

## Freedom to Speak Up: Raising Concerns (Whistleblowing) Policy

Version number :	7.0
Consultation Groups	Employees, Managers, HR
Approved by (Sponsor Group)	JSC Policy Sub Committee
Ratified by:	Joint Staff Committee
Date ratified:	March 2019
Name and Job Title of author:	Freedom to Speak Up Guardian
Executive Director lead :	Chief Nurse
Implementation Date :	September 2018
Last Review Date	March 2019
Next Review date:	March 2022

Services	Applicable
Trustwide	X
Mental Health and LD	
Community Health Services	

## Version Control Summary

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Status</b>	<b>Comment</b>
5.0	February 2014	Malcolm Galea, Shefa Begom, Senior HR Adviser	Approved	N/A
6.0	August 2016	Hannah Lootfun, HR Adviser	Approved	Policy updated to reflect national guidance and framework
7.0	August 2018	Ade Dosunmu Freedom To Speak Up Guardian	Approved	Policy updated to incorporate new role of Freedom to Speak Up Guardian

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## Executive Summary

### 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, The Trust 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.

### This policy

The purpose of this policy is to provide a safe mechanism for anyone who works for the Trust to come forward and raise any concerns they have about any aspect of the Trust's work, and to be able to do so without fear of detriment or reprisal.

This policy was one of a number of recommendations of the review by Sir Robert Francis into raising concerns (whistleblowing) in the NHS, aimed at improving the experience of raising concerns (whistleblowing) in the NHS. This policy has been 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.

The Chief Executive, Trust Board, Freedom To Speak Up, Human Resources and Staff side representatives are committed to this policy. If you raise a concern, it will be taken seriously.

## 1. Introduction

The East London NHS Foundation Trust recognises that there may be times where you personally feel there is something seriously wrong within the organisation. Whilst most of these concerns can be resolved with your immediate line manager, there may be some cases when you feel intimidated or disloyal to colleagues if you speak out when noticing something that, in your view, is 'untoward'. You may also fear intimidation, harassment or victimisation if you reveal your observations. In these circumstances you may feel it easier to ignore concerns rather than report what may be a suspicion of malpractice.

The Trust is committed to developing a culture of openness and accountability and takes all forms of malpractice, fraud, corruption or abuse very seriously. We are very concerned about the potential effect of these matters on the services we provide.

It is important, therefore, that you feel comfortable raising issues which concern you. If you have any concerns about possible criminal offences being committed; failure to comply with legal obligations; miscarriages of justice; the health and safety of any individual; harm or risk to the environment; or the concealment of wrongdoing and/or information about any of the above, it can be very difficult to know what to do. You may be worried that by reporting issues of concern, you are exposing yourself to possible victimisation, disciplinary action or putting your job at risk. The Trust understands these concerns, and this policy is implemented to reassure you that this is not the case.

## 2. Purpose of the Policy

The purpose of this policy is to:

- Allow staff to have confidence in raising matters of concern;
- Encourage individuals to feel confident in raising concerns and to question and act upon concerns about practice;
- Provide avenues for individuals to raise concerns and receive feedback on any actions taken;
- Ensure the individual receives a response to their concerns and that they are aware how to pursue them if they are not satisfied;
- Provide reassurance that individuals will be protected from possible reprisals or victimisation.

## 3. Scope of the Policy

This policy should be used to cover major concerns that fall outside the scope of other procedures including:

- Conduct which is a criminal offence. This can include fraud, corruption (including bribery). See Appendix A for guidance on the Bribery Act 2010;
- Disclosures related to miscarriages of justice;
- Health and Safety risks to the public, service users or other employees;
- Damage to the environment;
- The inappropriate or unauthorised use of public funds or other resources;
- Potential corruption, fraud or other financial malpractice;
- Healthcare matters including suspected maltreatment/abuse of service users or staff;
- Concerns about the professional or clinical practice or competence of colleagues or other members of staff;

- Other unethical conduct;
- Bribery' or payment in kind between staff.

The above list is by no means an exhaustive list.

This policy should always be read in conjunction with other relevant Trust policies such as the:

- Grievance Policy
- Dignity at Work Policy
- Counter Fraud and Bribery Policy\* and Response Plan
- Standing Orders
- Standing Financial Instructions
- Equal Opportunities Policy

\*Concerns or suspicions relating to Fraud should be discussed directly with the Counter-Fraud Specialist team.

This policy should also be considered alongside professional or ethical guidelines and codes of conduct or freedom to speech such as those produced by the GMC, NMC and Public Interest Disclosure Act.

#### 4. [What concerns can I raise?](#)

You can raise a concern about any **risk, malpractice or wrongdoing** you think is, has or may be harming the service we deliver. 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 counter-fraud team in complete confidence.
- 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 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.

#### 5. [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. However, anyone acting in a malicious or vexatious manner (for example not having sufficient grounds for action and seeking only to aggravate the defendant) may be subject to formal disciplinary action.

## 6. Who can raise concerns?

This policy applies to all staff employed by the East London NHS Foundation Trust. The spirit of this policy will be applied to non-Trust staff such as honorary contract holders, students, contractors, bank and agency staff, **volunteers** and employees of other organisations who work on our premises.

This policy also applies to staff who have left the Trust within a three-month period i.e. three months from the employees last working day at the Trust, bank and agency staff, staff seconded to work in the Trust, students on placement, volunteers and sub-contracted staff.

If you have a complaint against your own personal circumstances, please also refer to the Grievance and/or the Dignity at Work Policy which are available on the intranet.

### **Arrangements for service users or volunteer who work in the trust**

The Trust is dedicated to engage with people who use its services or volunteer in the Trust, enabling them to get more involved in helping design, shape and monitor services to ensure they continually improve and meet the needs of our local citizens and communities. As a service user or volunteer who have concerns at the time of working for the Trust, you should raise your concern formally or informally with your **Volunteer Lead (line manager)/Trust Volunteer Coordinator** or the People Participation Lead. Where you don't think it is appropriate to do this, you can contact one of the following people listed in the section of this policy titled "**Who should I raise my concern with?**"

Service users and **volunteers** will be given the same consideration and the same right to speak up as any other staff member who is working for the Trust.

Service users accessing the Trusts' Mental Health Service at the point of raising concern, should follow the local procedure to reporting concerns on the ward/ community or contact PALS (Patient Advice and Liaison Service on 0800 783 4839).

## 7. Anonymous Concerns

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, to 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.

### **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 13-14, who you can make a protected disclosure to.

1. To help you consider whether you might meet these criteria, please seek independent advice from The Whistleblowing Helpline for the NHS and social care (Tel: 08000 724 725, Open 8am -6pm, Monday – Friday or at <http://wbhelpline.org.uk>)
2. Protect (formerly Public Concern at Work) (0203 117 2520 Website: or contact a legal representative.
3. There is also a defined list of “prescribed persons”, at ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510962/BIS-16-79-blowing-the-whistle-to-a-prescribed-person.pdf))

## 8. 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 (lead clinician or tutor for students). Where you don't think it is appropriate to do this, you can contact one of the following:

- Your union representative;
- The Freedom to Speak Up Guardian, Anita Hynes [anita.hynes@nhs.net](mailto:anita.hynes@nhs.net) Tel; 07436 027388 or any of the local Freedom To Speak Up Ambassador in your area. This is an important role identified 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;
- The Chief Executive Navina Evans, 020 7655 4041, [navina.evans@nhs.net](mailto:navina.evans@nhs.net)
- The Senior Independent Director for Freedom To Speak Up is [jenny.kay2@nhs.net](mailto:jenny.kay2@nhs.net)
- The executive lead for Freedom To Speak Up is [lorrainesunduza@nhs.net](mailto:lorrainesunduza@nhs.net)
- The Director of Human Resources [tanya.carter@nhs.net](mailto:tanya.carter@nhs.net) Tel: 020 3299 9000
- The Service Director or service manager for your directorate
- An Executive/non-Executive Director\_ [http://elftintranet/sites/common/Private/Community\\_View.aspx?id=415&pageid=4640](http://elftintranet/sites/common/Private/Community_View.aspx?id=415&pageid=4640)
- [elft.concerns@nhs.net](mailto:elft.concerns@nhs.net) (Inbox is monitored by HR)
- [elft.freedomtospeakup@nhs.net](mailto:elft.freedomtospeakup@nhs.net) (Inbox is monitored by the Freedom To Speak Up Guardian)
- Fraud, Corruption or Bribery – For concerns in relations to Luton and Bedford services contact; Bethan Raistrick on 01582 700243 or via email [bethan.raistrick@nhs.net](mailto:bethan.raistrick@nhs.net), for concern elsewhere in the Trust, contact Zenda Butler on 0207 655 4289 or via e-mail [zenda.butler@nhs.net](mailto:zenda.butler@nhs.net) or Steven Course, The Trust Director of Finance on 020 7655 4204 or via e-mail on [s.course@nhs.net](mailto:s.course@nhs.net)

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. A list is included as Appendix B.

### **9. How should I raise my concern?**

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.

### **10. What will the organisation 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 (Appendix C).

Once you have informed someone of your concern, a suitable person will discuss the matter with you to ensure they have properly understood the nature and context of the concern. The information will initially be assessed by the person who you raised it with to establish what action should be taken. 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 Appendix D).

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. 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.

### **Investigation**

Where you have been unable to resolve the matter quickly (usually within a 10 working 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 incident). 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. The Trust reserves the right to decide what policy will be followed to address your concern. If this is the case, we will discuss and confirm this with you.

Any employment issues (that affect only you and not others) identified during the investigation will be considered separately. Again, the Trust reserves the right to decide what policy will be followed to address your concern.

### **Communicating with you**

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).

### **How will we learn from your concern?**

The focus of the investigation will be on improving the service we provide for patients and services. 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.

### **Board oversight**

The board will be given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high level information in our annual report. The board supports staff raising concerns and wants you to feel free to speak up.

## **11. Advice and support**

We understand that such processes may be difficult and in order to support you further you have access to the HELP Employee Assistance Programme (EAP). HELP provides free 24 hour confidential telephone counselling, and up to 6 1:1 sessions on any issues to staff employed by East London NHS Foundation Trust. The EAP can be contacted on 0800 328 9972 or you can visit [www.ELFT.helpeap.com](http://www.ELFT.helpeap.com)

Support is also available from the occupational health department.

You can also contact the [Whistleblowing Helpline](#) for the NHS and social care, Protect (formerly Public Concern at Work) or your professional body or trade union representative.

### **Mediation Services**

Mediation can be a useful mechanism for dispute resolution (to avoid) or reconciliation (to resolve) dysfunctional working or relationships that manifest through the raising of concerns. More information about mediation and how to access is available on the Trust intranet.

## **12. Review and measuring effectiveness**

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

Human Resources and the Freedom to Speak Up Guardian will monitor and analyse data pertaining to complaints raised under the policy on a quarterly basis. HR will use the data to monitor the implementation of the Policy and the management of cases. In addition, the data will be collated and analysed for information regarding the reasons for raising concerns and any patterns/similarities derived from those concerns.

The data will be used to inform and improve policies, as well as provide recommendations for improving working practises. HR will provide relevant reports, based on this data to the Executive Board and Joint Consultative Committee.

## **13. Monitoring**

It is the responsibility of the Director of Human Resources to monitor and review this policy, and to present any necessary changes, after negotiation with the Joint Staff Committee to the Service Delivery Board and the Trust Board.

## Appendix A – Guidance on the Bribery Act 2010

The laws dealing with corrupt activity in the UK were to be found in the common law offence of bribery and in three Acts of Parliament, namely the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916. The Bribery Act 2010 replaces the fragmented and complex offences at common law and the Prevention of Corruption Acts 1889-1916.

### **Examples of Bribery**

In the Act the offence of bribery is outlined as the receipt or acceptance of a bribe, or the offer to, promise or giving of a bribe, which assists in obtaining/ retaining business or financial advantage, or the inducement or reward of someone for the “improper performance” of a relevant function.

The Act creates four categories of offence, which address the following:

- Offering, promising or giving a bribe to another person;
- Requesting, agreeing to receive or accepting a bribe from another person;
- Bribing a foreign official; and
- A corporate offence of failing to prevent bribery.

A commercial organisation (including a Foundation Trust) is now liable for the activities of associated third parties as well as its own staff, and corporate ignorance offers no protection from prosecution. The only defence available to the Trust would be therefore to prove that they ‘had in place adequate procedures designed to prevent a person associated with it from undertaking such conduct’.

The Act provides for unlimited fines and individuals are liable to a prison sentence of up to ten years. A director convicted of a bribery offence is also likely to be disqualified from holding a director position for up to 15 years. The Act is not retrospective.

## Appendix B – Raising Concerns with External Organisations

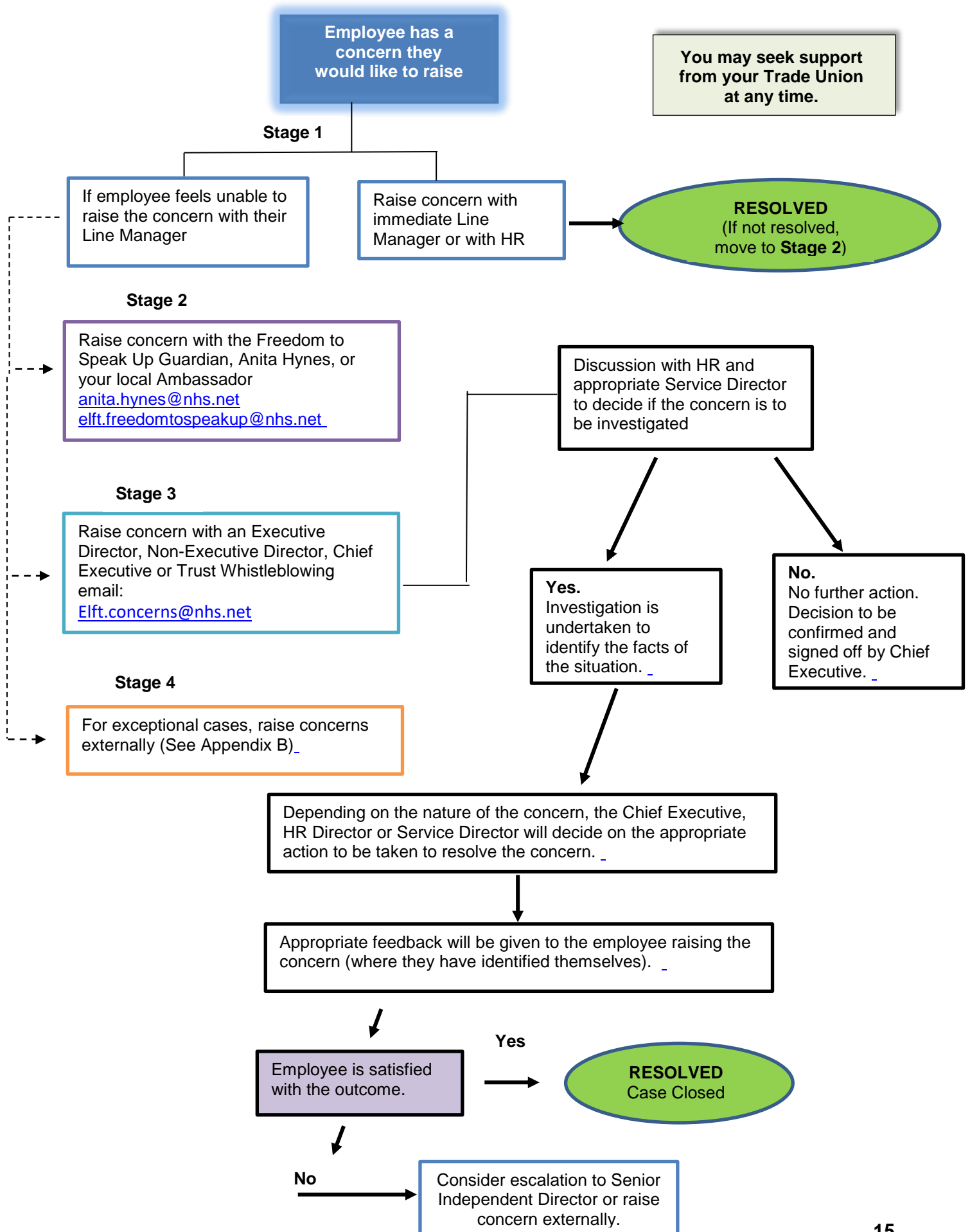
Staff who are considering raising concerns and would like more advice, who have raised concerns that are being dealt through the appropriate internal channels, or who are dissatisfied with the action taken or outcome may wish to consider approaching the following organisations:

- [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 Protect](#) for concerns about fraud and corruption.

Other organisations you can raise a concern with are in the table below.

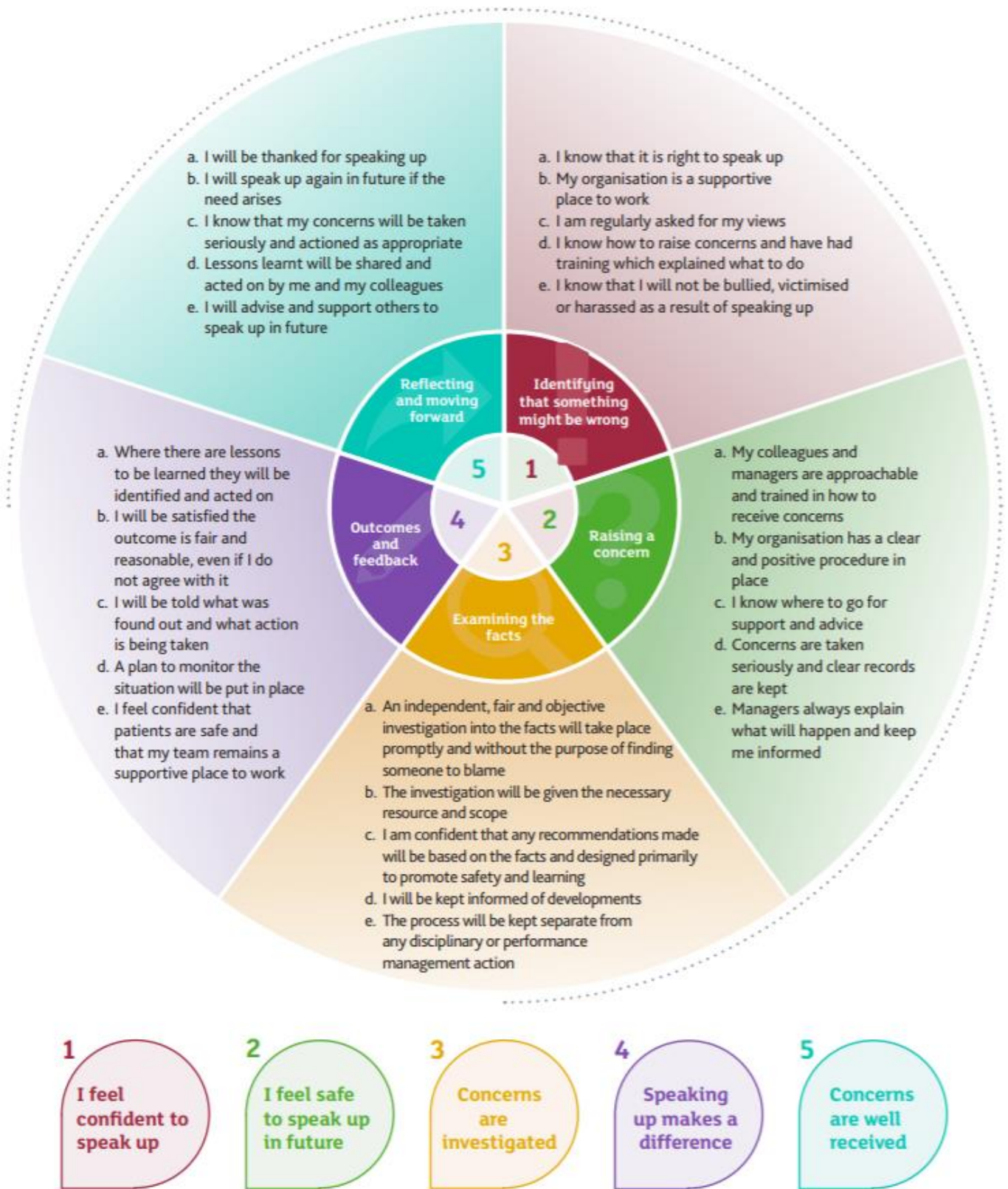
Name of Organisation	Description	Contact Details
<b>National Whistleblowing Helpline</b>	All staff in the NHS can seek independent advice from the National Whistleblowing Helpline which offers free, confidential advice to all staff within the NHS and Social Care. The helpline will be able to clarify what is a whistleblowing concern, the process to raise concerns and how to escalate a concern, if it is felt that the issues raised have not been dealt with appropriately. The helpline can also advise staff of their rights under the <a href="#">Public Interest Disclosure Act 1998</a> (PIDA) which is aimed at protecting those who raise a patient safety, or other issue in the public interest by following the correct procedures.	Tel: 08000 724 725 Email: <a href="mailto:enquiries@wbhelpline.org.uk">enquiries@wbhelpline.org.uk</a> Website: <a href="http://wbhelpline.org.uk/">http://wbhelpline.org.uk/</a>
<b>Protect: Speak up to stop harm</b> (Formerly PCAW: Public Concern At Work)	Staff may wish to take advice from an independent organisation. Protect is a charity which offers free and confidential advice.	Tel: 0203 117 2520 Website: <a href="http://www.protect-advice.org.uk">www.protect-advice.org.uk</a>
<b>NHS Fraud and Corruption Reporting Line or on-line reporting tool</b>	If an NHS worker tells NHS Counter Fraud Authority about any suspected wrong doing, they believe may have occurred (including crimes and regulatory breaches) they will qualify for the same employment rights as if they had made a disclosure to their NHS employer. The Public Interest Disclosure Act 1998 (PIDA) provides a statutory framework for protecting workers from harm if they blow the whistle on their employer.	Tel: 0800 028 40 60 Website: <a href="https://cfa.nhs.uk/reportfraud">https://cfa.nhs.uk/reportfraud</a>
<b>Advice, Conciliation &amp; Arbitration Service [ACAS]</b>	Their aim is to improve organisations and working life through better employment relations. They assist with employment relations by supplying up-to-date information, independent advice.	Tel: 08457 474 474 Website: <a href="http://www.acas.org.uk">www.acas.org.uk</a>
<b>Professional Representative and Regulatory Organisations</b>	All staff retain the right to consult, seek guidance and support from their professional organisation or trade union, and from statutory bodies such as the Nursing and Midwifery Council (NMC), the General Medical Council (GMC) or Health & Care Professionals Council (HCPC). Staff are encouraged to consult with the appropriate body if an issue continues to remain unresolved locally, and there is an obligation to comply with the codes of practice of their relevant professional body.	<b>GMC</b> Tel :0845 357 0022 Website: <a href="http://www.gmc-uk.org">www.gmc-uk.org</a> <b>NMC</b> Tel: 020 7333 9333 Website: <a href="http://www.nmc-uk.org">www.nmc-uk.org</a> <b>HCPC</b> Tel: 0845 300 6184 Website: <a href="http://www.hpc-uk.org">www.hpc-uk.org</a>
<b>The Health Service Commission (The Ombudsman)</b>	The Ombudsman may look into complaints by staff on behalf of a patient, provided that they are satisfied that there is no-one more appropriate to act on a patient's behalf, such as the immediate relative. Information leaflets about the Ombudsman's role and the procedures for reference are available from the Patient Liaison Office or the Health Service Commissioner for England, Millbank, London SW19 4QP.	Tel: 0345 015 4033. Website: <a href="http://www.ombudsman.org.uk">www.ombudsman.org.uk</a>

**Appendix C – Freedom to Speak Up: Flowchart for raising concern**





**Appendix D: 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.*