

| Meeting: Governing Body | | | |
|--------------------------------|---|---------------------|---------|
| Meeting Date | 27 September 2017 | Action | Approve |
| Item No. | 9e | Confidential | No |
| Title | Whistleblowing Policy | | |
| Presented By | Mrs Lisa Featherstone, Deputy Director of Business Delivery | | |
| Author | Mrs Lisa Featherstone, Deputy Director of Business Delivery | | |
| Clinical Lead | - | | |

| Executive Summary |
|---|
| <p>The Clinical Commissioning Group (CCG) needs to have in place a policy for enabling the raising of concerns, which may include whistleblowing.</p> <p>The Whistleblowing Policy aims to promote a culture in which individuals feel safe and confident to raise issues in the knowledge that the CCG is equipped to respond to these concerns in a consistent, fair and professional manner and that speaking up makes a difference. It reflects the requirements under The Public Interest Disclosure Act 1998.</p> <p>The CCG's Whistleblowing Policy has been updated to take into account guidance issued from the Department for Business, Innovation and Skills and 'Freedom to Speak Up: Raising Concerns Policy for the NHS' published after the Francis Review.</p> <p>The Policy has been discussed through the Audit Committee, with colleagues from Internal Audit, Local Anti-Fraud and External Audit.</p> |
| Recommendations |
| <p>It is recommended that the Governing Body:</p> <ul style="list-style-type: none"> • Approve the Whistleblowing Policy. |

| Links to CCG Strategic Objectives | |
|---|--------------------------|
| To empower patients so that they want to, and do, take responsibility for their own healthcare. This includes prevention, self-care and navigation of the system. | <input type="checkbox"/> |
| To deliver system wide transformation in priority areas through innovation | <input type="checkbox"/> |
| To develop Primary Care to become excellent and high performing commissioners | <input type="checkbox"/> |
| To work with the Local Authority to establish a single commissioning organisation | <input type="checkbox"/> |
| To maintain and further develop robust and effective working relationships with all stakeholders and partners to drive integrated commissioning. | <input type="checkbox"/> |
| To deliver long term financial sustainability in partnership with all stakeholders through innovative investment which will benefit the whole Bury economy. | <input type="checkbox"/> |

| | |
|--|-------------------------------------|
| To develop the Locality Care Organisation to a level of maturity such that it can consistently deliver high quality services in line with Commissioner's intentions. | <input type="checkbox"/> |
| Supports NHS Bury CCG Governance arrangements | <input checked="" type="checkbox"/> |
| Does this report seek to address any of the risks included on the Governing Body Assurance Framework? If yes, state which risk below: | No |
| GBAF – n/a | |

| Implications | | | | | | |
|---|-----|-------------------------------------|----|-------------------------------------|-----|-------------------------------------|
| Are there any quality, safeguarding or patient experience implications? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Are there any conflicts of interest arising from the proposal or decision being requested? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Are there any financial Implications? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Has an Equality, Privacy or Quality Impact Assessment been completed? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Is an Equality, Privacy or Quality Impact Assessment required? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input checked="" type="checkbox"/> |
| Are there any associated risks? | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> | N/A | <input type="checkbox"/> |
| Are the risks on the CCG's risk register? | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> | N/A | <input type="checkbox"/> |
| Failure to have up to date Policy in place could impact on the reputation of the CCG through legal challenge and poor practice. | | | | | | |

| Governance and Reporting | | |
|--------------------------|------------|---|
| Meeting | Date | Outcome |
| Senior Management Team | 21/08/2017 | Supported the policy for submission to Audit Committee |
| Audit Committee | 01/09/2017 | Reviewed and discussed the Policy and recommended it for ratification by the Governing Body |

Whistleblowing Policy

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| Version: | 0.3 |
| Ratified by: | Audit Committee |
| Date ratified: | |
| Name of originator /author (s): | |
| Responsible Committee / individual: | Audit Committee |
| Date issued: | [DD/MM/YY] |
| Review date: | [DD/MM/YY] |
| Target audience: | NHS Bury Clinical Commissioning Group Staff and Colleagues |
| Impact Assessed: | [Yes/No] |

Further information regarding this document

| | |
|---|--|
| Document name | Whistleblowing Policy CCG.GOV.006 |
| Category of Document in The Policy Schedule | Governance |
| Author(s) Contact(s) for further information about this document | |
| This document should be read in conjunction with | Bury CCG Grievance Policy Bury CCG Disciplinary Policy Bury CCG Safeguarding and Vulnerable Adults Policy Bury CCG Bullying and Harassment Policy and Procedure Bury CCG Anti-Fraud, Bribery and Corruption Policy |
| This document has been developed in consultation with | Chief Finance Officer MIAA Counter Fraud Services |
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| Copies of this document are available from | The Corporate Office in paper form or via the website at www.buryccg.nhs.uk/ |

Version Control

| Version History: | | |
|-------------------------|---|----------------------------|
| Version Number | Reviewing Committee / Officer | Date |
| 0.1 | Danny Lansley – Following NHS England and BIS Guidance | 13/03/2017 |
| 0.2 | Danny Lansley – Incorporating feedback from MIAA Counter Fraud Specialist | 03/05/2017 |
| 0.3 | Incorporating feedback from UNITE | 20/06/2017 |
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Whistleblowing Policy

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Terminology

Acronym Full Name

| | |
|------|--|
| ACAS | Advisory, Conciliation and Arbitration Service |
| PIDA | Public Interest and Disclosure Act 1998 |

1. Introduction

- 1.1. All of us at one time or another may have concerns about what is happening at work. Usually these are easily resolved. However, when the concern feels serious because it is about a possible danger, professional misconduct or financial malpractice that might affect patients, colleagues or the CCG itself, it can be difficult to know what to do.
- 1.2. Individuals may be worried about raising such an issue, thinking it is best kept to themselves, feeling that it is not their business or that it is only a suspicion. They may feel that raising the matter would be disloyal to their colleagues, managers or the CCG. Individuals may have said something but found they have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do.
- 1.3. The terms “freedom to speak up” and “raising a concern” may also be used to describe whistleblowing but they are all used to describe situations when an individual provides information or speaks up about wrongdoing, risk or malpractice. This could include a risk to patient safety, fraud or breaches in patient confidentiality (this list is not exhaustive, but for illustrative purposes).
- 1.4. This Whistleblowing Policy aims to promote a culture in which individuals feel safe and confident to raise issues in the knowledge that the CCG is equipped to respond to these concerns in a consistent, fair and professional manner and that speaking up makes a difference. It reflects the requirements under The Public Interest Disclosure Act 1998.
- 1.5. The policy takes into account guidance issued from the Department for Business, Innovation and Skills and ‘Freedom to Speak Up: Raising Concerns Policy for the NHS’ published after the Francis Review.
- 1.6. This policy does not supersede nor replace any existing policy e.g. Grievance Policy, and is designed to ensure that concerns relating to the wider public interest can be raised.

2. Purpose

- 2.1. Patient and Service User safety is of paramount concern to all of who work in the NHS regardless of the provider/commissioner divide. The purpose of this policy is to enable all staff working with or on behalf of Bury CCG to know what action they can take if they have concerns and to be assured that the CCG operates an open and transparent culture where concerns can be raised safely.
- 2.2. The policy aims to reassure individuals that it safe and acceptable to speak up and to enable individuals to appropriately raise any concerns at an early stage, with a clear commitment that anyone who is found to intimidate someone who raises a concern or makes false allegations maliciously will be sanctioned appropriately after investigation.

3. Scope

- 3.1. The policy applies to all current and former NHS staff (permanent, agency or temporary) along with independent providers of NHS services.
- 3.2. Volunteers are also covered under this policy although it should be noted that there is a lack of protection for volunteers under the Public Interest Disclosure Act 1998.

4. Bury CCG's Commitment

- 4.1. The Governing Body and Executive Management Team will ensure that:

- **Safety**

- 4.2. If individuals raise a genuine concern under this policy, they will not be at risk from losing their employment or suffer any detriment. Provided individuals are acting in good faith, it will not matter if they are mistaken in their assertions. Individuals will not be asked to produce evidence. The policy encourages those who fall within its scope to raise concerns with their manager or others where appropriate in the first instance. The policy also provides protection to those who may be party to the concern when their actions are not spurious or malicious in intent.

- **Confidentiality**

- 4.3. With these assurances in place, the organisation hopes individuals will raise concerns openly. When done in this manner it makes it easier for the CCG to assess the issue, work out how to investigate the matter and obtain more information. However, it is recognised there may be circumstances when they would prefer to speak to someone in confidence first or remain totally anonymous. If this is the case, it should be raised at the outset but individuals must recognise that anonymous concerns can only be assessed with the information available and feedback on actions could be limited but this should not discourage concerns from being raised in this way.
- 4.4. If requested, the organisation will not disclose identity without consent unless required to do so in law. Individuals should understand there may be times where resolution necessitates revealing identity e.g. when personal evidence is essential. In such cases, discussion will take place on whether and how the matter can best proceed.
- 4.5. Individuals who raise a concern confidentiality are not afforded protection from disciplinary action should a concern be made maliciously.

5. Responsibilities

- **Individuals**

- 5.1. The overriding responsibility of those employed by the NHS in regard to raising concerns is enshrined in the Constitution (Section 4b) which states that it is the responsibility of all those employed by the NHS to raise any genuine concern which may affect patients, the public, other staff or the organisation itself at the earliest reasonable opportunity.

- **Line Managers**

5.2. Being prepared to deal with an individual wanting to raise concerns, this means being familiar with this policy and any related policies, listening carefully and respecting concerns, responding positively and reassuring, respecting confidentiality if requested, offering practical support where possible, assessing the facts and deciding the way forward, maintaining good records and ensuring there is a positive outcome wherever possible.

- **The CCG**

5.3. To provide regular publicity about the processes for raising a concern and communicating these as widely as possible.

5.4. To investigate any concerns raised under the Whistleblowing Policy in a fair, consistent and confidential manner, in liaison with any other relevant body who may need to be involved.

5.5. To provide support to the individual raising the concern including access to mentoring, advice and counselling if required.

5.6. Regularly reviewing this policy against best practice guidelines.

5.7. Setting up a system to track, log and analyse all concerns raised and dealt with including lessons learned from concerned, actions taken as a result and ensuring implementation across the locality. This system will also include the publicising of positive outcomes.

- **Whistleblowing/Freedom to Speak Up Guardian**

5.8. The Chief Finance Officer has been nominated as Whistleblowing Champion. This role involves ensuring that the CCG embraces an open culture towards whistleblowing, that the procedures included are adhered to, acting as an independent arbiter for the formal escalation process and checking on the welfare of the person raising a concern at regular intervals.

6. What Concerns can I Raise?

6.1. Individuals can raise a concern about anything you think is harming the services we deliver or commission. A few examples (but not an exhaustive list) of this might include:

- Concerns about unsafe patient care
- Unsafe working conditions
- Inadequate induction or training of staff
- A bullying culture
- A criminal offence has, or is likely to be committed
- There has been some breach of probity guidelines (fraud ,bribery, corruption, financial malpractice, breach of Standing Financial Instructions)

6.2. Further examples can be found at <http://www.youtube.com/watch?v=zjau1Ey0di8>

- 6.3. When raising a concern individuals need to be minded that they still owe a duty of confidentiality to patients whom may be in their care especially relating to their health records and so this will need to be taken into account when raising a concern.

7. How to Raise a Concern

- 7.1. The general rule is 'If in doubt, raise it' – especially if others share your concern. Remember that firm evidence is not required to raise a concern. However, the information or circumstances giving rise to the concern should be clearly and fully expressed with as much information provided as possible. Concerns may be raised by phone, email or in writing.
- 7.2. If you raise a genuine concern individuals will not be at risk of losing their job or suffering any form of reprisal as a result. We will not tolerate the harassment or victimisation of anyone raising a concern. Those responsible for victimising a whistleblower could potentially be liable along with the CCG if it is found that there measures to prevent victimisation were not put in place.
- 7.3. Individuals may take independent advice on raising a concern at any stage from a trade union representative or other advisory services, these are listed below.

- **Informal Route**

- 7.4. Any concerns about a risk, malpractice or wrongdoing at work can be raised with the individual's line manager. If the individual feels unable to raise a concern with their line manager they are encouraged to speak to another senior member of staff who will not be conflicted in investigating the matter.
- 7.5. The member of staff who receives the concern will acknowledge receipt of the concern raised within two working days and hold a meeting (this may need to be virtual if the individual wishes to remain anonymous) to gather all the information needed to understand the situation, seeking advice from other professionals or subject matter experts where necessary.
- 7.6. In some cases a conclusion may be reached through an initial conversation. However this will be followed up with a written response in 10 working days.
- 7.7. Alternatively, the investigator may decide that the concern would be better looked at under another process with an explanation given as to why or that it requires a formal investigation and will inform the Chief Finance Officer who will assess if escalation if required and co-ordinate the process.

- **Formal Investigation**

- 7.8. The formal investigation will follow a similar path to the informal route with the difference that all evidence gathered will be recorded. The investigation will be objective to focus on the specific concerns raised. The process followed is described at **Appendix 1**.
- 7.9. An interim response to the investigation will be provided within 28 days of the initial meeting. Depending on the course of action taken after the interim report the full

report will be provided to the individual as soon as possible. It will include any remedial action need to prevent the scenario occurring again. The report will also be considered by the Governing Body and actions will be monitored by Senior Management Team or Audit Committee.

- **Right of Appeal**

7.10. Should the individual raising the concern remain dissatisfied with the outcome they have the right to raise the issue with the Chair. If the concern involves the Chair, the matter will be dealt with by the Chief Officer.

7.11. They will review the evidence and the Whistleblowing Champion or Chair/Chief Officer (depending on circumstances) will meet with the individual, a formal written response regarding the outcome of the investigation will be received within 28 days.

8. Raising Specific Concerns

- **Department of Health**

8.1. There is provision to report concerns to the Department of Health via their Customer Service Centre on 0207 210 4850 or online via <http://www.dh.gov.uk/contact-dh/>

- **Fraud, Bribery or Corruption**

8.2. Any concerns should be reported directly to the CCG's Local Counter Fraud Services, which is hosted by Mersey Internal Audit Agency (part of the NHS) on 0151 285 4500. Examples of fraud can be found at **Appendix 3**

8.3. We also have dedicated counter fraud specialist, Jacqui Procter, who can be contacted at: jacqui.procter@miaa.nhs.uk

8.4. NHS Counter Fraud Authority (NHSCFA) who are responsible for fraud policy in the NHS, also have a Counter Fraud Line 0800 028 40 60 and the ability to report online at www.reportsnhsfraud.nhs.uk

- **Safeguarding**

8.5. Any safeguarding concerns should be reported immediately to the Head of Safeguarding. The CCG will implement our internal safeguarding policies and will notify the originator of the concern via the processes outlined in the appropriate policy.

- **Independent Advice**

8.6. HR – colleagues can contact Hr Business Partners either directly or through the HR helpdesk

8.7. Trade Unions – colleagues can contact their Union Representative

8.8. Public Concern at Work – Independent Whistleblowing Advice
0207 404 6609, helpline@pcaw.co.uk or www.pcaw.co.uk

8.9. Whistleblowing Helpline – Advice for those working in the health and social care sectors 08000 724 725, www.wbhelpline.org.uk

8.10. Advisory, Conciliation and Arbitration Service (ACAS)
<http://www.acas.org.uk/index.aspx?articleid=1919>

9. Protected Disclosure – Public Interest Disclosure Act 1998 (PIDA)

- 9.1. Whistleblowing law is located in the Public Interest Disclosure Act 1998, which was amended by the Enterprise and Regulatory Reform Act 2013. Individuals may want to pursue this option if the internal process has been exhausted and feel that nothing has been done. Not all disclosures are protected though. Protection applies only to protected disclosures. A protected disclosure made through this legislation must be:
- In the public interest;
 - With a reasonable belief held by the individual that the events which are of concern are happening (or will happen): and,
 - That the whistleblower should believe the information is substantially true.
- 9.2. A protected disclosure is a qualifying disclosure which is made to an appropriate recipient. This can include:
- The CCG (the Chief Finance Officer has been designated as the appropriate person for the purposes of the Act).
 - A legal adviser
 - A regulatory body (referred to as a prescribed person – see below)
 - A third party such as a member of the media
- 9.3. A protected disclosure must be made to the Chief Finance Officer if raised internally and should not be for personal gain.
- 9.4. The individual has to have 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 covering up of information relating to the four categories above

Prescribed Persons

- 9.5. NHS England is a prescribed organisation, meaning that individuals raising concerns with them are protected from detrimental treatment or victimisation from the employer after they have made a qualifying disclosure (relating to one of the categories listed above).
- 9.6. The CCG works within the wider NHS infrastructure other 'prescribed persons' include:
- NHS Improvement – for concerns about Foundation Trusts (e.g. Pennine Care), NHS procurement, the national tariffs

- NHS Trust Development Authority – for non-foundations NHS Trusts like Pennine Acute
- Care Quality Commission – for quality and safety concerns
- Other prescribed persons - <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies> - full list

9.7. There is, however, a distinction between internal and external disclosure. Only having a suspicion is not enough when reporting concerns outside of where you work and significant additional conditions apply to these forms of disclosure in order for them to remain protected.

9.8. Going to the media should be seen as an absolute last resort when all other reporting mechanisms have been exhausted. However, provided you meet the criteria as described in 9.1-9.4 you will be protected under PIDA whether or not you have raised the concern internally.

- **Confidentiality Clauses**

9.9. Where a 'confidentiality clause' has been included in a settlement agreement, any such agreement is void insofar as they conflict with the protections provided under PIDA. These agreements cannot be used to prevent an individual from making a disclosure in the public interest in accordance with PIDA. If an agreement does contain such clauses, they are not legally binding.

- **Difference between Grievances and Concerns**

9.10. There may be certain situations where an individual believes that they are raising a concern when in fact their complaint is a personal grievance. In these circumstances, the individual who the report is first made to will liaise with HR colleagues, if necessary, to determine if the concern falls within the scope of this policy. A personal grievance is not usually covered under PIDA Act.

10. Monitoring, Oversight and Audit

10.1. A register of concerns raised will be maintained by the Chief Finance Officer. This should include the date of receipt, if confidentiality is requested, a summary of the concerns, a timeline of when feedback or updates were provided and the outcomes of each investigation were.

10.2. These anonymised data will be shared on an annual basis with the Audit Committee so that assurance can be provided that the organisation is acting in accordance with this policy and relevant guidance. This report will include data on the experience of individuals using the policy.

10.3. Through this policy the CCG will commit to a periodic review of the effectiveness of whistleblowing arrangements, this will be conducted via our internal audit function. The audit should cover as a minimum :

- A record of the number/types of concerns raised & investigation outcomes
- Feedback from individuals who have used the arrangements

- Any complaints of victimisation
- Any complaints of failure to maintain confidentiality
- A review of other existing reporting mechanisms (e.g. fraud, grievance etc.)
- A review of other adverse incidents that could have been identified (e.g. reported by third parties rather than employees)
- A review of any relevant litigation
- A review of staff awareness, trust and confidence in the arrangements

10.4. The CCG undertakes that the finding from the review will be published on the organisation's website and referenced in our Annual Report.

11. Working with Primary Care Colleagues

11.1. The recent guidance released by NHS England relating to whistleblowing in primary care makes reference to providers nominating a colleague from outside of their organisation who is independent of the line management structure and not the direct employer to act as a Freedom to Speak Up Guardian (referred to earlier on in the CCG policy as the Whistleblowing Guardian). The aim of the role is to:

- Ensure policies are in place
- That staff know where they can go to raise a concern

11.2. The CCG is open to working with primary care providers who may wish to use the CCG's Whistleblowing Guardian in this role.

12. Implementation and Training

12.1. To support the implementation of this policy, staff members will be made aware of the policy and procedures included via a range of communication channels. All new starters will be provided with a copy of this policy at induction and briefed by their line manager on its contents.

12.2. In addition support and training will be provided to senior managers and all those with line management or specific whistleblowing responsibilities to understand what to do if a concern is raised.

13. Review

13.1. A desktop review will be completed on an annual basis by the Chief Finance Officer with support from the Corporate Affairs and Governance Manager. A full review will be undertaken every three years which will include consultation with relevant staff representatives and senior management.

Appendix 1 - Procedure for Formal Investigations

If the Chief Finance Officer decides that a formal investigation is required, the following procedure will be enacted.

Investigating Officers – The Chief Finance Officer acknowledge the formal investigation within two working days and will appoint an investigating officer or team depending on the resources required. The officer will write to the individual raising the concern to inform them of who is handling the matter.

Aims of the Investigation – The investigating officer will write to them to set out how the CCG proposes to handle the investigation and how long they anticipate will take to complete the investigation and set out how the report will seek to identify/rectify any issues to prevent problems from re-occurring.

Witnesses – If a witness is prepared to give a written statement, an experienced member of staff will take a chronological record using the witness's own words. The witness will be asked to sign the statements as a true record.

Interview – The investigating officer may determine, that it is necessary to interview the person accused to find out the facts. The CCG has a right to ask an employee to account for his/her actions in respect of their employment.

Interim Report – As soon as the initial phase of the investigation has been completed the investigating officer will complete a confidential report to be considered by the Chief Finance Officer. The report will set out:

- The findings to date
- The interim conclusions drawn from these findings
- Whether it is appropriate to continue with investigation or seek legal advice as to the next steps

This report will usually be completed within 20 working days and shared with the individual who raised the concern.

Disciplinary Action – Any employee considered to be in contravention of the CCG's disciplinary rules as a result of the investigation will be notified of the matter being referred to the CCG's Disciplinary Policy. Any outcomes will be considered in light of the procedures set out in the policy.

Final Report – Once determinations are known as to whether any criminal or disciplinary action will take place. The final report will be shared with the individual who raised the concern and discussed at a private meeting of the Governing Body. The report should include:

- How the investigation arose
- Who the suspected parties are
- Their position and responsibilities within the CCG
- How the investigation was undertaken
- The facts and evidence identified

- Summary of the findings and recommendations identified including any remedial action to prevent reoccurrence

Criminal Act – If at any stage during the process evidence is uncovered which could lead to criminal proceedings or there is an admission of guilt, then the process will halt until advice has been received from legal professionals to ensure that the manner of evidence collection doesn't harm any potential criminal cases.

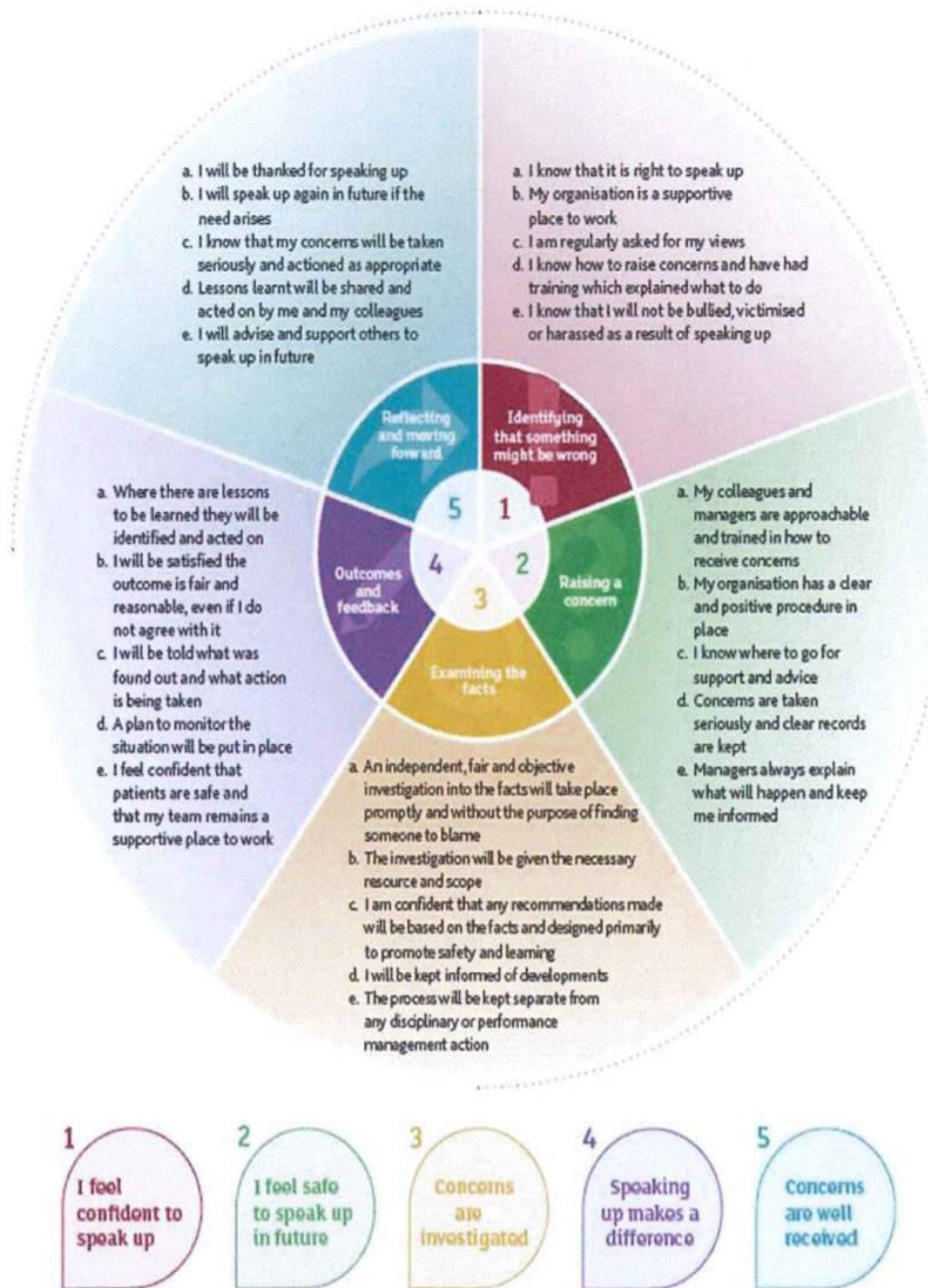
Maintaining Records - A record should be kept of all suspicions, including those dismissed as minor or not warranting investigation. It will contain details of action taken and decisions raised. The CCG will review the record annually.

For each investigation the investigating officer must open a file to chronologically list all:

- Telephone conversations
- Face to face discussions
- Records/documents reviewed
- Tests undertaken.

The file (whether paper based or electronic) should record all details no matter how insignificant they may seem.

Appendix 2 – Whistleblowing Process Flowchart



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 3 – Examples of Fraud

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.