Policy for Whistleblowing

Human Resources Policy No. HR05

Additionally refer to:
- HR01 Equality & Diversity
- HR16 Grievance Policy
- HR36 Disciplinary Policy
- HR45 Dignity At Work
- HR52 Standards of Business Conduct
- HR58 Fraud and Corruption
- Anti-Bribery policy
- NHS Constitution
- Safeguarding Children policy
- Safeguarding Adults policy
- NHS Prevent Strategy

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## Version Control Sheet

| Author/Contact: | Liz Walton  
Deputy Head of Human Resources |
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## Version History

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1. **Policy Statement**

1.1 This Policy has been written to take account of the Public Interest Disclosure Act (“PIDA”), and offers a framework of protection against victimisation or dismissal for workers who honestly raise genuine concerns about wrongdoing and malpractice in the workplace (as defined in paragraph 2.1 below), where disclosures are made in accordance with the Act’s provisions. The Act incorporates the protection within the Employment Rights Act for employees who take action over, or raise concerns about, health and safety at work.

1.2 This policy applies to all staff employed by the Trust, including those employed via the Temporary Staffing Department. It does not apply to agency staff, external secondees temporarily working with the Trust, or other individuals who are not directly employed by the Trust.

1.3 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trusts Equality & Diversity policy, (HR01). Special attention should be paid to ensuring the policy is understood when using it for staff new to the NHS or Trust, by staff whose literacy or use of English is weak or for persons with little experience of working life.

2. **Overview**

2.1 The Shrewsbury and Telford Hospital NHS Trust is committed to achieving the highest possible standards of quality, honesty, openness and accountability in all its practices. The Trust is also committed to developing a culture where it is safe and acceptable for all employees and colleagues to raise concerns, using its internal reporting processes such as DATIX, where the interests of others or of the organisation itself are at risk (be it related to staff or other service users). Examples may include:-

- unacceptable practice or staff practice in health care matters
- issues regarding staff conduct, such as unprofessional attitudes or behaviour, including concerns related to equality and diversity
- issues related to the environment of care in the broadest sense, such as resources, products, people, staffing or organisation-wide concerns
- a criminal offence,
- a failure to comply with a legal obligation,
- a miscarriage of justice,
- the endangering of an individual’s health and safety,
- financial malpractice, including suspected criminal acts and fraud
- deliberate concealment of information relating to any of the issues just mentioned.

This list is not exhaustive and applies whether or not the information is confidential.

2.2 **Safeguarding Children & Vulnerable Adults**

2.2.1 Once concerns have been identified, all staff have a duty of care to pass on the information using the Adult Protection referral form. Staff are encouraged to disclose information or concerns of malpractice or abuse within the context of this
policy. Where staff wish to report a situation where they suspect abuse may be happening, they should refer to the Adult Protection policy for guidance.

2.2.2 Where staff work with children and young people and an allegation has been made against them, the policy ‘Managing Allegations Against Staff who Work with Children & Young People’ must be followed. The Trust Senior Officer (Named Nurse) is then the lead person for the Trust liaising and working in co-operation with the Local Authority Designated Officer and the Police. The welfare of the child is paramount, and staff have a duty under the Children Act 1989 to protect children.

2.3 Fraud and Corruption

2.3.1 The Trust has a Fraud and Corruption policy which covers all issues relating to reporting suspicions of a fraudulent nature, setting out responsibilities of individuals within the Trust for reporting suspicions and co-operating with any investigation.

2.3.2 Further to this, the Trust has a standalone Anti-Bribery Policy, which makes references to the paying and receiving of bribes, bribery through intermediaries, facilitation payments, documents and records, joint ventures and consortia, agents and other intermediaries, contractors and suppliers, recruitment process and employment contracts, gifts and hospitality and political, charitable and cultural donations and contributions. This policy should be read in conjunction with the Fraud and Corruption policy.

2.3.3 The Trust has a Local Counter Fraud Specialist (LCFS) that deals in the strictest confidence with all fraud referrals. Any concerns of a potential fraudulent nature or in connection with the Trust’s Anti-Bribery policy should be referred to the National Fraud Helpline, the Trust’s Local Counter Fraud specialist or the Director of Finance in the first instance, and should not be subject to any investigation by other members of staff or management.

2.4 As stated earlier the Trust encourages its staff to use its internal mechanisms for reporting any malpractice or illegal acts or omissions and although it understands that they may be worried about raising issues such as malpractice or negligence within the hospitals, staff are assured that, if the concern was raised in good faith, the person raising the concern will not be at risk of losing his or her job or suffering any form of reprisal or detriment for doing so.

2.5 All staff have a responsibility and an obligation to raise concerns under this policy and as set out in the NHS Constitution. Furthermore, where professional codes of practice/conduct exists, failure to raise concerns in a timely manner may be a breach of those codes.

2.6 The Trust is committed to an open style system of communication, which should provide an environment where concerns can be aired freely. The Trust also recognise that staff may need to come forward on a confidential basis and this procedure makes it clear that staff will have that confidence respected unless the Trust is unable to resolve the issue without identifying that person because of any judicial review, evidence needed in a court of law, or if the Trusts Disciplinary policy has to be used. If this happens, the Trust will discuss this with the employee beforehand.

2.7 In order to benefit from legislation, the whistleblower has to satisfy certain conditions:-
2.7.1 A disclosure to the Line Manager, Senior Manager, Human Resources Department, Executive Director, the Chief Executive or the nominated Non Executive Director will be protected, provided that it is made in good faith and the whistleblower has a reasonable suspicion that the wrongdoing/malpractice has occurred, is occurring or is likely to occur.

2.7.2 A disclosure to a prescribed regulator, e.g. Monitor, Department of Health, the Health and Safety Executive, the Audit Commission or the Environment Agency (see Appendix A for advice on contact details) will be protected where the whistleblower honestly and reasonably believes that the information and any allegation in it are substantially true.

2.7.3 Wider disclosures to the police, media, Members of Parliament and non-prescribed regulators are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain, (See section 2.8 below). Authority and advice from the Workforce Director or an Executive Director will be required for the disclosure of confidential information to the police, press, financial or legal institutions.

2.8 To have protection for a wider disclosure the whistleblower must meet at least one of the following pre-conditions. That either:

- She/he reasonably believes that they would be victimised if they had raised the matter internally or with a prescribed regulator; or
- There was no prescribed regulator and she/he reasonably believed the evidence was likely to be concealed or destroyed; or
- The concern had already been raised with the employer or prescribed regulator; or
- The concern is of an exceptionally serious nature.

2.9 This procedure is not intended to replace the Grievance or Dignity at Work policies. It is not another route or mechanism for employees to raise private grievances. Use of this policy may, however, lead to other Trust policies being used. This will also cover action where managers have not responded appropriately to concerns raised by staff.

3. DUTIES

3.1 Trust Board

The Trust Board has a duty oversee the policy and ensure that appropriate action is taken promptly when issues are raised in accordance with this policy. In addition, the Trust Board has a duty to ensure that any individual(s) who honestly raise genuine concerns about wrongdoing and malpractice in the workplace (as defined in paragraph 2.1 above), where disclosures are made in accordance with the Act’s provisions is protected protection against victimisation or dismissal.

3.2 Managers

3.2.1 All managers are responsible for the implementation of this policy and for ensuring that all employees are aware of their responsibilities under it. Support and guidance may be sought from Human Resources.

3.2.2 Managers are also responsible for:
• Promoting a working environment in which individuals can be confident that they may raise concerns about wrongdoing and malpractice without fear of reprisal, victimisation or dismissal;
• Taking appropriate action when concerns are raised;
• Supporting and protecting individuals who raise concerns.

3.3 Employees

3.3.1 All individuals have a duty to raise concerns they may have regarding any wrongdoing or malpractice.

4 LEGAL BACKGROUND

4.1 This Policy has been written to take account of the Public Interest Disclosure Act ("PIDA"), and offers a framework of protection against victimisation or dismissal for workers who honestly raise genuine concerns about wrongdoing and malpractice in the workplace (as defined in paragraph 2.1), where disclosures are made in accordance with the Act's provisions. The Act incorporates the protection within the Employment Rights Act for employees who take action over, or raise concerns about, health and safety at work.

4.2 As with any other employer, the Trust cannot opt-out of the PIDA provisions. There is no qualifying period for protection for employees making a disclosure i.e. the employee does not have to work for the Trust for a period of time before they are entitled to protection for making a disclosure. If an employee makes a protected disclosure and is dismissed as a result, the dismissal is automatically unfair.

4.3 Where a whistleblower is victimised or dismissed in breach of the Act she/he can bring a claim to an employment tribunal for compensation.

4.4 If the provisions of the Act are met and the Employment Tribunal is satisfied that the disclosure was reasonable, the whistleblower will be protected. In deciding the reasonableness of the disclosure, the tribunal will consider all the circumstances. This will include the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence which the Trust owed a third party. Where the concern had been raised with the Trust or a prescribed regulator, the Tribunal will also consider the reasonableness of their response. Finally, if the concern had not been raised with the Trust, the Tribunal will consider whether our whistleblowing procedure was or should have been used.

4.5 The Act directs the worker towards raising the matter internally in the first instance and, where there is an internal whistleblowing procedure, to use it. However, the Act will protect workers where they make external disclosures but in a range of circumstances. If a worker chooses to disclose information in a way that is not covered by the Act, he/she will lose their protection (see Sections 2.7 and 2.8).

4.6 The Act applies to staff raising genuine concerns and applies whether or not the information is confidential and irrespective of the work area, the ‘malpractice’ is occurring in or has occurred in. See Section 2.1 for examples of the issues covered.

5 CONFIDENTIALITY

5.1 The Trust will not tolerate harassment or victimisation of anyone raising a genuine concern. If the employee asks for his/her identity to be kept confidential, it will not be disclosed without his/her consent. If the situation arises where the concern cannot be resolved
without disclosing his/her identity, i.e. if there is a judicial review, evidence is needed in a
court of law, or the Trust’s Disciplinary Policy is used, then the Trust will discuss it with the
employee first.

5.2 Within the contract of employment all staff are required to keep information confidential
where it relates to treatment of patients, personal details of employees, the business of the
Trust or is covered by the Data Protection Act. Such information should not be divulged to
anyone who does not have a right to it without authorisation. Contravention of this
requirement could result in disciplinary action. All staff are required to sign a declaration of
confidence confirming they understand this requirement.

N.B. This does not preclude the raising of concerns, for example about the treatment of
patients.

6 ANONYMITY

6.1 The Trust will endeavour to protect the anonymity of individuals when considering
anonymous reports under this policy, although it will be more difficult for such reports to be
investigated fully. However, it may not be possible to protect the identity of the individual
making an allegation during the course of the investigation. Therefore, it may not always
be appropriate for concerns to be made anonymously under this policy.

7 TRADE UNIONS

7.1 The Trust recognises that staff may wish to seek advice and be represented by a Trade
Union when using the provisions of this policy. The Trust acknowledges and endorses the
key role Trade Union representatives play in this area. Disclosures to accredited union
representatives under agreed whistleblowing procedures will be protected. Annex A
contains details of all Trade Unions and Professional Associations recognised by the Trust.

8 WHISTLEBLOWING PROCEDURE

8.1 Whilst the Trust would prefer that staff raise their concerns openly, using recognised
internal reporting processes such as DATIX, if the employee wants to raise the matter in
confidence, this should be communicated from the outset so that appropriate arrangements
can be made. See Sections 2 and 5.

   Stage One

8.2 If the employee has a concern about a risk, malpractice or wrongdoing at work, it is hoped
that they will feel able to raise the matter first with their line manager or Centre Chief. This
may be done verbally or in writing. The line manager/Centre Chief will then decide on an
appropriate course of action. See Appendix B for Line Manager/Centre Chief guidance. If
the concern relates to suspected fraudulent activity, contact should, in the first instance, be
made with the appropriate HR Advisor who will liaise with the Local Counter Fraud
Specialist.

   Stage Two

8.3 If the employee feels unable to raise the matter at the first level, for whatever reason, or
thinks that the line manager/Centre Chief has not taken appropriate action, the matter
should be raised either verbally or in writing to a: -

   • A Senior Manager
• The Human Resources Department
• An accredited Trade Union/professional organisation representative to take up the matter on his/her behalf.

**Stage Three**

8.4 If these channels have been followed and the employee still has concerns, for whatever reason, thinks that the above mentioned has not taken appropriate action or feels that the matter is so serious that it cannot be discussed with anyone detailed above, the matter should be raised either verbally or in writing to one of the following:

• Chief Executive
• Medical Director
• Director of Operations
• Finance Director
• Director of Quality & Safety/Chief Nurse
• Director of Governance & Risk Management
• Workforce Director
• Director of Communications
• Non-Executive Director, (07825 151812)

**Stage Four – External Disclosure to Prescribed Regulatory Bodies**

8.5.1 If it is felt that the matter is so serious that it cannot be discussed with any of the people mentioned in Steps One, Two and Three, or if the employee would like independent advice at any stage, they may contact a prescribed regulator such as:

• Department of Health
• Care Quality Commission
• The Audit Commission
• Health and Safety Executive
• Environment Agency
• NHS Counter Fraud
• NHS Prevent

See Appendix A for more details of the prescribed regulatory bodies and independent sources of advice.

9 **INDEPENDENT ADVICE**

9.1 Although it is hoped that this policy will give all employees the reassurance they need to raise their concerns internally (Stages One, Two and Three), the Trust recognises that there may be circumstances where the employee is unsure what action to take. Any individual wishing to seek independent advice at any stage may contact:

• Their Trade Union/Professional Organisation representative
• The NHS whistleblowing helpline (provided by the Royal Mencap Society) providing free, independent and confidential advice (08000 724725 (available weekdays 8am – 6pm) or email: enquiries@wbhelpline.org.uk).
• Health Service Ombudsman (telephone: 0345 015 4033), who are empowered to look into complaints raised by staff on behalf of patients, provided that they are satisfied that there is no one more appropriate, such as an immediate relative, to act on the patient’s behalf.

• Public Concern at Work (telephone: 020 7404 6609 or www.pcaw.co.uk) (who can give free confidential advice about how to raise a concern relating to serious malpractice at work.)

10 THE INVESTIGATION

10.1 All concerns raised by the whistleblower will be taken seriously.

10.2 Once the employee has raised their concerns, the appropriate level of management will investigate and assess the action that needs to be taken. The employee must not try to investigate the matter themselves. If the employee has any personal interest in the matter, they should immediately advise the investigating officer when they raise the concern.

N.B. All allegations of fraud or corruption will be dealt with in accordance with the related national guidance. The Local Counter Fraud Specialist will investigate any such allegations in accordance with the Fraud & Corruption policy.

10.3 In cases of suspected fraud or allegations of ill treatment of patients, suspension/exclusion or paid leave from work may have to be considered in accordance with the Trust’s Disciplinary policy. The protection of the patient is paramount in all cases.

10.4 The Line Manager, Senior Manager, Human Resources Department, Executive Director, Chief Executive or Non Executive Director (dependent on what level the concern is being investigated) will offer to keep the member of staff who has raised the concern informed about the purpose of the investigation and its outcome. However, the staff member must bear in mind that the Trust will not disclose the precise action taken where it would infringe a duty of confidence owed to the other employee by the Trust.

10.5 The investigating officer will keep the Chief Executive informed of all stages of the investigation. The Chief Executive will be responsible for the commission of any further internal or external investigations, should they be needed.

11 OUTCOME OF THE INVESTIGATION

11.1 If the result of the investigation is that there is a case to be answered by any individual, the Trust’s Disciplinary policy may be used. Where concerns are raised about the practice of clinical staff or fraud, action under this procedure may not be appropriate, and the Trust will have to act in accordance with English and European Law.

11.2 Where there is no case to answer, but the employee had a genuine concern and was not acting maliciously, the investigating officer will ensure that both the employee raising the concern and the individual(s) against whom the allegation was made suffer no reprisals, including any reference to the matter being retained on personal files.

11.3 Only where unfounded allegations are made maliciously, will it be considered appropriate to act against the employee who raised the concern. This will normally be under the Trust’s Disciplinary policy.
12 FOLLOWING THE INVESTIGATION

12.1 The investigating officer will brief the Chief Executive and any other appropriate management as to the outcome of the investigation. The investigating officer will then arrange a meeting with the whistleblower to give feedback on any action taken. This will not include details of any disciplinary action, which remain confidential to the individual concerned.

12.2 The relevant manager will be responsible for the implementation of any corrective action plan agreed.

13 IF THE STAFF MEMBER RAISING THE CONCERNS REMAINS DISSATISFIED

13.1 In most cases, the Trust’s response should address the concerns of the individual raising the matter. It is recognised, however, that the Trust may not respond in the way or to the extent the whistleblower wishes.

13.2 Where an individual is dissatisfied with the Trust’s response, the individual may raise the matter with a more senior member of management, who will review the situation and respond to the individual.

13.3 If the individual remains dissatisfied then he/she may consider raising the concern with a prescribed regulator (see section 2.7.2).

14 TIMESCALES

14.1 The investigating officer should attempt to complete the investigation as promptly as practicable and normally within a 4-6 week timescale. If it is likely that the investigation will take longer, this should be communicated to the individual raising the concern.

14.2 The investigating officer will inform the individual who has raised the concern of the outcome, following a brief from the relevant Senior Manager or Executive Director. This should normally be done within 2 calendar weeks of the conclusion of the investigation.

15 TRAINING NEEDS

15.1 Training requirements to fulfil this policy will be provided in accordance with the Trust’s Training Needs Analysis. Management and monitoring of training will be in accordance with the Trust’s Risk Management Training Policy. These can be accessed via the Learning Zone pages on the Trust’s intranet.

16 REVIEW PROCESS

16.1 All whistleblowing investigations and outcomes will be reported to the Trust Board in the private session.

16.2 It is recognised that as legislation changes the policy will need to be updated to reflect these requirements. Any revision will be made in consultation with recognised Trade Unions and professional staff organisations.

16.3 This policy will be reviewed within the normal cycle notwithstanding legislative changes, from the date of ratification by Trust Board.
17  EQUALITY IMPACT ASSESSMENT (EQIA)

17.1 This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

18  PROCESS FOR MONITORING COMPLIANCE

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<th>Group or Committee that will review the findings and monitor completion of any resulting action plan</th>
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<td>Annual report</td>
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<td>Deputy Head of HR</td>
<td>Annual report</td>
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19  REFERENCES

- Children Act 1989
- Public Interest Disclosure Act 1998
- Safeguarding Vulnerable Groups Act 2006
- Fraud Act 2006
- Bribery Act 2010
Appendix A

WHERE CAN I GET HELP AND ADVICE FROM?

Internal Contacts

Line Manager / Senior Manager / Centre Chief
Executive Director
Non-Executive Director (Whistleblowing Champion) 07825 151812

Duty Social Worker
01743 277699

Independent Organisations

NHS whistleblowing helpline (provided by the Royal Mencap Society)
08000 724725 (available weekdays 8am – 6pm)
enquiries@wbhelpline.org.uk

Health Service Ombudsman
0345 015 4033
www.ombudsman.org.uk

Public Concern at Work (PCaW)
020 7404 6609
helpline@pcaw.org.uk
www.pcaw.org.uk

Regulatory Bodies and Organisations

General Medical Council
Regulator for medical doctors in the UK
0161 923 6602
www.gmc-uk.org

Health Professions Council
Regulator for Allied Health Professionals
0207 582 0866
www.hpc-uk.org

Nursing and Midwifery Council (NMC)
Advice Centre, confidential service 0345 772 6100
020 7637 7181
advice@nmc-uk.org
www.nmc-uk.org

A full list of other regulators of healthcare professionals is available at:
www.nmc-uk.org/general-public/other-healthcare-regulators
Regulators of Health and Social Care Services

These organisations regulate healthcare systems and environments:

Care Quality Commission
03000 616 161
www.cqc.org.uk

Department of Health (England)
020 7210 4850
www.dh.gov.uk

Other Regulators

General Social Care Council
Tel: 0845 070 0630
Fax: 020 7397 5105
Web: www.gscc.org.uk

Health and Safety Executive
Tel: 0151 951 4000
Web: www.hse.gov.uk

Local Counter Fraud Specialist
Tel: 07760 174460
Email: gavin.ball@rsmtenon.com

National Fraud Line
Tel: 0800 2840 60
Please note that this is a free and confidential number and the line is open from 8am to 6pm Monday to Friday

NHS Prevent

Trade Unions

BAOT
British Association of Occupational Therapists
020 7357 6480
www.baot.co.uk

BDA
British Dental Association
020 7405 0090
www.bda.org.uk

British Dietetic Association
0121 200 8080
www.Bda.uk.com

BIOS
British and Irish Orthoptic Society
01353 665 541
www.orthoptics.org.uk
British Medical Association (BMA)
0300 123 1233
www.bma.org.uk

Chartered Society of Physiotherapy
020 7306 6666
www.csp.org.uk

The Association for Clinical Biochemistry
020 7403 8001
www.acb.org.uk

Hospital Consultants & Specialists Association
01256 771777
www.hcsa.com

Medical Defence Union
Freephone advisory helpline 0800 716 376
www.the-mdu.com

Royal College of Midwives (RCM)
020 7312 3535
www.rcm.org.uk

Royal College of Nursing (RCN)
0345 772 6100
www.rcn.org.uk

Society of Radiographers
020 7740 7200
www.sor.org.uk

UNISON
0845 355 0845
www.unison.org.uk

UNITE
01782 219800
www.unitethe_union.org
Appendix B

Stages for raising and escalating concerns: Whistleblowing

This flow chart should be read in conjunction with the whole policy.

Stage 1: Raise your concern via internal reporting processes, (DATIX) / Line Manager / Lead Clinician/Centre Chief

If you feel unable to raise a concern at any level within the Trust

Stage 2: Raise your concern internally with a designated person See Section 7

Stage 3: Escalate your concern internally to an Executive Director / NED Whistleblowing Champion

Stage 4: Escalate your concern to a healthcare regulatory organisation

If unable to do this for any reason

Concern not addressed adequately and /or immediate risk to others

You should seek advice*

Concern not addressed adequately and /or immediate risk to others

*Independent, confidential advice is available from your professional body, trade union, NHS Whistleblowing Helpline or PCaW. Students can also speak to their university tutor, lecturer or mentor.