

Speak Out Safely (Raising Concerns About Patient Care) and Whistle Blowing Policy

THE TRUST'S POLICY STATEMENT

The Countess of Chester Hospital NHS Foundation Trust is committed to achieving the highest possible standards of patient care and the highest possible ethical standards in public life in all of its practices. To achieve these ends, the Trust encourages freedom of speech. It also encourages staff to use internal mechanisms for reporting any malpractices or illegal acts or omissions by its staff or former staff. Above all, the Trust encourages a culture whereby staff and all levels of management fully understand that it is safe and accepted to raise such matters internally. Staff will be supported in these circumstances at a high level within the Trust and a named point of contact who can provide support and advice will be given to the individual concerned.

This Policy has a dual aim in supporting staff in fostering an open culture to raise concerns in the workplace and also to provide clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrong doing without suffering any detriment.

The Policy is written to comply with the Public Interest Disclosure Act 1998 and the changes to this introduced following the Enterprise and Regulatory Reform Act 2013 (ERRA). These set out the protection for workers against detriment or dismissal who report malpractice by their employers or other third parties more commonly known as 'Whistleblowing'.

PURPOSE

There is an expectation that anybody should be able to raise concerns at the earliest opportunity by the Trust creating an atmosphere where all staff can be open, honest and truthful in all their dealings with patients and with the public.

This Policy also supports staff by ensuring their concerns are fully investigated and that there is someone independent, outside of their team, to speak to. For the purposes of this Policy, the term 'whistleblowing' refers to the disclosure by workers of malpractice as well as illegal acts, miscarriages of justice, dangers to health and safety or deliberate concealing of information on any of the above.

The Countess of Chester NHS Foundation Trust is committed to openness, transparency and candour so that staff feel able to raise concerns and / or debate issues of concern about health care matters in a responsible way without fear of victimisation.

Statutory protection against detriment or dismissal for workers who 'blow the whistle' on wrong doing at work is provided by the **Public Interest Disclosure Act of 1998, reformed by the ERRA 2013**.

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SPEAK OUT SAFELY CAMPAIGN

In addition the Trust supports the Speak Out Safely campaign from the Nursing Times whose aim is to make it safe for staff to raise concerns about patient care and safety. This will assist in creating a culture in which staff will be supported if they speak up when they see poor practice or poor standards of care. This is a way of ensuring the Trust is providing safe, consistently high quality care.

SCOPE OF POLICY

This Policy (including the Public Interest Disclosure Act) applies to all workers of the Trust including employees on temporary or fixed-term contracts, 'bank' staff and those working on an "as and when required basis" as well as third party contractors, directors, agency staff, volunteers, freelance workers, apprentices, students, dentists and doctors under statutory schemes and engaged under training contracts.

[Please refer to the Flowchart at the end of this Policy.](#)

RAISING CONCERNS

It is the responsibility of all members of staff, either medical, clinical or non clinical, to ensure that high standards of care, treatment and services are provided at all times for patients. From time to time, staff may have concerns about the care or treatment given to any patient(s) and may wish to discuss these with their managers. This section of the policy gives advice to staff who have concerns about patient care, or concerns about processes/service delivery that affect patient care, on how to raise those concerns in cases where whistleblowing may not be appropriate.

By implication this Policy is concerned with the possibility that a member or members of staff are not delivering the standard of patient care expected of them. Making a complaint about the way in which a patient or patient group has been treated may therefore place an individual member of staff in the difficult position of choosing between loyalty to a colleague and the patient's best interests. However, the primary duty of every member of staff is to patients.

All concerns raised by staff about patient care will be dealt with seriously, promptly, and be subject to a thorough and impartial investigation where necessary. Managers have a particular responsibility to protect patients, and to handle concerns about their care in a way that will encourage the voicing of genuine misgivings, while at the same time protecting staff against unfounded allegations. No recriminations will follow reports which are made in good faith about low standards of care or possible abuses. All staff must comply with the Trust Values and put patients at the heart of everything they do.

If staff are uncertain about whether or not to express a concern, it is normally better for them to voice this rather than to remain silent. Often discussing an issue, normally with their immediate manager, will provide an opportunity to view the matter from a different perspective. From there, it can go forward and be dealt with if necessary. **Delay in**

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expressing concern could lead to recurrence, and/or make investigations more difficult.

If the concern raised involves a patient safety incident, the "Being Open" guidelines in which the Trust makes the following commitments to its patients, will also apply:-

- Apologise for the harm caused
- Explain, openly and honestly, what has gone wrong
- Describe what we are doing in response to the mistake
- Offer support and counselling services that might be able to help
- Provide the name of a person to speak to
- Give updates on the results of any investigation.

PROCESS FOR RAISING CONCERNS

WHEN TO EXPRESS A CONCERN

There is a responsibility on all staff to provide a high standard of care, and to report all instances where this has not been met, or is a breach of Codes of Professional Practice.

PROCESS FOR ENSURING STAFF ARE NOT TREATED DIFFERENTLY AS A RESULT OF RAISING A CONCERN

The Trust will ensure that any concerns raised are treated seriously and dealt with in a sympathetic manner. Disciplinary action will not be enacted unless it is found that the complaint is malicious in nature.

PROCESS TO BE FOLLOWED TO EXPRESS A CONCERN

When staff wish to express their concern about patient care they should normally do so to their line manager.

The Manager with whom the concern has been raised will need to decide whether to investigate the matter personally or to request another manager to carry out the investigation and to report back on the findings. The latter course of action will apply particularly where there is the possibility of disciplinary action and the Manager who first received the expression of concern is empowered to impose disciplinary sanctions.

If, for any reason, staff feel unable to follow this approach, they should contact their Staff Representative, Head of Service, Professional Manager/Lead or an Executive Director of the Trust.

Staff must also be aware that they may have to give evidence at some future stage if there is a formal enquiry, disciplinary hearing and/or police enquiry.

Before the investigation proceeds, the Manager with whom the concern was raised must decide whether it is necessary at this stage to exclude from work any individual(s) involved in the incident or event(s) on which concerns have been raised. The Trust's Disciplinary

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Policy sets out full details of the exclusion process. This will be discussed with a member of the Human Resources Business Partner Team.

See flowchart as Appendices.

NOTIFYING THE INDIVIDUAL WHO RAISED THE CONCERN

The manager dealing with the complaint will, at the conclusion of the investigation, meet the complainant and inform him/her of the outcome. This will be confirmed in writing to the complainant.

If appropriate, the patient(s) involved will also be informed of the outcome at the conclusion of the investigation. Should the investigation be unduly delayed, the patient will be kept informed of its progress.

If the member of staff who has made the complaint is dissatisfied with the investigation and the action which has been taken, he/she has the right to use the Trust's Grievance Procedure or to invoke the "Whistleblowing" section of the Policy.

THE PUBLIC INTEREST DISCLOSURE ACT (WHISTLEBLOWING)

The Act gives employees protection under the law by providing that employers should not victimise any employee who raises a concern internally or to a prescribed regulator (i.e. by making a disclosure). (see below).

The protection arises from day one of employment so there is no need to have the usual one-year qualifying period of service.

When does protection arise?

To qualify as a protected disclosure a worker would be making a qualified disclosure. The requirements for a qualified disclosure are:

1. Disclosure of information;
2. Nature of the worker's belief;
3. Subject matter of the disclosure; and
4. Method of disclosure

The disclosure must be a disclosure of information, not a matter of opinion or an allegation or statement of position. It must convey information in the form of facts. Equally, gathering of evidence or threatening to make a disclosure are not sufficient. It can be in writing or made verbally and can be any form of recorded information.

The **Worker's reasonable belief** is defined in that there is no requirement to prove the facts or allegations being disclosed are true, or that they are capable in law of amounting to one of the categories of wrongdoing. What is required is that the worker subjectively believes and that the belief is objectively reasonable.

It can be mistakenly believed, but must be more than unsubstantiated rumours, unfounded suspicions or uncorroborated allegations. Each case of reasonableness will depend on the circumstances.

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A **subject matter** of a disclosure must relate to one of these six “relevant failures”:-

1. Criminal Offences.
2. Breach of any legal obligations.
3. Miscarriages of justice.
4. Danger to health and safety of any individual.
5. Damage to the environment.
6. A deliberate concealing of information about any of the above.

The following are examples of behaviours which may constitute malpractice where a concern may be raised:-

- **Systemic failings, for example using broken equipment, that could endanger patients or colleagues**
- **Acts of violence/aggressive behaviour or discrimination towards patients or staff**
- **Inappropriate relationships between colleagues and patients**
- **Substance or alcohol misuse that could potentially affect or be affecting the ability to work**
- **The concealment of any of the above.**

This list is not exhaustive and there may be other matters that may fall into the malpractice category.

The **method of disclosure** must be made in line with statutory requirements. The statute is designed to ensure disclosures are made to the employer in the first instance. There are other circumstances in which these can be made and advice can be sought from the Human Resources Department, Staff Representatives or through one of the ‘Other Contacts’ outlined on Page 11.

OTHER TRUST POLICIES AND PROCEDURES

The Trust has a range of policies and procedures which deal with standards of behaviour at work notably, **Discipline, Performance, Grievances, Harassment and Bullying, Prevent Policy and Tackling Theft and Fraud in the NHS**. They provide a route by which staff can identify their concerns in the knowledge that there is a responsibility imposed on management to investigate such concerns. **In normal circumstances therefore, staff will be encouraged to use the provisions of those Policies and Procedures.**

There may be times, however, when the matter is extremely sensitive and needs to be handled in a different way and when it is not felt appropriate to use normal Management reporting channels. In those instances, the provisions of the **Whistleblowing Policy** may be more appropriate. Examples may be:-

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- Suspicion or evidence of malpractice or ill treatment of a patient by a senior member of staff or repeated ill treatment of a patient, despite a complaint being made.
- Suspected fraud.
- Suspicion of sexual abuse/assault /harassment towards staff/patients including contact, verbal or other forms.
- Breach of the Trust's standing financial instructions/standing orders.
- Showing undue favour over a contractual matter or to a job applicant.
- Information on any of the above has been, is being, or is likely to be concealed.

This list is not exhaustive and should be read in conjunction with the "subject matter" listed earlier in this Policy

DESIGNATED OFFICERS

The Trust has nominated the following as 'designated officers', any of whom can be used as the initial point of contact for disclosures made under this Policy:-

TITLE	TELEPHONE
Ian Harvey, Medical Director	(36) I&S
Mark Brandreth, Director of Planning, Partnership and Development	(36) I&S
Alison Kelly, Director of Nursing & Quality	(36) I&S
Debbie O'Neill, Chief Finance Officer	(36) I&S
Sue Hodgkinson, Director of Human Resources/OD	(36) I&S
Andrew Higgins, Chair of Quality, Safety and Patient Experience Committee - Senior Independent Non Executive Director	(36) I&S
Hayley Cooper, Staffside Chair and RCN representative	hayley.cooper2@ I&S

Duties, Roles and Responsibilities of the Designated Officer

(Excluding disclosures of **Alleged Fraud or Corruption** – see below)

On being informed of the issue of concern, the designated officer will arrange an initial interview with the person making the disclosure to establish details. This interview can, if requested, be held at a venue of the person's choice.

The person making the disclosure will be re-assured about their right to protection from possible reprisals or victimisation. An explanation of timescales will be provided so that the person making the disclosure has clear expectations of possible actions and this may include agreement for a review or update meeting, if appropriate. They also have the right to representation (see page 10 of this Policy)