

Raising a concern (including Whistleblowing) Policy

This policy is also available in Welsh.

Information box

For further advice contact: People Team

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Impact Assessment

- A business rationale assessment has been carried out and this policy contributes to Estyn's strategic objectives and delivery principles.
- An equality impact assessment has been carried out and this policy is not deemed to impact adversely on any people on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

This policy and procedure will be reviewed every three years or whenever a relevant change in legislation occurs. In addition, the policy and procedures may be reviewed at other times, for example if Nominated Officers or other employees involved in using it recommend any changes as a result of their experiences.

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Policy Objective

All Estyn colleagues should feel comfortable and safe to speak up if they come across something in the course of their work, past, present, or imminent, that they think is wrong, illegal or endangers others.

Raising a concern involves speaking up about suspected wrongdoing, risk or malpractice that affects a wider group of individuals such as work colleagues, the organisation, customers and the wider public.

A 'concern' may include (but is not limited to) something that would constitute a **whistleblowing** disclosure covered by the Public Interest Disclosure Act 1998, an alleged breach of the Civil Service Code, or a disclosure which if not made through the appropriate channels would be a breach of the Official Secrets Act 1989.

We are committed to:

- ensuring everyone feels able to, and understands their responsibility to speak up when they have a concern
- ensuring that anyone who has a concern is aware of how to raise it
- listening to those who raise a concern, and treating them with respect
- handling concerns responsibly, professionally and in a positive manner
- ensuring those raising a concern are afforded protection as detailed in the procedure
- supporting those involved, by fully investigating their concerns and escalating as appropriate
- providing training for nominated officers on how to support staff
- giving a clear and consistent message from the top that it is a duty to stand up and anyone doing so in good faith will be protected from any retribution

Please note: Estyn is not a prescribed whistleblowing body. This means that we are unable to investigate any concerns you may have about a school, college or other educational body. If you have such a concern of this nature, you should contact the appropriate prescribed body from the government list.

Introduction

Estyn is committed to ensuring the highest standards of conduct in all that it does. We expect our employees to share this commitment and understand that if you have a concern and suspect wrongdoing, you have a responsibility to speak up and not assume that someone else will raise a concern.

Effective arrangements that enable concerns to be raised can help:

- detect and deter wrongdoing
- provide managers with the information they need to make decisions and control risk
- save and/or protect lives, the environment, property, jobs, money and both personal and organisational reputations
- reduce the likelihood of legal claims against the organisation

Individuals who raise a concern often do so out of a sense of duty and a desire to ‘do the right thing’, but it is not always easy to come forward. We welcome and actively encourage open dialogue.

Anyone who raises a concern using this policy, will be supported and should not suffer any unfair or negative treatment as a result. Any instances of victimisation will be taken seriously and managed in line with the disciplinary policy.

Who is this policy for?

This policy applies to all staff, both past and present, including: employees, workers, officers, consultants, contractors, casual workers and agency workers.

Individuals external to Estyn are also able to raise concerns. Details on this can be found [here](#).

However, only Civil Servants can raise a concern under the Civil Service Code with the Civil Service Commission. In Estyn’s case, this is current employees, paid by Estyn or past employees who remain working in the Civil Service.

What types of concerns can be raised under this Policy?

If you are asked to do something, or are aware of the actions of others, which you consider to be wrong, illegal, have the potential to endanger others or breach the values of the Civil Service Code, or the Official Secrets Act, you should raise a concern using this policy. The policy refers to this as 'wrongdoing.'

The issue must be something that affects a wider group such as work colleagues, customers or the general public.

This policy cannot be used to raise individual/personal complaints about management decisions or concerns about individual treatment, including complaints of bullying, harassment and discrimination affecting an individual. These should be raised using the grievance policy.

Equally, this policy cannot be used to raise a matter of individual conscience, where for example, an individual is required to act in a way which conflicts with their faith or a deeply held personal belief, but where there is no suggestion of wrongdoing or a breach of the Civil Service Code.

Examples of the type of concern that might be raised under this policy include:

- a threat to national security (e.g. failure to follow security vetting procedures or falsifying documentation)
- theft, corruption or fraud (e.g. dishonest or fraudulent conduct relating to payments or falsifying documents)
- failure to comply with legal obligations (e.g. not protecting personal data as required by the Data Protection Act 2018, Gender Recognition Act 2004, Health and Safety regulations or any other relevant legislation)
- danger to the environment or to people (e.g. improper disposal of hazardous materials or abuse or mistreatment of children or vulnerable people)
- Civil Servants can also raise a concern about a breach of the core values of the Civil Service Code (e.g. if the employee has been required to act in a way that conflicts with the core values of honesty, integrity, objectivity or impartiality, or believes that another civil servant is acting, or has acted, in a way that conflicts with the Code)

This is not an exhaustive list.

If you are unsure whether your concern can be raised under this policy you should speak to one of the Nominated Officers for advice.

If you report a genuine concern, even if it turns out there is no case to answer, you are doing your duty, and will not be subject to any detriment. On the contrary, if you fail in your duty to report suspected wrongdoing, that failure could itself lead to disciplinary action.

It is rare for someone to raise a vexatious, malicious or knowingly untrue concern. However, if they do so it could result in disciplinary action being taken against them.

Any criminal concerns should be raised directly with a Nominated Officer.

What is whistleblowing?

‘Whistleblowing’ is a generic term relating to the internal or external disclosure of information to expose past, present or potential wrongdoing in an organisation. ‘Whistleblowing’ can cover the disclosure of information to someone within the organisation or revealing the information outside of the organisation, for example to a regulator.

This policy explains how you can report any concerns internally. It also explains how you can raise a concern under the Civil Service Code, with the Civil Service Commission.

It’s important to understand that raising a concern outside of this procedure, for example, with the media, campaign groups, on social media or with political parties could result in disciplinary action. It may also breach the Official Secrets Act (see below).

The Public Interest Disclosure Act 1998 (PIDA), more commonly known as ‘whistleblowing legislation’, is part of employment law.

PIDA protects workers who make a ‘qualifying disclosure’. There are a number of requirements for a disclosure to be qualifying, including that you have a reasonable belief that the disclosure is in the public interest.

The disclosure must also be a ‘protected disclosure’ which will broadly depend on the identity of the person to whom the disclosure is made.

PIDA encourages you to make your disclosure to your employer (internal disclosure) as the primary method of whistleblowing. Disclosure to third parties (external disclosure) may be protected, but this requires more stringent conditions to be met. Disclosures to a "responsible" third party, or a "prescribed person" are also likely to gain protection. However, wider disclosures, such as to the police or to the media, will only qualify in very limited cases. See GOV.UK for information on prescribed persons.

PIDA provides protection to workers who suffer any detriment on the grounds that they made a protected disclosure. It also provides protection against dismissal as a result of making a protected disclosure.

You may wish to seek your own legal advice before reporting a concern externally.

Official Secrets Act 1989

Under the Official Secrets Act (OSA) it is a criminal offence for current and former Civil Servants and Government Contractors to unlawfully disclose information in six specific categories:

- security and intelligence
- defence
- international relations
- information which may lead to the commission of crime
- information resulting from unauthorised disclosures or entrusted in confidence
- information entrusted in confidence to other states or international organisations

This Policy explains how to lawfully raise a concern involving these categories internally.

Any concerns that could be covered by the OSA should be raised directly with a Nominated Officer.

Raising a concern covered by the OSA externally outside of this procedure, for example with the media, campaign groups on social media, with political parties, could constitute a crime and potential consequences could be disciplinary action and/or criminal sanction.

Procedure

How to raise a concern

You should follow this procedure if you suspect or come across wrongdoing during your work. It is important that concerns are raised as soon as possible. **You do not need proof, just a reasonable, honest belief that wrongdoing has or is likely to occur.**

A workflow of how to raise a concern at what to expect can be found in Annex A.

Routes for raising a concern

- speak with a Nominated Officer, who will be able to provide impartial advice, support and guidance on raising a concern

- Raise the concern with the People team, or if the concern relates the People team or HMCI, raise it with David Jones who is Nominated Officer and a non-executive director

Nominated Officers

Nominated Officers are individuals who can offer impartial support and advice to those who suspect wrongdoing and want to raise a concern.

Nominated Officers can also provide information about the Civil Service Code and the role of the Civil Service Commission in hearing concerns that relate to a breach of the Code.

They can provide advice on:

- whether your concern falls under this policy
- how to raise the concern
- alternative channels to follow where your concern falls outside of this policy
- whether the concern is a breach of the Official Secrets Act
- next steps

Estyn's Nominated Officers are:

Mererid Wyn Williams Assistant Director - Inspection & Central Services
Vicky Price People and OD Manager
Liz Miles Assistant Director - Inspection
David Jones Non-Executive Director

Information needed to raise a concern

When raising a concern under the procedure you should try to provide as much information as possible, including:

- the background and reason behind the concern
- whether the concern has already been raised with anyone else and the response
- any relevant dates
- if applicable, how the values and behaviours in the Civil Service Code have been breached

If you have, or could be perceived to have, any personal interest in the outcome, it is important that you declare this at the outset.

The information provided should demonstrate that there are reasonable grounds for the concern to be acted upon. Proof is not needed, just a reasonable, honest belief that wrongdoing, has or is likely to occur.

Concerns should be raised in writing and sent to people@estyn.gov.uk.

How your concern will be handled

The People team will decide how to proceed with the case. You will be kept informed throughout the process and notified whether your concerns fall under this procedure or whether they should be dealt with under another procedure.

Investigating and Resolving the Concern

If it is decided that your concerns should be investigated, the People team will appoint a suitably trained person to investigate your concerns. This could be a member of Estyn's senior management team, a Non-Executive Director or, in exceptional circumstances, an external, independent investigator.

Once an investigating officer has been appointed, they will carry out an appropriate investigation, which will be conducted sensitively and as quickly as possible.

This may involve meeting with you and/or witnesses. Individuals who are invited to attend a meeting are able to be accompanied by a trade union representative or a work colleague. All those present at the meeting are expected to maintain confidentiality and not discuss the matter with others outside of the meeting.

In most cases it should be possible for you to continue your duties/role as normal whilst Estyn investigates your concern. However, Estyn has a duty to maintain a safe working environment and you should not suffer any unfair or negative treatment as a result of raising a concern.

Whilst there can be no guarantee that the outcome will be as you may wish, the investigating officer will confirm when the matter is concluded. They will explain the outcome of the investigation in as much detail as they are able, whilst maintaining security and confidentiality for all parties.

The investigating officer will make every effort to give you the necessary reassurance that they have investigated the matter thoroughly and that they have identified the appropriate action for Estyn to take to address any wrongdoing, so that your concerns can be put to rest.

Where a concern has been raised and you feel that the matter has not been adequately addressed, you can raise the matter with the People team, who will appoint a suitable manager, who will assess what steps have already been taken and ensure that appropriate challenge is applied to test the conclusions reached and whether further investigation is needed. That manager will close a matter once satisfied that the investigation is complete and that the resulting recommendations or actions have been acted upon. It is their responsibility to ensure that any risk to Estyn is properly managed.

If a civil servant remains dissatisfied with the outcome, and their concern involves a potential breach of the Civil Service Code, they may refer the matter to the Civil Service Commission.

Confidentiality

You should feel able to voice concerns openly under this policy. This makes it easier to investigate the matter and provide feedback.

Any disclosures made under this procedure will be treated in a sensitive manner. Your details will only be shared with those who need to know, in order to investigate and progress the matter.

If you want to raise a concern confidentially on the basis that your name is not revealed without your consent, this will be respected as far as possible. However, a situation may arise where the investigation itself may indicate the source of the information and in some cases it may not be possible to resolve the concern without revealing your identity. In these circumstances, this will be discussed with you before proceeding. The same considerations of confidentiality are afforded to anyone at the centre of the concern, as far as possible.

Raising a concern anonymously is preferred to silence, but it is much better to raise a concern openly. If a concern is raised anonymously, we will take all reasonable steps to establish the seriousness of the matter. However, remaining anonymous may limit the extent to which we can investigate the matter and could therefore put others at risk. Raising a concern openly makes it easier to investigate fully and provide feedback on the outcome and any action taken. If you are concerned about remaining anonymous, speaking in confidence to a Nominated Officer may help alleviate your concerns.

If you raise a concern anonymously, steps will be taken to establish the seriousness of the matter and the likelihood of being able to investigate further. In some circumstances, the likely source of the information may become apparent during the course of the investigation. It is therefore encouraged, where possible, to openly raise concerns. In this way, we can support you during the process and ensure you do not suffer any unfair or negative treatment as a result.

If your identity needs to be revealed to the police, we will take all reasonable steps to give you advance warning of this and take all reasonable steps to protect you from any detriment.

Protection

Anyone who raises a genuine concern in line with this policy and procedure should not suffer any detriment as a result of raising that concern. This includes where further enquiries or an investigation subsequently confirms there has been no wrongdoing.

If you feel that you have been victimised for raising a concern, either during the investigation or after the matter has been dealt with, you should raise the matter in line with the Dignity at Work Policy.

In addition to the protection given under this policy, the Public Interest Disclosure Act 1998 (PIDA) also serves to protect 'workers' who make a 'qualifying disclosure' in one of the permissible ways set out in the Act from detriment or dismissal. In order to be protected, the procedure set out in the Act will need to be followed.

Sources of support

It is not always easy to come forward and raise a concern. Considering whether to do so can be a difficult and stressful time. Talking to someone else can help gather your thoughts to decide the best course of action. If you do talk to someone else who is not a Nominated Officer or a member of the People team, they will be expected to treat the conversation as confidential.

Investigations into wrongdoing can also be a difficult and stressful time for others involved in the process. Sources of support are available throughout to provide help and advice (see Annex B).

Raising a concern with the Civil Service Commission

The Civil Service Commission is an independent body that can hear and determine concerns that relate to the Civil Service Code.

The Civil Service Code forms part of the terms and conditions of every civil servant. The Code expects civil servants to carry out their role with dedication and commitment to its four core values of integrity, honesty, objectivity and impartiality.

As a civil servant, if you are asked to do something that conflicts with the values in the Civil Service Code, are aware or have reason to suspect, that another civil servant is acting in conflict with the values, you should:

- raise a concern within Estyn
- give the organisation time to consider the matter
- if you are not satisfied with the response, you should then refer the matter to the Civil Service Commission, using the Commission's procedure

The Civil Service Commission can only deal with matters that relate to the Civil Service Code and that have previously been raised formally under the Code with Estyn.

The Commission cannot hear concerns related to individual treatment or management decisions. These matters, including internal complaints of bullying, harassment and discrimination should be raised under the Estyn's appropriate People procedures for prompt resolution. The Commission also cannot hear complaints in relation to matters of individual conscience, where there is no suggestion that the Civil Service Code has been breached.

Below are examples of the type of concern that may fall under the Civil Service Code:

- misusing one's official position, for example by using information acquired in the course of official duties to further one's private interests or those of others
- knowingly misleading or deceiving MSs, Welsh Government or others
- being influenced by improper pressure from others or the prospect of personal gain
- ignoring inconvenient facts or relevant considerations when providing advice or making decisions
- frustrating the implementation of government policies once decisions are taken. This could be through declining to take, or abstaining from, actions which flow from those decisions
- acting in a way that unjustifiably favours, or discriminates against, particular individuals or interests
- acting in a way that is determined by party political considerations, or using official resources for party political purposes

This is not an exhaustive list.

In very limited circumstances you may raise a concern directly with the Civil Service Commission. However, the Commission will normally want you to have raised a concern internally within Estyn first, and if not, they will want to understand why this has not been possible. The Commission will decide on a case by case basis and reserves the right to exercise discretion when deciding whether to deal with a matter directly.

The Commission will not usually accept concerns raised anonymously. However, where it provides evidence of a Civil Service Code risk, the Commission may forward the matter to the relevant department for them to consider and establish the likelihood of being able to investigate further.

Further information on the Civil Service Commission and how to raise a concern with the Commission is available.

Special Circumstances - Concerns raised by individuals who formerly worked at Estyn, non-civil servants and civil servants on loan

Individuals who formerly worked at Estyn

If a concern is raised by an individual who formerly worked in Estyn, we will presume that it is made in good faith and will investigate. Where the individual provides details that allow them to be contacted, we will acknowledge the concern. We will confirm when the matter is concluded and, where possible, the outcome, having consideration for the security and confidentiality for all parties.

If an employee raises a concern either before resigning or during their notice period, the presumption should again be that it is made in good faith and it should be investigated. The concern should be acknowledged and we will confirm when the matter is concluded and where possible/appropriate, the outcome, maintaining security and confidentiality for all parties.

Former civil servants will not generally have recourse to the Civil Service Commission unless they raised their concern whilst still a civil servant.

Non-Civil Servants – Secondees and agency staff

If you are a non-civil servant seconded into the Civil Service or on a temporary assignment via an agency, you can use this policy to raise a concern. As a non-civil servant, you are not subject to the Civil Service Code, so you do not have recourse to the Civil Service Commission. You are, however, required to observe the provisions of the Civil Service Code and departmental rules on conduct, confidentiality and security.

Concerns raised by civil servants on secondment or loan

If you are a civil servant seconded out of the Civil Service, you retain your status as a civil servant. This means you will continue to be bound by your Civil Service terms and conditions and the Civil Service Code. Therefore, if you want to raise a concern about an

Estyn matter you should use this policy and if you do not receive what you consider to be a reasonable response you may refer the matter to the Civil Service Commission.

If your concern relates to matters within the non-Civil Service organisation you have been seconded to, you should use the organisation's own policy and the matter cannot be brought to the Civil Service Commission. [Note: In cases like this, the correct actions may depend on the terms of the particular secondment.]

If you are a civil servant on loan to another department or organisation, you are bound by the provisions applicable to all civil servants, including the Civil Service Code. You should therefore, depending on the terms of your loan, either use the policy of your parent department for raising a concern, or the department you are on loan to. If you do not receive what you consider to be a reasonable response you may refer the matter to the Civil Service Commission.

Concerns raised by someone outside the Organisation

If a concern is raised about potential wrongdoing within Estyn, by someone outside the organisation, we will presume that the concern is raised in good faith and will investigate. If contact details are provided, we will acknowledge. We will confirm when the matter is concluded and provide as much information as possible about the outcome, whilst maintaining security and confidentiality.

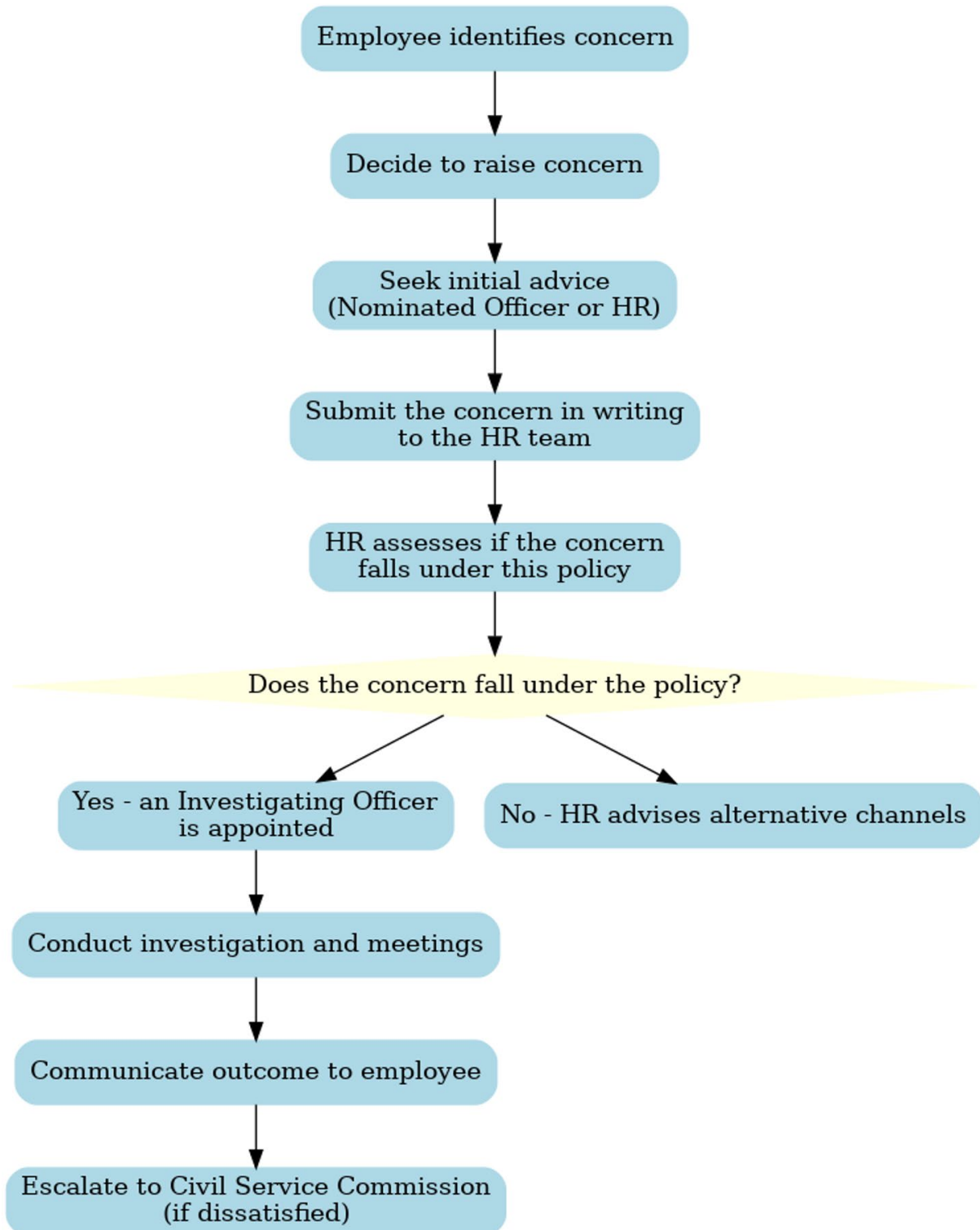
If you have a complaint about our work, you should raise this via our complaints handling procedure. This would include aspects of our work such as:

- the standard and quality of our services, policies or products
- the content of our resources or websites
- perceived non-compliance with the Welsh language standards
- the conduct of a member of our staff
- specific inaccuracies, references to third parties and key contextual omissions
- our compliance with the Civil Service Commission's Recruitment Principles

Concerns about matters in other organisations

If, during the course of your work, you suspect wrongdoing in another organisation, you should raise this using one of the routes described above. We will consider how to take the matter forward and will keep you informed as appropriate.

Annex A: Raising a concern process flowchat



Annex B: Sources of Support

It is not always easy to come forward and raise a concern, but speaking up where wrongdoing is suspected is the right thing to do.

You might feel anxious about speaking up, but talking to someone else can help gather your thoughts to decide the best course of action.

Investigations into wrongdoing can also be a difficult and stressful time for others who are involved. There are various sources of support available throughout the process. **Please note you should not divulge details of the concern itself whilst seeking support from other parties.**

Support Available

- A manager or Nominated Officer can provide advice on how to raise a concern and on available support
- Estyn's Employee Assistance Programme (EAP) may be able to provide advice, counselling and legal services where this is included as part of the EAP contract. They can be contacted at: <https://estyn.yourcarewellbeing.net>
- Trade Union members can seek advice from their representatives. Estyn recognises two trade unions, the FDA (www.fda.org.uk) and the PCS (www.pcs.org.uk)
- External sources of support include:
 - The ACAS Helpline 0300 123 1100 provides free and impartial advice on a range of workplace issues. You can access their resources at acas.org.uk
 - Protect (formerly Public Concern At Work) is a charity that advises individuals on whistleblowing matters at work. Further information and details of how to contact them is available via their website www.protect-advice.org.uk