for an independent organisation that provides NHS services can raise concerns. This includes agency workers, temporary workers, students, volunteers and governors.

7.0 Who should I raise my concern with?

- 7.1 In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager. But where you don't think it is appropriate to do this, you should follow the process described in Annex A, which explains who you should raise your concerns with step-by-step in our process.
- 7.2 If for any reason you do not feel comfortable raising your concern internally, you can raise concerns with external bodies, listed on page 6.

8.0 Advice and support

- 8.1 Details on the local support available to you can be found in Annex A. However, you can also contact the Whistleblowing Helpline for the NHS and social care, your professional body or trade union representative.

9.0 How should I raise my concern?

- 9.1 You can raise your concerns 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.

10.0 What will we do?

- 10.1 We are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns, and will respond in line with them (see Annex B).
- 10.2 We are committed to listening to our staff, learning lessons and improving patient care. On receipt the concern will be recorded and you will receive an acknowledgement within two working days. The central record will record the date the concern was received, whether you have requested confidentiality, a summary of the concerns and dates when we have given you updates or feedback.

11.0 Investigation

- 11.1 Where you have been unable to resolve the matter quickly (usually within a few days) with your line manager, we will carry out a proportionate investigation - using someone suitably independent (usually from a different part of the organisation) and properly trained - and we will reach a conclusion within a reasonable timescale (which we will notify you of). Wherever possible we will carry out a single investigation (so, for example, where a concern is raised about a patient safety incident, we will usually undertake a single investigation that looks at your concern and the wider circumstances of the incident. If your concern suggests a Serious

Incident has occurred, an investigation will be carried out in accordance with our Serious Incident Framework). The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and learning lessons to prevent problems recurring.

11.2 We may decide that your concern would be better looked at under another process; for example, our process for dealing with bullying and harassment. If so, we will discuss that with you.

11.3 Any employment issues (that affect only you and not others) identified during the investigation will be considered separately.

12.0 Communicating with you

12.1 We will treat you with respect at all times and will thank you for raising your concerns.

12.2 We will discuss your concerns with you to ensure we understand exactly what you are worried about. We will tell you how long we expect the investigation to take and 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).

13.0 How will we learn from your concern?

13.1 The focus of the investigation will be on improving the service we provide for patients. Where it identifies improvements that can be made, we will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

14.0 Board oversight

14.1 The board will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high level information in our annual report. The board supports staff raising concerns and wants you to feel free to speak up.

15.0 Review

15.1 We will review the effectiveness of this policy and local process at least annually, with the outcome published and changes made as appropriate.

16.0 Raising your concern with an outside body

16.1 Alternatively, you can raise your concern outside the organisation with:

NHS Improvement for concerns about:

- how NHS trusts and foundation trusts are being run
- other providers with an NHS provider licence
- NHS procurement, choice and competition the national tariff

16.2 Care Quality Commission for quality and safety concerns

NHS England for concerns about:

- primary medical services (general practice) primary dental services
- primary ophthalmic services
- local pharmaceutical services

16.3 Health Education England for education and training in the NHS

16.4 NHS Protect for concerns about fraud and corruption.

17.0 Making a 'protected disclosure'

17.1 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 page 8, who you can make a protected disclosure to.

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

18.0 National Guardian Freedom to Speak Up

18.1 Further to Sir Robert Francis, Freedom to Speak Up review, the National Guardian's Office was established. The Office is an independent, non-statutory body with the remit to lead culture change in the NHS so that speaking up becomes business as usual. The office is not a regulator, but is sponsored by the CQC, NHS England and NHS Improvement. If you require any further information please visit the National Guardians Office webpage on the CQC Website.

Annex A: The process for raising and escalating a concern

1.1 The Legal Framework: The Public Interest Disclosure Act 1998

- 1.1.1 PIDA 1998 protects workers who 'blow the whistle' about wrongdoing or malpractice and places a clear responsibility on public sector employers to remind staff of their responsibility to disclose suspected malpractice without fear of recriminations.
- 1.1.2 PIDA 1998 protects workers from being subjected to a detriment by their employer as a consequence of making a whistleblowing disclosure. Detriment may take a number of forms, such as denial of promotion, facilities or training through to direct intimidation or harassment.
- 1.1.3 A disclosure qualifies under PIDA 1998 if it regards a risk, wrong doing or malpractice that affects patients, the wider public or other staff. A qualifying disclosure is a disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:
- That a criminal offence has been, is being or is likely to be committed (e.g. assault, bribery, theft);
 - That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject. This could include professional malpractice or a failure to comply with any rules, regulations or codes of practice;
 - That a miscarriage of justice has occurred, is occurring or is likely to occur;
 - That the health and safety of any individual has been, is being or is likely to be endangered;
 - That the environment has been, is being or is likely to be damaged; or
 - That information tending to show any of the above has been, is being or is likely to be deliberately concealed.
- 1.1.4 Examples of malpractice which qualify as protected disclosures under PIDA 1998 include (but are not limited to) the following:
- Abuse or mistreatment of service users;
 - Exposing service users to unacceptable or unnecessary risk;
 - Acts of fraud and theft against the organisation or service users;
 - Procuring or accepting bribes from service users, staff or other third parties (e.g. suppliers of goods or services);
 - Dangerous Health and Safety situations and breach of fire regulations;
 - Deliberately concealing information relating to any malpractice; and
 - Staff working under the influence of alcohol or drugs.
- 1.1.5 PIDA 1998 provides statutory protection, including compensation, against employer reprisals to all employees who disclose information reasonably and responsibly in the public interest. A qualifying disclosure will be **legally protected** where it is made:
- To the worker's employer, either directly to the employer or by procedures authorised by the employer for that purpose; or
 - To another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure
- 1.1.6 PIDA 1998 places responsibilities upon the worker making a disclosure. In most cases, the worker must raise the matter **internally** first. The matter must be raised in 'good faith' - it must be done from a reasonable and honest (even if mistaken) belief, and must not be motivated by personal antagonism.
- 1.1.7 If the employee making the disclosure has not complied with the conditions of PIDA 1998 by following internal procedures first, he or she *may* have committed a fundamental breach of contract by disclosing confidential information belonging to the employer. As an employee, the

whistleblower may also have fundamentally breached the duty of trust and confidence owed to the employer and may therefore be liable to the organisation's disciplinary procedures. It is therefore strongly advised that employees follow the internal procedure before considering other options. Employees are encouraged to contact the Royal Mencap Society or Public Concern at Work if they have any questions or concerns about making a disclosure under PIDA 1998 (Section 7.1).

1.1.8 A flowchart is attached at Appendix 1 as a guide to show how whistleblowing disclosures should be escalated.

1.2 Raising an Informal Concern

1.2.1 If employees have a concern about malpractice they are required to raise the matter immediately with their line manager. If the manager is suspected to be involved or is condoning malpractice, employees are required to raise the matter with the next in line manager in the first instance. This may be done verbally or in writing. Employees are required to explicitly state that they are making a disclosure under the Whistleblowing Policy to assist the organisation to accurately record and track progress of any whistleblowing concerns.

1.2.1 Feedback will be given on the management action being taken within 5 working days, with due regard to the organisation's duty of confidence and without infringing the rights of other parties, for example where disciplinary action is being taken against another employee.

1.3 Escalating an Informal Concern

1.3.1 If a satisfactory response is not received within 5 working days of raising the whistleblowing concern or the employee feels unable to report concerns to their line manager or next in line manager, they should contact the Human Resources Business Partner. This may be done verbally or in writing. Employees are again required to explicitly state that they are making a disclosure under the Whistleblowing Policy.

1.4 Making an Internal Formal Disclosure

1.4.1 If the concerns have not been dealt with satisfactorily or the matter is deemed too serious for the informal stages, employees are encouraged to raise the matter formally and immediately to one of the following designated officers:

- **The Freedom To Speak Up Guardian** - 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
- **The Chief Accountable Officer**
- **The Chief Finance & Operating Officer**
- **The Chief Quality and Nursing Officer**
- **The Clinical Executive for Quality and Safety**
- **The Anti Fraud Specialist (for concerns of Fraud, Bribery and Corruption)**
- **A lay member of the Governing Body**

1.4.2 Contact can be by telephone, via email or in writing to and all correspondence should be marked "**in confidence to be opened by the addressee only**" and again employees are required to explicitly state that they are making a disclosure under the Whistleblowing Policy.

1.4.3 The person making a formal disclosure should as soon as practicable disclose in confidence the grounds for the belief of malpractice or serious risk to one of the designated officers identified above. Any disclosure under this procedure shall, wherever possible, be in writing. The person making the disclosure should provide as much supporting evidence as possible about the grounds for his or her belief although there is no requirement to 'prove' the

malpractice allegations.

1.4.4 If the person receiving the formal disclosure does not feel that this policy is appropriate to use they may make reference to other organisational policies that exist for dealing with concerns. For example:

- Disciplinary Policy
- Grievance Policy
- Bullying and Harassment Policy

1.4.5 A designated officer may decline to become involved on reasonable grounds. Such grounds include previous involvement or interest in the matter concerned, incapacity or unavailability or that the designated officer is satisfied that a different designated officer would be more appropriate to consider the matter in accordance with this procedure.

1.4.6 On receipt of the disclosure, the designated officer will offer to interview, in confidence, the person making the disclosure. Such an interview will take place as soon as practicable after the initial disclosure. The purpose of the interview will be for the designated officer to obtain as much information as possible about the grounds of the belief of malpractice and to consult about further steps which could be taken. The person making the disclosure may be accompanied by a local trade union representative or work colleague at the interview. The designated officer may be accompanied by an administrative assistant to take notes. Due regard will be given to confidentiality.

1.4.7 Where the designated officer is satisfied that the Whistleblowing procedure is appropriate, they shall decide on the nature of the investigation of the allegations. This may be an internal investigation by organisational staff; or referral of the matter to the police or other appropriate public authority; or the commissioning of an independent enquiry, for example by the organisation's auditors or Local Counter Fraud Specialist.

1.4.8 If the designated officer decides that the Whistleblowing procedure is not appropriate in respect of the matter disclosed, they shall so inform the discloser, giving reasons in writing. These could be on grounds that:

- The matter should be, is already or already has been the subject of appropriate proceedings under one of the CCG's other procedures;
- The matter is already the subject of legal proceedings, or has already been referred to the police or other public authority;
- There is reasonable doubt as to the discloser's good faith and/or reasonable belief about malpractice or serious risk.

1.4.9 If the discloser is not satisfied with the designated officer's decision, they may ask the Chair of the Governing Body to review the matter of the disclosure, the information and evidence presented, the process followed and the grounds for the decision. If the Chair of the Governing Body decides that the matter should be investigated under the Whistleblowing procedures, they shall direct a second designated officer to arrange an appropriate investigation. If they decide to uphold the view of the original designated officer, no further action will be taken under this process. The discloser may then consider whether to refer the allegations of malpractice or serious risk to an external agency (see below).

1.5 Making a Regulatory External Disclosure

1.5.1 While it is hoped that this policy gives employees the confidence to raise their concern internally, there may be circumstances where they can report the concern to an appropriate outside body. Ones relevant to the NHS include:

- NHS Improvement

- NHS England
- Care Quality Commission
- Health Education England

1.5.2 Disclosures to regulatory bodies may also be 'protected disclosures' under certain circumstances; for example the discloser must make the disclosure in good faith, must reasonably believe the allegations are substantially true, does not make the disclosure for personal gain and if the disclosure is considered reasonable. It is recommended that advice is sought from the Royal Mencap Society or Public Concern at Work if considering making an external disclosure before exhausting internal procedures outlined above.

1.5.3 If your concern is about fraud and corruption you can also contact the NHS Fraud reporting line.

1.6 Making a wider External Disclosure

1.6.1 Examples of wider external disclosures include Police, media, MPs and Non-Prescribed Regulators. Employees are advised that wider disclosures *may* also be 'protected disclosures' under very particular circumstances. As with regulatory disclosures, the discloser must make the disclosure in good faith, must reasonably believe the allegations are substantially true, does not make the disclosure for personal gain and the disclosure is considered reasonable.

1.6.2 In addition a further pre-condition to secure protection for a wider disclosure must be met. This is either:

- The person reasonably believed he/she would be victimised if the matter was raised either internally or with a prescribed regulator; or
- There was no prescribed regulator and he/she reasonably believed the evidence was likely to be concealed or destroyed; or
- The concern had already been raised with the employer or a prescribed regulator without being addressed in a timely manner; or
- The concern is of an exceptionally serious nature.

1.6.3 It is strongly recommended that advice is sought from the free, confidential services provided by the Royal Mencap Society or Public Concern at Work if considering making a wider external disclosure before exhausting internal and regulatory disclosure procedures.

1.6.4 Employees should note that failure to meet these requirements means that they would not qualify for protection under this policy and may be subject to disciplinary action for fundamental breach of contract and/or disclosure of confidential information.

1.7 Additional advice and support to Staff

1.7.1 Where there is doubt as to the way forward (i.e. the employee is not sure whether to make a formal disclosure), an employee may seek a confidential meeting with one of the designated officers detailed in this policy to discuss whether it would be appropriate to make a formal disclosure under the PIDA 1998. An individual seeking or taking part in such a meeting is guaranteed the same protection against personal detriment as is given under the procedure to someone making a formal disclosure, whether or not a formal disclosure follows.

1.7.2 Employees have the option to share their concerns in the first instance with colleagues or other representatives including trade union officials. Staff may also be accompanied by a colleague or representative when discussing allegations and suspicions with management.

1.7.3 Although it is far more effective for management to discuss matters with an identified person it is permissible for concerns to be shared anonymously, where a disclosure would not otherwise be made.

1.7.4 It is strongly recommended that advice is sought from the free, confidential service provided by the Royal Mencap Society; this is the nominated national provider of whistleblowing advice for NHS staff. Their contact details are:

Free telephone: 08000 724 725

Email: enquiries@wbhelpline.org.uk

Alternatively, employees may contact Public Concern at Work, a charity offering free advice on raising whistleblowing concerns. Their contact details are:

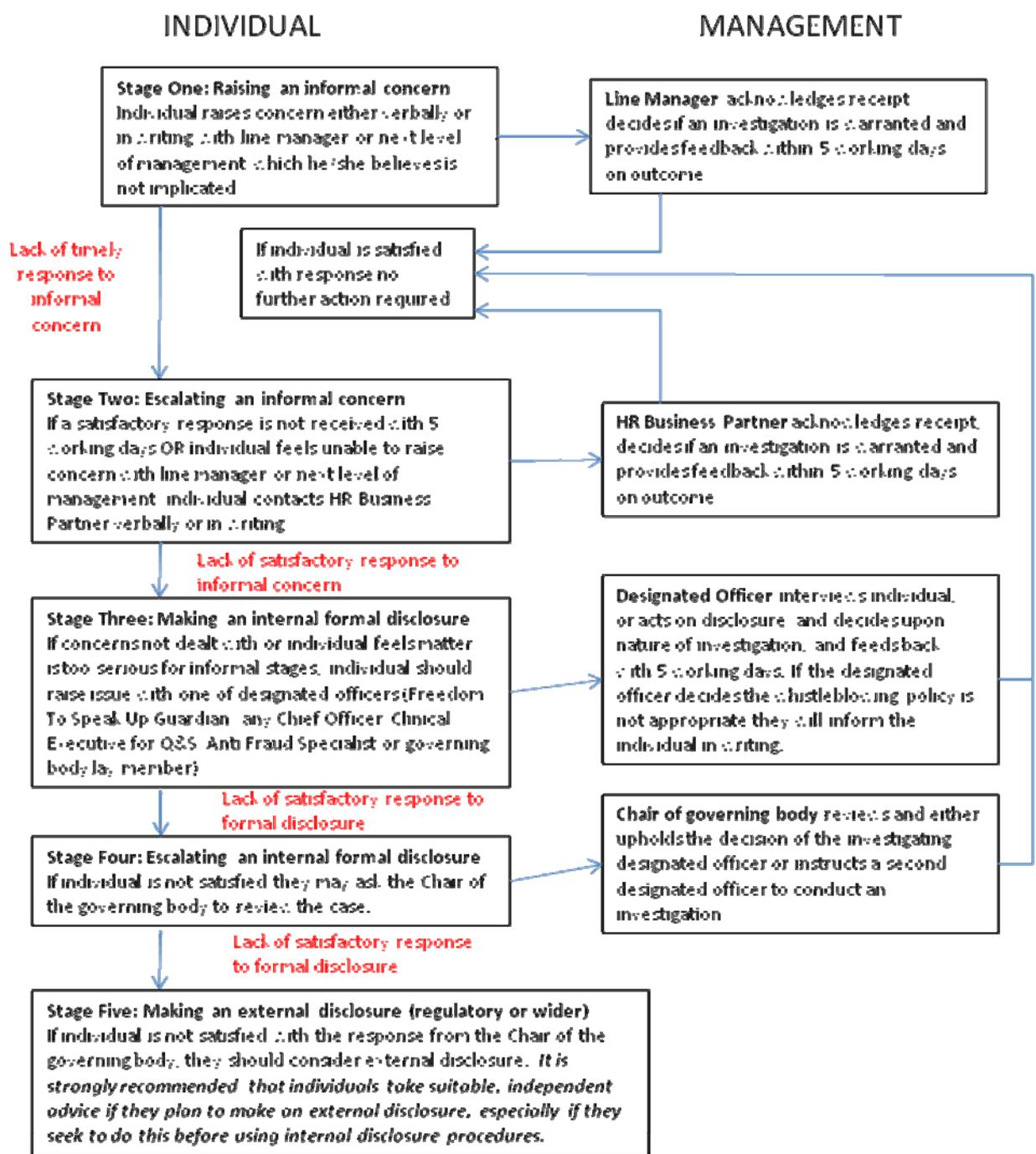
Confidential Telephone: 020 7404 6609

Website: www.pcaw.co.uk and email: helpline@pcaw.co.uk

Whistleblowing flowchart

Before entering the process the individual decides (taking advice as necessary) whether this is the appropriate procedure or whether a different procedure should be followed (eg Bullying & Harassment, Counter-Fraud, Bribery & Corruption)

Whistleblowing Process



Annex B: A vision for raising concerns in the NHS



Source: Sir Robert Francis QC (2015) *Freedom to Speak Up*