

Whistleblowing Policy & Procedure (Raising Concerns at Work)

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This policy should be read in conjunction with other relevant documents, guidance and policies	Anti-Fraud, Bribery and Corruption Policy, Grievance Policy, Disciplinary Policy, Safeguarding Policies, Equality and Diversity in Employment Policy

The CCG is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

This document can only be considered valid when viewed via the CCG's intranet. If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the one online.

Approved documents are valid for use after their approval date and remain in force beyond any expiry of their review date until a new version is available.

Version Control Sheet

Version	Date	Reviewed By	Comment
Draft v0.1	May 16	GMSS People Services lead	Changes made to link current policy with new national policy which needs to be in place by April 2017.
Draft v0.1	May 16	MIAA AFS	Reviewing in line with Anti-Fraud Bribery & Corruption Policy
Draft v0.1	May 16	Chief Officer	Reviewed changes prior to discussion with Audit Committee
Draft v0.1	25/5/16	Audit Committee	Minor changes to reflect delegation from the Board to the Audit Committee to review and monitor whistleblowing and add Non-Executive Director responsible for whistleblowing.
Final v1.0	July 16	Executive	For approval on the updated Policy.
Final v1.0	March 17	Board Secretary	Updated to include reference to a Local Speak Up Guardian role.
Final v2.0	April 18	Board Secretary	Minor updates made to the current policy.
Final v3.0	April 19	Board Secretary	No changes required.
Final v4.0	April 20	Board Secretary	Minor changes made further to comments received from Anti-Fraud specialist.
Final v5.0	April 21	Board Secretary	Review undertaken and minor changes made to AFS and CCG CFO contact details.
Final v6.0	April 22	Board Secretary	Review undertaken – no major changes required. Removed reference to Executive Director (CFO) as point of contact to raise concerns.

Analysis of Effect completed:	By:	Date:
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1 Speak up – we will listen

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.

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 This policy

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.

Bolton CCG has adopted this National Policy and our local process has been integrated into the policy and provides more detail about how we will look into a concern.

The Clinical Commissioning Group, (the CCG) is committed to ensuring the highest possible standards of service and the highest possible ethical standards in delivering this service. It is the responsibility of all staff to ensure that if they become aware that the actions of other employees or officers of the CCG or anyone working for, with or connected to it might compromise this objective, they will be expected to raise the matter.

The Public Interest Disclosure Act 1998 (**Appendix 1**) encourages employers to establish procedures that protect staff who disclose information about the CCG and its activities. This policy and procedure has been developed to support and assist staff to bring genuine concerns to the attention of appropriate people within the CCG who can take the relevant action.

The CCG is committed to the principle of public accountability including ensuring its responsibilities under the Duty of Candour are adhered to. The 'Duty of Candour' is a contractual requirement on NHS providers to be open with patients and their families and provide them with information on any investigations and lessons learned when things go wrong with their healthcare.

The contractual Duty of Candour, which forms part of the Government's plans to modernise the NHS by making it more accountable and transparent, will be an enforceable duty on NHS providers.

The CCG encourages all individuals to raise any concerns that they may have about the conduct of others in the organisation, Independent Contractor, or organisation with which the CCG has a relationship/ contract.

This policy applies to all CCG employees, bank and agency staff, contractors, volunteers and ex-employees.

This policy will be applied equally to all staff covered by the policy and in accordance with the CCG Equality and Diversity in Employment Policy.

The CCG has a responsibility as an employer to ensure that staff are aware of their right to raise concerns about potential poor practices or wrong-doing within their organisation ~ this is often referred to as “Whistle-blowing”.

Staff have protection under the Public Interest Disclosure Act 1998.

The policy provides a process whereby staff can raise concerns about issues at work without fear or concern about retribution after making a disclosure (whistleblowing).The policy covers concerns about:

- Standards of care, or care of a patient or client, is being placed, or is likely to be placed at risk, by the actions of an individual, organisation, or the CCG.
- That there is, or has been, inappropriate behaviour by a professional, a clinician or any other member of staff.
- Unlawful or unethical conduct.
- Clinical governance is an essential part of quality health care and must form an integral part of the daily working lives of all NHS staff. Robust governance arrangements will keep patients safe and enable professionals to alert relevant authorities when any cause for concern is raised.
- A criminal offence has been, or is likely to be, committed.
- There is, or has been, a failure to comply with legal obligations (including negligence, breach of contract, breach of administrative law).
- The health and safety of any individual, or the public, has, is, or is likely to be endangered.
- There has been a breach of probity guidelines (fraud, bribery and/or corruption, financial malpractice, breach of Standing Financial Instructions); (**Appendix 2**).
- The environment is in danger.

- A miscarriage of justice has occurred, is occurring, or is likely to occur.
- There is a risk to the reputation of the CCG, or your own organisation.
- Information tending to show any of the above is, or is likely to be deliberately concealed.

3 What concerns can I raise?

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 Specialist, telephone: 07824 104209 / or via email: andrew.wade@miaa.nhs.uk / andrew.wade3@nhs.net or through the NHS CFA website "<https://cfa.nhs.uk/reportfraud>" and Hotline No 0800 028 4060.
- a bullying culture (across a team or organisation rather than individual instances of bullying).

For further examples, please see the [Health Education England video](#).

Remember that if you are a healthcare professional you may have a professional duty to report a concern. **If in doubt, please raise it.**

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 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 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 an organisation 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.

5 Confidentiality

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 Who can raise concerns?

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 Who should I raise my concern with?

In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager.¹ 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 does not resolve matters, or you do not feel able to raise it with them, you can contact one of the following people:

- our non-executive director with responsibility for whistleblowing; Tony Ward, Lay Member Governance, tony.ward5@nhs.net, tel: 01204-462028.
- our Freedom to Speak Up Guardian – Mike Robinson, Associate Director Integrated Governance and Policy, michael.robinson1@nhs.net. 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.
- our risk management team: Diane Sankey, Patient Safety & Governance Lead, dianesankey@nhs.net, tel: 01204-462023

¹ The difference between raising your concern formally and informally is explained in our local process.

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 you do not feel comfortable raising your concern internally, you can raise concerns with external bodies, listed on page 9.

8 How should I raise a concern?

Under this policy there is no requirement for employees alleging “malpractice” to prove their case is true, only that it is honestly raised. All referrals will be taken seriously and Managers will be supportive of staff recognising that raising a concern is often a difficult experience.

In all cases, members of staff have the right to discuss their concerns with the Chief Officer. However, staff are encouraged to use the internal procedures (informal and formal) as laid out within this policy, in the first instance.

Whilst pursuing the aim of openness, it is imperative that patient confidentiality is maintained and that confidence in the services provided by the CCG is not unreasonably undermined. Similarly, as members of staff have certain obligations and loyalties to the CCG as their employer; it is important that the employer/employee relationship is not compromised.

Employees may contact their staff side representative for confidential advice about how and when to raise concerns at work.

Process

Step one (Informal)

If you have a concern about a risk, malpractice or wrongdoing at work, we hope you will feel able to raise it first with your line manager. This may be done orally or in writing. If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made.

Your line manager should look into the allegations raised or where appropriate may refer the matter on e.g. where more specialist knowledge is required to explore the issues.

Step two (Formal)

If Step one has been followed and you still have concerns or if you feel the matter is so serious you cannot discuss it with your line manager then you can raise your concerns with the Chief Finance Officer. The Chief Finance Officer may appoint an investigating officer to look into the matters raised.

Alternatively, 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. If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made.

Investigation

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 incident²). 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.

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.

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

Step Three

9 Raising your concern with an outside body

An employee who, having exhausted all of the internal procedures, remains dissatisfied with the outcome of the investigation, has the right to pursue the matter in the public arena.

Under the Public Interest Disclosure Act (1998), an external disclosure may only be justified if, the staff member has a genuine and reasonable belief that the concern amounts to:

- A criminal offence.
- Failure to comply with a legal obligation.
- A miscarriage of justice.
- Danger to health, safety or the environment.
- The concealment or cover-up of information relating to any of the above.

Wider disclosures, to the media or MPs, would not be justifiable unless the member of staff could **also** show that:

- an exceptionally serious issue had been previously raised with the employer or prescribed regulator and had not been resolved; or

² If your concern suggests a Serious Incident has occurred, an investigation will be carried out in accordance with the [Serious Incident Framework](#).

- he/she reasonably believes that they will be subjected to a detriment if the concern is raised directly with the CCG or with a regulator; or
- he/she believes that the CCG will cover up the failure or destroy the evidence if a disclosure is made directly to the employer.

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
- 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
- Health Education England for education and training in the NHS
- NHS Counter Fraud Authority for concerns about fraud and corruption.
- NHS CFA website "<https://cfa.nhs.uk/reportfraud>" and Hotline No 0800 028 4060.

10 Responsibilities

Responsibilities of the CCG

- To monitor this procedure and the concerns/issues that are raised as a result.
- To provide a point of contact for staff who wish to raise concerns under the provision of this policy and who feel it is inappropriate to raise the matter through their Line Manager.

Responsibilities of Managers

- Consider staff concerns carefully and (where necessary) to undertake an investigation (see **Appendix 3** for further guidance).

- Understand the difficult position that the individual staff member may be in.
- Seek appropriate advice from the named leads listed on page 7.
- Take prompt action to resolve the concern or refer it on to the Chief Finance Officer.
- Keep the member of staff informed about the ongoing processes and/or proposed solution.
- Regularly review situations that have been reported to them.
- Ensure individuals who genuinely report concerns are not penalised or discriminated against in any way.

Responsibilities of Employees

- Ensuring that the best standards of care are achieved.
- Reporting their concerns to a member of CCG staff as outlined in this procedure (particularly if they consider that something is happening which might compromise the above mentioned standards of care).
- Raising concerns in the public interest with a true belief that poor standards of practice have occurred.

11 Advice and support

Advice & support is available from:

- Your trade union, professional organisation or statutory body
- The independent charity Public Concern at Work Tel. 020 7404 6609 or email helpline@pcaw.co.uk
- NHS Counter Fraud Authority – <https://cfa.nhs.uk/>
- Your local Anti-Fraud Specialist, telephone: 07824 104209 or via email andrew.wade@miaa.nhs.uk / andrew.wade3@nhs.net

12 What will we do?

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 A).

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.

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

Any potential issues / concerns relating to the safety and welfare of a child and/or adult at risk will be referred for advice and guidance to the CCG Safeguarding Lead for Children and/or Adults.

Where it is considered that a child and / or adult is at risk of abuse or neglect a referral to the Local Authority must be made in line with the agreed multi-agency safeguarding policies and procedures. A safeguarding enquiry or a safeguarding strategy discussion lead by the Local Authority will identify which information can be shared and the most appropriate way to communicate the outcomes of the investigation to the person raising the concern, the patient and or significant others.

14 Malicious Concerns

The CCG cannot condone abuse of this procedure and if following investigation a member of staff is found to have raised concerns maliciously, the matter will be dealt with under the CCG Disciplinary policy.

15 Anonymous Concerns

If you raise a concern without telling us who you are, it will be much more difficult for the concern to be investigated, and for us to protect your position and to provide relevant feedback. Accordingly, whilst we will consider what action may be justified by an anonymous report, we will not be able to handle such reports as per the process stated within this policy but the concern raised will be investigated.

16 How will we learn from your concern?

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.

17 Board oversight

The board has delegated oversight to the Audit Committee to receive high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. A whistleblowing log will be maintained and reviewed by the Audit Committee regularly. Similar high level information will be included in the Committee's annual report. The board supports staff raising concerns and wants you to feel free to speak up.

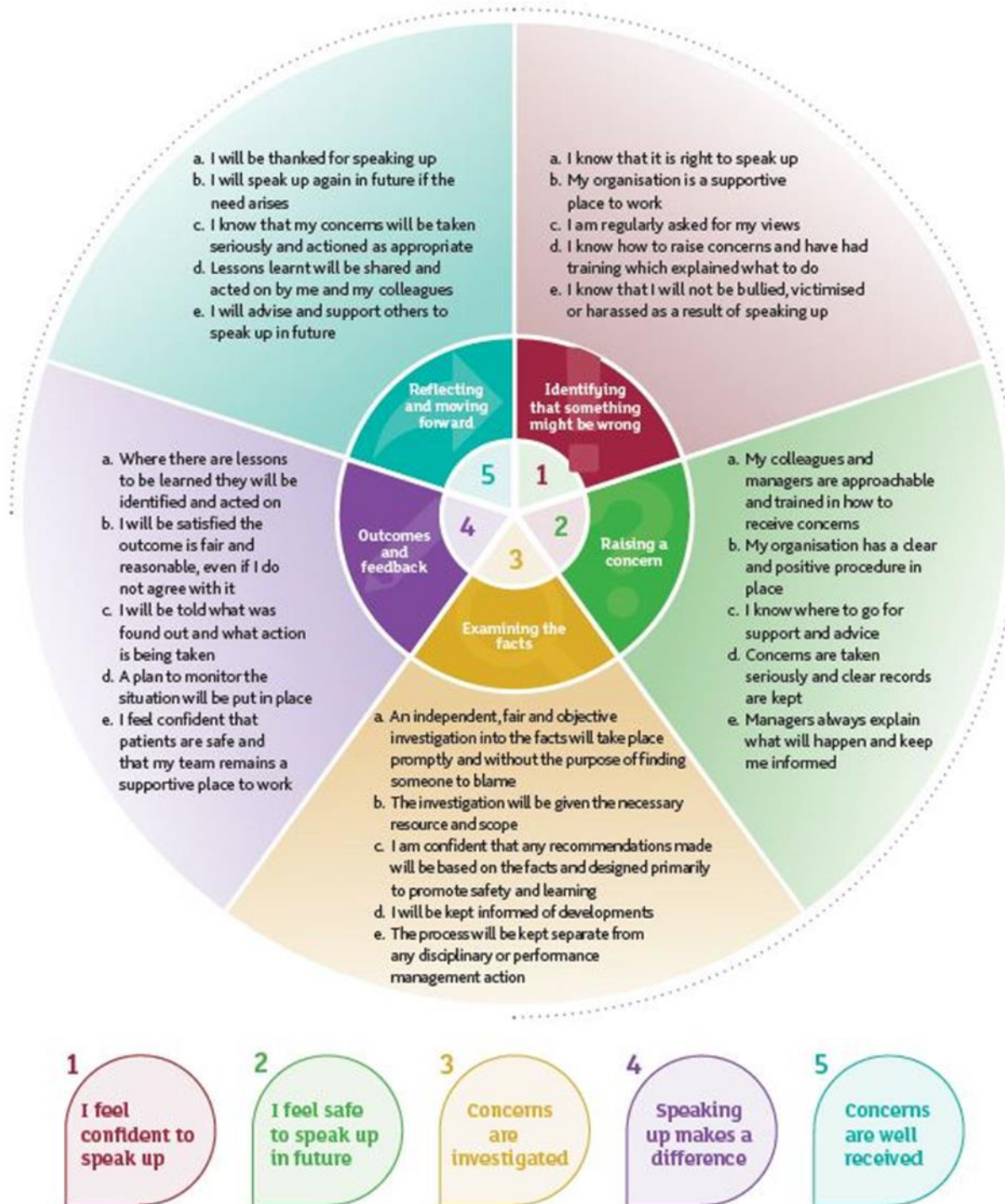
18 Review

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

19 Making a ‘protected 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 page 8, who you can make a protected disclosure to. To help you consider whether you might meet these criteria, please seek independent advice from the Whistleblowing Helpline on 08000 724725 for the NHS and social care, Public Concern at Work on 020 7404 6609 or a legal representative.

Annex A: A vision for raising concerns in the NHS



Source: Sir Robert Francis QC (2015) *Freedom to Speak Up: an independent report into creating an open and honest reporting culture in the NHS*.

APPENDIX 1

Summary of the main provisions of the Public Interest Disclosure Act 1998

This section gives more detail about the legal background to the policy. The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace. The Act protects “whistle blowers” from dismissal and victimisation and promotes the public interest. The Act applies to people at work raising genuine concerns about crime, civil offences, miscarriage of justice, danger to health and safety and the cover up of any of these.

There are a number of key principles under the PIDA:

- Alerting a third party: where a worker reasonably suspects malpractice (including a crime), he will be protected from victimisation where he raises the matter in good faith with a person who is legally responsible for the matter. Where someone in the NHS “blows the whistle” in good faith direct to the Department of Health the disclosure is protected in the same way as an internal one.
- Involving a regulator: where a worker reasonably suspects malpractice a disclosure to a prescribed regulator (such as the Health and Safety Executive) will be protected if it is made in good faith and he reasonably believes the information and any allegation in it are substantially true.
- A wider, public disclosure: where a worker reasonably suspects a cover-up of malpractice (such as a crime) is likely, a wider public disclosure will be protected if he reasonably believes the information and any allegation in it are substantially true and the disclosure is reasonable and in good faith.

APPENDIX 2

Fraud Act 2006

A person is guilty of fraud if he is in breach of any of the sections listed below (*which provide for different ways of committing the offence*):

- **section 2** (fraud by false representation)
- **section 3** (fraud by failing to disclose information)
- **section 4** (fraud by abuse of position)

2.1 A person who is guilty of fraud is liable: on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both); on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

2.2 Section 2, Fraud Act 2006: Fraud by false representation - A person is in breach of this section if they:

- (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss
- A representation is false if:
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
 - **Representation** means any representation as to fact or law, including a representation as to the state of mind of:
 - (a) the person making the representation, or
 - (b) any other person.
 - A representation may be express or implied.
 - For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

2.3 Section 3, Fraud Act 2006: Fraud by failing to disclose information - A person is in breach of this section if they:

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

2.4 Section 4, Fraud Act 2006: Fraud by abuse of position

A person is in breach of this section if he/she:

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

APPENDIX 3

Bribery Act 2010

Bribery and corruption prosecutions can be brought using the Bribery Act 2010 and defines offences as: **an inducement or reward offered, promised or provided to someone to perform a relevant function or activity improperly in order to gain a personal, commercial, regulatory and/or contractual advantage, on behalf of oneself or another.** Therefore making it a criminal offence to:

- a) **Give promise or offer a bribe (section.1), and/or**
- b) **Request, agree to receive or accept a bribe (section.2).**

Corruption is generally considered to be an “umbrella” term covering various activities as bribery, corrupt preferential treatments, kickbacks, cronyism, theft or embezzlement.

Examples of bribery and corruption in an NHS context could be; a contractor attempting to influence a procurement decision-maker by giving them an extra benefit or gift as part of a tender exercise; or, a medical or pharmaceutical company providing holidays or other excessive hospitality to a clinician in order to influence them to persuade their CCG to purchase that company’s particular clinical supplies and/or services.

A bribe does not have to be in cash; it may involve the awarding of a contract, the provision of gifts, hospitality, sponsorship, the promise of work or some other benefit or favour. The persons making and receiving the bribe may be acting on behalf of others and under the Bribery Act 2010, **all** parties involved may be prosecuted. The Bribery Act 2010 includes an offence of **Bribing a Foreign Public Official (section.6)**, meaning that anyone involved in bribery activities overseas may be liable to prosecution in the UK if the bribe is in respect of any UK activity, contract or organisation.

The Bribery Act 2010 introduces a new **Corporate Offence of Failing to Prevent Bribery (section.7)**. which means an NHS body may be held liable when someone “associated” with it bribes another in order to get, keep or retain business for the organisation.

In addition, the Bribery Act 2010 also includes an offence of **A Senior officer of the Organisation would also be Liable for Prosecution if they Consented to or Connived in a Bribery Offence carried out by Another (section.14)** meaning that they may be prosecuted for a parallel offence to that brought against the primary perpetrator and the organisation could also be subject to an unlimited fine.

APPENDIX 4

Guidelines for Initial Discussion

(For use by CCG Managers)

This sheet is a suggested structure to support CCG Managers in gaining the relevant and appropriate information to enable them to make a decision about how to proceed with the concern.

1. Thank the staff member for telling you about their concern, even if they appear to be mistaken.
2. Respect and heed legitimate staff concerns about their own position / career.
3. Manage expectations and respect promises of confidentiality.
4. Remember there are different perspectives to every story.
5. Determine whether there are grounds for concern and investigate if necessary in line with the timescales outlined in the policy.
6. Record the details of concern
 - What has happened?
 - When did it occur?
 - Where did it occur?
 - Who was involved?
 - How long has this been happening?
7. Are there any other witnesses?
8. Is there any supporting information?
9. How did the member of staff become aware of incident/occurrence?
10. Has the matter been raised with anyone else, if so whom?
11. Name of persons to whom disclosure made.
12. Any actions agreed and anticipated timescales.

Managers are encouraged to take full notes of their discussion with the member of staff. However the notes should not make reference to the individual reporting the concern, in order to protect and maintain their confidentiality.