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**NORTHERN IRELAND PRACTICE AND EDUCATION
COUNCIL FOR NURSING AND MIDWIFERY**

**Framework on your right to raising a
concern (Whistleblowing)**
(based on HSC Framework)

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Any request for this document in another format or language will be
considered

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INTRODUCTION

1. Health and social care services exist to promote the health, wellbeing and dignity of patients and service users and the people who deliver these services want to do the best for those they serve.
2. Encouraging staff to raise concerns openly as part of normal day-to-day practice is an important part of improving the quality of services and patient safety. Many issues are raised by staff and addressed immediately by line managers – this is very much encouraged. When concerns are raised and dealt with appropriately at an early stage, corrective action can be put in place to ensure safe, high quality and compassionate care.
3. The importance of raising concerns at work in the public interest (or “whistleblowing”) is recognised by employers, workers, trade union and the general public. Working in partnership with Trade Unions, staff associations and employee representatives is an important part of ensuring fairness and promoting awareness of the policies, procedures and support mechanisms which a good employer will have in place¹.

DEFINING WHISTLEBLOWING

4. Whistleblowing is defined as “when a worker reports suspected wrongdoing at work”². The wrongdoing is often related to financial mismanagement, such as misrepresenting earnings and false accounting, but can also have more immediate consequences such as those highlighted in the Mid Staffordshire Report (2013)³.
5. Staff can report things that are not right, are illegal or if anyone is neglecting their duties. This might include, for example, concerns around:
 - patient safety
 - health and safety at work
 - environmental damage
 - a criminal offence (e.g. fraud).

¹ Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health & Social Care (NHS, 2014)

² *Government Whistleblowing Policies* National Audit Office (2014)

³ Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (2013)

6. Whistleblowing can also be broadly defined as simply ‘raising a concern’⁵. People outside the organisation, including stakeholders, suppliers and service users, can also raise concerns through the HSC Complaints Procedure. However, whistleblowing is different from making a complaint or raising a grievance. Whistleblowers can often act out of a feeling of fairness or ethics rather than a personal complaint. As Public Concern at Work (PcAW) states, it is important to note that:

*“...the person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern – they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it”.*⁴

WHY DOES WHISTLEBLOWING MATTER?

7. Staff who are prepared to speak up about malpractice, risk, abuse or wrongdoing should be recognised as one of the most important sources of information for any organisation seeking to enhance its reputation by identifying and addressing problems that disadvantage or endanger other people⁵.
8. It is important for individuals to feel safe and listened to when raising concerns. An open approach to whistleblowing promotes the values of openness, transparency and candour and encourages employees to treat patients and service users with dignity, respect and compassion.
9. From the employer’s point of view, there are good business reasons for listening to staff who raise concerns, as it gives an opportunity to stop poor practice at an early stage before it becomes normalised and serious incidents take place.
10. From the staff members’ perspective, the freedom to raise concerns without fear means that they have the confidence to go ahead and “do the right thing”. It is part of encouraging staff to reflect on practice as a way of learning¹.

⁴ [Where’s whistleblowing now? 10 years of legal protection for whistleblowers, PCaW, March 2010](#)

⁵ Whistleblowing in the Public Sector: A good practice guide for workers and employers, published jointly in November 2014 by Audit Scotland, the National Audit Office, the Northern Ireland Audit Office and the Wales Audit Office, with the support of Public Concern at Work

SCOPE

11. This Framework and accompanying Model Policy has been developed in response to the recommendations arising from the Regulation and Quality Improvement Authority's (RQIA) Review of the Operation of Health and Social Care Whistleblowing Arrangements⁶. The Model Policy has been adopted and tailored by NIPEC to take account of the organisation's structures, policies and procedures (Ref: NIPEC/17/19).
12. This Framework and accompanying Model Policy applies to **all staff** (employees, workers⁷) involved in the work of an HSC organisation. It does not apply to patients and clients or members of the public who wish to complain or raise concerns about treatment and care provided by an HSC organisation or about issues relating to the provision of health and social care. These will be dealt with under the organisation's Complaints Procedure.
13. This Framework and accompanying Model Policy is for staff to raise issues where the interests of others or the organisation are at risk. If a member of staff is aggrieved about their personal position they must follow the local grievance procedure or policy for making a complaint about bullying and/or harassment.
14. All cases of suspected, attempted or actual fraud raised under this policy should be handled promptly in line with the organisation's Fraud Response Policy and Plan.

AIMS

15. The aim of this Framework and accompanying Model Policy is to ensure that, under the terms of the Public Interest Disclosure (Northern Ireland) Order 1998, a member of staff is able to raise legitimate concerns when they believe that a person's health may be endangered or have concerns about systematic failure, malpractice, misconduct or illegal practice without fear of retribution and/or detriment.
16. If a member of staff has honest and reasonable suspicions about issues of malpractice/ wrongdoing and raises these concerns through the channels outlined in the model policy, they will be protected from any disciplinary action and victimisation, (e.g. dismissal or any

⁶ [Review of the Operation of Health and Social Care Whistleblowing Arrangements \(RQIA, 2016\)](#)

⁷ Definitions set out in Articles 3 (3) and 67K of the [Employment Rights \(Northern Ireland\) Order 1996](#)

action short of dismissal such as being demoted or overlooked for promotion) simply because they have raised a concern under this policy.

17. This Framework and accompanying Model Policy aims to improve accountability and good governance within the organisation by assuring the workforce that it is safe to raise their concerns.
18. The benefits of encouraging staff to report concerns include⁵:
 - identifying wrongdoing as early as possible
 - exposing weak or flawed processes and procedures which make the organisation vulnerable to loss, criticism or legal action
 - ensuring critical information gets to the right people who can deal with the concerns
 - avoiding financial loss and inefficiency
 - maintaining a positive corporate reputation
 - reducing the risks to the environment or the health and safety of employees or the wider community
 - improving accountability
 - deterring staff from engaging in improper conduct.

KEY PRINCIPLES AND VALUES

Distinction between grievance and whistleblowing concerns

19. Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others, and may be something which adversely affects patients, the public, other staff or the organisation itself. A grievance differs from a whistleblowing concern as it is a personal complaint regarding an individual's own employment situation. A whistleblowing concern is where an individual raises information as a witness whereas a grievance is where the individual is a complainant. Grievances are addressed using the Grievance Policy.

Raising a concern openly, confidentially, or anonymously

20. In many cases, the best way to raise a concern is to do so openly. Openness makes it easier for the organisation to assess the issue, work out how to investigate the matter, understand any motive and get more information.

A worker raises a concern confidentially if they give their name on the condition that it is not revealed without their consent. If an organisation is asked not to disclose an individual's identity, it will not do so without the individual's consent unless required by law (for example, by the police).

A worker raises a concern anonymously if they do not give their name at all. If this happens, it is best for the organisation to assess the anonymous information as best it can, to establish whether there is substance to the concern and whether it can be addressed. Clearly if no-one knows who provided the information, it is not possible to reassure or protect them.

Malicious claims and ulterior motives

21. There may be occasions when a concern is raised either with an ulterior motive or maliciously. In such a case, and as set out in the model policy, the organisation cannot give the assurances and safeguards included in the policy to someone who is found to have maliciously raised a concern that they also know to be untrue. Such situations should be handled carefully.

The starting point for any organisation is to look at the concern and examine whether there is any substance to it. Every concern should be treated as genuine, unless it is subsequently found not to be. However, if it is found that the individual has maliciously raised a concern that they know is untrue, disciplinary proceedings may be commenced against that individual.

LEGAL FRAMEWORK

22. The Public Interest Disclosure (Northern Ireland) Order 1998⁸ (the Order) allows a worker to breach his duty as regards confidentiality towards his employer for the purpose of 'whistleblowing'. It was introduced in the interest of the public, to protect workers from detrimental treatment or victimisation from their employer if they raise a genuine concern, whether it is a risk to patients, financial malpractice, or other wrongdoing. These are called "qualifying disclosures". A "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following circumstances:

- where criminal activity or breach of civil law has occurred, is occurring, or is likely to occur
- where a person has failed, is failing or is likely to fail to comply with any legal obligation he is subject to
- where a miscarriage of justice has occurred, is occurring or is likely to occur
- where the health and safety of any individual has been, is, or is likely to be endangered
- where the environment has been, is being or is likely to be damaged
- where information indicating evidence of one of the above circumstances is being or is likely to be deliberately concealed.

23. A qualifying disclosure is made by the worker:

- to his employer, or where the worker reasonably believes that the relevant failure relates solely or mainly to the conduct of a person other than his employer or any other matter for which a person other than his employer has legal responsibility, to that other person
- to a legal adviser for the purpose of obtaining legal advice
- to the Department of Health or the Minister for Health
- to a person prescribed by an Order⁹ made by the Department for the Economy for the purposes of Article 67F of the Employment Rights (Northern Ireland) Order 1996.¹⁰ The worker should reasonably believe that the relevant failure falls within any description of matters in respect of which that person is so prescribed and that the information disclosed, and any allegation contained in it are substantially true.

⁸ [The Public Interest Disclosure \(Northern Ireland\) Order 1998](#)

⁹ [Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) Order \(Northern Ireland\) 2014](#)

¹⁰ The Employment Rights (Northern Ireland) Order 1996 as amended by the Employment Act (Northern Ireland) 2016

24. If the worker makes a disclosure to a person other than his employer or to a person not noted above, it will be a qualifying disclosure in accordance with the Order provided the following conditions are met:
- the worker reasonably believes the information disclosed and any allegation contained within it are substantially true
 - the disclosure is not made for personal gain
 - the worker must act reasonably, taking into account the circumstances.

In addition one, or more, of the following conditions must be met:

- the worker reasonably believes he will suffer a detriment if he makes the disclosure to his employer
 - in the case where there is no prescribed person as noted above, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer
 - the worker has previously made the disclosure to his employer or a prescribed person.
25. In determining whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to:
- the identity of the person to whom the disclosure is made
 - the seriousness of the relevant failure
 - whether the conduct is continuing or likely to occur in the future
 - whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person
 - whether any previously made concern was acted upon
 - whether the worker followed any procedure laid down by the employer.
26. It should be noted that a disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
27. The Order covers all workers including temporary agency staff, student nurses and student midwives, persons on training courses and independent contractors who are working for and supervised by a HSC organisation. It does not cover volunteers. It also makes it clear that any clause in a contract that purports to gag an individual from raising a concern that would have been protected under the Order is void.

HANDLING CONCERNS

28. To enable a 'whistleblowing' policy to work in practice and to avoid unnecessary damage, it is important to ensure that policies authorise all staff, not just health and medical professionals, to raise a concern, and identify who they can contact.
29. Legal protection is very important if staff are to be encouraged to raise a concern about wrongdoing or malpractice. However, it is vital that employers develop an open culture that recognises the potential for staff to make a valuable contribution to the running of public services, and to the protection of the public interest.
30. Where an individual is subjected to a detriment by their employer for raising a concern or is dismissed in breach of the Order, they can bring a claim for compensation under the Order to an Industrial Tribunal.
31. Managers can lead by example, by being clear to staff as to what sort of behaviour is unacceptable, and by role modelling the appropriate behaviours themselves. They should encourage staff to ask them what is appropriate if they are unsure before - not after - the event. If wrongdoing or a potential risk to patient safety is found, it should be taken seriously and dealt with immediately.

IMPLEMENTING LOCAL POLICY

32. It is important that all HSC organisations are committed to the principles set out in their 'whistleblowing' arrangements and can ensure that it is safe and acceptable for staff to speak up about wrongdoing or malpractice within their organisation. To achieve this, it is necessary to ensure buy-in and leadership from management and Trade Union engagement.
33. Within each organisation, an appropriate senior manager should be appointed to take responsibility for ensuring implementation of the 'whistleblowing' arrangements. This could be the clinical governance lead, the nursing or medical director, or responsible officer. HSC organisations should also consider appointing an appropriate number of advisors/advocates to signpost and provide support to those wishing to raise a concern. In

addition, each organisation should appoint a non-executive board member to have responsibility for oversight of the culture of raising concerns within their organisation.

34. As an employer, HSC organisations must take all concerns raised seriously. However, it may not be necessary to carry out a formal investigation in each case. Employers should consider a range of possibilities depending on the nature of each case⁵:
 - explaining the context of an issue to the person raising a concern may be enough to alleviate their concerns
 - minor concerns might be dealt with straightaway by line management
 - a review by internal audit as part of planned audit work might be sufficient to address the issue, e.g. through a change to the control environment
 - there may be a role for external audit in addressing the concerns raised and either providing assurance or recommending changes to working practices
 - there may be a clear need for a formal investigation.
35. Having considered the options it is important that employers clearly document the rationale for the way forward. The HSC organisation's local policy should make it clear whose responsibility it is to decide on the approach to be adopted.
36. If necessary, the HSC organisation can also seek advice and guidance from the relevant prescribed person.
37. Once local arrangements are in place, it is important to ensure all staff are aware of them, and this can be achieved in a number of ways: through hard copy correspondence with staff, communication by email and/or via organisations' intranet sites, through team briefings and inductions, or the message appearing on payslips. It is also important to ensure that the policies are accessible.

BRIEFING AND TRAINING

38. Many concerns will be raised openly with line managers as part of normal day-to-day practice. Good 'whistleblowing' arrangements should do nothing to undermine this. It is important that this is made clear to both staff and managers.

39. All managers and designated contacts should be briefed on:
- the value and importance of an open and accountable workplace
 - how to handle concerns fairly and professionally
 - how to protect staff who raise a genuine concern and where staff can get help or refer a concern
 - how to manage expectations of confidentiality
 - the importance of an alternative to line management if the usual channels of communication are unavailable
 - how to brief their staff on arrangements.
40. Senior managers and designated contacts who are given a specific role in the 'whistleblowing' arrangements should receive training in the operation of their policy for raising concerns.

AUDIT AND REVIEW

41. A well-run organisation will periodically review its 'whistleblowing' arrangements to ensure they work effectively and that staff have confidence in them. The following points can sensibly be considered to assure the organisation that the arrangements meet best practice:
- arrange regular feedback sessions to evaluate progress and collect data on the nature and number of concerns raised
 - check the procedures used are adequate to track the actions taken in relation to concerns raised and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by whistleblowing. Is there evidence of constructive and timely feedback?
 - have there been any difficulties with confidentiality?
 - have any events come to the organisation's attention that might indicate that a staff member has not been fairly treated as a result of raising a concern?
 - look at significant adverse incidents/incident management systems or regulatory intervention - could the issues have been picked up or resolved earlier? If so, why weren't they?
 - compare and correlate data with information from other risk management systems

- find out what is happening on the ground - organisations should consider including a question about awareness and trust of arrangements in any future local staff surveys
- organisations should seek the views of trade unions/professional organisations, as employees might have commented on the 'whistleblowing' arrangements or sought their assistance on raising or pursuing a 'whistleblowing' concern
- organisations could also consider other sources of information, including information from exit interviews, the Order or other legal claims
- key findings from a review or surveys should be communicated to staff. This will demonstrate that the organisation listens and is willing to learn and act on how its own arrangements are working in practice
- refresh 'whistleblowing' arrangements regularly. Regular communication to staff about revised arrangements is also recommended
- although volunteers are not covered by the Order, the application of this Framework and Model Policy should be considered in the handling of their concerns
- think about reporting good news - success stories encourage and reassure everybody.

Monitoring the arrangements in line with this checklist will also help the organisation demonstrate to regulators that their arrangements are working.

REPORTING AND MONITORING

42. Concerns raised by staff are an important source of information for HSC organisations. It is important that they capture key aspects so that the value of their whistleblowing arrangements can be determined and lessons learned where appropriate.
43. In addition to individual case files, HSC organisations should maintain a central register of all concerns raised, in a readily accessible format. Any system for recording concerns should be proportionate, secure and accessible by the minimum necessary number of staff.
44. An analysis of 'whistleblowing' caseload should be reported regularly to senior management and the HSC organisation's Audit and Risk Committee. In addition, an annual return on caseload, actions and outcomes should be made available to the Department of Health. These will help inform those charged with governance that arrangements in place for staff to raise concerns are operating satisfactorily or will

highlight improvements that may be required. HSC organisations should consider reporting on the effectiveness of their 'whistleblowing arrangements' in their annual report⁵.