

East Hampshire **NHS**
Primary Care Trust

To, Kathryn Rowles

From: Dr Ian Reid

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With Compliments

04 SEP 2002



PRIVATE & CONFIDENTIAL

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Dear Dr Reid

Further to recent discussions, please find enclosed the information requested on Hampshire Ambulance Service NHS Trust. I have also included CHI's Whistle Blowing Policy, which I hope will be helpful. If you have any queries regarding this policy, please feel free to contact Mrs Margaret Tozer, CHI Investigation Manager, on: **Code A**

Code A

Yours sincerely

Code A*Investigation Coordinator*

Enc.

Hampshire Ambulance Service NHS Trust

Emergency Incidents Originating at Gosport War Memorial Hospital

Reference Period :- 01/04/2000 to 28/02/2002 (23 months)

Note. The current system has only been operational form mid March 2000.

Analysis

Total number of Emergencies

Category A

Category B/C

253

47

206

Ward/Department Distribution

Arch Royal Ward	8
Blake Maternity Unit	104
Car Park	1
Collingwood Ward	18
Daedlus Ward	11
Dolphin Day Unit	2
Dryad Ward	2
Front Entrance	1
Ground Floor	1
Mulberry Arch Royal Ward	1
Mulberry Collingwood Ward	3
Out Patient Department	11
Phoenix Day Unit	2
Reception	2
Sultan Ward	28
Ward Not Stated	58
Total	253

15 WHISTLE BLOWING POLICY

Policy

The purpose of this policy is to provide a framework to promote responsible whistle blowing. It protects employees and stakeholders wishing to raise a concern about:

- serious irregularities within CHI, for example a failure to comply with a legal duty
- the NHS (or NHS services provided by others through joint funding or joint commissioning) where the interests of patients and others in the NHS are at risk, and are not being dealt with by CHI appropriately in clinical governance reviews, investigations or other CHI reviews or projects

CHI is committed to developing a culture where it is safe and acceptable for all employees and stakeholders to raise concerns about poor or unacceptable practice and misconduct. CHI has a separate policy, which advises patients, the public and people working in the NHS on how they can raise concerns.

The policy does not release employees from their duty of confidentiality in the course of their work, for example, during clinical governance reviews or investigations, nor is it a route for taking up a grievance about a personal situation.

CHI has a duty to pass on information to others if this is required in the public interest. If CHI employees raise a concern in confidence, however, they will have that confidence respected unless CHI is unable to resolve the issue without identifying the person who raised the concern, for example, because evidence is needed in court, or CHI is subject to a judicial review and as a result all CHI's papers are open to scrutiny. If this happens, CHI will discuss this with the employee beforehand.

Who is this policy for?

This policy is for people employed by CHI. For the purposes of this policy this is someone who is:

- employed on a substantive contract
- on secondment to CHI, for example on a clinical governance review or on an investigation
- on a temporary contract or employed through an agency to work for CHI
- hired as an independent consultant for CHI
- hired as a contractor/supplier of services to CHI

What are the guiding principles?

To ensure that this policy is adhered to, and to assure the concern will be taken seriously, CHI will:

- not allow the person raising the concern to be victimised for doing so
- treat victimisation of whistle blowers as a serious matter and take disciplinary action
- not attempt to conceal evidence of poor or unacceptable practice
- take disciplinary action if an employee destroys or conceals evidence of poor or unacceptable practice or misconduct
- ensure confidentiality clauses in CHI contracts do not forbid or penalise whistle blowing;
- liaise with the Department of Health (CHI's sponsoring organisation) and other organisations who work closely with CHI, so that they know who the appropriate contacts are if they choose to raise the matter elsewhere. These external contacts are listed below.

What does the act cover?

The Public Interest Disclosure Act covers malpractice, for example, a criminal offence, breach of contract, negligence or causing danger to health and safety. Concerns relevant to this policy include, but are not limited to:

- clinical malpractice including the abuse of patients in care

- system failures, for example, untoward incident reporting
- concerns about health and safety, including not compliance with the Health and Safety Act;
- financial irregularities, including fraud, or suspected fraud
- breach of employee codes of conduct or rules, for example receipt of gifts and hospitality
- failure of CHI to comply with a legal duty

Whistle blowing should not be used in place of CHI grievance procedures or be a route for raising malicious or unfounded allegations against colleagues.

How a concern can be raised?

Employees can raise a concern with their line manager or with any director.

If a concern is raised with the line manager or director he/she will:

- note the key points of the concern and check if the matter has been raised with anyone else in CHI, for example, a clinical governance review manager.
- check that the employee has a copy of the whistle blowing policy and explain the key principles, for example, the rights and responsibilities of someone expressing a concern under the Public Interest Disclosure Act
- assure the whistleblower about complete confidentiality unless at a later stage this becomes unavoidable, for example, if legal proceedings take place
- explain how information will be recorded and stored
- compile a written file note with a reference number to be stored in a locked filing cabinet with other documents of this kind in the office of the director of human resources. Information may also be stored electronically with appropriate security codes
- refer the concern to a director who will advise on the best person to look at the concern in more detail. Within the next steps outlined below, this director will be referred to as the 'lead director'. The employee can state whether he or she has a preference about which director this should be.

The next steps will be:

Step 1

The lead director will review the information provided and will either:

- i) nominate a member of staff (this could be the line manager unless the director has been advised that the whistleblower would prefer this not to be the case), and provide the whistleblower with the name of that member of staff, to investigate the concern in more detail, as outlined in steps 2, 3 and 4 below;

or

- ii) suggest a different way of handling the matter raised. If this course of action is taken the lead director will explain why and also agree how the whistleblower will be informed of the outcome of the action to be taken.

Step 1 will be completed within 5 working days, or within a time agreed with the whistleblower if the lead director concerned is absent from the office for a period longer than 5 days.

Step 2

The nominated member of staff will:

- Establish contact with the whistleblower within two working days of and cover the points above.

- Make a detailed written record of the areas of concern. The record will include:
 - whether the concern was raised with anyone previously, and if so, what happened as a result;
 - how the whistleblower thinks the matter might be resolved;
 - the next steps to be followed by the nominated member of staff;
 - how the nominated member of staff will maintain contact with the whistleblower, and the timescales in taking the next steps.

The whistleblower will also be advised about the role of Public Concern at Work - an independent charity which offers support and advice to whistle blowers.

A copy of the file note will be forwarded the whistleblower.

Step 2 will be completed within 10 working days.

Step 3

The nominated member of staff will discuss the concern with the lead director who will

either:

- Agree the arrangements and the timescale for investigating the matter as outlined in step 4. The timescale will be determined by the type of concern but will not normally take longer than 8 weeks. If it needs to be longer than 8 weeks, there will be a clear explanation of why this is the case;

or

- Suggest a different way of handling the matter if this is appropriate, for example referral to the General Medical Council. If this course of action is taken, the whistleblower will be informed of the outcome of the action to be taken. If future involvement by the whistleblower will be required, CHI will agree what that involvement will be, how CHI will support the person raising the concern and how CHI will continue to keep them informed of progress.

The whistleblower will be advised in writing by the lead director of the action agreed in i) or ii) above.

Step 3 will be completed within 10 working days.

Step 4

If CHI is investigating the concern:

The whistleblower will be kept informed of progress (in writing by the nominated member of staff) at 4-week intervals. This will not stop more regular contact if preferred.

The nominated member of staff, in consultation with the lead director, will prepare a report of the outcome of the investigation. This will clearly identify recommendations for any further action.

The lead director will agree the next steps with the chief executive, or with the director of policy and development (deputy chief executive);

A summary of the report, prepared by the lead director, will be made available to the whistleblower at the conclusion of the investigation. Where specific action from CHI alone is recommended, this will be discussed with the whistleblower as a way of ending their involvement in the process;

The lead director will be responsible for progressing the action as agreed with the chief executive or the director of policy and development.

Within this procedure it is not practical to identify all the specific steps, which may be needed to progress action on a case-by-case basis. If further involvement is required by the whistleblower, CHI will maintain ongoing support, or arrange for support through others so that the whistleblower interests are satisfactorily represented.

Where can independent advice be sought?

If employees feel unsure about using this procedure, or would like independent advice at any stage, they may contact the independent charity Public Concern at Work on 020 7404 6609. Their lawyers provide free confidential advice at any stage about raising a concern.

What other organisations can be contacted?

Hopefully the explanations in this policy give assurance that concerns will be taken seriously. Having read the policy potential whistleblowers may feel that they should report the matter to another organisation or use a different procedure such as the grievance procedure. Other organisations concerned with standards in the NHS include:

- General Medical Council
- United Kingdom Central Council for Nurses and Midwives
- Council for the Professions Supplementary to Medicine
- Health and Safety Executive
- Health Service Ombudsman
- Association of Community Health Councils in England and Wales

Public Concern at Work can advise on the circumstances when it is more appropriate to contact an outside body.

How will the policy be implemented and monitored?

The implementation of this policy, led by the director of human resources, will include:

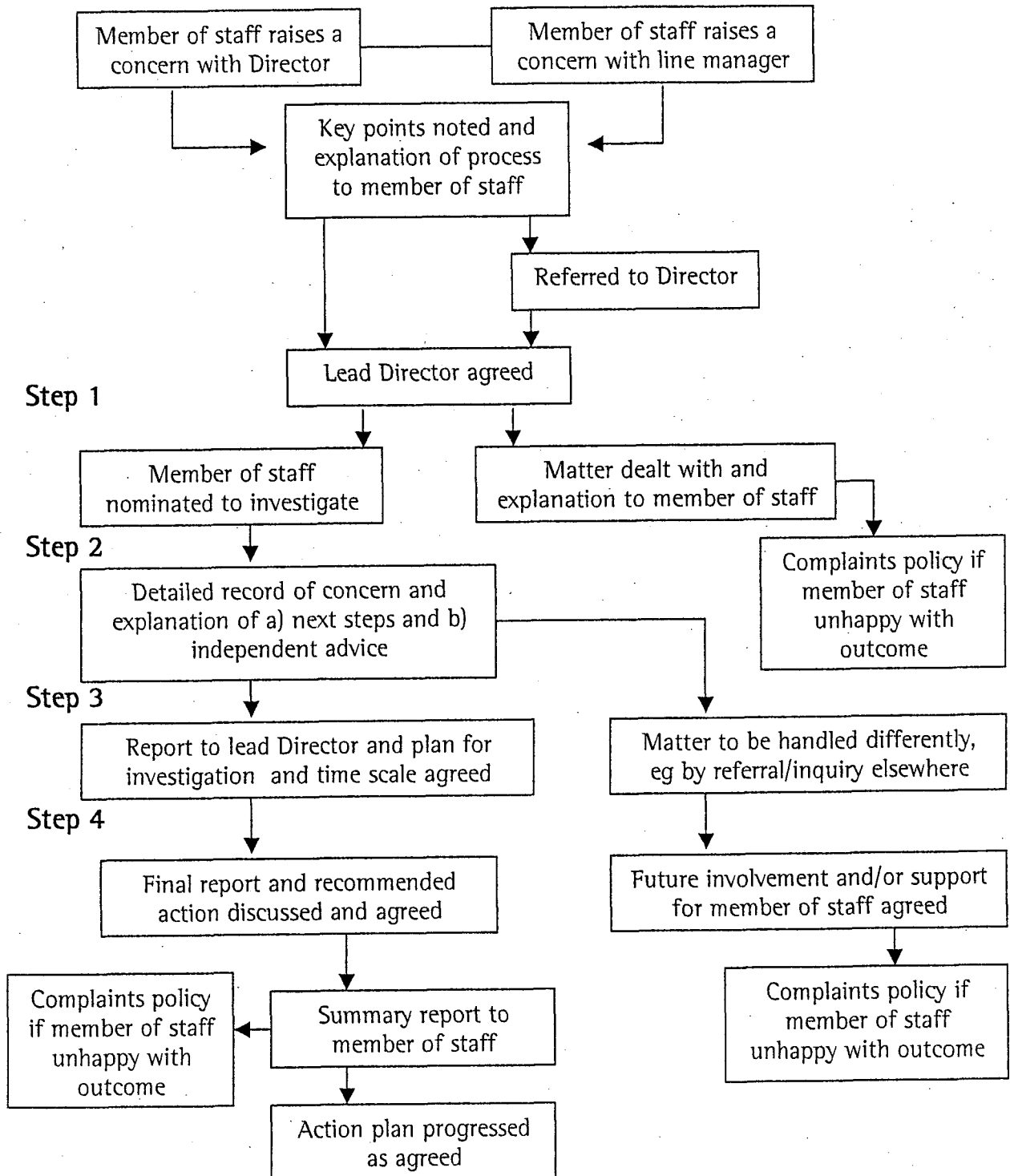
- iv) A report to the Commission Board 12 months after implementation for its consideration.

What can be done if the way CHI has handled my concerns is unsatisfactory?

If the whistleblower is unhappy with the response to his or her concerns within this policy framework, s/he may follow CHI's complaints procedure. Further advice can also be sought from Public Concern at Work. While CHI cannot guarantee that they will respond to all matters in the way that the whistleblower might wish, CHI will try to handle any matter fairly and properly.

ANNEX 1

Flow chart: Whistle blowing policy



ANNEX 2

SUMMARY OF THE PUBLIC INTEREST DISCLOSURE ACT 1998**Introduction**

The Act applies to the public, private and voluntary sectors. It aims to improve accountability and good governance in all organisations by assuring workers concerned about malpractice that it is safe to raise their concerns. It also encourages employers to be receptive to such concerns and penalises them if they respond by victimising the worker.

The Act sets out the circumstances in which a disclosure of information may be protected. In brief, to obtain that protection, workers must act reasonably and responsibly. An employee who makes a rash disclosure (to the media for example, of a matter which could and should have been raised internally) will not be protected. Only disclosures about specified types of malpractice may qualify for protection. A worker who is victimised or penalised for making a protected disclosure can bring an action for compensation against the employer at an employment tribunal.

Malpractice

The Act applies to people at work raising genuine concerns about crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover-up of any of these. In the NHS this includes a worker raising concerns about risks to patients or about financial malpractice. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals covered

In addition to employees, it covers other workers, trainees, agency staff, home workers and all self-employed NHS professions (ie doctors, dentists, ophthalmologists and pharmacists). The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, the army or police officers.

Internal disclosures

A disclosure to the employer will be protected if the whistleblower has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. For the purposes of the Act, the employer of self-employed NHS professions is deemed

to be the Health Authority (Health Board in Scotland). Where a third party is responsible for the malpractice, this same tests applies to disclosures made to it.

Legal advice

To ensure that people concerned about malpractice can get independent and confidential advice about how the Act works, disclosures to lawyers are protected.

NHS and quangos

To promote accountability in public life, the same protection as for internal disclosures applies where someone in the NHS or a public body blows the whistle direct to the sponsoring Department. There is no requirement that such concerns should be raised internally first.

Regulatory disclosures

Special provision is made for disclosures to bodies, which are prescribed under the Act. Those relevant to the NHS are:

- i) Public sector finance: Audit Commission, Accounts Commission for Scotland.
- ii) Fraud and fiscal irregularities: Serious Fraud Office, Inland Revenue, Customs and Excise.
- iii) Health and Safety dangers: the relevant enforcing authority (Health and Safety Executive or Local Authority).
- iv) Environmental dangers: the Environment Agency
- v) Others: Charity Commission, Occupational Pensions Regulatory Authority.

Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonably believes that the information and any allegation contained in it are substantially true.

Wider disclosures

First the concern must have been raised with the employer or a prescribed regulator, unless:

- a) the worker reasonably believed s/he would be victimised if s/he did so;
- b) there is no prescribed regulator and the worker reasonably believed there would be a cover-up; or
- c) the matter was exceptionally serious.

If one of the above preconditions is met, and the tribunal is satisfied that disclosure was reasonable, the whistleblower will be protected.

Wider disclosures (eg to the police, the media, MPs and non prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and the following two provisions are met:

In deciding the reasonableness of the disclosure the tribunal will consider the identity of the person it was made to, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the tribunal will also consider the reasonableness of their response. Finally, if the concern had been raised with the employer, the tribunal will consider whether any whistle blowing policy in the organisation was or should have been used.

Full protection

Where a worker or employee is victimised for blowing the whistle in breach of the Act, he can bring a claim at an employment tribunal. The usual limits on awards in employment law will not apply under the Public Interest Disclosure Act. Workers and employees who lose their jobs in breach of the Act will be fully compensated for their losses. Awards for victimisation short of dismissal will also be uncapped and based on what is just and equitable in all the circumstances.

Where an employee (but not other workers) is dismissed for blowing the whistle, he may apply within 7 days for an interim order. Where the tribunal considers that the employee is likely to win at the full hearing, it will order that he keeps his job or is paid his wages pending the full hearing.

The provisions on interim relief do not apply to self-employed professionals in the NHS. Nor can a tribunal make a Re-employment Order where the contract of a self-employed professional has been terminated in breach of the Act. However, as such workers will be entitled to recover their full losses at an employment tribunal, re-employment may well be an option the employer may wish to consider in the event of a claim under the Act.

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Criminal offences

Where the disclosure of that information was itself a criminal offence, such as under the Official Secrets Act, the whistleblower will not be protected under this Act if he has or would have been convicted of the offence.

[Extracted from *Public Concern at Work* briefing pack.]