



**EMPLOYMENT
POLICIES AND PROCEDURES**

**FREEDOM OF SPEECH
POLICY AND PROCEDURE**

SEPTEMBER 2005

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1 INTRODUCTION

There may be occasions where staff have concerns about what is happening at work. NHS Lothian believes that in most situations these concerns could be resolved by utilising the NHS Lothian Grievance Procedure. However, where these concerns relate to unlawful conduct, financial malpractice or danger to patients, the public or environment, the Grievance Procedure or normal line management routes may not be appropriate.

NHS Lothian has introduced this policy to enable NHS Lothian employees to raise concerns about such issues at an early stage and through an agreed procedure. It is important that any matter of concern is raised at the earliest possible stage in order to protect the safety of patients, staff or members of the public and/or public resources.

2 POLICY CONTEXT

2.1 Policy Purpose, Principles and Values

NHS Lothian is committed to achieving the highest possible standards of care and high ethical standards in the delivery of health care. Freedom of speech is therefore encouraged through the framework laid down in this policy. The policy provides the basis by which concerns can be fairly and effectively raised and responded to. The policy also provides NHS Lothian, in the first instance, with the opportunity to address issues of concern and, where appropriate, take action to remedy such issues.

NHS Lothian is firmly committed to an open, honest organisational culture. NHS Lothian is striving to create a climate which ensures employees have absolute confidence in the fairness and objectivity of the procedures through which their concerns are raised and are assured that concerns raised will be acted upon.

The purpose of this policy is to ensure employees have a proper and widely publicised procedure for voicing complaints about issues such as:

- malpractice or ill treatment of a patient/client/customer by a member of staff;
- repeated ill treatment of a patient/client/customer, despite a complaint being made;
- a criminal offence has been committed, is being committed, or is likely to be committed;
- suspected fraud;
- disregard for legislation, particularly in relation to health and safety at work;
- the environment has been, or is likely to be, damaged;
- breach of Standing Financial Instructions;
- showing undue favour over a contractual matter;
- showing favour to a job applicant;
- a breach of a code of conduct;
- information on any of the above has been, is being, or is likely to be concealed.

NHS Lothian has a wide range of policies and procedures which deal with standards of behaviour at work. These policies include Management of Employee Conduct, Equal Opportunities, Dignity at Work and Race Equality. Employees are encouraged to use the provisions of these procedures when appropriate. There may be times, however, when the matter causing concern is not about the employee's personal employment position and needs to be handled in a different way.

2.2 Scope

This policy applies to all individuals employed by NHS Lothian, or who work within, or supply services to, NHS premises. The latter include: agency and locum staff; contractors; volunteers; students and trainees; independent consultants; home workers; work experience trainees; and independent NHS contractors.

If an employee is unsure as to which policy to use it is best to first seek advice from their line manager, the Human Resources Department or their staff representative, who will advise them of the options for disclosure.

3 REPRESENTATION: THE ROLE OF TRADE UNIONS / PROFESSIONAL ORGANISATIONS

At all stages of this procedure, employees may seek advice from, and be represented by, their trade union or professional organisation representative.

4 DISCLOSURE OFFICERS

An employee should normally raise concerns in the first instance with their line manager. However, it is recognised that there may be circumstances where matters require to be handled outwith normal channels of communication. In such instances, "Disclosure Officers" appointed by NHS Lothian will act impartially and give appropriate advice and support. Where concerns are raised with a Disclosure Officer they will arrange an initial interview to ascertain the area of concern. The Disclosure Officer will ask whether or not the employee raising the concern wishes their identity to be disclosed, and will reassure the employee about protection from possible reprisals or victimisation.

There will be certain situations where due to the nature of the concerns raised the Disclosure Officer will not be able to agree to maintaining complete confidentiality. The employee will be advised of this at the outset of the discussion.

Employees will also be asked whether they wish to make a written or verbal statement. Where the employee makes a verbal statement, the Disclosure Officer will write a brief summary of the discussion which will be agreed by both parties.

Disclosure Officers have a responsibility to ensure that concerns are raised with the appropriate person within NHS Lothian. Disclosure Officers will be recruited from within NHS Lothian and appointed in partnership with trade unions and professional organisations. Information on NHS Lothian Disclosure Officers will be made accessible to all employees.

A list of the currently designated Disclosure Officers may be found in Appendix D.

5 PROCEDURE

5.1 Formal Stage

When a concern is raised, the line manager or Disclosure Officer will determine the most appropriate manager to undertake the formal investigation. A representative from the Human Resources Department may assist where necessary. Neither the manager nor the Human Resources Manager should have had previous knowledge of the concern. Where appropriate, eg in matters relating to financial malpractice or fraud, the Internal Audit function will be asked to assist in the investigation. The investigation will be conducted timeously and will be concluded with a recommendation on what action is required. All involved parties will be guaranteed a fair and impartial hearing.

If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation should be concluded as quickly as is reasonably possible in line with the processes laid down within the NHS Lothian Management of Employee Conduct: Disciplinary Policy and Procedure. However, NHS Lothian requires such investigations to be thorough, and so will allow for flexibility to ensure all issues and potential complexities are appropriately addressed.

5.2 Contacts Outwith NHS Lothian

The emphasis of this policy is on encouraging employees to raise their concerns internally, both as the quickest way to resolve concerns and to enable NHS Lothian to provide appropriate support if required. Whilst NHS Lothian hopes this policy gives employees the reassurance they need to raise such matters internally, it is recognised that there may be circumstances where they can properly report matters to outside bodies, such as those detailed in Appendix A. If an employee chooses to make a disclosure to an outside body, they must have an honest and reasonable suspicion that malpractice has occurred, is occurring or is likely to occur, and must believe the information to be substantially true.

Although the internal process, as detailed above, exists for disclosure, in exceptional circumstances wider disclosures, i.e. to the police, Members of the Scottish Parliament or Members of Parliament may be justified. Employees will be protected under the Public Interest Disclosure Act 1998 if they meet the above criteria, have not made the disclosure for personal gain and have first raised the concern within NHS Lothian or a prescribed regulator, as detailed in Appendix A. The only exceptions to this are if the employee believes they would have been victimised as a result of making such a disclosure; a prescribed regulator is not available; or if there is reasonable belief that there would be an attempt to cover up the matter causing concern.

The charity Public Concern at Work and any trade union or professional organisation will be able to advise an employee on such an option and the circumstances in which they may be able to contact an outside body safely. It is strongly recommended that any employee seeks advice from such parties before making an external disclosure.

5.3 Record Keeping

Records will be kept of all disclosures made under this Policy. These disclosures will be securely and confidentially stored. The NHS Lothian Director of Human Resources will be responsible for ensuring appropriate systems for the safe storage of such documents.

6 MONITORING AND REVIEW

This policy and procedure will be reviewed by the NHS Lothian Partnership Forum on a regular basis.

APPENDIX A

EXTERNALLY RAISING SERIOUS ISSUES OF CONCERN AT WORK

The Lord Advocate, Scotland

Audit Scotland*

Auditor General for Scotland

General Medical/Dental Council

Government Ministers/Scottish Ministers

Health and Safety Executive

Health Service Ombudsman

Medical Royal Colleges

Mental Welfare Commission

NHS Staff Council

Revenue and Customs Commissioners

Scottish Environment Protection Agency

Scottish Information Commissioner

*Note: In addition, Audit Scotland has determined that protected disclosures may be made to internal auditors and appointed external auditors.

Advice and information:

Public Concern at Work

Advisory, Conciliation and Arbitration Service (ACAS)

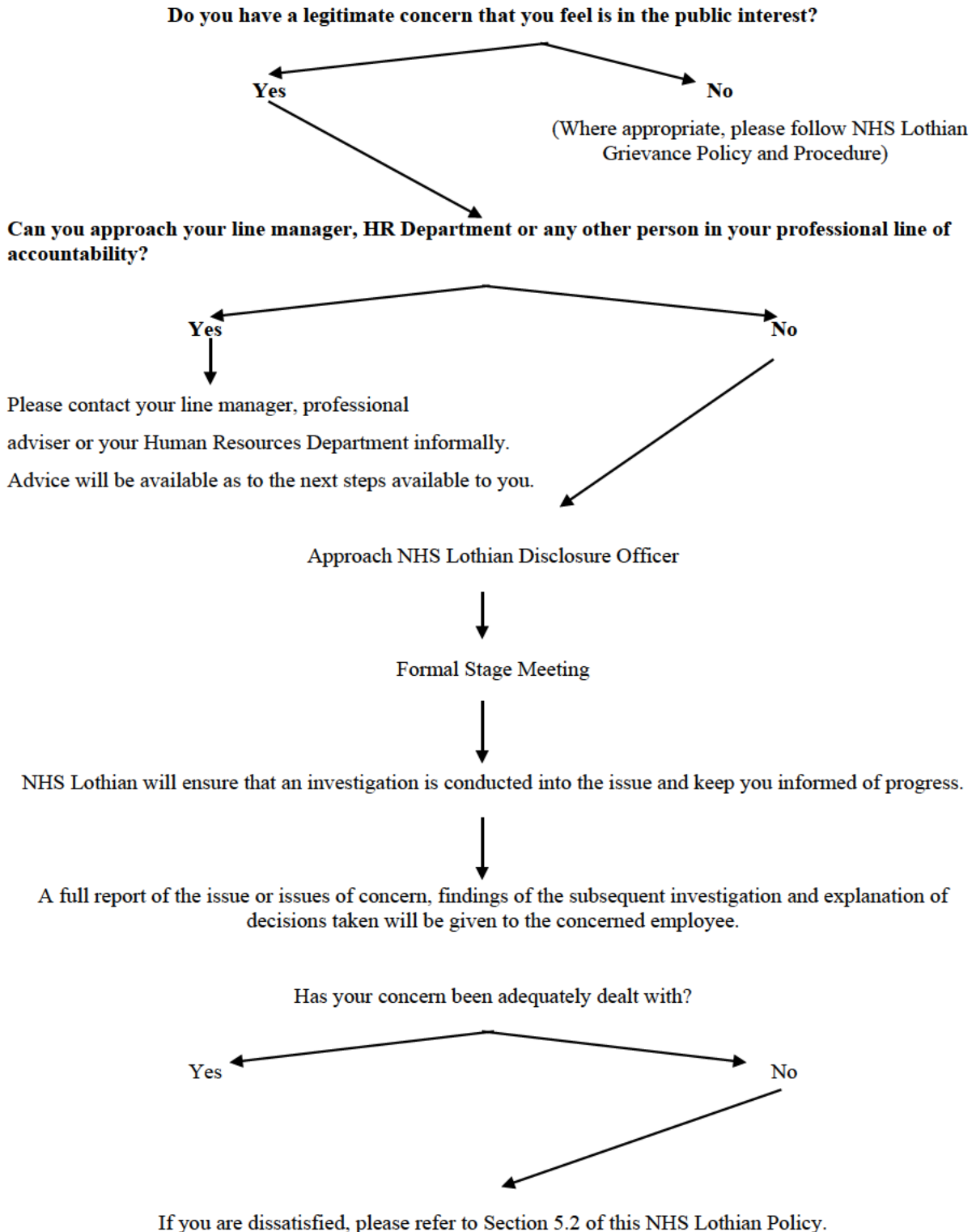
Registered trade unions and professional organisations

Citizens Advice Bureau

A solicitor or other legal adviser

For full details of “prescribed persons”, and the matters for which they are prescribed, see the Public Interest Disclosure Act 1998 or the Department of Trade and Industry’s Guide to the Act.

NHS Lothian Freedom of Speech – Policy Flowchart



SUMMARY OF THE MAIN PROVISIONS OF THE PUBLIC INTEREST DISCLOSURE ACT 1998

MALPRACTICE

The Act applies to people at work raising genuine concerns about crime, breach of a legal obligation (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and any cover-up of these. In the NHS this would include an employee raising concerns about risks to service users or about financial malpractice. The Act applies whether or not the information is confidential.

INDIVIDUALS COVERED

In addition to employees, it covers other workers, agency staff, home workers and self-employed NHS professionals. The Act does not cover volunteers.

INTERNAL DISCLOSURES

A disclosure to the employer will be protected if the individual has an honest and reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur.

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.

REGULATORY DISCLOSURES

Special provision is made for disclosures to bodies which are prescribed under the Act. Such disclosures will be protected where the individual 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

Wider disclosures (i.e. to the police, media, MSPs, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are not made for personal gain and if they satisfy a further two provisions. The concern must have been raised with the employer or a prescribed regulator beforehand, unless there existed a reasonable belief of victimisation; no prescribed regulator exists; the individual believed that the concern would be covered up; or if the matter was exceptionally serious. If one of these preconditions is met and any resultant tribunal is satisfied that the disclosure was reasonable, the individual will be further protected.

FULL PROTECTION

Where an employee is victimised for making a public disclosure in line with the Act, they may bring a claim to an Employment Tribunal. Employees who lose their jobs in breach of the Act will be fully compensated for their losses. Awards for victimisation short of dismissal are uncapped and based on what is deemed just and equitable in all circumstances.

CONFIDENTIALITY CLAUSES

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

DESIGNATED DISCLOSURE OFFICERS

As at September 2005, the designated Disclosure Officers for NHS Lothian are as follows:

University Hospitals Division:

██████████ Data Protection and Freedom of Information Officer, Royal Infirmary of Edinburgh

Telephone: ██████████

Primary Care Organisation and Community Health Partnerships:

██████████, Complaints Officer, Astley Ainslie Hospital

Telephone: ██████████ (49522)

██████████ Complaints Officer, Astley Ainslie Hospital

Telephone: ██████████

██████████ Complaints Officer, Astley Ainslie Hospital

Telephone: ██████████

West Lothian:

██████████, Complaints Officer, St John's Hospital

Telephone: ██████████

NHS Lothian Headquarters:

██████████, Complaints Officer and Freedom of Information Contact, Deaconess House

Telephone: ██████████