

Public Interest Disclosure ("Whistleblowing") Policy

Strategic delivery: Setting standards Increasing and informing choice Demonstrating efficiency economy and value

Details:

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| Meeting | AGC |
| Agenda item | 14 |
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| Meeting date | 7 December 2016 |
| Author | Rachel Hopkins, Head of Human Resources |

Output:

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| For information or decision? | For decision |
| Recommendation | The Committee is asked to agree the amended policy. |
| Resource implications | None |
| Implementation date | Ongoing |
| Communication(s) | Ongoing |
| Organisational risk | <input checked="" type="checkbox"/> Low <input type="checkbox"/> Medium <input type="checkbox"/> High |

Annexes

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| Annex A – | Whistleblowing Policy |
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1. Purpose

- 1.1.** The Public Interest Disclosure Policy generally referred to as the “Whistleblowing” Policy was implemented to ensure people working for the HFEA were aware of the channels available to report inappropriate behaviour.
- 1.2.** This paper also confirms that a review of the HFEA Whistleblowing Policy has been undertaken and to set out the updated policy which includes a few minor amendments for the committee's agreement..

2. Policy

- 2.1.** The policy was shared with the Staff Forum and tabled at CMG who approved the draft policy. In December 2014, the Committee approved it. A number of minor amendments that have been proposed.
- 2.2.** A review was not undertaken in 2015 due to staff and work commitments and therefore was not presented to AGC for approval.
- 2.3.** We have now reviewed the policy and have updated names where appropriate and re-branding.
- 2.4.** Any comments or changes the Committee deems necessary are requested.

Public Interest Disclosure ("Whistleblowing") Policy

1. Introduction

- 1.1 In accordance with the Public Interest Disclosure Act 1998, and the corporate values of integrity, impartiality, fairness and best practice, this policy intends to give employees a clear and fair procedure to make disclosures which they feel are in the public interest ("whistleblowing") and will enable the HFEA to investigate these disclosures promptly and correctly.
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2. Aim

- 2.1 To outline what constitutes a Public Interest disclosure, and to provide a procedure within the HFEA to deal with such disclosures
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3. Scope

- 3.1 This policy applies to all employees, both permanent and fixed term and also Authority members
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4. Responsibility

- 4.1 The HR department is responsible for ensuring that all staff have access to this policy. Managers and Senior Executives are responsible for ensuring that any public interest disclosure is dealt with immediately, and sensitively, and confidentially.
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5. Principles

- 5.1 Employees who raise their concerns within the HFEA, or in certain circumstances, to prescribed external individuals or bodies will not suffer detriment as a result of their disclosure, this includes protection from subsequent unfair dismissal, victimisation or any other discriminatory action.
- 5.2 The Public Interest Disclosure Act 1998, (more widely known as the 'Whistleblowers' Act) protects 'workers' from suffering any detriment where they make a disclosure of information while holding a reasonable belief that the disclosure tends to show that:
- (a) a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - (c) A miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) The health and safety of any individual has been, is being or is likely to be endangered,
 - (e) The environment has been, is being or is likely to be damaged, or
 - (f) Information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- 5.4 It should be noted that disclosures, which in themselves constitute an offence, are not protected.

- 5.4 HFEA's policy is intended to ensure that where a member of staff, including temporary or contractual staff, have concerns about criminal activity and/or serious malpractice e.g. fraud, theft, or breaches of policy on Health and Safety, they can be properly raised and resolved in the workplace. Such matters **must be raised internally** in the first instance. Please refer to the paragraph on gross misconduct in the Authority's Disciplinary Policy, and also the Authority's Fraud and Anti-Theft Policy.
- 5.5 HFEA seeks to foster a culture that enables staff who witness such malpractice to feel confident to raise the matter in the first instance in the knowledge that, once raised, it will be dealt with effectively and efficiently. The HFEA will not tolerate the victimisation of individuals who seek to bring attention to matters of potentially serious public concern, and will seek to reassure any individual raising a concern that he or she will not suffer any detriment for doing so. If an individual is subject to a detriment for raising a concern the HFEA will seek to pursue an appropriate sanction.
- 5.6 Frivolous or vexatious claims which fall outside the protection of the Act or such other provisions as may be held to protect them (e.g. HFEA's codes of conduct, confidentiality clause etc.) may be considered acts of misconduct and subject to disciplinary action.
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6. Procedure

Internal Disclosure

- 6.1 HFEA staff who become concerned about the legitimacy or public interest aspect of any HFEA activity or management of it should raise the matter initially with their line manager. If a member of staff feels unable to raise the matter through their line manager, they may do so through the HR Department.
- 6.2 It will be the responsibility of the line manager to record and pursue the concerns expressed; consulting such other parts of the Authority; (e.g. HR, SMT) as may be necessary, including where appropriate consideration as to whether external expert assistance is required.
- 6.3 The identity of the individual making the disclosure will be kept confidential if the staff member so requests unless disclosure is required by law.
- 6.4 In other than serious cases, the line manager will normally be responsible for responding to the individual's concern. They must maintain appropriate records and ensure that they provide the individual raising the concern with:
- An explanation of how and by whom the concern will be handled
 - An estimate of how long the investigation will take
 - Where appropriate, the outcome of the investigation
 - Details of who he/she should report to if the individual believes that he/she is suffering a detriment for having raised the concern
 - Confirmation that the individual is entitled to independent advice.

- 6.5** Should a member of staff feel that they are not satisfied that their concern has been adequately resolved, they may raise the matter more formally with the Chief Executive.
- 6.6** Any member of staff wishing to make a disclosure of significant importance may approach the Chief Executive in the first instance. Matters of significant importance include, but are not restricted to, criminal activity e.g. fraud or theft, or other breaches of the law; miscarriage of justice; danger to health and safety; damage to the environment; behaviour or conduct likely to undermine the Authority's functions or reputation; breaches of the *Seven Principles of Public Life* (Annex A) and attempts to cover up such malpractice.
- 6.7** The matter of significant importance may have taken place in the past, the present, or be likely to take place in the future.
- 6.8** Concerns may be raised either in writing or at a meeting convened for the purpose. A written record of meetings must be made and agreed by those present. In serious cases or in any case where a formal investigation may be required, line managers concerned should consult the Head of HR and SMT, unless they are implicated, when they should speak to the Chair. Line managers must not take any action which might prejudice any formal investigation or which might alert any individual to the need to conceal or destroy any material evidence.
- 6.9** Where an individual has reason to believe that the concerns about which he / she intends to make a disclosure are condoned or are being concealed by the line manager to whom they would ordinarily be reported, the matter may be referred directly to the Head of HR who will determine in conjunction with the Chief Executive the need for, and the means of, investigation. In exceptional circumstances, the Head of HR may take the disclosure directly to the HFEA Chair. Any such approach should be made in writing, clearly stating the nature of the allegations.
- 6.10** Unless inappropriate in all the circumstances, investigations will normally be undertaken by the following posts:

| <i>Allegation against</i> | <i>Investigated by</i> |
|---------------------------|------------------------|
| Directors | Chief Executive |
| Chief Executive | Chair |
| Member | Chair |
| Audit Committee Member | Audit Committee Chair |
| Chair | Department of Health* |
| Deputy Chair | Chair |

*Via Senior Sponsor at the DH (currently Mark Davies, Director, Health Science and Bioethics (tel. 0207 210 6304^[MA1] / mark.davies@dh.gsi.gov.uk)

- 6.11** Individuals under contract to the HFEA for the delivery of services should raise any issues of concern in the same way, via the appropriate line manager.

6.12 Once investigations and follow up actions as appropriate have been concluded, a written summary of the matter(s) reported and concluding actions taken should be forwarded to the Chair of the Authority (the Chair) for inclusion in the central record of issues reported under this policy. The anonymity of the individual who made the disclosure should be preserved as far as possible.

External Disclosure

- 6.13** The HFEA recognises that there are circumstances where the matters raised cannot be dealt with internally and in which an individual may make the disclosure externally and retain the employment protection of the Act. Ordinarily such disclosure will have to be to a person or regulatory body prescribed by an order made to the Secretary of State for these purposes.
- 6.14** Prescribed bodies under the Act include the Comptroller and Auditor General of the National Audit Office (NAO), who are the external auditors to the Authority. The Act states that disclosure to the NAO should relate to “the proper conduct of public business, fraud, value for money and corruption in relation to the provision of centrally-funded public services.”
- 6.15** The NAO have a designated whistle blowing hotline which can be used in confidence on 020 7798 7999. Further information about this service and other bodies prescribed under the Act is available via the NAO’s website: <http://www.nao.org.uk/contact-us/whistleblowing-disclosures/>
- 6.16** In these circumstances the worker will be obliged to show that the disclosure is made in good faith and not for personal gain, that he or she believed that the information provided and allegation made were substantially true, and that they reasonably believed that the matter fell within the description of matters for which the person or regulatory body was prescribed.
- 6.17** Unless the relevant failure of the employer is of an exceptionally serious nature, the worker **will not** be entitled to raise it publicly unless he/she has already raised it internally, and/or with a prescribed regulatory body and, in all the circumstances, it is reasonable for him / her to make the disclosure in public.
- 6.18** If a member of staff is unsure of their rights or obligations and wishes to seek alternative independent advice, Public Concern at Work is an independent organisation that provides confidential advice, free of charge, to people concerned about wrongdoing at work but who are not sure whether or how to raise the concern (telephone 020 7404 6609 or 020 3117 2520, email: whistle@pcaw.org.uk), or visit their website at <http://www.pcaw.org.uk/>. HFEA staff may also use the Whistleblowing Helpline, which offers free, confidential and anonymous advice to the health sector: <http://wbhelpline.org.uk/>
- 6.19** Where matters raised from external disclosure procedures are (as appropriate) subsequently investigated and resolved internally, a written record of the matters raised and actions taken should be forwarded to the Chair for inclusion in the central record of issues referred under this policy. The anonymity of the individual who made the disclosure should be preserved as far as possible.

Information held on the HFEA Register

Under Section 31 of the Human Fertilisation and Embryology Act 1990 ("the Act"), the HFEA is required to keep a register containing certain categories of information. The Act prohibits disclosure of data held on the HFEA register, subject to a number of specified exceptions. Disclosure of information which is not permitted by an exception may constitute a criminal offence.

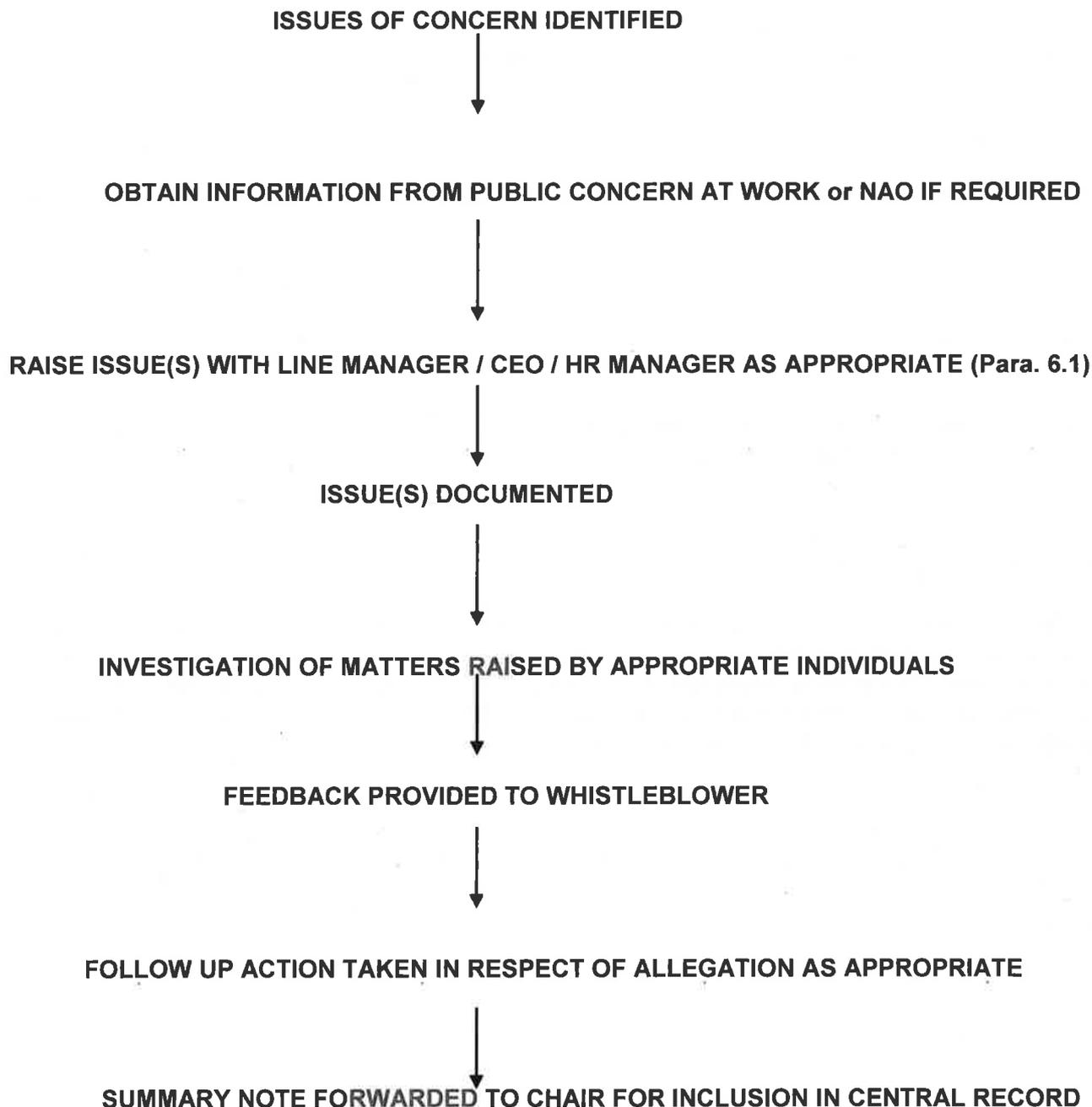
7. Notes

- 7.1 This policy will be reviewed by the Audit and Governance Committee annually.
- 7.2 An anonymised summary of issues raised under this whistleblowing policy and remedial actions taken will be forwarded annually to the Authority for information.
- 7.3 The role of the HFEA as a regulatory body:

Under the provisions of the Public Interest Disclosure Act 1998 employees of an organisation are able to disclose publicly (under certain circumstances) their concerns about legitimacy or public interest aspects of the organisation within which they work. Although the Act requires that concerns be raised internally in the first instance, there are provisions for disclosure to be made to a regulatory body. The HFEA is itself one such regulatory body.

The procedure for dealing with a public interest disclosure from a member of staff of one of the licensed centres for which the HFEA is the regulatory body is not covered by this policy and prior to any separate procedure being issued, guidance must be sought from the Director of Compliance and Information.

Procedure Diagram



Procedures for external disclosures will depend upon the procedures of the body to whom disclosures are made. **Public Concern at Work** or the **NAO** will be able to provide information in this respect. Where matters raised from external disclosure procedures are (as appropriate) subsequently investigated and resolved internally, a written record of the matters raised and actions taken should be forwarded to the Chair for inclusion in the central record of issues referred under this policy.

The identity of the individual making the disclosure will be kept confidential if the staff member so requests unless disclosure is required by law.

Seven Principles of Public Life (The as recommended by the Nolan Committee)

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations which might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life.

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Version/revision control

| Version | Changes | Updated by | Approved by | Release date |
|---------|---|--------------------------------|---------------------|----------------------|
| 0.1 | Created | Head of Finance | Head of HR | July 2010 |
| 0.2 | Revisions and updates | Head of Finance | CMG/AGC/Staff Forum | May 2012 |
| 0.3 | Revisions and updated | Head of HR | Staff Forum/CMG/AGC | December 2014 |
| 0.4 | Minor clarification in 6.8 omitted at time of (0.3 above) | Head of HR | As above | February 2015 |
| 0.5 | Reviewed/updated prior to AGC | Head of Finance and Head of HR | | <i>December 2016</i> |