



Freedom to Speak Up (Whistleblowing) Policy & Process

1.4

Document Type:	Policy & Procedure
Status:	Final
Version:	1.4
Reviewed by:	Lee Busher
Latest review date:	July 2022
Document Owner:	Trudy Mansfield
This version approved:	November 2020
Next review due:	July 2024
Approved by	Kirstine Haslehurst
Original publication date	15 th July 2019
Applies to:	Southern Hampshire Primary Care Alliance Staff

Version Control

Version	Date	Author	Change Summary
1.4	21/07/2022	L Busher	Formatting changes and review

CONTENTS

1. INTRODUCTORY STATEMENT	4
2. AIM OF THIS POLICY	4
3. SCOPE	5
4. DEFINITIONS.....	5
Whistleblowing	5
Protected disclosures	6
Prescribed persons / organisations	7
5. PROCESS - RAISING A WHISTLEBLOWING CONCERN: EXTERNAL TO SHPCA.....	8
Verbal whistleblowing concerns.....	8
Initial Response to an external concern	8
Confidentiality	9
Investigation – External Concern.....	9
Response.....	10
If the whistleblower is not satisfied	10
6. PROCESS - RAISING A WHISTLEBLOWING CONCERN: INTERNAL TO SHPCA	10
7. Confidentiality.....	11
8. External disclosures by SHPCA Staff	11
Investigation and outcome.....	12
9. INVESTIGATION PROCEDURE (INTERNAL TO SHPCA)	13
The Investigation Process.....	13
The Investigating Officer	14
Union Representatives or Companions.....	16
Record Keeping and Confidentiality	17
Suspension (Exclusion) or Transfer.....	18
10. PROCESS FOR SPECIAL CASES	18
Child or Adult Protection	19
Management of allegations against staff – child protection (children or young people under 18 years of age).....	19
Management of allegations against staff – adult protection.....	19
Proceedings against a Staff Side Representative	19
Raising a Grievance during an Investigation Process.....	20
11. PROTECTION AND SUPPORT FOR WHISTLEBLOWERS	20
12. LEARNING FROM FTSU/Whistleblowing CONCERNS.....	21
13. ROLES AND RESPONSIBILITIES	21
14. EQUALITY AND DIVERSITY.....	22
15. MONITORING THE EFFECTIVENESS OF THE POLICY.....	23
16. REVIEW.....	23

1. INTRODUCTORY STATEMENT

Speaking up about any concern an individual may have at work is really important. In fact, it is vital because it will help Southern Health Primary Care Alliance (SHPCA) to keep improving the services commissioned for our patients and the working environment for our staff.

An individual may feel worried about raising a concern, and SHPCA understands this. SHPCA approach would urge that anyone would not be put off because of this. SHPCA is committed to a Just Culture and will act in accordance with our duty of candour, SHPCA Directors and senior leaders are committed to an open and honest culture and SHPCA will always look into a concern.

SHPCA will receive and take forward whistleblowing concerns which are raised from staff within SHPCA or ex-employees, individuals who are employed from organisations from which SHPCA commissions services and from any staff employed within a SHPCA member practice.

SHPCA is committed to conducting business with honesty and integrity, and SHPCA expects its staff to maintain high standards, in accordance with SHPCA's Constitution. However, all organisations face the risk of things going wrong from time to time, or of unknowingly harbouring illegal or unethical conduct. A culture of openness and accountability is essential in order to prevent such situations occurring or to address them when they do occur.

2. AIM OF THIS POLICY

This policy should be read in conjunction with the Staff Policy Guide The **aims of this policy** are to:

- Encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected
- Provide staff with guidance as to how to raise those concerns.
- Reassure staff that they should be able to raise genuine concerns in good faith without fear of reprisals, even if they turn out to be mistaken.

This policy reflects the principles of Freedom to speak up: raising concerns (whistleblowing) policy for the NHS, April 2016 and Freedom to speak up in Primary Care: Guidance to primary care providers on supporting whistleblowing in the NHS, NHS England, November 2016.

This policy does not form part of the employee contract of employment, however outcomes following a formal process may then become relevant to an employee's terms and conditions of employment.

3. SCOPE

This policy is applicable to all employed staff working within SHPCA including members, interim (off payroll) workers and volunteers.

The policy is also applicable to individuals who are/were employed from organisations from which SHPCA commissioned services, who wish to raise a whistleblowing concern

This policy does not cover concerns raised by patients and members of the public, who should refer to SHPCAs Complaints Policy.

4. DEFINITIONS

Whistleblowing

Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers at work. This may include:

- criminal activity
- miscarriages of justice
- danger to health and safety
- damage to the environment
- failure to comply with any legal [or professional] obligation or regulator requirements
- bribery
- financial fraud or mismanagement
- unauthorised disclosure of confidential information
- breach of our internal policies and procedures
- conduct likely to damage our reputation
- discrimination, harassment or other conduct prohibited by the Equality Act 2010
- a bullying culture (across a team or organisation rather than individual instances of bullying)
- the deliberate concealment of any of the above matters
- external issues with provision of care to patients, such as:
 - unsafe patient care
 - unsafe working conditions
 - inadequate induction or training for staff
 - lack of, or poor, response to a reported patient safety incident

For further examples, please see the Health Education England video

If there are concerns that people using the service are not being cared for properly or a concern about the safety of vulnerable adults or children, concerns can be raised with the local authority (local council) via the Hampshire Multiagency Safeguarding Hub (0300 555 1384), whistleblowing to the Care Quality Commission (or another body) or to South Eastern Hampshire CCG.

Independent advice can be sought before raising a concern. Individuals can also contact their trade union or professional regulatory body or refer to guidance issued by them. Free, independent and confidential advice is available from the Whistleblowing Helpline for NHS and Social Care on 08000 724725. Individuals can also call the independent whistleblowing charity, Public Concern at Work, for free and confidential advice on 020 7404 6609 or go to www.pcaw.org.uk.

A whistleblower is a person who raises a genuine concern in good faith relating to any of the above. If an individual has any genuine concerns related to suspected wrongdoing or danger affecting any of SHPCA's activities (a whistleblowing concern) this should be reported under this procedure.

Healthcare professionals have a professional duty to report a concern. If in doubt, please raise it.

Whistleblowing concerns usually relate to the conduct of staff, but they may sometimes relate to the actions of a third party, such as a customer, supplier or service provider. The law allows individuals to raise a concern in good faith with a third party, where they reasonably believe it relates mainly to their actions or something that is legally their responsibility.

Protected disclosures

Certain conditions must be met for a whistleblower to qualify for protection under the Public Interest Disclosure Act 1998 (PIDA), depending on to whom the disclosure is being made and whether it is being made internally or externally

Workers are encouraged to raise their concerns with their employer (an internal disclosure) with a view that the employer will then have an opportunity to address the issues raised. If a worker makes a qualifying disclosure internally to an employer (or another reasonable person) they will be protected.

If a disclosure is made externally, there are certain conditions which must be met before a disclosure will be protected. One of these conditions must be met if a worker is considering making an external disclosure (this does not apply to disclosures made to legal advisors).

If the disclosure is made to a prescribed person, the worker must reasonably believe that the concern being raised is one which is relevant to the prescribed person (see below).

A worker can also be protected if they reasonably believe that the disclosure is substantially true, the disclosure is not made for personal gain i.e. is in the public interest, it is reasonable to make the disclosure and one of the following conditions apply:

- At the time the disclosure is made, the worker reasonably believes that s/he will be subjected to a detriment by their employer if the disclosure is made to the employer;
- or**
- The worker reasonably believes that it is likely that evidence relating to the failure / wrongdoing will be concealed or destroyed if the disclosure is made to the employer;
- or**
- The worker has previously made a disclosure to his / her employer.

Additional conditions apply to other wider disclosures to the police, an MP or the media. These disclosures can be protected if the worker reasonably believes that the disclosure is substantially true, the disclosure is of an exceptionally serious nature, and it is reasonable to make the disclosure

Prescribed persons / organisations

Special provision is made for disclosures to organisations prescribed under PIDA. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and additionally, honestly and reasonable believes that the information and any allegation contained in it are substantially true. Please note that SHPCA is not currently a prescribed organisation under PIDA and as such can only take limited action in relation to whistleblowing concerns in respect of other external organisations.

If an individual who is external to SHPCA is uncertain whether something is within the scope of this procedure, they should seek advice from the Head of Governance, Quality & Safety

Freedom to Speak Up Guardian

SHPCA staff should seek advice from the **SHPCA Freedom to Speak Up Guardian:**

Janet Naylor or in her absence

Head of Quality& Governance - Lee Busher

The role of the Freedom to Speak Up Guardian is to act 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 operating officer, the Chair or if necessary, outside the organisation.

This policy should not be used for complaints relating to a SHPCA staff members own personal circumstances, such as the way they have been treated at work. In those cases the Grievance Policy should be used.

5. PROCESS - RAISING A WHISTLEBLOWING CONCERN: EXTERNAL TO SHPCA

Individuals employed by external organisations will normally be able to raise any concerns support via their employer's own whistleblowing policies, procedures and support mechanisms. However, if an individual prefers not to raise it with them for any reason or feels that the issue should also be raised with SHPCA, they can contact us through the Chief Operating Officer or Head of Governance, Quality & Safety.

SHPCA does not have the legal authority to visit an organisation and conduct an investigation into a whistleblowing concern.

The following outlines the procedure within SHPCA for managing whistleblowing concerns raised in relation to external organisations.

Verbal whistleblowing concerns

Whistleblowing concerns are usually made in writing, but can also be accepted verbally. Verbal whistleblowing concerns should be recorded in writing and the whistleblower asked to confirm the issues to be investigated.

In the first instance, the whistleblower will be offered advice, for example, to contact the National Whistleblowing helpline, the Care Quality Commission (CQC), NHS England.

Initial Response to an external concern

All **whistleblowing concerns, whether oral or written, must receive a written response.** Where the complaint or other handler must make a written version of the concerns that includes the following: the name of the whistleblower, contact details, the subject matter of the concerns and the date on which it was made. This will be forwarded with the acknowledgement letter, to the whistleblower, for their agreement, along with a letter this should:

- acknowledge the whistleblowing concern
- be acknowledged in writing within three working days of receipt.
- Include an offer to discuss the whistleblowing concern with the Clinical Governance Lead r to discuss the actions which will be taken, which includes:
 - Explaining the actions that SHPCA is legally permitted to take
 - To offer additional support, for example, offer to meet with the director of quality and nursing to discuss their concerns
 - When the investigation is likely to be complete
 - When the response is likely to be sent.
 - What the issues are that the whistleblower wants raised
 - The agreed actions, questions and timescales for response will be confirmed in writing to the whistleblower.

If the whistleblower does not take up the offer of a discussion, the Complaints team should determine the response period and the whistleblower will be notified of this in writing.

Confidentiality

SHPCA will confirm whether the matter is being raised in confidence. SHPCA will accept concerns which are raised anonymously.

Care will always be taken throughout the whistleblowing process to ensure that the personal details of the whistleblower are not disclosed.

In transferring information relating to whistleblowing concerns between agencies, confidentiality will always be maintained. Every effort will be made to obtain the whistleblower's consent before sharing this information with another body or organisation.

Consent will be obtained in writing or where this is not possible, staff will seek guidance from the Caldicott Guardian.

Investigation – External Concern

The Complaints Lead will arrange for the whistleblowing concern to be investigated in the most appropriate manner.

During the investigation the complaints manager will keep the whistleblower and all those involved informed as far as reasonably practicable as to the progress of the investigation.

The complaints lead will forward the concern to the appropriate lead for investigation. The director of quality and nursing will also be informed to ensure executive leads are informed as appropriate.

Concerns relating to a member GP practice will be forwarded to the senior commissioning manager (primary care) who will determine the appropriate action. For example, if the concern relates to a medical performer, the concern will be forwarded to NHS England to take forward. If it relates to the practice in general, it may be forwarded to the clinical director: primary care and community to investigate.

Whistleblowing concerns in relation to an SHPCA staff member will be actioned in accordance with the procedures detailed in Section 5 – Raising a Whistleblowing Concern: Internal to SHPCA.

Response

As soon as reasonably practicable after responses to requests for assurance have been received / the investigation is complete, SHPCA will send a formal response in writing to the whistleblower which will be signed by the chief officer or nominated responsible person.

The response will also:

- Offer an explanation of how the whistleblowing concern has been investigated.
- Report the conclusion reached including any matters where it is considered remedial action is needed.
- Indicate that a named member of staff is available to clarify any aspect of the letter.
- Actions and learning arising from the whistleblowing alert.

The response should be clear, accurate, balanced, simple and easy to understand. It should avoid technical terms, but where these must be used to describe a situation, events or condition, an explanation of the term should be provided.

The Head of Governance, Quality & Safety will forward the formatted, written response, for the approval of the appropriate Director and/or Chief Operating Officer.

The response will then be forwarded for final approval to the SHPCA Chair (or nominated deputy).

If the whistleblower is not satisfied

While SHPCA cannot always guarantee the outcome being sought, SHPCA will try to deal with the concern fairly and in an appropriate way. By using this procedure staff can help SHPCA to achieve this.

If the whistleblower is not happy with the way in which their concern has been handled, they can raise it with NHS Improvement or CQC.

6. PROCESS - RAISING A WHISTLEBLOWING CONCERN: INTERNAL TO SHPCA

In many cases staff will be able to raise any concerns with their line manager. Staff members may tell them in person or put the matter in writing if preferred. The line manager may be able to agree a way of resolving the concern quickly and effectively. In some cases, they may refer the matter to the Freedom to Speak Up Guardian. **In cases of fraud**, reference may also be drawn to the Local Anti-Fraud, Bribery & Corruption Policy. Whistleblowing in relation to conflicts of interest or business conduct will need to refer to SHPCA Standards of Business Conduct and Managing Conflict of Interest Policy, and SHPCA's Conflicts of Interest Guardian.

For concerns regarding violence, intimidation, bullying, harassment, discrimination or victimisation in relation to individual SHPCA employees, please refer to SHPCA's Bullying and Harassment Policy.

However, where the matter is even more serious, or it is felt that the line manager has not addressed the concern, or a staff member or an ex-employee prefers not to raise it with them for any reason, contact should be made with one of the following:

- The Freedom to Speak Up Guardian
- SCW HR
- Other trusted high profile position, such as SHPCA's lay advisors and executives.

SHPCA will arrange a meeting with the staff member as soon as possible to discuss their concern. A colleague or union representative may be brought to any meetings under this policy. The companion must respect the confidentiality of the disclosure and any subsequent investigation.

SHPCA will take down a written summary of the concern and provide the staff member with a copy after the meeting. SHPCA will also aim to give an indication of how SHPCA propose to deal with the matter,

7. CONFIDENTIALITY

SHPCA hope that staff will feel able to voice whistleblowing concerns openly under this policy. However, if an employee wants to raise their concern confidentially, SHPCA will make every effort to keep their identity secret. If it is necessary for anyone investigating the concern to know the employee's identity, SHPCA will discuss how to proceed with them, for example if required to disclose it by law (such as by the police or if your evidence is needed in court)

SHPCA do not encourage staff to make disclosures anonymously because proper investigation may be more difficult or impossible if SHPCA cannot obtain further information from the staff member. It is also more difficult to establish whether any allegations are credible and have been made in good faith. Whistleblowers who are concerned about possible reprisals if their identity is revealed should come forward to the Freedom to Speak Up Guardian and appropriate measures can then be taken to preserve confidentiality. If there is in any doubt advice can be sought from SCW HR or Public Concern at Work, the independent whistleblowing charity, who offer a confidential helpline (020 7404 6609 or go to www.pcaw.org.uk).

8. EXTERNAL DISCLOSURES BY SHPCA STAFF

The aim of this procedure is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the workplace. In most cases staff members should not find it necessary to alert anyone externally.

The law recognises that in some circumstances it may be appropriate for concerns to be reported to an external body such as a regulator. It will never be appropriate to alert the media as this could be deemed serious / gross misconduct, which would be dealt with under SHPCA's Disciplinary Policy.

SHPCA strongly encourage staff to seek advice before reporting a concern to anyone external. The independent whistleblowing charity, Public Concern at Work, operates a confidential helpline. They also have a list of prescribed regulators for reporting certain types of concern.

Whistleblowing concerns usually relate to the conduct of staff, but they may sometimes relate to the actions of a third party, such as a customer, supplier or service provider. The law allows individuals to raise a concern in good faith with a third party, where they reasonably believe it relates mainly to their actions or something that is legally their responsibility. However, SHPCA encourages staff to report such concerns internally first. Staff members should contact their line manager for guidance.

Investigation and outcome

Once a staff member has raised a concern and their preferred outcome, SHPCA will carry out an initial assessment to determine the scope of any investigation (refer to Section 6). SHPCA will inform the staff member of the outcome of the assessment. Staff may be required to attend additional meetings in order to provide further information.

In some cases SHPCA may appoint an investigator or team of investigators including staff with relevant experience of investigations or specialist knowledge of the subject matter. The investigator(s) may make recommendations for change to enable SHPCA to minimise the risk of future wrongdoing.

If the concern suggests that an incident has occurred, this will be reported in accordance with SHPCA's Managing Events, Incident Management Policy and Guidance.

Any employment issues that only affect the whistleblower and not others identified during the investigation will be considered separately.

SHPCA will aim to keep staff members informed of the progress of the investigation and its likely timescale. However, sometimes the need for confidentiality may prevent SHPCA giving specific details of the investigation or any disciplinary action taken as a result. Staff members should treat any information about the investigation as confidential.

If SHPCA conclude that a whistleblower has made false allegations maliciously, in bad faith or with a view to personal gain, the whistleblower will be subject to disciplinary action.

If the whistleblower is not satisfied

While SHPCA cannot always guarantee the outcome being sought, SHPCA will try to deal with the concern fairly and in an appropriate way. By using this procedure staff can help SHPCA to achieve this.

If a staff member is not happy with the way in which their concern has been handled, the staff member can raise it with one of the other key contacts. Alternatively staff may contact members of the Board (or SHPCA's external auditors).

9. INVESTIGATION PROCEDURE (INTERNAL TO SHPCA)

The purpose of an investigation is to be just and equitable and to help promote fairness, order and consistency in the investigation of allegations made by and against staff.

It is recognised that, wherever possible, issues should be addressed informally with the employee. Where this is not possible, an investigation may be invoked as per section 6.2 below.

The Investigation Process

When an incident or complaint gives rise to concern, the Chief Operating Office/Head of Governance/Head of Service or Director dealing with the complaint or concern, will:

- Decide if an investigation is necessary
- Establish terms of reference – the rules that the investigation will follow, including precisely what needs to be investigated
- Choose an appropriate investigating officer

This will be done with the support of SCW. In the first instance, SHPCA will consider whether informal action may be all that is required to resolve a matter. Most problems that arise can be settled quickly and without undue process.

As a matter of principle the **investigation will be invoked when:**

- **An allegation has been made against an employee which may constitute misconduct or gross misconduct in accordance with disciplinary action**
- **An allegation has been made by an employee regarding a grievance or bullying and harassment (see Bullying and Harassment Policy).**

The **purpose of the investigation will be to establish the facts** of the case in hand and to **ensure that steps are taken to avoid a recurrence. SHPCA adopts a Just Culture approach to investigation (see Annex)**

When a decision to investigate has been made, the line manager will be required to make the member(s) of staff aware that an investigation is being undertaken with the support of SCW HR.

The Investigating Officer

The COO or Head of Service (as appropriate) will then appoint an appropriate investigating officer.

Usually the employees' line manager will be appointed as investigating officer, but in some instances it may be deemed appropriate to appoint an appropriate manager to investigate the allegations, an example of this would be where allegations have been made against the line manager by the employee.

The investigating officer will be responsible for the investigation stage of this procedure. The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. An investigator should do this by looking for evidence that supports the allegation and evidence that contradicts it. In potential disciplinary matters, it is not an investigator's role to prove the guilt of any party but to investigate if there is a case to answer.

If an employee has an objection to the investigating officer assigned, they may raise this with SCW HR. It may be deemed appropriate to appoint an independent manager to investigate the allegations, as detailed above.

If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter to be made available. The employee will be responsible for making arrangements for this.

In some instances, it may be deemed appropriate for a manager of the same sex and/or ethnic origin or other distinction to hear some allegations of harassment made under the Bullying and Harassment Policy.

The investigating officer will liaise with the COO/Head of Service who will be responsible for contacting SCW HR for support, advice and training.

The investigating officer will invite the employee to an investigatory meeting by letter which should be hand delivered to the employee or sent by recorded delivery should it not be possible to give it to them in person. A SCW HR representative will be present at that meeting and the individual will have the right to be accompanied by a trade union representative or workplace colleague. The letter should be given to the employee at least five working days prior to the meeting.

The employee and their representative (if any) should make every effort to attend meetings (including any appeal). If the employee and their representative (if any) cannot attend at the time specified, they should let SHPCA know immediately and SHPCA will seek to agree a reasonable alternative time. SHPCA will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set, as long as it is reasonable and not more than five working days after the date proposed by SHPCA, unless mutually agreed between SHPCA and employee.

If the employee does not attend on the second alternative date, or if the employee fails to attend without good reason, or is persistently unable or unwilling to do so, this may result in the meeting being conducted in the employee's absence and a decision made on the information available. The individual may provide a written statement to the manager holding the meeting.

If the individual is unfit to attend the meeting due to a medical condition, medical advice will be sought from Occupational Health to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, the individual may provide a written statement to the investigating officer holding the meeting.

Whilst it is acknowledged that employees may find procedural action contributes to feelings of stress, this will not normally be a reason for delaying such action.

If the individual is unable to attend the meeting, summary notes of the meeting will be made, which the employee is entitled to receive a copy of. These notes will not be verbatim notes of the meeting but a summary record of discussions.

If the individual attends the investigation meeting, a transcript will be provided to the employee for agreement and signature.

An investigation must be kept confidential at all times. In the event it becomes known that one is being conducted, the details of the investigation will be kept confidential. In a confidential investigation it is important to explain the need to maintain confidentiality to all staff involved. However, an employee is allowed to discuss the matter with their trade union representative or workplace colleague where they have one. It must be made clear that if an employee breaches confidentiality at any stage an employer could view this as a disciplinary matter.

Many investigations may be conducted without removing an employee from their typical working environment. On occasions, SHPCA may need to consider taking a temporary measure while an investigation is conducted. It will be done with support from SCW HR.

Following the meeting with the employee, the investigating officer will then carry out an investigation which may involve one or more of the following:

- Gathering statements from staff, patients or the public who were witness to the allegations
- Collating documentary evidence such as staff meeting notes, supervision notes, time sheets, accident/ incident reports/ appraisal records.
- Reviewing CCTV footage
- Checking telephone records
- Checking IT and computer records
- Checking personal records

This list is not exhaustive.

The investigating officer will take care not to:

- Jump to any conclusions
- Restrict their activities to investigating the facts only
- Say or do anything that implies judgement.

The investigating officer will then prepare a report of the investigation.

The purpose of this report is to provide a summary of the allegations and the evidence gathered. The investigating officer is not responsible for deciding the outcome of the investigation but will provide a factual summary of evidence only.

The investigating officer is responsible for ensuring that all necessary steps are taken promptly and without any unreasonable delays. The investigating officer would normally be expected to complete the investigation within four weeks.

The investigating officer will submit the completed report to the head of service/associate director to consider what action should be taken. The following decisions may be taken:

- There is no case to answer
- The matter can be dealt with informally through discussion with the employee
- The matter requires formal action

For matters identified by the employee, a formal response will be made. A copy of the investigation report, relevant supporting evidence and witness statements will be sent to the employee for their records.

The employer will provide the employee with copies of any witness statements and other written evidence that will be referred to in the hearing. The employer reserves the right for the evidence to be redacted, anonymised or withheld only where there is a strong reason for doing so.

Please note that, in conjunction with SHPCA's Disciplinary Policy, SHPCA reserves the right to hold the hearing on the same day as the investigation meeting. This decision will be made following an adjournment to consider the evidence presented and with the agreement of all parties. Please refer to the Disciplinary Procedures for details on how to proceed

Union Representatives or Companions

The employee may, if desired, be accompanied by a trade union official (lay or full time) or a work place colleague. The employee must be informed of this right at the commencement and all subsequent stages of this procedure.

If the employee wishes to be accompanied to a meeting, they should confirm the identity of their representative in writing at least two days before any meetings.

It is employee's responsibility to make the necessary arrangements for their representative's attendance at the meetings.

SHPCA reserves the right to apply a 'test of reasonableness' regarding representatives to ensure that they would not prejudice the meeting. Reasonableness may be based on, for example, prior involvement in aspects of the subject or the availability of representative to accompany (i.e. that meetings are not postponed for long periods in order to wait for the representative to be available).

The representative may:

- Address the meeting and confer with the employee, during it
- Put the employee's case
- Sum up the employee's case
- Respond on behalf of the employee to any views expressed at the meeting.

The representative may not answer questions on behalf of the employee.

Trade union representatives may be from another organisation or a lay official or full-time officer as long as they are certified as having experience of or received training in acting as a workers companion.

Any other companion (a workplace colleague) should always be a staff member of SHPCA and any decision on whether the choice of companion is appropriate should be made in conjunction with SHPCA and/or SCW HR. Family members and legal representatives will not be allowed to attend these meetings.

Any companion must maintain confidentiality during and after the application of this policy

Electronic recordings of any meetings conducted under this policy will require the consent of all parties.

Record Keeping and Confidentiality

A record of the investigation and the outcome to the investigation will remain on the employee's file in a sealed envelope.

This information will in no way be used against the employee but is retained for record keeping purposes only in line with SHPCA Records Management Policy.

Individuals will be provided with a copy of the notes made from their meetings. Where there is a dispute regarding their accuracy, which cannot be resolved, both the original notes and the amended version will be retained on file.

The individual will be provided with a copy of the investigation report. In some circumstances it may be appropriate to redact or withhold some information from the individual, for example in order to protect a witness.

Employees, managers and representatives must ensure confidentiality throughout the procedure cases and thereafter when the resolution has been reached. Failure to do this could result in disciplinary action being taken against the person responsible for the information breach.

Suspension (Exclusion) or Transfer

129 There may be occasions when the allegations being considered are of a serious nature to warrant the suspension of the employee. Please refer to SHPCA's Disciplinary and Suspension Policy.

10. PROCESS FOR SPECIAL CASES

The Role of Counter Fraud and the Police - Please refer to the Local Anti-Fraud, Bribery and Corruption Policy.

For any allegation where it is suspected that there may be an element of fraud, SHPCA COO/Head of Governance will notify the Local Counter Fraud Service (LCFS) and/or the SHPCA Chair/Finance Lead Director of Finance in accordance with the NHS Counter Fraud Authority (formerly NHS Protect) policy document, 'Parallel criminal and disciplinary investigations, Policy statement – April 2013' who may in turn refer the matter to the police.

Where it is identified by LCFS that members of staff may be involved in the commission of an offence or offences, the LCFS will liaise with SHPCA at the earliest opportunity. The LCFS will work with SHPCA in accordance with the NHS Counter Fraud Authority guidance document 'Applying Appropriate Sanctions Consistently'. Where legally appropriate the LCFS will make relevant evidence gathered available to SHPCA for use during internal disciplinary proceedings. SHPCA will liaise with SCW HR for advice and guidance as required.

Criminal and disciplinary processes have different purposes, different standards of proof, and are governed by different rules. As such, it would not be appropriate for one investigation to cover both criminal and disciplinary matters.

- In conducting an investigation, the LCFS investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.
- There is no requirement under the Police and Criminal Evidence Act (PACE) for the investigator to notify the suspect that they are being investigated. At the point that evidence to indicate that an offence has been committed, the suspect will normally be provided with an opportunity to give an explanation regarding any evidence that has been identified.
- The investigator will not normally make contact with a suspect prior to this (other than to make arrangements for the interview) to ensure that the investigation process is not prejudiced.
- All relevant parties may be required to participate in separate interviews as part of the counter fraud investigation.

- The investigation carried out by the counter fraud team will run in parallel with the internal HR investigation.

Child or Adult Protection

Management of allegations against staff – child protection (children or young people under 18 years of age)

If it is alleged that an employee of SHPCA may have caused harm to a child, or pose a risk of harm to children, it must be responded to and thoroughly addressed. There may be a concern that the member of staff may have:

- Behaved in a way that has harmed or may have harmed a child
- Possibly committed a criminal offence against or related to a child
- Behaved towards a child or children in a way that indicates that they may pose a risk of harm to children

Any **allegations made against a member of staff MUST be reported immediately** to a designated professional for safeguarding children within SHPCA. The designated professionals will work with senior managers and provide guidance regarding the safeguarding context of the allegation, including reporting to the police where a criminal offence may have been committed and informing the local authority designated officer (LADO) within one working day of the allegation being made.

Management of allegations against staff – adult protection

In line with the Hampshire Safeguarding Adults Board Multi-Agency Policy if an allegation is made against a staff member which states that they may have, or have, harmed an adult, this **MUST** be immediately reported to the safeguarding adults management advisor (SAMA) in the safeguarding adults team in SHPCA. Allegations may be historic and/or current, may be in relation to a staff member's conduct during employment, or in their personal lives which involve the abuse/neglect/mistreatment of a vulnerable adult or involve concerns where a person's conduct towards an adult may also potentially impact on their suitability to work with children. Concerns may also relate to the potential risk a person may pose to an adult or a child.

The SAMA will work with senior managers and provide guidance regarding the safeguarding context of the allegation, actual and potential risks posed, ensuring a proportionate response is taken and that due processes are followed including reporting to the police where a criminal offence may have been committed. The SAMA will inform the designated nurse for safeguarding children and the LADO in the local authority where there are any associated concerns in relation to risks to children.

Proceedings against a Staff Side Representative

In all cases where the manager is investigating an issue against a trade union official the case will be discussed with a branch or full time officer.

Raising a Grievance during an Investigation Process

In exceptional circumstances, where an employee raises a grievance at any stage of the investigation, a decision will be made as to whether the investigation proceedings should be suspended until such time as the grievance is resolved.

A decision will be made based on the seriousness of the allegations presented which make it clear that it would be inappropriate for the investigation to continue. In most cases, the two procedures will run parallel.

It is not sufficient to raise a grievance with regards to the investigation action itself.

11. PROTECTION AND SUPPORT FOR WHISTLEBLOWERS

It is understandable that whistleblowers are sometimes worried about possible repercussions. SHPCA aims to encourage openness and will support staff who raise genuine concerns in good faith under this policy, even if they turn out to be mistaken.

Provided a whistleblower is acting honestly, it does not matter if they are mistaken or if there is an innocent explanation for their concerns.

Staff must not suffer any detrimental treatment as a result of raising a concern in good faith, in accordance with the Public Interest Disclosure Act 1998. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If a staff member believes that they have suffered any such treatment, they should inform the Freedom to Speak Up Guardian immediately. If the matter is not remedied they should raise it formally using SHPCA's Grievance Policy.

Staff who raise concerns about harassment or discrimination are also protected under the Equality Act 2010 from victimisation. Victimisation is less favourable treatment by the employer because the employee has either brought proceedings against the employer because of discrimination or harassment, or is giving evidence on behalf of another employee who is claiming discrimination or harassment.

Staff must not threaten or retaliate against whistleblowers in any way. Anyone involved in such conduct will be subject to disciplinary action.

SHPCA has an employee assistance programme, which offers confidential support and a counselling hotline is available to whistleblowers who raise concerns under this policy. Whistleblowers who are external to SHPCA should contact their own organisation's support mechanisms, as identified within their whistleblowing policies and procedures.

If staff members have a concern and would like advice about how to raise it, they may contact the following:

Whistleblowing helpline – offers independent, free, confidential advice for the NHS and social care employers and staff.

Public Concern at Work (PCaW) – advises individuals on whistleblowing, supports organisations, and seeks legislative change.

12. LEARNING FROM FTSU/WHISTLEBLOWING CONCERNS

The focus of investigation will be on improving the services commissioned for patients. Where it identifies improvements that can be made, SHPCA will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

Learning in relation to external service providers will be reported to SHPCA Clinical Assurance Group, whilst learning which is internal to SHPCA will be logged via the SHPCA Learning Log and reported to the SHPCA Board.

13. ROLES AND RESPONSIBILITIES

Board and Senior Management Team will:

- Will promote a culture of openness that welcomes the opportunity to address and resolve concerns
- Respond positively to any escalated concerns, either taking or arranging appropriate action
- Ensure all managers understand their responsibilities in relation to this policy
- Ensure that any learning from issues raised is implemented.

Line managers will:

- Ensure that they themselves and employees are aware of this policy
- Ensure that the policy and its supporting standards and guidelines are built into local processes and that there is on-going compliance
- Adhere to the timescales within the policy to ensure that matters are dealt with quickly, reasonably and as fairly as possible
- Ensure that the informal stage is used wherever possible prior to any formal action being taken
- Involve SCW HR for advice and support when a staff related issue has been raised
- Respond to any concerns raised by employees; consider them fully, sympathetically and fairly in accordance with this policy.
- Ensure that any employee raising a concern has support within a non-punitive framework.
- Foster and promote an open culture and provide regular opportunities for staff to speak up and discuss concerns at both an individual and team level.
- Treat all employees fairly by applying the policy consistently and ensuring that any personal information is kept in complete confidence in line with information governance requirements.

Employees Will ensure they read, understand and comply with this policy.

- Have a right and responsibility to bring to the attention of their line managers any matter where the interest of others or the organisation may be at risk.
- Are able to contact SCW HR, their trade union representative or appropriate professional body for advice and guidance.
- Will try and deal with matters at the nearest point of origin and where appropriate first approach the appropriate manager in order to discuss the problem informally
- Will attend meetings as require
- Will maintain confidentiality.

SCW HR Will:

- assist managers and employees in the fair and consistent application of the policy
- provide advice and support to employees and managers concerning individual issues, including advice on the range of options or courses of action that may be taken
- facilitate informal meetings on request
- provide coaching and training on the application of this policy
- provide support at formal meetings
- maintain confidentiality.

TRAINING IMPLICATIONS

All employees need to be aware of this policy and their responsibilities. This will be achieved by:

- New employees will be directed to where policies are located on SHPCA website
- Promoting the policy through staff newsletters on publication and each time it is reviewed
- Ensuring all employees receive the Staff Guide to Speaking Up (within the Staff Guide to Governance, Quality & Safety).

SHPCA Board Members and SHPCA Line managers will be provided with coaching and training on the application of this policy as appropriate.

This policy is made available to all staff via SHPCA intranet website.

14. EQUALITY AND DIVERSITY

In applying this policy, SHPCA will have due regard for the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

Where English is not the first language or there are difficulties in reading this policy, employees should contact their line/other appropriate manager or senior officer within SHPCA, a SCW HR or staff representative for advice and guidance

If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter or friend to be made available. The employee will be responsible for making arrangements for this, or where appropriate, Access to Communications will be contacted with the support of SCW HR.

In line with SHPCA policy, an equality analysis has been completed. It is understood that no employee will receive less favourable treatment on the grounds of disability, age, sex, race, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, working patterns or trade union membership or non-membership in relation to the application of this policy.

15. MONITORING THE EFFECTIVENESS OF THE POLICY

The effectiveness of this policy will be monitored by SCW HR to ensure the correct procedures have been followed and timescales met. Any learning points and trends will be identified by SCW who will make recommendations to Business and HR Services Manager about changes which need to be made.

Policy monitoring and review will include analysis of the available equality characteristics.

16. REVIEW

This policy may be reviewed at any time at the request of either staff side or SHPCA but will be reviewed automatically in the event of new legislation or guidance emerging or annually.