

HR36 Whistleblowing Policy



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RELATED DOCUMENTS

These documents will provide additional information:

REF NUMBER	DOCUMENT REFERENCE NUMBER	TITLE	VERSION

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POLICY OVERVIEW

Whistleblowing Policy

Purpose

Where malpractice is suspected, each employee has a responsibility to 'blow the whistle' on individuals or organisations. The method for doing so is detailed within this policy.

The CCG is committed to creating a culture of openness and accountability and encourages employees to raise genuine concerns about malpractice or serious risk as early as possible to mitigate against any potential damage to patients, staff, the wider public and the organisation. All employees are encouraged to raise concerns as soon as they arise. This policy sets out a process whereby employees, who have genuine concerns about malpractice or serious risk, which they believe to be in the public interest, may raise those concerns without fear of reprisal.

Malpractice may include suspicions regarding fraud, danger to the public or criminal activity. More detail about malpractice can be found in section two of the policy.

Who this Policy applies to

This policy applies to everybody who is employed by or works for the organisation including temporary agency staff, professional contractors and volunteers. Wherever the term "employee" or "staff" is used, it applies to all of the above as well as substantive staff.

Key Principles

The most sensible and effective way of preventing and remedying malpractice and serious risk is for employees to raise their concerns through the existing lines of management immediately as they arise.

Employees are required to explicitly state that they are making a disclosure under the Whistleblowing Policy to assist the organisation to record and track progress of any whistleblowing concerns raised.

If the concerns have not been dealt with satisfactorily or the matter is deemed too serious for the informal stages, employees are encouraged to raise the matter formally through a variety of channels.

Legal Considerations

The Public Interest Disclosure Act 1998 ("PIDA 1998") protects workers who 'blow the whistle' about wrongdoing or malpractice and places a clear responsibility on public sector employers to remind staff of their responsibility to disclose suspected malpractice without fear of recriminations.

The Francis Report recommends that:

1. Compromise agreements containing clauses seeking to prevent disclosures protected under the PIDA 1998 are not acceptable.
2. Reporting of incidents of concern relevant to patient safety, compliance with fundamental standards or some higher requirement of the employer needs to be not only encouraged but insisted upon.

SUPPORTING PRINCIPLES

Whistleblowing Policy

If workers bring information about suspected wrongdoing to the attention of their employers or a relevant organisation, they are protected in certain circumstances under the Public Interest Disclosure Act 1998.

If a worker is to make a disclosure it should be made to the employer or a prescribed person or Body, so that employment rights are protected. The disclosure must also be in the public interest. This can be done through the CCG's 'Speak up Guardian', as recommended in the Robert Francis Report published on 11 February 2015.

Qualifying disclosures are disclosures of information where the worker reasonably believes 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.

The CCG operates within the principles of the Nolan Principles of Public Life (Appendix 2) and any whistleblowing should take these principles into consideration.

Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

The legislation allows employees to seek legal advice about any malpractice concerns they may have.

Professional staff may also contact their professional registration bodies e.g. GMC, NMC for guidance about any malpractice concerns.

In instances where fraud or corruption is suspected to have occurred, there is a confidential telephone hotline, "NHS Fraud and Corruption Reporting Line" which may be used to report suspicions of fraud or corruption in the NHS – this can be accessed on 0800 028 40 60.

Where a whistleblowing allegation is proven against an individual within the CCG, consideration will be given to the use of the Disciplinary policy.

The policy seeks to balance the need to provide safeguards for employees who raise genuine concerns about malpractice against the need to protect others and the organisation against malicious and vexatious allegations.

If a satisfactory response is not received within 5 working days of raising the whistleblowing concern or the employee feels unable to report concerns to their line manager or next in line manager, they should continue to escalate their concerns.

No CCG employee will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the employee will not be prejudiced because they raised a legitimate concern.

Settlement agreements containing clauses seeking to prevent disclosures protected under the PIDA 1998 are unacceptable

Where employees feel that they are being bullied or harassed they should raise such matters via the Bullying and Harassment Policy.

Where employees have concerns or grievances that are not covered by the Whistleblowing Policy they should raise such matters via the Grievance Policy.

The CCG promotes equality and diversity and aims to ensure that patients and staff feel valued and treated in a fair and equitable manner. The whistleblowing policy takes into consideration the protected characteristics as set out in the Equality Act 2010 and in guidance are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

THE POLICY

The Legal Framework: The Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 (“PIDA 1998”) protects workers who ‘blow the whistle’ about wrongdoing or malpractice and places a clear responsibility on public sector employers to remind staff of their responsibility to disclose suspected malpractice without fear of recriminations.

PIDA 1998 protects workers from being subjected to a detriment by their employer as a consequence of making a whistleblowing disclosure. Detriment may take a number of forms, such as denial of promotion, facilities or training through to direct intimidation or harassment.

A disclosure qualifies under PIDA 1998 if it regards a risk, wrong doing or malpractice that affects patients, the wider public or other staff. A qualifying disclosure is a disclosure of information in the public’s interest which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

- That a criminal offence has been, is being or is likely to be committed (e.g. assault, bribery, theft);
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject. This could include professional malpractice or a failure to comply with any rules, regulations or codes of practice;
- That a miscarriage of justice has occurred, is occurring or is likely to occur;
- That the health and safety of any individual has been, is being or is likely to be endangered;
- That the environment has been, is being or is likely to be damaged; or
- That information tending to show any of the above has been, is being or is likely to be deliberately concealed.

Examples of malpractice which qualify as protected disclosures under PIDA 1998 include (but are not limited to) the following:

- Abuse or mistreatment of service users;
- Exposing service users to unacceptable or unnecessary risk;
- Acts of fraud and theft against the organisation or service users;
- Procuring or accepting bribes from service users, staff or other third parties (e.g. suppliers of goods or services);
- Dangerous Health and Safety situations and breach of fire regulations;
- Deliberately concealing information relating to any malpractice; and
- Staff working under the influence of alcohol or drugs.

PIDA 1998 provides statutory protection, including compensation, against employer reprisals to all employees who disclose information reasonably and responsibly in the public interest. A qualifying disclosure will be **legally protected** where it is made:

- To the worker’s employer, either directly to the employer or by procedures authorised by the employer for that purpose; or
- To another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure

PIDA 1998 (and subsequent amendments) places responsibilities upon the worker making a disclosure in so far as the matter must be in the public's interest.

It is recommended that an employee wishing to make a disclosure follows internal procedures first, otherwise he or she *may* have committed a fundamental breach of contract by disclosing confidential information belonging to the employer. As an employee, the whistleblower may also have fundamentally breached the duty of trust and confidence owed to the employer and may therefore be liable to the organisation's disciplinary procedures. It is therefore strongly advised that employees follow an internal procedure before considering other options. Employees are encouraged to contact the Royal Mencap Society or Public Concern at Work if they have any questions or concerns about making a disclosure under PIDA 1998 (Section 7.1).

The following people are protected by the legislation when considering whistleblowing:

- Employees
- Agency workers
- People who are training with an employer, but not employed
- Self-employed workers, if supervised or working off-site.
- NHS workers who work under certain contractual arrangements e.g. Office Holders, GPs and dentists

Whistleblowing as an early warning system

As an early warning system, whistleblowing can help alert employers to risks such as to other systemic issues within the organisation and with employees and office holders. These risks may include, but are not limited to, the following:

- Malpractice or ill treatment of a patient or service user by any member of staff/contractor;
- Repeated ill treatment of a patient or service user, despite a complaint being made;
- A criminal offence has been committed, is being committed or is likely to be committed;
- Suspected fraud, corruption or abuse of position;
- Disregard for legislation, particularly in relation to health and safety at work;
- The environment has been, or is likely to be damaged;
- Breach of Prime Financial Policies and/or Standing Orders;
- Showing undue favour over a contractual matter or to a job applicant;
- A breach of a professional code of conduct;
- Information on any of the above has been, is being or is likely to be concealed;
- Financial irregularity;
- Unethical practice;
- Negligence; and

- Maladministration.

Raising an Informal Concern

If employees have a concern about malpractice they are required to raise the matter immediately with their line manager. If the manager is suspected to be involved or is condoning malpractice, employees are required to raise the matter with a more senior manager in the first instance. This may be done verbally or in writing. Employees are required to explicitly state that they are making a disclosure under the Whistleblowing Policy to assist the organisation to accurately record and track progress of any whistleblowing concerns.

Feedback will be given within 5 working days regarding the management action being taken, with due regard to the organisation's duty of confidence and without infringing the rights of other parties, for example where disciplinary action is being taken against another employee.

Escalating an Informal Concern

If a satisfactory response is not received within 5 working days of raising the whistleblowing concern, or the employee feels unable to report concerns to their line manager or more senior manager, they should contact the Senior Human Resources Business Partner. This may be done verbally or in writing. Employees are again required to explicitly state that they are making a disclosure under the Whistleblowing Policy.

Making an Internal Formal Disclosure

If the concerns have not been dealt with satisfactorily or the matter is deemed too serious for the informal stages, employees are encouraged to raise the matter formally and immediately to one of the following designated officers:

- The Accountable Officer
- The Chief Finance & Operating Officer
- The Clinical Chair
- Any of the CCG Lay Members

Contact can be by telephone, via email or in writing and all correspondence should be marked **“in confidence to be opened by the addressee only”** and again employees are required to explicitly state that they are making a disclosure under the Whistleblowing Policy.

The person making a formal disclosure should, as soon as practicable, disclose in confidence the grounds for their belief of malpractice or serious risk to one of the designated officers identified above. Any disclosure under this procedure shall, wherever possible, be in writing. The person making the disclosure should provide as much supporting evidence as possible about the grounds for his or her belief although there is no requirement to 'prove' the malpractice allegations. When a person reports a concern, it is likely that they will be requested to provide more information. Therefore, when making a disclosure or raising a concern they should try to include as much of this detail as possible. Appendix 3 provides a pro-forma a list of questions that should be completed as far as possible.

If the person receiving the formal disclosure does not feel that this policy is appropriate to use, they may make reference to other organisational policies that exist for dealing with concerns. For example:

- Safeguarding Policies
- Disciplinary Policy

- Grievance Policy
- Bullying and Harassment Policy

A designated officer may decline to become involved on reasonable grounds. Such grounds include previous involvement or interest in the matter concerned, incapacity or unavailability or that the designated officer is satisfied that a different, designated officer would be more appropriate to consider the matter in accordance with this procedure.

Investigating the disclosure

On receipt of the disclosure, the designated officer will offer to interview, in confidence, the person making the disclosure. Such an interview will take place as soon as practicable after the initial disclosure and should usually start by the 5th day after the disclosure is received. The purpose of the interview will be for the designated officer to obtain as much information as possible about the grounds for the belief of malpractice and to consult about further steps which could be taken. The person making the disclosure may be accompanied by a trade union representative or work colleague at the interview. The designated officer may be accompanied by an administrative assistant to take notes. Due regard will be given to confidentiality.

Where the designated officer is satisfied that the Whistleblowing Procedure is appropriate, they shall decide on the nature of the investigation of the allegations. This may be an internal investigation by organisational staff, referral of the matter to the police or other appropriate public authority or the commissioning of an independent enquiry, for example by the organisation's auditors or Local Counter Fraud Officer. In the event that a Safeguarding Children concern is presented and the feature of the 'Position of Trust' is in question, existing Safeguarding Children procedures need to be followed and, where necessary, the LADO (Local Authority Designated Officer) arrangements put into operation.

Any investigation should not exceed 4 weeks except in exceptional circumstances where this should be discussed with the Accountable Officer or Chair for approval for the exception. Where appropriate, the individual who made the disclosure should be kept informed of the progress of the investigation, however consideration should be given as to the appropriateness of sharing the outcome with the individual where the outcome results in disciplinary action against an individual, or the sharing of information would undermine other investigations taking place.

If the designated officer decides that the Whistleblowing Procedure is not appropriate in respect of the matter disclosed, they shall inform the discloser, giving reasons in writing. These could be on grounds that:

- The matter should be, is already or already has been the subject of appropriate proceedings under one of the CCG's other procedures;
- The matter is already the subject of legal proceedings, or has already been referred to the police or other public authority;
- There is reasonable doubt as to the discloser's good faith and/or reasonable belief about malpractice or serious risk.

If the discloser is not satisfied with the designated officer's decision, they may ask the Chair of the CCG's Governing Body to review the matter of the disclosure, the information and evidence presented, the process followed and the grounds for the decision. If the Chair of the Governing Body decides that the matter should be investigated under the Whistleblowing Procedure, they shall direct a second designated officer to arrange an appropriate investigation. If they decide to uphold the view of the original designated officer, no further

action will be taken under this process. The discloser may then consider whether to refer the allegations of malpractice or serious risk to an external agency (see below).

Making a Regulatory External Disclosure

While it is hoped that this policy gives employees the confidence to raise their concern internally, there may be circumstances where they feel they can only report the concern to an appropriate, external organisation. Organisations relevant to the NHS include:

- The Care Quality Commission (CQC)
- The Health and Safety Executive; or
- The National Patient Safety Agency.

Disclosures to regulatory bodies may also be 'protected disclosures' under certain circumstances; for example the discloser must believe the matter is in the public's interest. It is recommended that advice is sought from the Royal Mencap Society or Public Concern at Work if considering making an external disclosure before exhausting internal procedures outlined above.

If a concern is about fraud and corruption, the NHS Fraud Hotline can be contacted.

Making a Wider External Disclosure

Examples of wider, external disclosures include Police, Media, MPs and Non-Prescribed Regulators. Employees are advised that wider disclosures *may* also be 'protected disclosures' under very particular circumstances. As with regulatory disclosures, the discloser must make the disclosure in the public's interest.

In addition a further pre-condition to secure protection for a wider disclosure must be met. This is either:

- The person reasonably believed he/she would be victimised if the matter was raised either internally or with a prescribed regulator; or
- There was no prescribed regulator and he/she reasonably believed the evidence was likely to be concealed or destroyed; or
- The concern had already been raised with the employer or a prescribed regulator without being addressed in a timely manner; or
- The concern is of an exceptionally serious nature.

It is strongly recommended that advice is sought from the free, confidential services provided by the Royal Mencap Society or Public Concern at Work if considering making a wider external disclosure before exhausting internal and regulatory disclosure procedures.

Employees should note that failure to meet these requirements means that they would not qualify for protection under this policy and may be subject to disciplinary action for fundamental breach of contract and/or disclosure of confidential information.

Additional Advice and Support to Staff

Where there is doubt as to the way forward (i.e. the employee is not sure whether to make a formal disclosure), an employee may seek a confidential meeting with one of the designated officers detailed in this policy to discuss whether it would be appropriate to make a formal disclosure under PIDA 1998. An individual seeking or taking part in such a meeting is

guaranteed the same protection against personal detriment as is given under the procedure to someone making a formal disclosure, whether or not a formal disclosure follows.

Employees have the option to share their concerns in the first instance with colleagues or other representatives including trade union officials. Staff may also be accompanied by a colleague or representative when discussing allegations and suspicions with management.

Although it is far more effective for management to discuss matters with an identified person it is permissible for concerns to be shared anonymously, where a disclosure would not otherwise be made.

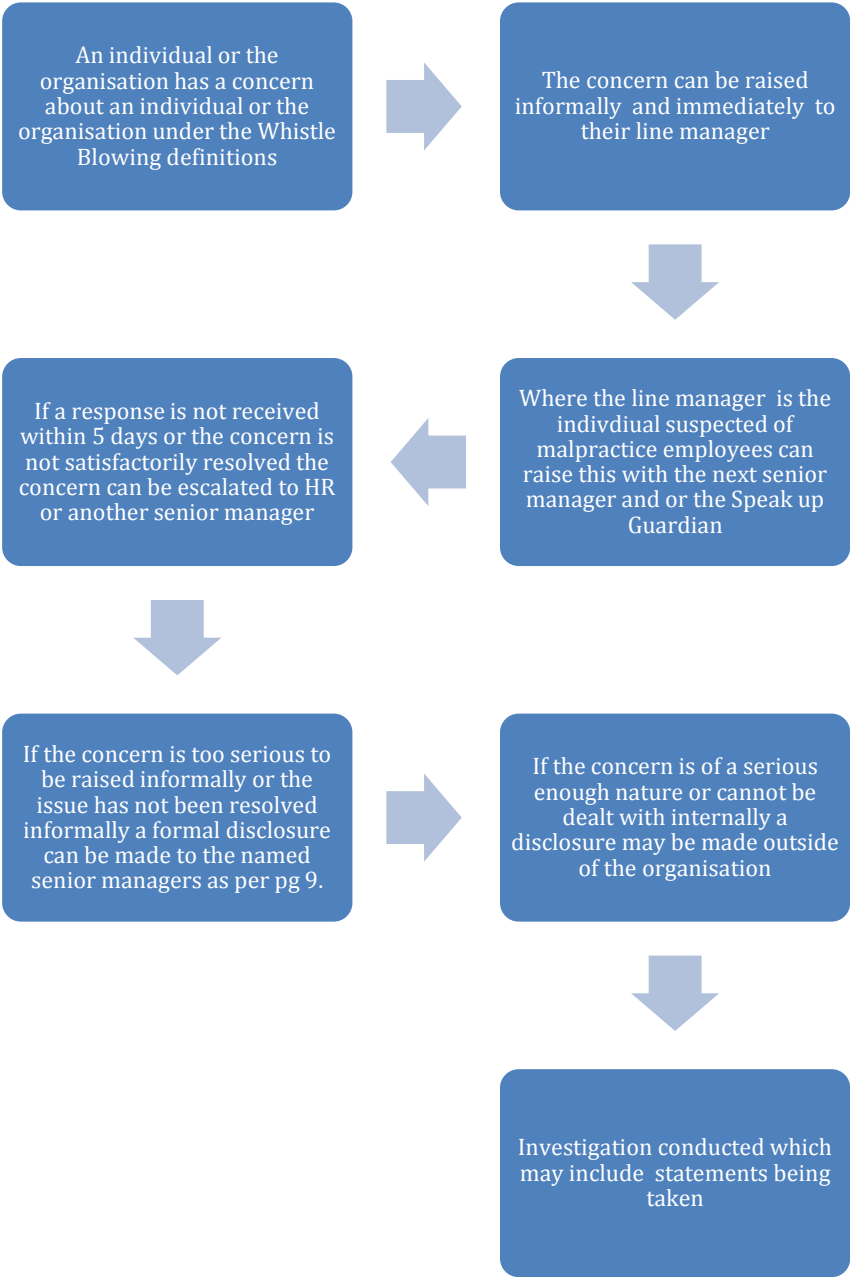
It is strongly recommended that advice is sought from the free, confidential service provided by the Royal Mencap Society; this is the nominated national provider of whistleblowing advice for NHS staff. Their contact details are:

Free telephone: 08000 724 725
Email: enquiries@wbhelpline.org.uk

Alternatively, employees may contact Public Concern at Work, a charity offering free advice on raising whistleblowing concerns. Their contact details are:

Confidential Telephone: 020 7404 6609
Website: www.pcaw.co.uk
Email: helpline@pcaw.co.uk

Appendix 1 Process Flow Chart



Appendix 2 Nolan Principles of Public Life

The seven Nolan Principles of Public Life (taken from *First Report of the Committee on Standards in Public Life (1995)*)

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 obligation to outside individuals or organisations that 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 and 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 the 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 take steps to resolve any conflicts arising in a way that protects the public interest.

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

Appendix 3 Disclosure Form

Please note that this form is to aid a disclosure and subsequent investigation into the concerns. Therefore you should aim to provide as much information as possible.

Name:	
Whistleblowing disclosure against:	
Whistleblowing disclosure made to:	
Date submitted:	

When considering a disclosure please consider the following questions:

- What has happened?
- When did it occur?
- Where did it occur?
- Who was involved?
- Has it happened before?
- Are there any other witnesses?
- Is there any supporting information?
- How did you become aware of the situation?
- Do you have any personal interest in the matter?
- Has the matter been raised with anyone else? If so, who?
- Are you prepared to make a written statement?

Please use the following space to summarise the disclosure

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Appendix 4 Key Contacts

Designated Officers	
Accountable Officer	Name: Dr Helen Hibbs E-mail: Helen.Hibbs@nhs.net Telephone: 01902 44 4854
Chief Finance and Operating Officer	Name: Claire Skidmore E-mail: Claire.Skidmore@nhs.net Telephone: 01902 44 4847
Clinical Chair	Name: Dr Dante De Rosa Email: dante.derosa@nhs.net Telephone: 01902 444854
CCG Speak up Guardian	Name: Peter McKenzie Email: Corporate Operations Manager Telephone: 01902 44 4664
CCG Lay Members	Pat Roberts E-mail : patriciaroberts@nhs.net Telephone:01902 444878 Jim Oatridge E-mail: jim.oatridge@nhs.net Telephone: 01902 444878 Helen Ryan E-mail: helen.ryan3@nhs.net Telephone: 01902 444878 Mr Tony Fox E-mail: Tony.Fox@sath.nhs.uk Telephone: 01902 444878
Counter Fraud Referrals	
Local Counter Fraud Specialist (LCFS)	Neil Mohan Local Counter Fraud Specialist Wolverhampton CCG Wolverhampton Science Park, Glaisher Drive, Wolverhampton, WV10 9RU E-mail: neil.mohan@uk.pwc.com Telephone: 07843 325993
National Fraud & Corruption Reporting Hotline	0800 028 40 60
External Agencies	
Public Concern at Work	020 7404 6609 helpline@pcaw.co.uk
Trade Unions	To be confirmed
Nursing & Midwifery Council	0207 637 7181
General Medical Council	0161 923 6200
West Midlands Police	0845 113 5000
Care Quality Commission	020 7448 9200
Financial Services Authority	020 7676 4646
Health & Safety Executive	0541 545500 (main info line)

National Patient Safety Agency	020 7062 1620
BSI Code of Practice on Whistleblowing Arrangements	www.pcaw.co.uk/bsi
NHS Improvement	0300 123 2257
The National Audit Office	020 7798 7999 or enquiries@nao.gsi.gov.uk
Professional Regulators	
General Chiropractic Council	020 7713 5155
General Dental Council	020 7887 3800
General Optical Council	020 7580 3898
General Osteopathic Council	020 7357 6655
Health Professions Council	020 7840 9802
Royal Pharmaceutical Society of Great Britain	020 7735 9141

Further information

BSI Code of Practice on Whistleblowing Arrangements

Organisations can download a free copy of the 2008 British Standards Institution's Code of Practice on Whistleblowing Arrangements from www.pcaw.co.uk/bsi

Public Concern at Work
For information about the Public Interest Disclosure Act 1998, please visit: www.pcaw.co.uk/law/uklegislation.htm

NHS Counter Fraud and Security Management Services (CFSMS)
Weston House
246 High Holborn
London WC1V 7EX
Tel: 020 7895 4500

Care Quality Commission (CQC)
Finsbury Tower
103–105 Bunhill Row
London EC1Y 8TG
Tel: 020 7448 9200

Monitor
4 Matthew Parker Street
London SW1H 0NP
Tel: 020 7340 2400

National Patient Safety Agency (NPSA), 4–8 Maple Street, London W1T 5HD, Tel: 020 7062 1620

Professional Regulators

- General Chiropractic Council
44 Wicklow Street
London WC1X 9HL
www.gcc-uk.org Tel: 020 7713 5155
- General Dental Council
37 Wimpole Street
London W1G 8DQ
www.gdc-uk.org Tel: 020 7887 3800
- General Medical Council
Regents Place
350 Euston Road
London NW1 3JN
www.gmc-uk.org Tel: 0161 923 6602
- General Optical Council
41 Harley Street
London W1G 8DJ
www.optical.org Tel: 020 7580 3898
- General Osteopathic Council
176 Tower Bridge Road
London SE1 3LU
www.osteopathy.org.uk
Tel: 020 7357 6655
- Health Professions Council
Park House, 184 Kennington Park Road
London SE11 4BU
www.hpc-uk.org
Tel: 0845 300 4472 or 020 7840 9802
- Nursing and Midwifery Council
23 Portland Place
London W1B 1PZ
www.nmc-uk.org Tel: 020 7637 7181
- Royal Pharmaceutical Society of Great Britain
1 Lambeth High Street
London SE1 7JN
www.rpsgb.org.uk Tel: 020 7735 9141