

NHS South East London Integrated Care Board

Freedom to Speak Up: Whistleblowing Policy (CG02)

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| Approved by | |
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1.0 Speak up – we will listen

1.1 Speaking up about any concern at work is really important. In fact, it is vital because it will help the South East London Integrated Care Board (SEL ICB), to keep improving our services for all patients and the working environment for our staff.

1.2 Please do not be concerned about raising a concern. In accordance with SEL ICB's Duty of Candour, our senior leaders and entire Unitary Board are committed to an open and honest culture. Your concern will be investigated and access to the support needed will be available.

2.0 This policy

2.1 This 'standard integrated policy' was one of several recommendations from the review carried out by Sir Robert Francis into whistleblowing in the NHS, aimed at improving the experience of whistleblowing in the NHS. The expectation of this policy (produced by NHS England and Improvement) is that it is adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns for the benefit of all patients.

2.2 The SEL ICB's local process has been integrated into the policy/adheres to the principles of this policy and provides more detail about how a concern will be investigated.

3.0 Equality and Human Rights Statement

3.1 "In applying *this policy*, the SEL ICB will have due regard for the need to eliminate unlawful discrimination, promote advance equality of opportunity, and provide for and promote good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010): age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation, in addition to offending background, trade union membership or any other personal characteristic.

An equality impact screening assessment analysis has been completed (Appendix 1) and no positive or negative impacts have been identified."

4.0 What concerns can be raised?

4.1 Any concerns about **risk, malpractice or wrongdoing** that are considered to be harming the service SEL ICB commissions can be raised. Examples of this might include (but are not 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 counter-fraud team on freephone 0800 028 4060 or at www.reportnhsfraud.nhs.uk.)
- a bullying culture (across a team or organisation rather than individual instances of bullying)

4.2 Further examples are provided in this [Health Education England video](#).

4.3 It should be remembered that a healthcare professional may have a professional duty to report a concern. **If in doubt, please raise it.** Individuals should not wait for proof but raise the matter as soon as it is a concern. It does not matter if this belief turns out to be mistaken

as long as the concern is reported in good faith.

- 4.4 This policy is not for individuals with concerns about their employment affecting only them – this is covered in SEL ICB's grievance policy.

5.0 Feeling safe to raise a concern

- 5.1 If a genuine concern is raised under this policy, staff are not at risk of losing their job or suffering any form of reprisal as a result. SEL ICB will not tolerate the harassment or victimisation of anyone raising a concern, nor will it tolerate any attempt to bully individuals into not raising any such concern. Any such behaviour is a breach of the organisation's values and, if upheld following investigation, could result in disciplinary action.

6.0 Confidentiality

- 6.1 Individuals should feel comfortable raising any concern openly, but SEL ICB appreciates that they may want to raise it confidentially. This means that, whilst an individual's identity will be known to the person the concern has been reported to, they do not want anyone else to know their identity. Therefore, SEL ICB will keep the individual's identity confidential, if required, unless required to disclose it by law (for example, by the Police). Individuals can choose to raise concerns anonymously, without giving a name, but that may make it more difficult for SEL ICB to investigate thoroughly and give feedback on the outcome.

7.0 Who can raise concerns?

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

8.0 Who should concerns be raised with?

- 8.1 In many circumstances, the easiest way to get a concern resolved will be to raise it formally or informally with the line manager but, if this is inappropriate, any of the options set out below can be used in the first instance.
- 8.2 If raising it with the line manager does not resolve matters or is inappropriate one of SEL ICB's Freedom to Speak Up Guardians can be contacted. 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 Chair, or if necessary, outside the organisation.
- 8.3 If concerns remain after this, the Director of Corporate Operations, SEL ICB's director with responsibility for whistleblowing can be contacted.
- 8.4 These people have been trained in receiving concerns and can provide information about where individuals can go for more support.
- 8.5 If, for any reason, raising a concern internally would be uncomfortable for an individual, concerns can be raised with the external bodies, listed in Appendix C.

9.0 Advice and support

9.1 Details on the local support available can be requested from the individuals in section 8. However, the [Whistleblowing Helpline](#) for the NHS and social care, professional bodies or trade union representatives can also be contacted.

10.0 How should a concern be raised?

10.1 A concern can be raised in person, by phone or in writing (including email).

10.2 Whichever route is chosen, as full an explanation as possible should be given including the information and circumstances that gave rise to the concern.

11.0 What will SEL ICB do?

11.1 SEL ICB 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 Appendix B).

11.2 SEL ICB are committed to listening to our staff, learning lessons and improving patient care. Upon receipt, the concern will be recorded and an acknowledgement will be sent within two working days. The central record will record the date the concern was received, whether confidentiality has been requested, a summary of the concerns and dates when updates or feedback have been given.

12.0 Investigation

12.1 Where a matter has not been resolved quickly with the line manager (usually within a few days), SEL ICB will carry out a proportionate investigation, using someone suitably independent (usually from a different part of the organisation) and properly trained, and a conclusion will be reached within a reasonable timescale (which will be notified). Wherever possible, a single investigation will be carried out (so, for example, where a concern is raised about a patient safety incident, a single investigation will usually be carried out that looks at the concern raised and the wider circumstances of the incident¹). 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.

12.2 SEL ICB may decide that a concern that has been raised would be better looked at under another process; for example, the process for dealing with bullying and harassment. If so, this will be discussed with the individual prior to proceeding

12.3 Any employment issues (that affect only the individual reporting the concerns) identified during the investigation will be considered separately in line with appropriate HR advice.

13.0 The Procedure

13.1 Following the investigation process outlined above, a director (who has not had any previous involvement with the matter raised), with HR or appropriate advice, will fully evaluate the matter to assess the action to be taken. In circumstances where this may be inappropriate, a SEL ICB Unitary Board independent non-executive will be asked to review the case. This may involve an internal inquiry or a more formal investigation.

¹ If the concern raised suggests a Serious Incident has occurred, an investigation will be carried out in accordance with SEL ICB's Incidents and SIs policy.

- 13.2 The individual reporting the concern will be informed who will be handling the matter, how that person can be contacted, and whether any further assistance will be required. If requested, SEL ICB will arrange for a summary of the individual's concerns to be written up together with a summary of how the matter will be investigated.
- 13.3 If employees are interviewed as part of the investigation, they have the right to be represented by their Trade Union or professional organisation representative or accompanied by a colleague (other than a person acting in a legal capacity). The right to representation does not include relatives or friends.
- 13.4 On occasion SEL ICB will be unable to inform the individual as to how the matter will be investigated or precisely what action has been taken due to potential breaches of duty of confidentiality. In the first instance, any concern relating to fraud, bribery or corruption should be reported to the SEL ICB's Local Counter Fraud Specialist, Counter Fraud champion or Chief Financial Officer.
- 13.5 In all cases where concerns relate to safeguarding issues, the relevant borough Social Services team will be notified immediately.

14.0 The investigation process and potential outcomes

- 14.1 SEL ICB will aim to complete any investigation process in line with good practice and within a period of 28 days. However, for more serious allegations this process may take longer. If a concern is raised appropriate updates on progress with the investigation will be provided by the HR department and further information may be required.
- 14.2 There are 3 potential outcomes following an investigation:
- **Unfounded Allegation** – If the concern is judged to be wholly unfounded or without merit, then it will be dismissed and communicated in writing to the individual who made the allegation, including the rationale for dismissal of the case. The investigating officer is responsible for ensuring the individual is not victimised for bringing the allegation and receives appropriate support. Only if, on the facts, it is determined the employee was acting maliciously, will action under the grievance or disciplinary policies be considered.
 - **Allegations Substantiated** – If the result of the investigation is that there is a case to be answered, then the most appropriate policy for the circumstances will be applied.
 - **Independent/Formal Inquiry** – If the concern raised is very serious or complex, then a formal inquiry may be held which will be carried out by an appropriate investigative team appointed by a senior member of the executive team in conjunction with the nominated independent non-executive member.

15.0 Anonymous Concerns

- 15.1 SEL ICB will take all appropriate action to ensure any concerns raised are investigated fully. It is more difficult to understand and investigate concerns and provide feedback if individuals are unwilling to identify themselves. SEL ICB promotes a working environment where employees should feel encouraged and empowered to raise concerns through the appropriate internal process. If an anonymous concern is received, a nominated lead director with advice from HR will review the contents of the concern. However, without talking to the employee(s) individuals through an interview and without the attainment of any additional facts, a full investigation may not be possible.

16.0 If dissatisfaction remains after the investigation

16.1 If an individual is not satisfied with the outcome of the investigation and/or inquiry, SEL ICB recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons, such as the Health and Safety Executive or the Audit Commission. Details of sources of independent advice are attached at Appendix C.

17.0 Reporting by ex-employees and raising concerns regarding ex-employees

17.1 Reporting of concerns also applies to employees who have left SEL ICB's employment. Ex-employees may raise concerns under this policy within three months of leaving the SEL ICB and these will be managed in accordance with the SEL ICB's policies and procedures.

18.0 Responsibilities

18.1 **The Chief Executive** will ensure that reasonable resources are allocated for the implementation of this policy.

18.2 **The Chief of staff** will oversee the implementation of this policy ensuring that it is made available to all staff and will monitor the effectiveness of its implementation. The chief of staff will also ensure that there are robust policies, procedures and systems in place for the management of performance issues arising from genuine and reasonable concerns raised by employees, and that such concerns arising are dealt with in accordance with this policy.

18.3 **All Unitary Board Members and Directors** will ensure that they are aware of the requirements of this policy and ensure that they are implemented, particularly when an employee approaches them with a genuine and reasonable concern.

18.4 **The Local Counter Fraud Specialist** will act as first point of contact for any concerns relating to fraud, bribery or corruption.

18.5 **All line managers** will ensure that all staff are encouraged to raise genuine and reasonable concerns and are assisted in doing so.

18.6 **All employees** will make themselves aware of the content of this policy and comply with it.

19.0 Concerns raised about independent contractors, or those providing commissioned services

19.1 SEL ICB will act within the limit of its statutory powers and any rights and authority granted under contract to:

- establish the facts
- establish whether the concerns have a basis in fact
- establish whether further action is needed in the public interest and take what action is necessary based on proportionality. Such action could include:
 - supporting performance
 - reporting to the relevant professional body or regulatory authority
 - enforcing contract terms
 - re-drawing or withdrawing from existing contract terms
 - reporting to the police

20.0 Communicating with individuals

20.1 SEL ICB will always treat individuals with respect and will thank them for raising concerns. Concerns will be discussed with individuals to ensure an exact understanding of the matter. We will advise individuals who have raised concerns how long we expect the investigation to take and keep them up to date with its progress. Wherever possible, SEL ICB will share the full investigation report with the individual concerned (while respecting the confidentiality of others).

21.0 How SEL ICB will learn from concerns raised

21.1 The focus of the investigation will be on improving the service SEL ICB provides for patients. Where it identifies improvements that can be made, they will be tracked to ensure the necessary changes are made and are working effectively. Lessons will be shared with teams across the organisation or more widely as appropriate.

22.0 Unitary Board oversight

22.1 The Unitary Board will be given high level information about all concerns raised by individuals through this policy and what SEL ICB are doing to address any problems. We will include similar high-level information in the annual report. The Unitary Board supports staff raising concerns and wants individuals to feel free to speak up.

23.0 Review

23.1 SEL ICB will review the effectiveness of this policy and local process annually, with the outcome published and changes made as appropriate.

24.0 Raising your concern with an outside body

24.1 Alternatively, individuals can raise their concern outside the organisation with:

- [NHS England & Improvement](#) for concerns about:
 - how NHS trusts and foundation trusts are being run
 - other providers with a NHS provider licence
 - NHS procurement, choice and competition
 - the national tariff
 - primary medical services (general practice)
 - primary dental services
 - primary ophthalmic services
 - local pharmaceutical services^[TO1]
- [Care Quality Commission](#) for quality and safety concerns
- [Health Education England](#) for education and training in the NHS^[TO2]
- [Local Counter Fraud Services](#) or [NHS Counter Fraud Authority](#) for concerns about fraud and corruption

24.2 An employees' contract of employment with the SEL ICB includes a requirement for confidentiality in the use of information. This covers medical, personal, financial and business information about clients, patients, staff and other individuals and organisations. If a concern is raised externally to SEL ICB, this responsibility must be kept in mind. If there appears to be a conflict with the necessary reporting of the concern, advice should be sought to protect the individual and SEL ICB's obligations.

25.0 Making a 'protected disclosure'

25.1 There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise a concern and 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 at Appendix C, to whom you can make a protected disclosure. To help consideration of whether an individual might meet these criteria, independent advice can be sought from the [Whistleblowing Helpline](#) for the NHS and social care, [Public Concern at Work](#) or a legal representative.

26.0 National Guardian Freedom to Speak Up

26.1 The [National Guardian's Office](#) can independently review how staff have been treated having raised concerns where NHS organisations may have failed to follow good practice, working with some of the bodies listed above to take action where needed.

Appendix A: Process for raising and escalating a concern

Step one

If an individual has a concern about a risk, malpractice or wrongdoing at work, it should be raised initially with the line manager. This may be done orally or in writing.

Step two

If the individual feels unable to raise the matter with the line manager, for whatever reason, the matter should be raised with one of SEL ICB's local Freedom to Speak Up Guardians.

These people have been given special responsibility and training in dealing with whistleblowing concerns. They will:

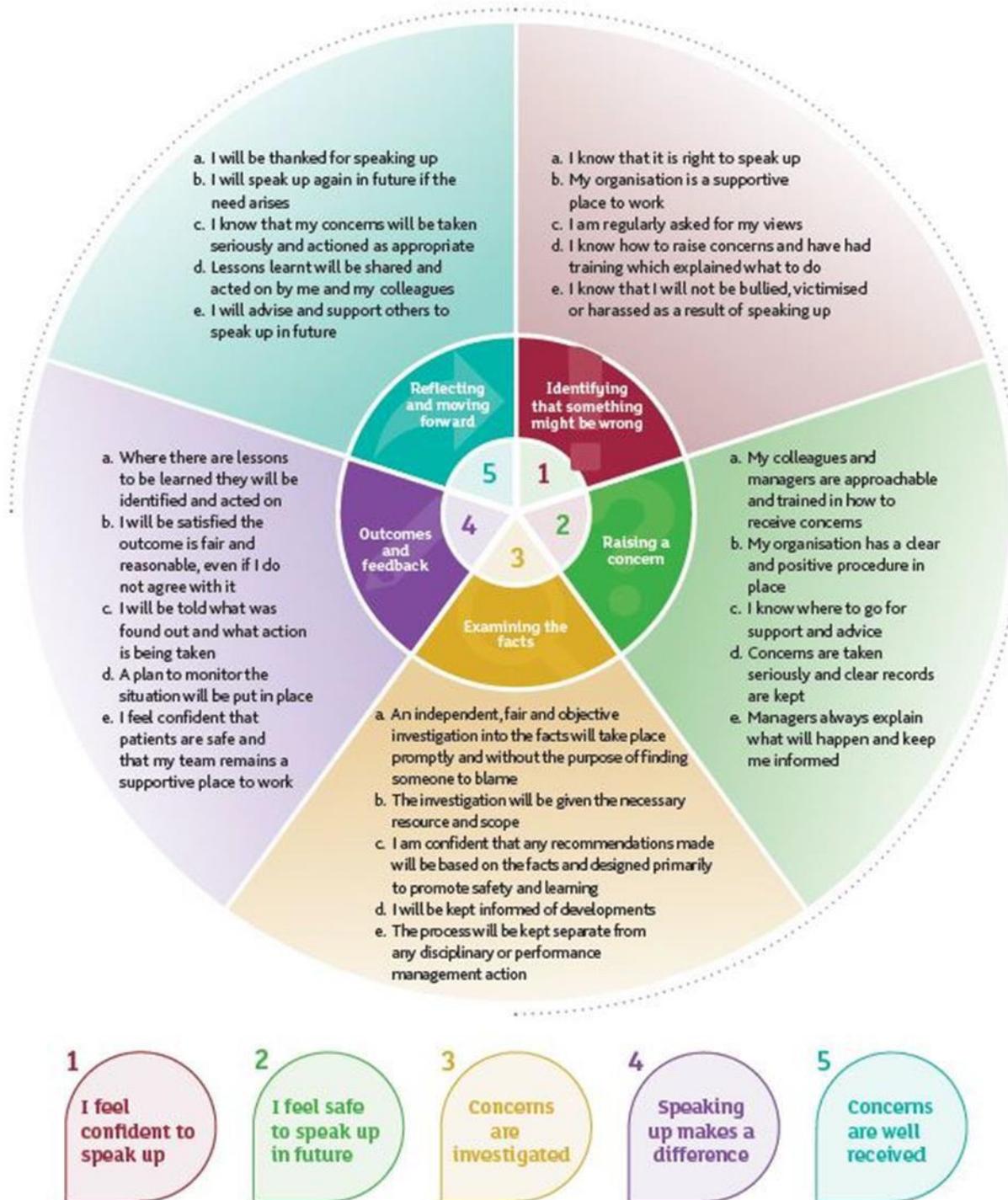
- treat the concern confidentially unless otherwise agreed
- ensure timely support to progress the concern is received
- escalate to the Unitary Board any indications that the individual is being subjected to detriment for raising the concern
- remind the organisation of the need to give the individual timely feedback on how the concern is being dealt with
- ensure the individual has access to personal support as raising the concern may be stressful

If the individual wants to raise the matter in confidence, this must be stated at the outset so that appropriate arrangements can be made.

Step three

Concerns can be raised formally with external bodies as in section 24.

Appendix B: 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 C: Independent Advice and Help

There may be occasions when it is appropriate to take the concern to another organisation. The following gives useful contact numbers if this is the case.

Whistleblowing Helpline for NHS and Social Care

08000 724725

Public Concern at Work

Public Concern at Work is a registered charity and the leading body on whistleblowing issues. They provide advice to individuals: <http://www.pcaw.co.uk/index.html> 020 7404 6609 or email helpline@pcaw.co.uk

Local Counter Fraud Specialist

Melanie Alflatt – Email: Melanie.alflatt@tiaa.co.uk T: 01732 752022 M: 07899981415

National Fraud Helpline

0800 0284060

Other sources:

Trade Union or Professional body will provide you with advice.

Other organisations concerned with the standards in the NHS include:

British Dental Association

<http://www.bda-dentistry.org.uk>

020 7935 0875

General Medical Council

www.gmc-uk.org or gmc@gmc-uk.org

0845 357 8001

The Nursing and Midwifery Council

<http://www.nmc-uk.org>

Main switchboard: 020 7637 7181

Main fax: 020 7436 2924

The Health Professions Council

<http://www.hpc-uk.org>

Health and Safety Executive

0845 345 005

Health Service Ombudsman

<http://www.ombudsman.org.uk> Helpline 0845 015 4033 or email phso.enquiries@ombudsman.org.uk

Mental Health Act Commission

Tel: 0115 943 7100

Fax: 0115 943 7101

Email: ChiefExec@mhac.org.uk

Appendix D: Equality Impact Assessment Checklist

This is a checklist to ensure that relevant equality and equity aspects of proposals have been addressed either in the main body of the document or in a separate Equality & Equity Impact Assessment (EEIA)/ Equality Analysis. It is not a substitute for an EEIA which is required unless it can be shown that a proposal has no capacity to influence equality. The checklist is to enable the policy lead and the relevant committee to see whether an EEIA is required and to give assurance that the proposals will be legal, fair and equitable.

The word “proposal” is a generic term for any policy, procedure or strategy that requires assessment.

| Challenge questions | Yes/No | What positive or negative impact do you assess there may be? |
|---|--------|--|
| Does the proposal affect one group more or less favourably than another on the basis of: | | |
| • Race | No | |
| • Pregnancy and Maternity | No | |
| • Sex | No | |
| • Gender and Gender Re-Assignment | No | |
| • Marriage or Civil Partnership | No | |
| • Religion or belief | No | |
| • Sexual orientation (including lesbian, gay bisexual and transgender people) | No | |
| • Age | No | |
| • Disability (including learning disabilities, physical disability, sensory impairment and mental health problems) | No | |
| Will the proposal have an impact on lifestyle? (e.g., diet and nutrition, exercise, physical activity, substance use, risk-taking behaviour, education and learning) | No | |
| Will the proposal have an impact on social environment? (e.g., social status, employment (whether paid or not), social/family support, stress, income) | No | |
| Will the proposal have an impact on physical environment? (e.g., living conditions, working conditions, pollution or climate change, accidental injury, public safety, transmission of infectious disease) | No | |
| Will the proposal affect access to or experience of services? (e.g., Health Care, Transport, Social Services, Housing Services, Education) | No | |

| | | |
|---|-------------------------|-------------------|
| Policy Author Theresa Osborne | Date 18/11/21 | Signature: |
| Equalities Manager | Date | Signature: |