

**TITLE: Reporting Concerns & Whistleblowing Policy**

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<b>ASSOCIATED POLICIES &amp; PROCEDURES</b>	Disciplinary Policy Grievance Policy Dignity at Work Policy Health & Safety Policy Induction Policy, Procedures for Handling Concerns Regarding Medical Dental Staff Conduct and Capability Counter Fraud Policy Bribery Act Guidance Policy for Safeguarding Adults Safeguarding Children and Young People Policy

**DOCUMENT REVIEW HISTORY**

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February 2006	Roger Pollard
May 2007	Roger Pollard
January 2009	Mark Dunstan
August 2012	Fiona Hall

<b>DOCUMENT CHECKED FOR</b>	<b>Name</b>	<b>Yes/No</b>
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<b>EQUALITY, DIVERSITY &amp; RACE RELATIONS IMPACT</b>	<b>K Sohanpal/F Hall</b>	<b>yes</b>
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## Trust statement of intent

Airedale NHS Foundation Trust is committed to improving the experiences of patients and anyone working for us. The Trust understands it can be difficult to report a concern, particularly one that relates to poor standards of care, professional or other misconduct, including fraud and corruption, and will take appropriate action when such concerns are raised. Patient care and safety is at the heart of what we do.

### 1. Introduction

Most individuals have concerns about what is happening at work at some time or another, and usually these concerns are easily resolved. However, when they are about unlawful conduct, financial malpractice or dangers to the public, colleagues or environment, or about other serious misbehaviour at work, it can be difficult to know what to do. To make it easier for individuals to raise concerns, the Trust has adopted this policy. The policy aims to reassure individuals that it is safe and acceptable to speak up and to enable them to raise any concern at an early stage when they have a genuine concern (not necessarily with proof) and that they do so in the right way.

A “Whistleblower” is a witness not a complainant. Someone who when faced with an acute dilemma does not stay silent or look the other way but raises the matter with the organisation or, if absolutely necessary, other outside body.

This policy should be used if an individual has concerns where the interests of others or of the organisation are at risk, and which they believe the Trust should investigate. However, it should not be used if an employee wishes to make a complaint about an employment issue or how they have been treated. In these cases the Grievance Policy or Dignity at Work Policy should be used.

In some cases, for example, if there are allegations of fraud or corruption, it may be necessary to first consult our Local Counter Fraud Specialist or in extreme circumstances the Police before taking any further steps. Please also see the Trust’s Anti-Fraud, Bribery and Corruption Policy.

### 2. Scope

This policy applies to all employees of the Trust, bank and agency workers, volunteers, students, trainees and contractors.

Concerns covered by this policy may include the following, although this list is not exhaustive, and is intended as guidance only:

- Malpractice or ill treatment of a patient/service user by any member of staff
- Repeated ill treatment of a patient/service user, despite a complaint being made
- A criminal offence has been committed, is being committed or is likely to be committed
- Suspected fraud, bribery or corruption
- Disregard for legislation, particularly in relation to health and safety at work

- The environment has been, or is likely to be, damaged
- Breach of standing financial instructions
- Miscarriage of justice
- 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

### **3. Policy Statement**

Airedale NHS Foundation Trust encourages an open culture in all its dealings between staff, managers and all people with whom it comes into contact. These values are enshrined in the NHS Constitution. This policy aims to guide individuals wishing to raise a concern about the Trust, in order to make continuous improvements to Trust operations for the benefit of all.

Sometimes individuals may be concerned about acting before there is conclusive proof or may have concerns about loyalty, victimisation or harassment. It is important that all staff feel confident that concerns will be taken seriously, and addressed appropriately as soon as possible.

The Trust promotes a climate of openness and dialogue so that where individuals have concerns they can be raised at an early stage with their managers. However, there may be instances where an individual is reluctant to approach their manager or someone else closer to the issue. This policy and procedure should be used in these circumstances.

If an individual raises a genuine concern under this policy, they will not suffer any detriment, provided they are acting in good faith. Whilst ensuring that the best interests of individuals who raise concerns are safeguarded, the policy also seeks to ensure that individuals are protected from uninformed or vexatious allegations. The Trust will not tolerate allegations, known to be untrue, that are maliciously raised. Any found to be so, may lead to disciplinary action being taken against that individual.

Concerns raised anonymously are more difficult for the Trust to deal with and investigate in such a way as to protect the whistleblower or give feedback to them. The Trust will consider what action may be justified by an anonymous report, and apply this policy where applicable, it may not prove possible to handle such reports under this policy. Managers receiving such reports may seek advice from others in the Trust to ensure the correct action is taken.

## **4. Implementation**

### **4.1 The Public Interest Disclosure Act 1998**

This Act gives all employees/workers who disclose information reasonably and responsibly in the public interest, protection from dismissal or unfair discrimination, if the principle reason is that they have made a protected disclosure (see section 4.3.1). The Act is intended to encourage individuals to raise their concerns, in a responsible way, if there is a practice within the Trust which they believe is threatening to public interest, without fear of detrimental treatment. The legislation favours internal disclosures because it gives the organisation the opportunity to address the situation.

### **4.2 Responsibilities**

#### **4.2.1 The Chief Executive**

The Chief Executive has the ultimate responsibility to ensure that all staff can raise their views or concerns, and these are considered and dealt with thoroughly and fairly. He/she will be supported in this by his/her Directors and Managers.

Should the Chief Executive receive a concern from an individual then they shall also have the responsibilities in section 4.2.2 below.

#### **4.2.2 Managers/Executive Directors/Chief Executive/Chairman**

All managers regardless of their seniority, will ensure their staff are aware of this policy during their induction to the department. Managers will also inform the HR department of any concerns being handled under this policy using the form in Appendix A, in order that the policy and its implementation can be monitored and reviewed.

Anyone receiving a concern will refer to the procedure below, and will always:

- Take concerns seriously
- Consider them fully and sympathetically
- Recognise that raising a concern can be difficult for some staff
- Seek advice from other health care professionals where appropriate
- Treat concerns and issues raised in a confidential manner

The Director of Organisational Development & Workforce is responsible for monitoring the implementation and the development of this policy.

#### **4.2.3 Individuals**

Those covered by this Policy have a right and duty to raise matters of concern to them. They must however, balance their rights and duties to disclose issues, with their obligation to safeguard all confidential information to which they have access, particularly information about patients. All individuals will refer to the procedure below when deciding if/how to raise a concern.

#### **4.2.4 Employee Health & Wellbeing and the Employee Assistance Programme**

Raising concerns can be a stressful and worrying process, and in addition to the protection afforded by the Public Interest Disclosure Act 1998 and this policy, anyone raising concerns may also need the support of Employee Health and Wellbeing on 01535 294401 and/or the Employee Assistance Programme 0800 243458 who have professional counsellors available to help and their services are completely confidential.

#### **4.2.5 Independent Advice**

If an individual is unsure about raising a concern, at any stage, they may seek independent advice from a Trade Union representative or professional organisation. They may also contact Public Concern at Work, a charity which specialises in providing free and confidential legal advice on how to raise a concern about serious malpractice at work.

Public Concern at Work, 3rd Floor Bank Chambers, 6 - 10 Borough High Street, London, SE1 9QQ Tel: 020 7404 6609

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### 4.3 Procedure

The individual should consider if the Whistleblowing Policy is the correct policy to raise their concern under. There are many Trust policies, available on Sharepoint via the Trust Intranet, which have different procedures to follow, some of which are listed below. For example, whistleblowing is different to raising a grievance. Its aim is to prevent harm to others or to an organisation as a whole, rather than securing individual personal interests.

**Patient safety/clinical incidents:** complete Adverse Event Form (AEF). Refer to Sharepoint and consider if a safeguarding issue.

**Health and safety/environmental:** complete Adverse Event Form (AEF). Refer to Sharepoint.

**Health/Performance of staff:** discuss with own manager, Employee Health & Wellbeing or HR. Refer to HR Policies on Sharepoint.

**Bullying and harassment:** refer to the Dignity at Work Policy, Disciplinary Policy, or Grievance Policy on Sharepoint

**Fraud/Corruption/Theft:** report to Local Specialist immediately:

- Fraud – Trust Local Counter Fraud Specialist on 0161 206 1909 (or in their absence, the Trust Director of Finance) or via the NHS Fraud & Corruption Reporting Line on 0800 0284060
- Theft – Trust Local Security Management Specialist on 01535 292658 (or in their absence the Trust Director of Finance)

If no other procedure is appropriate, or the individual is not covered in the scope of these policies, or if they feel their concern is too serious, they should use this Reporting Concerns and Whistleblowing Policy, and the procedure below (see also Flowchart in Appendix B).

#### 4.3.1 Protection for Whistleblowers

For an individual to be protected as a whistleblower under the Public Interest Disclosure Act, they must first be making a “qualifying disclosure” for which:

- they must be a “worker” under the scope of this policy (section 2) and
- they must believe that one of the following is happening, has happened in the past or will happen in the future:
  - A criminal offence
  - The breach of a legal obligation
  - A miscarriage of justice
  - A danger to the health and safety of any individual
  - Damage to the environment
  - Deliberate attempt to conceal any of the above

This qualifying disclosure then becomes a “protected disclosure” if it is made in good faith, and in the following circumstances:

- disclosure to the Trust as the employer
- disclosure to a legal advisor
- disclosure to a prescribed person or regulatory body (section 4.5.1)
- disclosure to an external body unconnected to the Trust eg media
- disclosure in exceptionally serious cases

Individuals making a disclosure external to the Trust (section 4.5) will only be protected if they have previously raised the matter with the Trust, or have not done so because they reasonably believe they will be subjected to a detriment. The disclosure must be made

- in good faith (which means with honest intent and without malice)
- in the reasonable belief that the allegations are substantially true
- without acting for personal gain

To be sure of an individual’s status regarding protection when making a disclosure, internally or externally, they are advised to seek advice in the first instance from their line manager or another manager, or from an independent source if preferred (see Section 4.6).

#### **4.3.2 Informal Procedure**

A concern is best raised with those most able to put things right, for example, the person closest to the problem. Alternatively, you may choose to talk to your Line Manager (or Clinical Director for Medical Staff) or another manager. In the first instance, the individual should raise their concern with one of these people, verbally or in writing.

#### **4.3.3 Formal Procedure - Stage 1**

If the concern is unresolved informally, or if an individual is not directly employed by the Trust eg contractors, the individual should raise their concern formally, in writing, with one of the following Executive Directors:

Medical Director  
Director of Operations  
Director of Nursing  
Director of Finance  
Director of Strategy and Business Development

#### **4.3.4 Formal Procedure - Stage 2**

If the steps above have been followed and the individual feels their concerns remain unresolved, or if the matter is so serious that they cannot discuss it with any of the above, they should write to either the:

Chief Executive  
Chairman

#### **4.4 How will the Trust handle the concern raised?**

When a concern is raised, the person receiving this (eg Line Manager, Clinical Director, other Manager, Director) will consider if the concern is best handled under this policy or another eg Grievance Policy and explain to the individual this decision. They will then consider what action is appropriate, which, under this policy, would normally include a confidential interview with the individual raising the concern, with the aim of taking action to resolve any issues raised. Notes will be taken of the meeting at which the individual may be accompanied by a colleague or Trade Union representative. At the end of this meeting, all parties will agree a timescale for receiving feedback on any investigation and actions taken. Where possible, this will take place within 4 weeks, however, this does not prevent a shorter or longer alternative being agreed. The individual may be asked at any stage of the procedure how they feel the issue might be best resolved. Anyone involved with these situations may contact the HR department for advice and support at any time.

At the end of the informal and each formal stage, individuals will have 5 working days to invoke the next stage. Failure to do so will result in the assumption that they are satisfied with the outcome and do not wish to proceed to the next stage.

The Trust will provide the individual with as much feedback as possible, taking into consideration the duty of confidentiality owed by the Trust to others involved. All management decisions will be confirmed in writing.

The individual raising the concern should be aware, however, that the provision of detailed updates and case progress may be restricted where the concern relates to matters that may be subject to an on-going criminal investigation or judicial proceedings. Similarly, investigations conducted by third parties (i.e. regulators; the police etc) are subject to timescales beyond the Trust's immediate control.

Where recommendations are made as a result of someone reporting concerns under this policy, after providing feedback, the manager will then contact the individual after 6 months has passed to update them on implementation.

To encourage employees to come forward to raise legitimate concerns, copies of their written complaint will not normally be given to anyone named in the complaint.

The Trust will do whatever it can to respect a request for confidentiality, however, it cannot be guaranteed as there may be circumstances in which this is not possible, for example, where there is a legal requirement or judicial instruction to disclose an individual's identity.

## 4.5 Making a Regulatory Disclosure or a Wider Disclosure

The Trust would expect, considering the assurances given in this policy, that any concerns would be raised in the first instance, via the internal procedures explained above. Raising concerns externally before taking steps to resolve them internally, may weaken the protection given to individuals in some cases, under the Public Interest Disclosure Act 1998. However, there may be rare occasions when individuals wish or need to contact an outside body. Individuals unsure about how to proceed should seek advice from their manager, or from an independent advisor (see below and section 4.2.6). The Trust would rather serious concerns are raised externally than not at all.

### 4.5.1 Regulatory Disclosures

Provided individuals meet the requirements of 4.3.1 they can make a protected regulatory disclosure to an appropriate body or agency from the list below.

Care Quality Commission Monitor	tel 03000 616161 or go to <a href="http://www.cqc.org.uk">www.cqc.org.uk</a> tel 020 7340 2400 or go to <a href="http://www.monitor-nhsft.gov.uk">www.monitor-nhsft.gov.uk</a>
Health & Safety Executive Department of Health	tel 0845 3450055 or go to <a href="http://www.hse.gov.uk">www.hse.gov.uk</a> tel 020 72104850 or go to <a href="http://www.dh.gov.uk">www.dh.gov.uk</a>
Local Security Management Specialist	tel 01535 292658
Local Counter Fraud Specialist	tel 0161 206 1909
NHS Whistleblowing Helpline	tel 08000 724 725
NHS Counter Fraud and Corruption Reporting Line	tel 0800 028 40 60 or go to <a href="http://www.reportnhsfraud.nhs.uk">www.reportnhsfraud.nhs.uk</a>
National Patient Safety Agency	tel 020 7927 9500 or go to <a href="http://www.npsa.nhs.uk">www.npsa.nhs.uk</a>
Parliamentary and Health Service Ombudsman	tel 0345 0154033 or go to <a href="http://www.ombudsman.org.uk">www.ombudsman.org.uk</a>
Environment Agency	tel 0800 807060 or go to <a href="http://www.environment-agency.gov.uk">www.environment-agency.gov.uk</a>
Equality and Human Rights Commission	tel 0845 604 6610 or go to <a href="http://www.equalityhumanrights.com">www.equalityhumanrights.com</a>

### 4.5.2 Wider Disclosures

If an individual has attempted to resolve their concerns internally and/or through a regulator without success, they may make a wider disclosure to, for example, the Police, their local MP or the media. External disclosures of concerns to the media should be seen as a last resort when all other options have been exhausted, and individuals are advised to seek independent

advice on this decision. Any unjustifiable disclosure that might undermine public confidence in the Trust or Health Service, may lead to disciplinary action.

In line with the Public Interest Disclosure Act 1998, wider disclosures are protected if they are reasonable in all circumstances and not made for personal gain and meet one of the following preconditions:

- There is a reasonable belief that the employee would be victimised if the matter was raised internally or with a prescribed regulator
- There is no prescribed regulator and there is a reasonable belief that the evidence would be concealed or destroyed
- The concern had already been raised internally or to a prescribed regulator
- The concern is of an exceptionally serious nature

## **5. Equality & Diversity**

Airedale NHS Foundation Trust is committed to the overarching principles of Equality and Diversity. As such the organisation values and supports its entire staff. We are committed to ensuring all forms of prejudicial, unfair basis and/or actions which result in discriminatory practices are eliminated. The Trust makes this stand based not only on meeting its legislative duties but also a moral strand on ensuring equitable outcomes for all of its staff and patients.

The Foundation Trust is continually working towards eradicating all forms of harassment and discrimination, exclusion, victimisation, harassment and bullying and working to ensure it meets its legal duties by ensuring that:

- unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010 are eliminated
- equality of opportunity between people from different groups; is advanced
- good relations between people from different groups are fostered.

The Trust treats any complaints it receives very seriously and as such any complaint received in respect of this policy or associated policies (in terms of application or adherence) will be investigated by Foundation Trust Staff. The process undertaken will also ensure that complainants, patients, relatives and carers are not discriminated against on the grounds of disability, gender, marital status, sexuality, colour, race, nationality, ethnic origin, religion, belief or age. Additionally, the Trust will ensure that no individual is treated in a detrimental manner as a result of having made a complaint.

The policy will be continually reviewed to ensure that there are no elements within the policy, practice or procedures that are prejudicial on any grounds in respect of the protected equality characteristics mentioned above. Using the guidance produced under the auspices of Equality legislation, this document has also been equality impact assessed and is attached at the end of the document.

## **6. Consultation**

This policy has been agreed by the Airedale Partnership Group (APG) following consultation with staff within the Trust. It was first introduced (as the Openness Policy) on 1 May 2000. A copy of the policy was circulated in June 2000 to all members of staff with their payslip and updated following management restructuring in February 2006 and reviewed in May 2007 when the title was changed and the flowchart added. The policy was significantly amended in August 2012 and agreed again by the Executive Directors Group on 12 September 2012.

## **7. Monitoring and Evaluation**

The implementation and effectiveness of this policy will be monitored by the OD & Workforce Directorate Management Team Meetings, and a report produced annually for the Trust Audit Committee.

This policy will be reviewed no later than September 2015. It will also be reviewed following each case to ensure that lessons are learned, with regards to process and application, and that they are reflected in the policy. In addition, the policy will be reviewed as necessary as new guidance or legislation is introduced.

## **8. References**

Speak up for a Healthy NHS (2010) – published by the Social Partnership Forum and Public Concern at Work.

PAS 1998:2008 Whistleblowing Arrangements Code of Practice (2008) – British Standards Institute and Public Concern at Work

Health Service Circular 1999/198: “The Public Interest Disclosure Act 1998 – Whistleblowing in the NHS”

**REPORTING CONCERNS & WHISTLEBLOWING POLICY  
APPENDIX A – REPORTING FORM**

Name:	Job Title & Grade:
Location & Directorate:	Telephone Number:
Date of discussion:	
Brief Outline of Concern:	
Advice Given to Individual:	
Action Agreed (including timescales where appropriate):	
Date Completed:	
Further Action (see overleaf)	YES / NO
Adviser's Signature:	
Individual's Signature:	

**FURTHER ACTION TAKEN**

Bring Forward Date:

Further Action Taken /Date:

Bring Forward Again on:

Further Action Taken Date:

Date Feedback Given to Individual:

Date Case Closed:

Adviser's Signature:

Individual's Signature:

**Monitoring Purposes Only:**

<u>Ethnic Origin</u>		<u>Age</u>		<u>Sex</u>		<u>Sexual Orientation</u>		<u>Religious Beliefs</u>		<u>Disabled</u>	
White	<input type="checkbox"/>	16 - 25	<input type="checkbox"/>	Male	<input type="checkbox"/>	Bisexual	<input type="checkbox"/>	Atheism	<input type="checkbox"/>	Yes	<input type="checkbox"/>
Mixed	<input type="checkbox"/>	26 - 35	<input type="checkbox"/>	Female	<input type="checkbox"/>	Gay	<input type="checkbox"/>	Buddhism	<input type="checkbox"/>	No	<input type="checkbox"/>
Asian	<input type="checkbox"/>	36 - 45	<input type="checkbox"/>	Do not wish to disclose	<input type="checkbox"/>	Hetero	<input type="checkbox"/>	Christianity	<input type="checkbox"/>	Do not wish to disclose	<input type="checkbox"/>
Black	<input type="checkbox"/>	46 - 55	<input type="checkbox"/>			sexual	<input type="checkbox"/>	Hinduism	<input type="checkbox"/>		
Other	<input type="checkbox"/>	56 - 65	<input type="checkbox"/>			Lesbian	<input type="checkbox"/>	Islam	<input type="checkbox"/>		
Do not wish to disclose	<input type="checkbox"/>	65 +	<input type="checkbox"/>			Do not wish to disclose	<input type="checkbox"/>	Jainism	<input type="checkbox"/>		
		Do not wish to disclose	<input type="checkbox"/>			Judaism	<input type="checkbox"/>				
						Sikhism	<input type="checkbox"/>				
						Other	<input type="checkbox"/>				
						Do not wish to disclose	<input type="checkbox"/>				

**ONCE CASE IS CLOSED PLEASE ENSURE FORM IS SENT TO HUMAN RESOURCES.**

## APPENDIX B - Flow Chart of Process for Handling Concerns

