

Livewell Southwest

**Raising Concerns and Speaking Up
(Whistleblowing Policy)**

Version No 3.9
Review: December 2021

Notice to staff using a paper copy of this guidance

The policies and procedures page of Intranet holds the most recent version of this guidance. Staff must ensure they are using the most recent guidance.

Author: HR Department

Asset Number: 122

Reader Information

Title	Raising Concerns and Speaking Up (Whistleblowing Policy). V.3.9
Asset number	122
Rights of access	Public
Type of paper	Policy
Category	Non clinical
Document purpose/summary	This policy describes circumstances in which employees may whistleblow. The protection afforded under The Public Interest Disclosure Act 1998 (commonly known as the 'blowing the whistle'. The policy is intended to supplement rather than replace the Concerns and Complaints, or Grievance Policies and Procedures.
Author	HR Department
Ratification date and group	8 August 2015, JCCN
Publication date	1 st July 2022
Review date and frequency	Three years after publication, or earlier if there is a change in evidence.
Disposal date	The PRG will retain an e-signed copy for the archive in accordance with the Retention and Disposal Schedule. All copies must be destroyed when replaced by a new version or withdrawn from circulation.
Name & Job title	Head of HR
Target audience	All staff; Contractors and Sub-Contractors; Agency Staff; Work Experience Placements; Volunteers
Circulation	Electronic: Livewell Southwest (LSW) intranet and website (if applicable) Written: Upon request to the PRG Secretary on ☎ 01752 435104. Please contact the author if you require this document in an alternative format.
Stakeholders	Staff at Livewell Southwest
Consultation process	HR Department in conjunction with JTUF representatives
References/sources of information	<ul style="list-style-type: none"> Freedom to Speak Up Guardian Guidance (March 2016) Standard NHS integrated policy published by NHS Improvement and NHS England (April 2016)
Equality analysis checklist completed	Yes
Is the Equality and Diversity Policy referenced	Yes
Is the Equality Act	No

2010 referenced	
Associated documentation	<ul style="list-style-type: none"> • Harassment and Bullying Policy • Incident Reporting Procedure • Grievance Policy • Concerns and Complaints Policy
Supersedes document	All previous versions
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Document review history

Version no.	Type of change	Date	Originator of change	Description of change
For previous document review history, please contact the PRG Secretary.				
3.	Updated	May 2013	Colette Davies	Reviewed. Minor changes and updating of titles. Policy checked with JTUF, LCFS and Medical Director
3.1	Reviewed	July 2015	HR Policy Group	Reviewed and minor changes made.
3.2	Updated	October 2016	HR Policy Group	Updated to include Freedom to Speak Up Guardian
3.3	Minor Up-date	19 December 2017	HR Policy Group	Change in policy title
3.4	Extended	July 2018	Head of HR & Staff Wellbeing	Extended
3.5	Extended	September 2019	Head of HR & Staff Wellbeing	Extended
3.6	Extended	February 2020	Head of HR & Staff Wellbeing	Extended
3.7	Extended	January 2021	HR Admin	Extended
3.8	Extended	April 2021	HR Admin	Extended
3.9	Extended	July 2022	HR Admin	Extended

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Raising Concerns and Speaking Up (Whistleblowing Policy)

1 Introduction

1.1 Equality statement

- 1.1.2 Livewell Southwest is committed to fairness and equity and values diversity in all aspects of its work as a provider of health and social care services and as an employer of people. We constantly strive to build a workforce that is representative of the community it serves.
- 1.1.3 Livewell Southwest is committed to eliminating all forms of discrimination on the grounds of age, disability, gender reassignment, marriage / civil partnership, pregnancy maternity, race, religion or belief, sex and sexual orientation in the provision of our services and in recruitment and employment. This enables an environment that is characterised by dignity and respect which is free from harassment, bullying and victimisation in line with Livewell Southwest's Equality & Diversity Policy.

1.2 Policy statement

- 1.2.1 Livewell Southwest encourages an open culture in all its dealings between staff, managers, and all people with whom it comes into contact. The Livewell Southwest Board supports the principles of freedom to speak up across the organisation to create a culture where staff understand and feel confident in raising concerns however insignificant they appear. This Policy provides guidelines to all staff (definition in 6.1) that feel they need to raise concerns relating to the organisation, in confidence.
- 1.2.2 Where you have an employment grievance, then this policy will not apply. Please use Livewell Southwest's Grievance Policy.
- 1.2.3 Other policies which might be more appropriate to use are:
- Bullying and Harassment Policy
 - Counter Fraud Policy and Guidance
 - Serious Incidents Requiring Investigation (SIRI) Policy

2. Purpose

- 2.1 At one time or another staff may have concerns about what is happening at work. Speaking up about any concern staff may have at work is really important. Usually these concerns are easily resolved. However, when they are about unlawful conduct, risks and dangers to our patients, the public, work colleagues, the environment; harassment; unprofessional practice at work or financial malpractice then staff may wish to raise it through this policy.

- 2.2 The Policy is designed to protect those raising a concern from suffering a detriment and/or unfair dismissal in compliance with the Public Interest Disclosure Act 1998. Providing that concerns and allegations are made lawfully, without malice and in the public interest, employees will not be disadvantaged by raising a concern and gives protection to all employees who disclose information reasonably and responsibly in the public interest. It also affords protection to those who suffer victimisation as a result of a disclosure up to and including dismissal.
- 2.3 A 'whistleblower' is a witness not a complainant. Someone faced with a dilemma is actively encouraged and supported to raise the matter with their employer in the first instance before considering taking their concerns to an appropriate external body, e.g. Professional Body, Care Quality Commission, Clinical Commissioning Group.

3 Definitions

For the purposes of this Policy, the following terms and definitions apply.

- 3.1 **Whistleblowing concern** – reasonable and honest suspicion an employee has about a possible fraud, danger or other serious risk that threatens patients/clients, carers, colleagues, the public or the organisation's own reputation.
- 3.2 **Open whistleblowing** – where the employee openly raises the whistleblowing concern and does not request confidentiality.
- 3.3 **Confidentiality** – where the employee's name is known but will not be disclosed without their consent, unless required by law.
- 3.4 **Designated officer** – senior officer whom Livewell Southwest designates to receive whistleblowing concerns, employees can report, normally by telephone, or email a whistleblowing concern.
- 3.5 **External disclosure** – raising a whistleblowing concern externally with a regulator or independent supervisory body, or as appropriate the police, MPs, consumer/citizen groups or the media.
- 3.6 **Tip-off** – indication of an otherwise unknown fact that can then be evaluated or corroborated by independent evidence.
- 3.7 **Anonymity** – where the employee does not identify him or herself at any stage to anyone.
- 3.8 **Bribery and corruption:**

- **General bribery offences** - Sections 1 to 5 of the Bribery Act 2010 sets out the "general bribery offences".
- Bribery occurs when a person offers, gives or promises to give a "**financial or other advantage**" to another individual in exchange for "**improperly**" performing a "**relevant function or activity**".
- Being bribed, is defined as requesting, accepting or agreeing to accept such an advantage, in exchange for improperly performing such a function or activity.
- A "**financial or other advantage**" has a wide meaning and could include holidays or entertainment, contracts, non-monetary gifts and offers of employment etc.
- A "**relevant function or activity**" covers "any function of a public nature; any activity connected with a business, trade or profession; any activity performed in the course of a person's employment; or any activity performed by or on behalf of a body of persons whether corporate or unincorporated".
- The conditions attached are that the person performing the function could be expected to perform it in good faith or with impartiality, or that an element of trust attaches to that person's role.
- Activity will be considered to be "**improperly**" performed when the expectation of good faith or impartiality has been breached, or when the function has been performed in a way not expected of a person in a position of trust.
- The standard in deciding what would be expected is what a reasonable person in the UK might expect of a person in such a position.

4 Duties & responsibilities

- 4.1 The **Chief Executive** is ultimately responsible for the content of all policies, implementation and review.
- 4.2 **Directors** are responsible for supporting the principles of freedom to speak up across the organisation to create a culture where staff understand and feel confident in raising concerns however insignificant they appear.
- 4.3 **Freedom to Speak Up Guardian** (Director of Professional Practice, Safety & Quality) is responsible for acting 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.
- 4.4 **Line Managers** have a responsibility to listen and act where appropriate to a concern raised by a staff member.
- 4.5 The responsibility of all **staff** is to be aware of the policy and their responsibilities; ensuring that they raise any concerns at the appropriate level; participate and engage in the process by providing full and detailed information as required; maintain confidentiality of the matter as appropriate.
- 4.6 Responsibility of any other group for instance, volunteers, students, honorary contracts, contractors etc. is to be aware of the policy and their responsibilities; ensuring that they raise any concerns at the appropriate level; participate and engage in the process by providing full and detailed information as required;

maintain confidentiality of the matter as appropriate.

5 Who may use this policy?

- 5.1 All staff, trainees, agency workers, temporary workers, students, contractors and volunteers.
- 5.2 There is no employment qualifying period for raising a concern.

6. What concerns can you raise?

- 6.1 You can raise a concern about **risk, malpractice or wrongdoing** you think is harming the service we deliver. Just 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 - (01752) 431378 or 07789 868568).
 - A bullying culture (across a team or organisation rather than individual instances of bullying).
 - A criminal offence (for example taking bribes to authorise false invoices, or to fix prices).
 - A failure to comply with a legal obligation (for example employing an overseas worker without the required work permit).
 - A miscarriage of justice.
 - The endangering of an individual's health and safety (for example re-labelling out of date food or mistreating or neglecting a patient/people who use our services).
 - Damage to the environment by the illegal dumping of clinical waste.
 - Deliberate concealment of information tending to show any of the above.
- 6.2 Remember that if you are a healthcare professional you may have a professional duty to report a concern. **If in doubt, please raise it.**
- 6.3 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.

7 Feeling safe to raise your concern

7.1 Your Protection

- 7.1.1 If you raise a concern, you will not be at risk of damaging your position as a result, provided that you are acting in good faith, not motivated by personal gain or reasonably believe that information disclosed is substantially true, it does not matter if you are mistaken. The organisation does not extend this assurance to someone who acts from an improper motive and raises a matter they know to be untrue.

7.2 Your Confidence

- 7.2.1 The fear of being labelled a troublemaker or disloyal, or being victimised are powerful reasons for not reporting concerns. The victimisation of anyone who raises a concern will not be tolerated and may be subject to disciplinary action.
- 7.2.1 You may decide that you want to raise a concern in confidence. Therefore, if you ask for your identity to be protected, it will not be disclosed without your consent. Where it is not possible to deal with the concern without revealing your identity (for instance because your evidence is needed in Court), there will be a discussion and support will be given.
- 7.2.2 This policy does not cover the situation where information about malpractice is received anonymously; discretion will be used in the investigation of such information.

7.3 Gagging

- 7.3.1 To be 'gagged' is to force upon the person something which prevents speech, to silence and to deprive freedom of speech, for instance by the use of 'gagging clauses'.
- 7.3.2 Gagging may also be a fundamental breach of the individuals Human Rights under the Human Rights Act (2000) – 'Freedom of Expression'.

7.4 Gagging Clauses

- 7.4.1 We believe that the use of 'gagging clauses' in employment contracts and settlement agreements are void insofar as they conflict with the Human Rights Act's protection.
- 7.4.2 To eliminate practices which might be viewed as an attempt to conceal evidence of malpractice, we will review confidentiality clauses in relevant contracts, including settlement agreements, to ensure that these do not prohibit or penalise the making of a protected disclosure as listed in Section 6 above.

8. Who should you raise your concern with?

8.1 Internal disclosure line manager

- 8.1.1 In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager, a more senior manager or HR manager. It will help if you state the facts of the matter clearly and remember to give details of how you can be contacted. But where you do not think it is appropriate to do this, you can use any of the options set out below in the first instance.

8.2 Alternative internal disclosure contacts – Designated Officers

- 8.2.1 If you feel unable to raise the matter with someone in your immediate line management, for whatever reason, please contact one of the following:

Director of Professional Practice, Safety and Quality (Freedom to Speak Up Guardian)
Telephone (01752) 434638

Medical Director
Telephone (01752) 431703/434740

Director of Clinical Practice and Development
Telephone (01752) 01752 434129

Or via email: LSWCIC.Whistleblowing@nhs.net

- 8.2.2 If for any reason you do not feel comfortable raising your concern internally, you can raise concerns with external bodies, listed in section 9.

8.3 Medical and Dental (Non Pay Review Staff)

- 8.3.1 If Medical and Dental staff not covered by the Pay Review have any clinical concerns these must be raised immediately with the Medical Director or Director of Operations in writing. You will receive written acknowledgement of your concern.

8.4 Fraud

- 8.4.1 If your concern is about suspected fraud and/or corruption please contact either the Director of Finance or the Local Counter Fraud Specialist for Livewell Southwest on 01752 431378 or 07789 868568.

9 Raising your concern with an outside body

9.1 Whilst we hope this policy gives you the reassurance you need to raise a concern internally, we would rather you raised a matter with the appropriate regulator than not at all. Provided you are acting in good faith and you have evidence to back up your concern, you can also contact an appropriate agency from the list below.

- Care Quality Commission for quality and safety concerns - www.cqc.org.uk.
- NHS England for concerns about general practice and dental services - www.england.nhs.uk.
- Health Education England for education and training in the NHS - <https://hee.nhs.uk>.
- NHS Protect for concerns about fraud and corruption - www.nhsbsa.nhs.uk.
- Local Counter Fraud Specialist - (01752) 431378 or 07789 868568.

10 What support is available?

10.1 Mediation, counselling and stress management are offered via Occupational Health and Wellbeing and Options.

11 How should you raise your concern?

11.1 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.

12 What will the organisation do?

12.1 Once a concern has been raised, it will be assessed to determine what action should be taken through an informal investigation. The following information will be provided:

- Who is handling the matter
- Contact details
- If further assistance may be needed from the person raising the concern

12.2 If there is any personal interest in the matter it should be declared at the outset. Depending on the nature of the concern it may be more appropriate to address the issue using a different policy e.g. Grievance Policy.

12.3 Whilst the purpose of this policy is to enable the organisation to investigate reported concerns and take appropriate steps to deal with it, please note, that we may not be able to advise on the precise action that is taken where this would infringe confidentiality. However we will provide as much feedback as we can.

13 Where can you get independent advice?

- 13.1 If you are unsure whether to use this policy or if you want independent advice at any stage you may contact The Independent Charity Public Concern At Work - www.pcaw.co.uk.
- 13.2 This Charity specialises in providing free and confidential legal advice on how to report serious concerns at work. Public Concern At Work will also help to advise on whether a circumstance can be properly reported to an additional outside body such as the Police.

14 Can you make wider public disclosures?

- 14.1 If all other avenues have been exhausted, it would be considered acceptable by the organisation for you to take the matter to a Member of Parliament, the Police or Non-Prescribed Regulators if the subject of the disclosure is serious enough to warrant wider disclosure because:
- You believe you would be victimised if you raised the matter internally.
 - You reasonably believed a cover up was likely.
 - You had already raised the matter internally and were not satisfied with the outcome.
 - And your concern is not made for personal gain.

15 Can you make approaches to the media?

- 15.1 Raising your concerns externally before you have voiced your concerns internally may weaken the protection given to you under the Public Interest Disclosure Act 1998. No one covered by this policy should generate public anxiety by making a public statement on the basis of un-researched or unchecked rumour without first having raised these concerns through the appropriate organisation management channels.
- 15.2 If internal procedures have been exhausted and after genuine attempts to have your concerns heard you are still convinced that something is seriously wrong, there is no organisation restriction on approaching the media in these circumstances. Livewell Southwest asks that where it is the intention to 'go public' that the Communications Team are informed prior to the act.
- 15.3 Where staff do not follow this policy their actions may be dealt with under Livewell Southwest's Disciplinary Policy.

16 Can you take legal advice?

- 16.1 If you have a concern you can also get independent and confidential advice about the Act from a solicitor or lawyer. Disclosures to solicitors and lawyers are protected.

17 Where else can you raise concerns?

- 17.1 To reassure you that we want you to raise concerns internally and that we deal with your concerns properly please know that you can also contact any of the following agencies:
- (i) Occupational Health & Wellbeing (OH&WB) – you are able to contact OH&WB on (01752) 437222 or by email: plh-tr.OccupationalHealthWellbeingBookings@nhs.net
 - (ii) Your Trade Union will also be able to provide advice and support in the most appropriate agency to contact and how to go about this. Contact the Union Office, Mount Gould Hospital. Telephone: (01752) 434450.

18 Training implications

- 18.1 Training will be provided to managers, as required, on their duties in relation to this policy.

19 Monitoring compliance

- 19.1 The HR Department will be responsible for monitoring the effectiveness of this Policy in conjunction with managers and Trade Union partners.

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

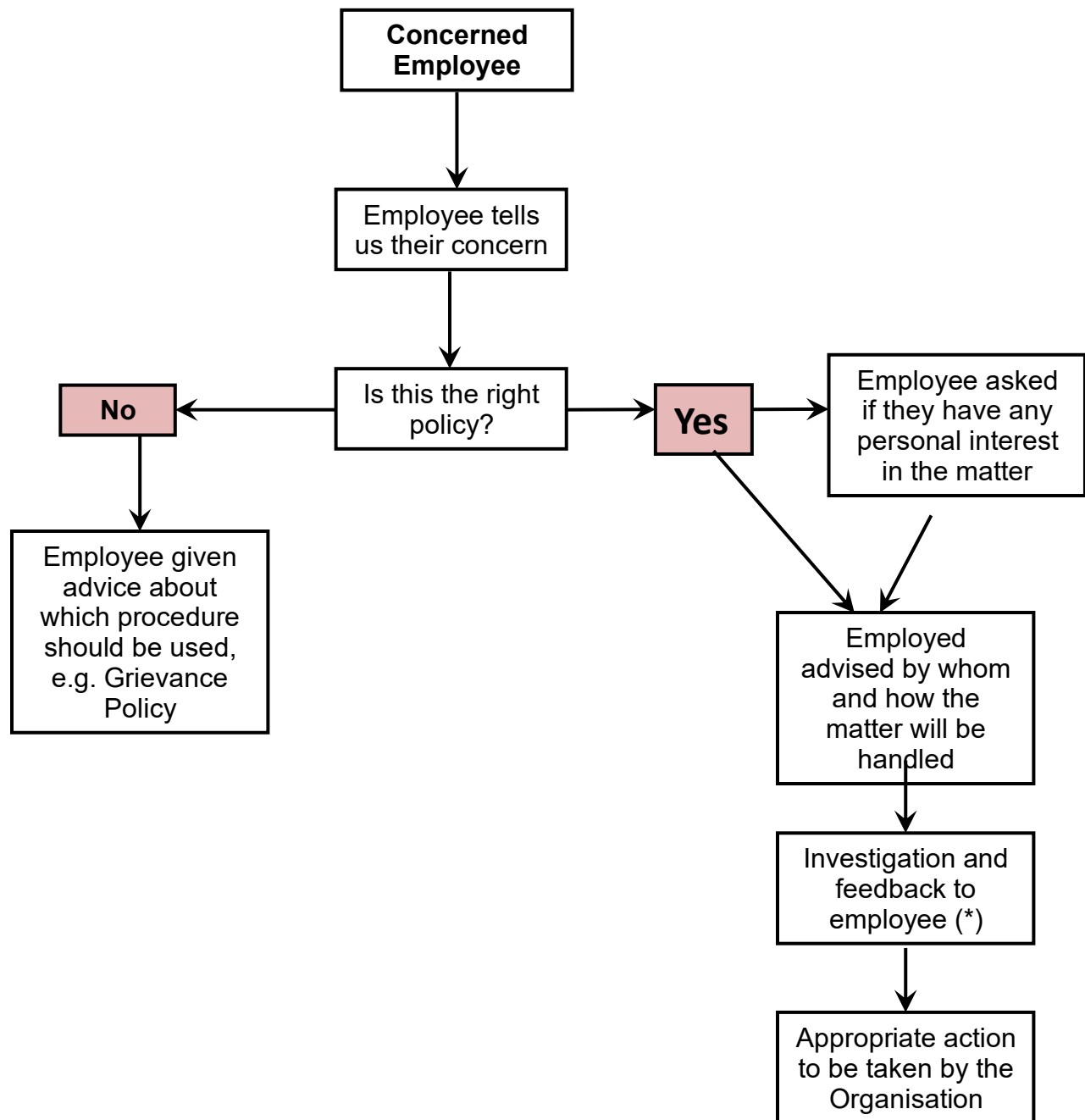
The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Clinical Practice & Development

Date: 19 December 2017

Flow Chart: How We Will Handle the Matter



(*) Please note that when dealing with possible malpractice we will give you as much feedback as we can. We may not be able to tell you the precise action we take where this could infringe a duty of confidence to someone else.