

**TRUST WIDE DOCUMENT**

<b>DOCUMENT TITLE:</b>	<b>Concerns at Work Policy (Whistle Blowing )</b>
<b>DOCUMENT NUMBER:</b>	<b>ELHT/HR20 version 4</b>

<b>DOCUMENT PURPOSE:</b>	<p>ELHT is committed to ensuring the highest standards of service and the highest ethical standards in delivering this service.</p> <p>It is the responsibility of all employees to ensure that if they become aware that the actions of other employees or officers of the Trust or anyone working for, with or connected to it might compromise this objective, they will be expected to raise the matter.</p>
<b>SUPPORTING REFERENCES</b>	<p>Public Interest Disclosure Act 1998 Bribery Act 2010 ELHT HR09 Disciplinary Procedure ELHT Procurement Policies and Procedures NHS Constitution Bribery Act 2011 Public Interest Disclosure Act 2011 Enterprise &amp; Regulatory Reform Act 2013</p>
<b>TARGET AUDIENCE:</b>	All Trust Personnel
<b>DISTRIBUTION:</b>	All Trust policy manuals and intranet
<b>AUTHOR(S):</b>	Human Resources Department
<b>EXECUTIVE DIRECTOR RESPONSIBLE:</b>	Chief Executive

<b>CONSULTATION VIA</b>	Policy Sub Group, JNCC
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<b>Table of contents Page No</b>		
1	Introduction and Scope of Policy	<del>4</del> 4
2	Responsibilities	<del>9</del> 7
3	Procedure for Reporting	<del>10</del> 8
4	Safeguards against malicious allegations	<del>12</del> 9
5	Disclosure outside the Trust	<del>12</del> 10
6	Dismissal	<del>13</del> 10
7	Detriment	<del>13</del> 11
8	Routes of disclosure that are protected	<del>14</del> 11
9	Disclosures elsewhere	<del>15</del> 12
10	Disclosures in exceptionally serious cases	12
<b>Appendix 1</b>		<del>16</del> 13
Contact details of prescribed bodies and other organisations		
<b>Appendix 2</b>		<del>18</del> 15
Guidelines for Initial Discussion with Employee		
<b>Appendix 3</b>		<del>20</del> 17
Flow Chart of Process for raising a concern		
<b>Appendix 4</b>		18
<b>Policy Monitoring Arrangements</b>		

## **CONCERNS AT WORK POLICY ('WHISTLE BLOWING')**

*This policy should be used when employees genuinely believe there may have been a breach of ethical standards and or standards of service and patient care have been compromised. A breach of the following also constitutes the need to raise concerns:*

- *A criminal offence, including an offence that has occurred in the past or is likely to be committed*
- *A breach of a legal obligation*
- *Risks to health or safety*
- *Damage to the environment*
- *Miscarriages of justice*
- *Bribery (Bribery Act 2010)\**
- *Concealment of any of the above*

### **1. Introduction and Scope of Policy**

The Trust is committed to ensuring the highest standards of service and the highest ethical standards in delivering this service. It is the responsibility of all employees to report appropriately if they become aware that the actions of other employees or associates of the Trust or anyone working for, with or connected to it might compromise this objective. If they believe this standard has been compromised, it will be their responsibility to report concerns as outlined in this procedure. ELHT is committed to preventing and eliminating all forms of malpractice and wrongdoing and will support all staff who genuinely raise a concern about behaviours or services of concern to them. This is further endorsed by the Department for Health who have amended the NHS Constitution to strengthen and reinforce whistleblowing. The NHS Constitution now has an expectation that NHS staff will raise concerns about safety, malpractice or wrong doing at work which may affect patients, the public other staff or the organisation itself as early as possible.

- 1.1 Employee's belonging to professional bodies such as the GMC and NMC are bound by professional codes and therefore have a duty to raise concerns where they believe patient dignity, care and safety is being compromised. Not doing so could be in breach of their professional obligations.
- 1.2 This policy and procedure has been developed to support and assist employees to bring genuine concerns to the attention of appropriate people within the Trust who can take the relevant action. The Public Interest Disclosure Act 1998 as amended in 2011 protects employees who, acting in good faith, disclose information about the Trust and its activities or those of any of its employees, or officers, anyone working for, with or connected to it.
- 1.3 Making a disclosure in the public interest is also referred to as 'whistle blowing' or 'blowing the whistle'. The Public Interest Disclosure legislation protects workers

from dismissal or victimisation in the event that they disclose some sort of wrongdoing to ELHT or another appropriate body. 'Worker' in this context includes not only those who are directly employed by the Trust, but also other individuals such as agency temps, freelancers and casual employees. Anyone who works for the Trust under any type of contract or agreement will fall within the scope of the protection.

1.4 The Trust has a range of policies and procedures which deal with standards of behaviour and conduct at work e.g. Disciplinary and Grievance Procedures and Harassment and Recruitment Policies. Employees should use these procedures where necessary. However, situations may arise where it is not appropriate or employees feel unable to report incidents through the usual management channels. If this is the case; employees are protected under the Public Interest Disclosure Act to raise their concerns as a protected disclosure with any management representative or HR.

1.5 Managers will need to recognise that there is a difference between a grievance and a protected disclosure. A grievance will concern an employee personally, ie the individual may have a complaint about:

- His or her pay or working hours
- The amount of work that he or she is expected to do
- Working conditions
- Being bullied by fellow workers

1.6 A protected disclosure, on the other hand, will concern the conduct of another person in the workplace (whether or not that conduct affects the complainant personally) and where the complainant genuinely believes that the conduct in question amounts to:

- A criminal offence, including an offence that has occurred in the past or is likely to be committed
- A breach of a legal obligation
- Risks to health or safety
- Damage to the environment
- Miscarriages of justice
- Bribery (Bribery Act 2010)\*
- Concealment of any of the above

\* A bribe is defined as the giving or taking of a reward in return for acting dishonestly and/or in breach of the law.

Under the Bribery Act 2010, there are four possible offences:

1. Bribing another person
2. Being bribed
3. Bribing a foreign public official

#### 4. Failure to prevent bribery

It is a criminal offence for an individual to give or to receive a bribe. It is a corporate offence if a business is found to have failed to prevent bribery.

1.7 The law defines protected disclosures as listed above and qualify the person making them for protection against dismissal and detriment. A disclosure will also be protected if the information disclosed is of a nature that shows that any of the above is likely to be deliberately concealed.

Examples may include:

Malpractice or ill treatment of a patient/client by a member of employees.

Inappropriate sexual behaviour or language by an employee or someone acting on behalf of the Trust, towards patients/clients/other employees.

Repeated ill treatment of a patient/client, despite a previous report having been made.

Suspected fraud.

Showing undue favour over a contractual matter or to a job applicant

Falsification of financial records.

Disregard for legislation e.g. health and safety legislation.

The use of unsafe equipment or unsafe working practices. Breach of Trust standing financial instructions.

<b>Examples of the difference between a grievance and a protected disclosure</b>	
<b>Grievance</b>	<b>Protected disclosure</b>
An individual's complaint is in relation to the type of work that he or she is being asked to do, for example if it is not covered by his or her contract	A disclosure that an individual has been instructed to carry out actions that he or she genuinely believes to be illegal, eg to falsify tax returns
Employees complaint that he or she has received insufficient safety training	A disclosure that safety rules within the workplace are routinely being flouted, thus endangering safety
Complaint from a member of employees about the hours that he or she is expected to work	A disclosure that the requirements imposed by the organisation on a group of employees represent a breach of the working time legislation

## 2. Responsibilities

2.1 Where employees raise concerns they must do so in good faith with a true belief that a malpractice has occurred. They should not therefore do so with any malicious intent. It is important to note that whilst some employees may choose to raise concerns in writing; this is by no means compulsory and they are able to bring their concerns to the attention of managers verbally. Trust managers have a duty to:

Take the employees concerns seriously and acknowledge the difficult position they may be in.

Consider them carefully and undertake an investigation.

Seek appropriate advice from Human Resources.

Take prompt action to resolve the concern or refer it on to an appropriate person.

Keep the employee informed of the process. Monitor and review the situation.

Inform senior managers.

Ensure individuals who genuinely report concerns are not penalised in any way. Any individual who makes a disclosure of wrongdoing or malpractice in good faith, will be treated with respect and will be afforded protection against victimisation. Anyone who victimises a whistleblower will be subject to the organisation's disciplinary procedure.

2.2 The Trust recognises the difficulty employees may face in voicing concerns, and assures them of support. All attempts will be made to maintain confidentiality during the initial investigation process but employees who raise matters of concern should recognise that this may not always be possible and that they may need to provide evidence as part of an official investigation.

2.3 The Royal Mencap Society can be contacted if employees are unsure about raising concerns or would like independent support and advice. Contact details are in appendix 1.

2.4 Any employee who in good faith makes allegations that turn out to be unfounded will not be penalised for being genuinely mistaken.

2.5 The Trust Board is responsible for monitoring this procedure and the concerns or issues that are raised as a result.

## 3. Procedure for Reporting

3.1 All employees who have genuine concerns relating to the Public Interest Disclosure Act, are encouraged to use the internal procedure prior to pursuing

any external routes which may be available. However if an employee feels unable to raise the issue internally; there are contacts numbers in appendix 1.

3.2 The options available to employees are as follows:

A. Raising concerns with a manager.

B. Contacting a “**designated person**” who is outside of the formal line management structure. The designated persons for ELHT are the Company Secretary and the Director of HR & OD

C. Contacting a union representative.

D. Raising a concern directly with the Trust Chairman, Chief Executive or other member of the Trust Board

3.3 The Trust is keen to ensure that employees feel able to raise such concerns to their managers. Where concerns relate to their manager, they are able to raise them with other senior managers in the Trust. Concerns can be raised verbally or in writing. Concerns raised verbally must be treated in the same manner as those reported in writing.

3.4 Managers will endeavour to reassure employees and maintain confidentiality. If employees request to protect their identity by remaining anonymous, the Trust will not disclose their details without consent. If the situation arises where it is not possible to resolve the concern without revealing an individual’s identity (for instance; when evidence is needed in court or for a disciplinary investigation) this will be discussed with the employee as to whether and how the Trust can proceed. In the event that employees are not willing to be identified and the Trust cannot proceed with any further action, the allegation will be confidentially recorded.

3.5 Where possible, concerns about health service issues should be resolved informally i.e. between the employee and his/her line manager or professional head.

3.6 Managers will take the concern seriously and consider the issues fully and sympathetically. Managers may seek advice from health care professionals where necessary. They will acknowledge that raising a concern can be a difficult experience for some employees.

3.7 If employees wish, they may be accompanied by a work colleague or staff-side representative when meeting to discuss any such issue they wish to raise.

3.8 The manager will be required to initiate a thorough investigation of the allegations using appropriate support from Human Resources, Senior Managers and if appropriate, a local counter-fraud specialist. On receipt of a concern raised, the manager should endeavour to respond to the employee as soon as appropriate action has been taken, both to re-assure them and thank them for their disclosure. Please refer to appendix 2.

3.9 The employee does not need to be informed of what actual action is taken or the final outcome to the matter. However, they should be kept informed on a regular basis of the process and progress being made and be re-assured that it is being dealt with in an appropriate manner.

3.10 In the event that the inappropriate activity continues, employees will have the right to escalate the issue to the Trust Board. Employees should be reassured that the issue will be resolved as speedily as possible. Managers will endeavour to complete investigations within 20 working days. Where this it is not possible, the employee will be kept informed of progress and reasons for delay.

3.11 Whilst pursuing the aim of openness, it is imperative that patient confidentiality is maintained and that confidence in the services provided by the Trust is not unreasonably undermined. Similarly, as employees have certain obligations and loyalties to the Trust as their employer, it is important that the employer/employee relationship is not compromised.

### **3.13 Concerns about the Chief Executive/Chair**

Where a complaint is about the Chief Executive of the Trust an employee should raise the issue with the Chair. If, however, concerns relate to the Chair of the Trust, these can be raised with the Senior Independent Director (contact details in Appendix 1) who will decide on how the investigation will proceed. This may include an external investigation.

### **3.14 Trade Union Representatives**

The Trust recognises that some employees may wish to raise their concerns initially with their staff side representative. The staff side representative will ascertain as many facts as possible from the individual and raise the issue with the appropriate manager. The manager will then follow the procedure as laid out above.

## **4. Safeguards against malicious allegations**

Where the investigation concludes that malicious allegations have been made it will be necessary to take action under the Trust's Disciplinary Procedure.

## **5. Disclosure outside the Trust**

5.1 An employee who, having exhausted procedures within the Trust, remains dissatisfied, has the right to pursue the matter in the public arena through disclosure to 'prescribed bodies' or 'prescribed persons'. Please see appendix 1 for contact details of prescribed bodies.

5.2 Disclosure to other persons, for example the Press, Legal Adviser or MP will be protected under the Act, provided that the individual makes the disclosure in

good faith, reasonably believes the information to be true and does not make the disclosure for personal gain and provided that he/she

- believes that if he/she were to disclose matter to his/her employer they would be subject to detrimental treatment.
- believes that evidence relating to the subject matter of the disclosure would be concealed or destroyed if the disclosure is made to his/her employer and remains dissatisfied having exhausted all internal procedures.

or

- the employee has already disclosed the information to his/her employer and the inappropriate activity/issue has/is continuing.

5.3 In exceptional circumstances e.g. where there is possible danger to life, employees have the right to make public disclosure **without** going through Trust procedures. However, the Trust would encourage the employee to also raise the matter with the designated persons or senior manager.

5.4 Employees are reminded that disclosure, even where warranted, does not give the right to disclose confidential information of ELHT e.g. patient records/information, personal details etc. Professional organisations e.g. NMC, GMC also have Codes of Conduct relating to the use and disclosure of privileged information and confidentiality.

## 6. Dismissal

6.1 If an employee is dismissed or selected for redundancy because he or she has made a protected disclosure, the dismissal will be automatically unfair.

6.2 In most cases of dismissal, the dismissed employee must have at least a year's continuous service with the employer to be eligible to bring a claim of unfair dismissal to an employment tribunal. If, however, the reason or principal reason for the dismissal is that the employee made a protected disclosure, no minimum length of service is required.

6.3 The dismissed employee will, however, need to be able to present sufficient evidence to the tribunal to counteract any alternative reason for dismissal put forward by the employer.

6.4 Although only employees (and not other workers) can bring complaints of unfair dismissal, a worker who is not an employee can complain that he or she has been subjected to a detriment if his or her contract is terminated for whistleblowing.

## 7. Detriment

7.1 A claim for detriment following whistleblowing can be based on any form of victimisation, including:

- Disciplinary action
- Denial of a work-related benefit
- Non-payment of a bonus, or allocation of an unreasonably low bonus
- Denial of a promotion
- Being demoted or transferred to less interesting work
- Verbal or physical abuse at work by management or colleagues
- Any form of bullying or harassment
- Being allocated all the worst jobs or forced to work excessive overtime

7.2 Workers are entitled to complain to an employment tribunal if they experience this type of detrimental treatment because they have made a protected disclosure.

7.3 To claim detriment, a worker must have sufficient evidence to demonstrate that the way in which he or she was treated was linked to the fact that he or she had previously made a protected disclosure.

7.4 It does not matter where in the world the alleged wrongdoing has occurred (is occurring, or is likely to occur). The person making the disclosure will be protected provided that he or she is employed in Great Britain.

## **8. The routes of disclosure that are protected**

8.1 The law lays down clear principles about how a potential whistleblower must make a disclosure if the disclosure is to be protected. The purpose of these rules is primarily to encourage workers to raise their concerns through appropriate channels rather than, for example, publicising their allegations in the newspapers. There are six routes that may attract protection, these being a disclosure in good faith:

- To the employer directly
- To a legal adviser, if made in the course of obtaining legal advice
- To a Minister of the Crown, where the worker is engaged in Crown or public employment
- To a 'prescribed person' (see Disclosures to a 'prescribed person' in Appendix 1)
- Elsewhere in defined circumstances (see Disclosures elsewhere below)
- Elsewhere in exceptionally serious cases (see Disclosures in exceptionally serious cases below)

## **9. Disclosures elsewhere**

9.1 A disclosure made elsewhere - for example, to the police, an MP or a non-prescribed regulator - may qualify as a protected disclosure if:

- The worker reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body

- The worker had previously disclosed his or her concerns to the employer or a prescribed body
- In circumstances where there is no prescribed body, the worker reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice

Certain other conditions must also be met. These are that:

- The disclosure must be made in good faith
- The person making the disclosure must reasonably believe that the information disclosed is substantially true
- The person making the disclosure must not have done so for personal gain
- It must be reasonable in the circumstances for the person to have made the disclosure in that way

## **10. Disclosures in exceptionally serious cases**

10.1 If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. 'Exceptionally serious' is not defined in the legislation, but is likely to be restricted to matters where disclosure would serve the public interest.

The worker making the disclosure must::

- Make it in good faith
- Reasonably believe that the information being disclosed is substantially true
- Not be disclosing the information for financial gain.

10.2 It must also be reasonable in all circumstances for the person to make the disclosure.

## Appendix 1

### ELHT Prescribed Persons:

**Company Secretary:** Ms Frances Murphy (frances.murphy@elht.nhs.uk) **Director**

**of HR & OD:** Mr Kevin Moynes (kevin.moynes@elht.nhs.uk)

**Senior Independent Director:** Mr Shazad Sarwar (shazad.sarwar@elht.nhs.uk)

### Prescribed Bodies for reporting Public Interest Disclosures:

The Health and Safety Executive  
Redgrave Court  
Merton  
Road Bootle  
Merseyside  
L20 7HS

The Environment Agency  
National Customer Contact Centre  
PO BOX 544  
Rotherham  
S60 1BY  
T:0800 80 70 60

The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  
T: 020 7066 1000

### Other Key Contacts:

Public Concern at Work  
For information about the Public Interest  
Disclosure Act 1998, please visit:

**[www.pcaw.co.uk/law/uklegislation.htm](http://www.pcaw.co.uk/law/uklegislation.htm)**

NHS Counter Fraud and Security  
Management Services (CFSMS)  
Weston House  
246 High Holborn  
London WC1V 7EX  
Tel: 020 7895 4500

Care Quality Commission (CQC)  
Finsbury Tower  
103–105 Bunhill Row  
London EC1Y 8TG

Tel: 020 7448 9200

Monitor  
4 Matthew Parker Street  
London SW1H 0NP  
Tel: 020 7340 2400

National Patient Safety Agency (NPSA)  
4–8 Maple Street  
London W1T 5HD  
Tel: 020 7062 1620

## **Appendix 2 - Guidelines for Initial Discussion with Employee**

This sheet is not intended to be used as a proforma. It is a suggested structure to support you in gaining as much information as possible. Depending on the nature of the concern some of the points may not be appropriate.

Details of concern e.g.

What has happened

When did it occur

Where did it occur

Who was involved

How long has this been happening

Are there any other witnesses

Is there any supporting information

How did the employee become aware of incident/occurrence.

Has the matter been raised with anyone else, if so whom.

Name of persons to whom disclosure made.

Any actions agreed

## Handling disclosures

### **Dos and don'ts**

**Do** adopt an objective and balanced approach towards any allegations made under a whistleblowing policy.

**Do** face the substance of any disclosure square on.

**Do** take prompt action to investigate any allegations made under a whistleblowing policy (or make sure another appropriate person instigates an investigation).

**Do** encourage an individual who has come forward to disclose some sort of wrongdoing to explain fully the evidence that he or she has of the wrongdoing.

**Do** ask the whistleblower to provide specific examples of the conduct that he or she has observed or the evidence obtained to support the allegations of malpractice.

**Do** distinguish between facts and opinions.

**Do** appreciate that it can be very stressful for the person alleging wrongdoing.

**Do** let the whistleblower know that he or she has the organisation's support.

**Don't** get angry or defensive if an individual raises allegations of malpractice within the organisation.

**Don't** allow personal views about the whistleblower to influence the assessment of the allegations that he or she is making.

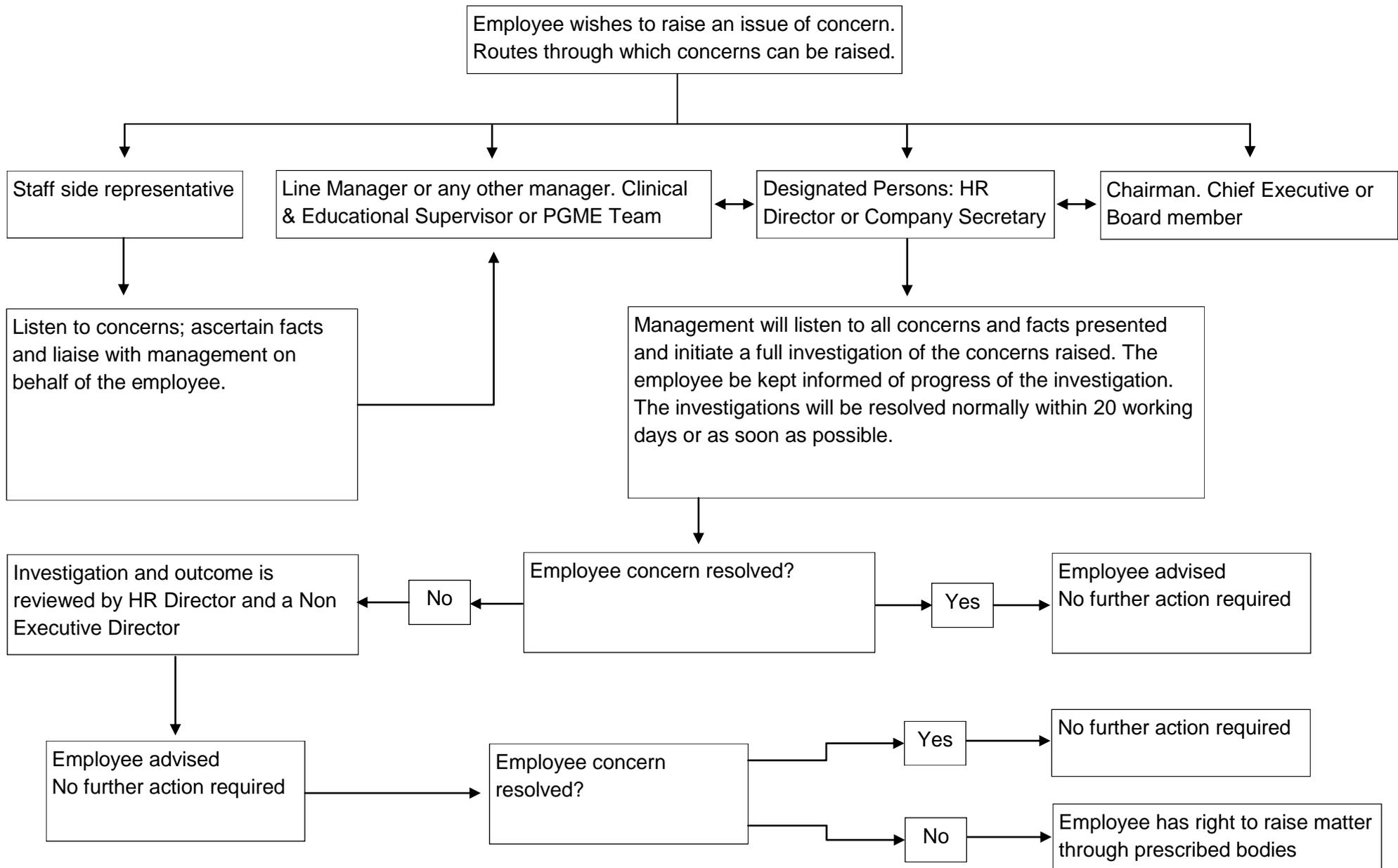
**Don't** react negatively to a disclosure, or adopt a judgmental attitude.

**Don't** dismiss an employee's disclosure as an exaggeration, or as trivial, unless there is clear evidence that the allegations are unfounded.

**Don't** attempt to suppress evidence of wrongdoing.

**Don't** penalise an individual for making a disclosure that proves unfounded if, despite making a mistake, he or she acted in good faith in making the disclosure.

**Do** listen actively to what the employee has to say and take it on board.



Minimum Requirement to be monitored:	Duties (Roles and Responsibilities)	The organisation has a process for raising or escalating concerns	The organisation has a process for raising a concern with outside bodies and organisations	The organisation has a process for monitoring compliance
Who will perform the monitoring	Director of HR	Director of HR	Director of HR	Director of HR
What will be monitored	Whistleblowing systems and processes	Process for raising or escalating concerns	Process for raising a concern with outside bodies and organisations	Process for monitoring compliance
How are you going to monitor	Review of whistleblowing systems and processes	Review process	Review process	Review process
When will the monitoring be performed	Annually	Annually	Annually	Annually
Responsible individual/ committee for review of results	Governance Committee	Governance Committee	Governance Committee	Governance Committee
Responsible individual/ committee for development of action plan	Director of HR	Director of HR	Director of HR	Director of HR
Responsible individual / committee for monitoring of action plan and implementation	Trust Board	Trust Board	Trust Board	Trust Board