



HWCBS Care (T/A Segal Gardens)

436 Fleet Lane, Parr, St Helens, nr Liverpool, Merseyside, WA92NH



Review Sheet

Last Reviewed
13 Dec '19Last Amended
13 Dec '19Next Planned Review in 12 months, or
sooner as required.

Business impact



MEDIUM IMPACT

Changes are important, but urgent implementation is not required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

Policy reviewed with the addition of further legal guidance on the nature of whistleblowing and the processes to follow. Additionally, two new sections have been added to your system details requiring you to provide (a) the name and address of your Local Authority Safeguarding Adult Team and (b) the telephone number of your Local Authority Safeguarding Adult Team. Please ensure that you update these sections so that the policy reflects the information relevant to your service.

Relevant legislation:

- The Criminal Justice and Courts Act 2015
- The Enterprise and Regulatory Reform Act 2013
- The Care Act 2014
- Public Interest Disclosure Act 1998
- The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Public Concern at Work, (2016), *PAS 1998:2008 Whistleblowing Arrangements Code of Practice*. [Online] Available from: [Accessed:]
- Author: The Care Quality Commission, (2013), *Whistleblowing: Guidance for providers who are registered with The Care Quality Commission*. [Online] Available from: http://www.cqc.org.uk/sites/default/files/documents/20131107_100495_v5_00_whistleblowing [Accessed: 12/12/2019]
- Author: NHS Improvement Service, (2016), *Freedom to speak up: raising concerns (whistleblowing) policy for the NHS*. [Online] Available from: https://nhsicorporatesite.blob.core.windows.net/green/uploads/documents/whistleblowing_pc [Accessed: 12/12/2019]
- Author: CQC, (2019), *Whistleblowing and why we can't protect you in disputes with your employer*. [Online] Available from: <http://www.cqc.org.uk/contact-us/report-concern/report-concern-if-you-are-member-staff> [Accessed: 12/12/2019]
- Author: Nursing and Midwifery Council, (2019), *Whistleblowing to the NMC*. [Online] Available from: <https://www.nmc.org.uk/standards/guidance/raising-concerns-guidance-for-nurses-and-midwives/whistleblowing/> [Accessed: 12/12/2019]

Suggested action:

- Encourage sharing the policy through the use of the QCS App
- Share 'Key Facts' with all staff
- Develop training sessions for relevant staff
- Ensure relevant staff are aware of the content of the whole policy



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1. Purpose

1.1 This policy outlines the procedure to follow if a person wishes to 'whistleblow' and raise a concern about a wrongdoing in their workplace.

1.2 This policy and procedure does not apply if a member of the workforce is aggrieved about their personal position. They must use the Grievances Policy and Procedure.

1.3 To support HWCGS Care (T/A Segal Gardens) in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
SAFE	S6: Are lessons learned and improvements made when things go wrong?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.4 To meet the legal requirements of the regulated activities that HWCGS Care (T/A Segal Gardens) is registered to provide:

- | The Criminal Justice and Courts Act 2015
- | The Enterprise and Regulatory Reform Act 2013
- | The Care Act 2014
- | Public Interest Disclosure Act 1998
- | The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff
- | NHS staff
- | Persons working on training courses
- | Temporary Agency Staff

2.2 The following Service Users may be affected by this policy:

- | Service Users

2.3 The following stakeholders may be affected by this policy:

- | Commissioners
- | Local Authority
- | Care Quality Commission



3. Objectives

3.1 All staff have a duty to ensure standards of quality care by raising concerns regarding wrongdoing or malpractice. This policy will provide the means of ensuring that staff can confidentially raise genuine concerns of malpractice and/or misconduct through appropriate means at the earliest point without fear of reprisal.

**HWCBS Care (T/A Segal Gardens)**

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**4. Policy**

4.1 HWCBS Care (T/A Segal Gardens) is committed to the principles of whistleblowing and supporting and providing mechanisms for employees to fulfil their duty without fear of any reprisals.

4.2 HWCBS Care (T/A Segal Gardens) is committed to a high standard of care, to honesty, openness and decency in all its activities. It is recognised that Service User safety must come first at all times and, whilst it can be difficult for staff to raise concerns about the practice of others, including managers, the implications of not raising those concerns are potentially very serious for HWCBS Care (T/A Segal Gardens), its employees and most importantly for those receiving its services.

4.3 HWCBS Care (T/A Segal Gardens) encourages a free and open culture in its dealings with its employees and all people with whom it engages in business and legal relations. In particular, HWCBS Care (T/A Segal Gardens) recognises that effective and honest communication is essential if any wrongdoing or malpractice is to be effectively dealt with and the organisation's success ensured.

4.4 HWCBS Care (T/A Segal Gardens) believes that raising concerns/speaking up is important to ensure Service User, employee and public safety.

4.5 HWCBS Care (T/A Segal Gardens) recognises that staff members are likely to be the first to realise that there may be something seriously wrong within the organisation but may feel that speaking up would be disloyal to colleagues or their employer who may, under certain circumstances, face criminal charges. They may also fear harassment or victimisation and fear for a loss of job or a reduction in work hours.

4.6 HWCBS Care (T/A Segal Gardens) will not tolerate the ill treatment, including any bullying or harassment, of anyone raising a concern. It will ensure that any individual who raises a concern, can do so confidentially in line with the Public Interest Disclosure Act 1998 (PIDA).

4.7 HWCBS Care (T/A Segal Gardens) will ensure that any individual who raises a genuine concern under the Whistleblowing Policy and Procedure will not be at risk of termination of their employment or suffer any form or reprisal which includes, but is not limited to, loss or reduction of hours or changes to regular working patterns because of it.

4.8 HWCBS Care (T/A Segal Gardens) will support and enable members of staff and volunteers to speak out regarding misconduct and malpractice through a structured and regularly reviewed process.

4.9 HWCBS Care (T/A Segal Gardens) recognises that whistleblowing concerns are often raised when employees do not feel that their earlier concerns have been listened to or that any action has been taken. HWCBS Care (T/A Segal Gardens) will put in place mechanisms for its staff to discuss concerns when they arise and endeavour to give feedback on any actions if confidentiality will not be breached.

4.10 HWCBS Care (T/A Segal Gardens) will ensure that it follows not only the law on whistleblowing, but also best practice and guidance from regulatory bodies including the Care Quality Commission and the NHS.



HWCGS Care (T/A Segal Gardens)
436 Fleet Lane, Parr, St Helens, nr Liverpool, Merseyside, WA92NH



5. Procedure

5.1 All staff have a duty to raise concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour to ensure standards of quality care.

5.2 HWCGS Care (T/A Segal Gardens) will consider all concerns raised by staff but, in order for a disclosure to be a Qualifying Disclosure for the purposes of whistleblowing, it must satisfy the following criteria:

- | It must be a disclosure of information
- | It must, in the reasonable belief of the member of staff, be made in the public interest; and
- | It must tend to show one or more of the types of wrongdoing or failure listed in s43B(1)(a)-(f) set out below:
 - | Criminal offences
 - | Breach of any legal obligation
 - | Miscarriages of justice
 - | Danger to the health and safety of an individual
 - | Damage to the environment
 - | The deliberate concealing of information about any of the above

Specific examples of when these may apply are set out below at 5.3.

5.3 This procedure is intended to provide a safeguard to enable members of staff to raise concerns about one or more of the following that has occurred, is occurring, or is likely to occur. These qualifying disclosures (see definition) mean that staff can raise a concern about risk, malpractice or wrongdoing that they think is harming the services, might harm or has harmed in the past any aspect of the services that HWCGS Care (T/A Segal Gardens) delivers. A few examples of this might include (but are by no means restricted to):

- | Unsafe care
- | Unsafe working conditions
- | Inadequate induction or training for staff
- | Lack of, or poor, response to a reported Service User safety incident
- | Suspicions of fraud (which can also be reported to the local counter-fraud team)
- | Damaging the environment - e.g. disposing of materials or waste incorrectly, for example, flushing medicines or syringes down the toilet or sink
- | A bullying culture (across a team or organisation rather than individual instances of bullying)
- | Incidents of unsafe staffing, falsification of timesheets, Service User visit logs or MARs or clinical or care records
- | Failure to investigate claims of physical or sexual assault
- | Physical, verbal or sexual abuse of any Service User, colleague or other person on the premises of HWCGS Care (T/A Segal Gardens)
- | Breaching the Data Protection Act

5.4 How to Raise a Concern - Step 1

- | If a member of staff has a concern about a risk, malpractice or wrongdoing at work, it is hoped that they feel they will be able to raise it first with their line manager
- | This may be done verbally or in writing
- | It is better to raise a concern as soon as it arises
- | Where possible, unless, for example, where the concern relates to a safeguarding matter, the concerns raised will be treated confidentially
- | The member of staff's line manager will inform them if they cannot keep the concern confidential
- | The Registered Manager has overall responsibility for concerns raised and the member of staff's line manager may need to share the concern with the Registered Manager who will have access to HWCGS Care

**HWCGS Care (T/A Segal Gardens)**

436 Fleet Lane, Parr, St Helens, nr Liverpool, Merseyside, WA92NH

5.5 How to Raise a Concern - Step 2

- | If a member of staff does not feel they can raise the concern with their line manager or the concern relates to or involves the line manager (or they have raised it with the line manager and no action has been taken) the member of staff should then escalate their concerns to the Registered Manager

5.6 How to Raise a Concern - Step 3

- | If the member of staff does not feel that the Registered Manager or HWCGS Care will appropriately handle their concerns, the member of staff may report their concerns directly to the Care Quality Commission on 03000 616161 or through its website
- | The CQC will not disclose the member of staff's identity without their consent unless there are legal reasons requiring the CQC to do so, e.g. where the information is about a child or vulnerable adult who is at risk

5.7 Investigation

The Registered Manager, in consultation with HWCGS Care, shall have discretion over the nature of the investigation into concerns raised, including, where it is considered appropriate, the involvement of others such as Adult Social Services or auditors. If there is evidence of criminal activity, the Police will be informed.

5.8 Registered Manager and HWCGS Care Responsibility

- | Responsibility for dealing with any concerns reported will lie with the Registered Manager who will have access to HWCGS Care
- | If the concerns relate to the Registered Manager, concerns should be escalated to HWCGS Care
- | If the concerns involve both the Mr Damian Cummings Gillian Gilmore and HWCGS Care or an individual is fulfilling both roles, the member of staff can contact the CQC

5.9 Protected Disclosures and Safeguarding

- | Where a safeguarding concern is received by a member of staff, St Helens safeguarding policies and procedures will be followed
- | Where a safeguarding concern is received by a member of staff and refers to the actions of the Manager or Deputy Manager, then the referral must in the first instance be made to the Social Services Adult Protection Team
- | The Adult Protection Team will take the responsibility of informing other agencies. The contact details for the local Social Services for HWCGS Care (T/A Segal Gardens) are as follows:

St.Helens Council Contact Centre, Wesley House, Corporation Street, St Helens, WA10 1HF
01744 676600

5.10 Raising a Concern - Timescales

The individual with whom the concern is raised will acknowledge the concern within locally agreed timescales and in line with best practice.

The investigating officer will be confirmed to the member of staff along with any further information required including contact information and an estimate of the likely timescales involved.

5.11 Where possible, the responsible manager will feed back to the member of staff who raised the concern on the outcome of any investigation, although this may not always be possible in full due to the nature of the disclosure.

5.12 A record of the information provided and details of the proceedings will be kept in line with best practice.

5.13 False Allegations

All whistleblowing concerns will be investigated. However, if a member of staff is found to have made allegations maliciously and/or not in good faith, disciplinary action may be taken. A member of staff will never be disciplined for raising a concern, so long as they follow the whistleblowing procedure or make disclosures in accordance with the Public Interest Disclosure Act 1998.

5.14 Bullying and Harassment of Whistleblowers

Unless an employer has taken reasonable steps to prevent this type of victimisation by co-workers, it will be deemed liable for the acts of its staff. It is therefore no longer enough to deal with incidents of bullying or harassment as and when they arise, on a case by case basis. The only basis upon which an employer will now be able to defend itself against liability for the actions of its staff will be by proactive steps. In order to demonstrate a "reasonable steps" defence, an employer will need to anticipate conduct such as bullying and harassment. To avoid incidents of bullying or harassment occurring, HWCGS Care (T/A Segal Gardens) will take the following steps:

**HWCGS Care (T/A Segal Gardens)**

436 Fleet Lane, Parr, St Helens, nr Liverpool, Merseyside, WA92NH

- | Adhere to the Whistleblowing Policy
- | Embed a culture of openness and transparency
- | Communicate the policy
- | Offer any necessary training to ensure that it is put into effect
- | Take action if any worker bullies or harasses a whistleblower

5.15 Employment Contracts, Whistleblowing and Confidentiality

HWCGS Care (T/A Segal Gardens) will seek legal or Human Resource advice when drawing up any settlement agreements or employment contracts to avoid the risk of breaching the Public Interest Disclosure Act.

**6. Definitions****6.1 Whistleblower**

- | A member of staff who raises a concern about something they have seen first hand at work in relation to malpractice or wrongdoing. This could be concerns about inappropriate or unlawful conduct, financial mismanagement, poor practice or behaviour

6.2 Qualifying Disclosure

- | Qualifying disclosures are disclosures of information where the worker reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future:
 - | A criminal offence
 - | The breach of a legal obligation
 - | A miscarriage of justice
 - | A danger to the health and safety of any individual
 - | Damage to the environment
 - | Deliberate attempt to conceal any of the above

6.3 Public Interest

- | A disclosure made in the interest of the public, i.e. not relating to an individual such as in a grievance case

6.4 Grievance or Private Complaint

- | A dispute about the employee's own employment position without a public interest aspect

6.5 PIDA

- | Public Information and Disclosure Act - Legislation which provides protection to workers who make disclosures in the public interest

6.6 Employee/Staff

- | PIDA refers to 'workers'. This policy has used the term employee/staff/colleagues to reflect the relevant persons that this policy relates to. The NHS integrated Policy (2016) 'Freedom to Speak Up: Whistleblowing Policy for the NHS' refers to volunteers being included. However, PIDA does not specifically include volunteers as they are not paid employees and therefore cannot be compensated financially for ill treatment or unfair dismissal

6.7 Criminal Justice and Courts Act 2015

- | Legislation which lays out the offences involving ill-treatment or wilful neglect by a person providing health or social care

6.8 Anonymously

- | Made or done by someone whose name is not known or made public

6.9 Vicarious Liability

- | Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment

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**Key Facts - Professionals**

Professionals providing this service should be aware of the following:

- | All staff have a duty to ensure standards of quality care by raising concerns regarding inappropriate behaviour, unlawful conduct, poor practice or behaviour and will be protected and supported to do so
- | HWCGS Care (T/A Segal Gardens) is committed to the Whistleblowing Policy and Procedure and will act on information given in line with it
- | All whistleblowers will be treated in a fair way and will not be victimised or prejudiced as a result of a genuine concern
- | On induction, staff will be trained on the whistleblowing procedures of HWCGS Care (T/A Segal Gardens). Information on how to report concerns will be visible at HWCGS Care (T/A Segal Gardens)
- | HWCGS Care (T/A Segal Gardens) will monitor the effectiveness of the whistleblowing procedures and will review every concern raised to identify and address any themes or trends

**Key Facts - People affected by the service**

People affected by this service should be aware of the following:

- | If you have concerns that you are at risk of harm or abuse you can contact Mr Damian Cummings Gillian Gilmore. HWCGS Care (T/A Segal Gardens) has a safeguarding policy and your Service User Guide has information on who you can talk to
- | If you want to complain or have a comment about your service you can use the procedure for complaints at HWCGS Care (T/A Segal Gardens)

**Further Reading**

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

- | Safeguarding Policy and Procedure
- | Grievances Policy and Procedure
- | Duty of Candour Policy and Procedure
- | Complaints, Suggestions and Compliments Policy and Procedure
- | Anti-Bullying Policy and Procedure
- | Confidentiality Policy and Procedure

**Outstanding Practice**

To be 'outstanding' in this policy area you could provide evidence that:

- | HWCGS Care (T/A Segal Gardens) enables employees to raise concerns by providing support (such as a helpline) from an independent agency in regard to whistleblowing concerns
- | HWCGS Care (T/A Segal Gardens) has a designated Whistleblowing Champion and evidence of the proactive nature of this role and how it is a success
- | HWCGS Care (T/A Segal Gardens) uses lessons learnt from concerns, without breaching confidentiality, to ensure continuous improvement of the service
- | Staff report that HWCGS Care (T/A Segal Gardens) is extremely open, transparent and actively supports and encourages whistleblowing
- | The wide understanding of the policy is enabled by proactive use of the QCS App



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Forms

Currently there is no form accompanied to this policy.