

**NHS 24
BOARD MEETING**

**18 JUNE 2020
ITEM NO 9.4
FOR ASSURANCE**

WHISTLEBLOWING UPDATE

Executive Sponsor:	Director of Nursing and Care/ Interim Director of Workforce
Lead Officer/Authors:	Director of Nursing and Care/ Interim Director of Workforce
Action Required	The content of this paper is presented to the Board for discussion and decision.
Key Points for this Committee to consider	<ul style="list-style-type: none"> • To understand and take action as appropriate to meet the assurance requirements in relation to the National Whistleblowing Standards • While the implementation of the INWO and Standards is paused, in discussion with Liz Mallinson our NWC, we support proceeding to ensure preparedness for the implementation of the Standards when they are formally published
Governance process	Progress with and any resulting recommendations will be made to the Executive Management Team, the Staff Governance Committee and the Board.
Strategic alignment and link to overarching NHS Scotland priorities and strategies	<ul style="list-style-type: none"> • The appointment of the SPSO as INWO and their associated powers is made under the Public Services Reform (the Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 • Whistleblowing Champions are appointed by Scottish Government and the implementation of the National Whistleblowing Standards is a legal requirement • Staff Governance Standards • NHS 24 Strategy • Key Scottish Government Ministerial Priorities • NHS 24 Realistic Medicine Framework • NHS 24 Strategic and Corporate Risk Register • Excellence in Care
Key Risks	Failure to implement the Standards would impact on the Corporate Risk Register – reputational damage
Financial Implications	At this stage no financial implications have been identified.
Equality and Diversity	The organisation should consider in reporting whether any analysis by protected characteristics is required

RECOMMENDATION

- The holder of the designated role of the 'Confidential Contact' role is confirmed as the Executive Director of Nursing and Care.
- We agree to proactively engage with assessing requirements for change to meet the Standards even although the implementation of the INWO role and Standards is paused
- A Short Life Working Group is convened and chaired by the Executive Director of Nursing and Care to ensure NHS 24 is in a state of preparedness for the implementation of the Standards
- The NWC works with the Chief Executive and the Confidential Contact, Director of Nursing and Care and the Director of Workforce to provide oversight and reporting to the Board on progress with taking forward the Standards.

1. BACKGROUND

- 1.1 NHS 24 is committed to dealing responsibly, openly and professionally with any genuine concern about wrongdoing, malpractice or safety risks on the work place. Whistleblowers can have an important role in highlighting any unjust or unethical behaviour potentially resulting in positive change. Affording whistleblowing protection whilst progressing due diligence in relation to the whistleblowing concern is an important balance to maintain.

The 2015 'Freedom to Speak Up Review' and (latterly the 2019 review of allegations of bullying and harassment in NHS Highland) highlighted the need to improve whistleblowing arrangements, and to foster more open, honest and inclusive cultures.

- 1.2 In support of this objective, the following were progressed
- Based within the Scottish Public Services Ombudsman (SPSO), a new role of an Independent Whistleblowing Officer (INWO) is being established. The INWO is expected to support all NHSScotland Boards to comply with national whistleblowing and to provide critical oversight to any whistleblowing concerns. The INWO will be the final stage of the process for those raising concerns
 - Development of a new set of 'National Whistleblowing Standards' (accessible through this link www.inwo.org.uk), to support the INWO and all NHSScotland Boards to handle any whistleblowing concerns
 - Non-Executive Whistleblowing Champion (NWC) Board Members appointed to each Board. The NWC does not have any operational role in the Board. Each NWC is expected to work alongside the INWO and contribute to the promotion and delivery of a positive working culture
 - The National Whistleblowing Standards provide the Framework for the new national 'Once for Scotland' NHSScotland Whistleblowing Policy (this will render the NHS 24 Whistleblowing Policy redundant)
- 1.3 On the 17 January 2020, the SPSO wrote to HR Directors (letter attached as Appendix 1), advising the following
- The Public Services Reform Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2020 introduces significant changes in

the way in which the NHS in Scotland handles whistleblowing concerns; the legislation gives the SPSP0 the role of INWO

- The Standards define a model procedure for handling whistleblowing concerns
- The original timeframe was for the Standards come into effect on 27 July 2020 and standards to be implemented by 27 July 2020
- Any whistleblowing concerns received prior to 27 July were to be handled using current procedures

2. CURRENT POSITION

2.1 On 30 March 2020, Scottish Government wrote to advise that certain programmes of work would be paused in recognition of changing priorities, which included

- The introduction of the Independent National Whistleblowing Officer (INWO role) and the Whistleblowing Standards

On the 30 April 2020, Scottish Government emailed NWCs to advise that notwithstanding the pausing of the INWO role and standards

'--the key aspects of the Whistleblowing Champion role remain in place. We continue to seek assurance that staff are able to speak up about patient or staff safety concerns at an early stage and that these concerns are given due consideration. We (SG) have been working to collate guidance that we would endorse for use by NHSScotland employees to support the workforce. This aims to ensure that all NHSScotland employers, staff and managers understand what they need to do to look after their own and their colleagues health in respect of COVID19.'

NWC's have also been asked to *'seek assurance that staff are aware of how to report a concern and the other sources of support and advice including: the Board's Whistleblowing Contact, the confidential Alert and Advice Line provided by 'Protect', and Health Improvement Scotland'*

2.2 Scottish Government went onto say that *'WBCs should also seek assurance that HR; staff representatives and Whistleblowing Policy contacts are aware and are being updated on progress and outcomes in response to any issue raised. Where trends or 'hot spots' are identified without resolution, it would be useful if you can share this information with Scottish Government to enable use to provide appropriate advice and/or support to the Board.'*

At the time of writing this paper, no specific requirements have been advised by Scottish Government.

3. **The National Whistleblowing Standards** (Final draft shared for information by the SPSP0, ahead of publication originally proposed for the summer 2020).

3.1 The National Whistleblowing Standards set out how the INWO will support NHS service providers to handle issues, which meet the definition of a 'whistleblowing concern'. Whistleblowing is defined in the Order referred to above as

When a person who delivers services or used to deliver services on behalf of a health service body, family health service provider or independent provider (as defined under section 23 of the Scottish Public Services Ombudsman Act 2002) raises a concern that relates to speaking up, in the public interest, about an NHS service, where an act or omission has created or may create, a risk of harm or wrong doing'

- 3.2** People also talk about 'raising concerns' or 'speaking up'. These terms can also refer to whistleblowing. The issue just needs to meet the definition above, whatever language is being used to describe it. A whistleblowing concern is different to a grievance. A grievance is typically a personal complaint about an individual's own employment situation. The Standards describe the difference between a grievance and a concern

'a person raising a concern is usually a witness and may have no direct involvement in the concern they are raising. They are simply trying to tell management about the risks they have identified. These concerns usually affect other people; they are not only about matters that have a personal effect on the person raising the concern.

When a person raises a grievance or makes an allegation about being subject to bullying and harassment, this relates to their own employment rights or how they have been treated'.

Sometimes a person may raise issues which contain both whistleblowing and grievance concerns. These issues need to be dealt with through separate policies.

This paper does not set out a detailed overview of all the requirements of the Standards.

4. NHS 24 RESPONSIBILITIES

- 4.1** With respect to the Standards, NHS 24 responsibilities are outlined under four broad domains; leadership; training and awareness raising; contractors and joint working arrangements; and monitoring, learning and reporting.

NHS 24 Leadership

- Leadership demonstrates an open and transparent culture that values the contributions of all staff- including for those raising concerns or those identifying the need for change.
- The Board supports the NWC, including the need to progress any actions regarding any issues raised

Training and Awareness Raising

- A clear description of the whistleblowing procedure is in place for anyone wishing to raise a concern (as well as for those receiving a concern)
- All staff to be made aware of the Standards (and their implementation), the NWC, and the main point of contact for any whistleblowing concern
- Specific responsibilities are outlined for the Chief Executive, Executive Directors, senior management, the HR/Workforce Director, investigators, the independent and confidential main point of contacts, managers, staff and union representatives

- Anyone raising a whistleblowing concern must be signposted to the INWO at the end of the process

Contractors and Joint Working Arrangements

- Any services contracted out have arrangements in place to support staff to raise any concerns
- Arrangements are in place to ensure that students and volunteers are made aware of their right to access the whistleblowing procedure
- Similarly any joint working arrangements with other organisations/sectors have provisions in place to support anyone raising a whistleblowing concern
- The Board must receive quarterly whistleblowing concern reports, as required, from services delivered on their behalf. The Board must review these reports and follow up learning and any issues as required

Monitoring, learning and reporting

- A systematic procedure is in place for recording, reporting and learning from any whistleblowing concerns
- Recording systems should maintain confidentiality requirements for whistleblowing and are in line with GDPR
- Any whistleblowing concerns are reported to the Board on a quarterly basis
- Quarterly Reports are based on Key Performance Indicators
- A statement outlining any learning, changes or improvements as a result of a whistleblowing concern
- Statements of the number of concerns received, staff perceptions, the experiences of those concerned, the number of concerns upheld/partially upheld/not upheld at each stage, the average time to respond to concerns and timescales for closure (e.g. within 5 working days and 20 working days
- An annual report is published, setting out performance in handling any whistleblowing concerns

Current NHS 24 Arrangements

We would expect staff and any volunteers to feel comfortable in raising a whistleblowing concern and to feel confident that the issue will be investigated fully and impartially. In line with the Public Interest Disclosure Act 1998, the current NHS 24 Whistleblowing Policy has been designed to protect whistleblowers from any detrimental treatment. The policy will shortly be replaced by a national 'Once for Scotland Policy'.

At the outset, a whistleblowing concern should be raised verbally or in writing with the line manager if possible. Staff can also contact the HR or trade union representatives or the main confidential contacts.

Under our policy NHS 24 will take steps to ensure the member of staff raising the concern is assured the matter will be properly investigated.

Should the approaches outlined in the policy not seem feasible or that confidential advice is first required, staff can contact the 'Whistleblowing Alert

and Advice Service' for NHS Scotland. This is managed by 'Protect', an independent whistleblowing charity.

Feedback, Comments, Concerns and Complaints

There is a clear and established corporate procedure for dealing with (and reporting on) feedback, comments, concerns and complaints. This is currently led by the Risk and Resilience Manager.

Moving forward, any whistleblowing concerns must be handled in line with the impending 'Once for Scotland' NHSScotland Whistleblowing Policy (which is in turn underpinned by the National Whistleblowing Standards).

In order to support clarity on terminology used, the Short Life Working Group will consider if it is helpful to develop definitions for each of the main categories- feedback, comments, complaints and whistleblowing.

4.2 The National Whistleblowing Standards

The Standards consist of –

- Part 1- Whistleblowing Principles
- Part 2- the procedure and when to use it
- Part 3- the two stage procedure
- Part 4- NHS Board and staff responsibilities
- Part 5- From Recording to learning lessons
- Part 6- Board requirements and external services
- Part 7- Information for primary care providers
- Part 8- Information for joint Integration Boards
- Part 9- Arrangements for students
- Part 10- Arrangements for volunteers

Responsibilities defined by the Standards are set out in Appendix 2. Some specific points of procedure to note

- *Given the role of the Confidential Contact as outlined in the Standards, it is proposed this role sits with Executive Director of Nursing and Care for NHS 24*
- *To note the role of the HR/Workforce Director as defined in the Standards*

4.3 The Standards recognise that Whistleblowing concerns raised about senior staff¹ can be difficult to handle as there may be a conflict of interest for the staff managing or investigating the concern. When concerns are raised against senior staff, it is particularly important that the investigation is conducted by an individual who is not only independent of the situation, but empowered to make decisions on any findings of the investigation.

4.4 The organisation must ensure there are strong governance arrangements in place that set out clear procedures for handling such concerns. This should include consideration of who oversees the case; how other staff are treated

¹ 'Senior staff' are those whose position in the organisation means that they are limited or no staff members with clear seniority over them

through the process; who should investigate; and what support is available to assist with the investigative process. Each Board is required to clearly set out how it intends to consider a concern raised about a Chief Executive or a Board member.

5 Raising Concerns through existing processes- Business as Usual

5.1 People regularly identify risks or harm and speak up to get them dealt with. This is usually very successful with no repercussions for the person raising the concern. The Standards describe this as 'business as usual' and describes everyday processes or actions that deal with an issue or concern, including formal processes for identifying and improving patient safety. The Standards give some examples as follows-

- Reporting short staffing on RESPND (system used in a number of Boards for recording a range of incidents and reports by NHS Boards); and action being taken to deal with them
- Raising an issue during a team meeting or handover, leading to an investigation or action or both)
- An issue being investigated through an existing safe practice review or audit.

5.2 It is not possible to for the Standards to apply to every action that is taken through business as usual processes. The Standards only apply if the person raising the concern asks for it to be handled under the procedure.

5.3 However, people who raise a concern should not necessarily need to know these Standards and managers need to be trained to identify issues, which would be appropriate to handle under the Standards. Again, the Standards give an example and this might apply if the person is worried about their concern not being acted on or if they are worried, they might be victimised by colleagues or management as a result of raising the concern.

5.4 Boards should have service standards in place for business as usual processes and any quality assurance/management standards NHS 24 has in place are very relevant here. The Standards state that whatever the issue and however, it is raised, the organisation is expected to respond appropriately to concerns and must not tolerate victimisation of anyone who raises a concern. How the person is treated through business as usual processes and the organisation's response to the concern, can form part of any subsequent investigation by the INWO.

5.5 One of the main 'pinch points' Boards have had to consider when reflecting on the Standards is the interaction of Business as Usual feedback, concerns and complaints processes and Whistleblowing.

This is also a matter of management training and considering if any of our quality management and assurance processes need to be reviewed taken into account the requirements of the Standards. The implementation of the Standards might also need to be reflected in governance assurance frameworks. This will form part of the role of the Short Life Working Group which will review and ensure the frameworks meet the requirements set out in the Standards.

APPENDIX 1

CONFIDENTIAL

Our ref: INWO
17 January
2020

Dear HR Director,

- 1.1 National Whistleblowing Standards (the Standards)
- 1.1.1 The Standards

As you may be aware, the recently published [Public Services Reform \(the Scottish Public Services Ombudsman\) \(Healthcare Whistleblowing\) Order 2020 \(SSI 2220/5\)](#) introduced significant changes to the way in which the NHS in Scotland handles whistleblowing concerns. The legislation gives the Scottish Public Services Ombudsman the role of **Independent National Whistleblowing Officer (INWO)**.

As INWO I have new powers as the final stage in Whistleblowing complaints about how NHS services handle whistleblowing concerns, and to define Whistleblowing Complaints Principles and Standards.

The Standards define a 'model procedure' for handling whistleblowing concerns raised by staff and others delivering NHSScotland services. They were developed in partnership with stakeholders from NHSScotland, the Scottish Government, those with experience of whistleblowing and third-sector organisations who have advised or supported whistleblowers.

The Standards come into effect on 27 July 2020, the date my powers come into effect and the date SPSO will publish them.

I will write to you again to confirm publication. In the meantime, in advance of the 'formal' publication, I am sharing the Standards with you, to enable you to prepare for implementation. It is anticipated that the Scottish Government's Once for Scotland policy on whistleblowing will be published at the same time, for all NHSScotland staff, and will fully reflect the Standards.

- 1.1.2 Requirement for NHS Scotland to implement the Standards
- Your board (and all other NHSScotland service providers) **must** implement the Standards by 27 July 2020, by ensuring that your whistleblowing policies and procedures, including governance arrangements, comply fully with them.

Other organisations that deliver NHSScotland services, such as primary care providers and contracted services, must also implement the Standards, ensuring their procedures also comply with them. This means that your board needs to ensure there are systems in place for primary care providers in your area to report their concerns handling performance data to the board.

Your board will also need to work with higher education institutions and voluntary organisations, to ensure that anyone working to deliver NHSScotland services

(including students and volunteers) has access to the Standards and knows how to use them to raise concerns.

The Standards are available on our website, at www.inwo.org.uk. They are in ten parts to make them easier to use. Your board will need to take account of all ten parts, to ensure full compliance with the Standards. The board will also be expected to work with partners to ensure that partner providers are aware of and compliant with the Standards by 27 July 2020.

1.1.3 The National Whistleblowing Standards and support for implementation
Over the coming six months, the SPSO will provide information, support and guidance for all organisations preparing to implement the Standards. Further updates and guidance on implementation will be provided on our website.

1.1.4 Transitional cases

It is important to note that your current whistleblowing procedures must remain in place until 27 July 2020, and will still be applicable for any whistleblowing concerns that are raised with you up to that date. This means that all whistleblowing concerns received prior to 27 July 2020 must be handled through your current procedures, and I would have no role in reviewing such cases.

My team look forward to working with you and your teams as you prepare for implementation and move towards effective and safe systems for staff to raise concerns. If you have any questions please contact Francesca Richards, who is leading on this work. She can be contacted at csa@sps.gov.scot.

Yours sincerely



Rosemary Agnew
Scottish Public Services Ombudsman

ROLES AND RESPONSIBILITIES

The below sets out main points of the roles and responsibilities set out in the Standards- they are not comprehensive and a full review will be required against the Standards to ensure compliance.

Board Members

- Setting culture and tone
- ensure arrangements are in place act to promote trust between staff and the board in raising concern
- Each Board must ensure that there is a clear description of the roles and responsibilities of staff in relation to raising and receiving concerns at each level of the organisation
- Ensure there are support systems in place for members of staff rising concerns

Chief Executive

- overall responsibility and accountability for the management of whistleblowing concerns
- must ensure delegation is clearly stated
- must work with Board members to decide how oversight of the implementation of the standards will be achieved and who has responsibility

Executive Directors

- In particular responsibility and accountability for signing off stage 2 decision letters
- Ensure staff who are delegated responsibility have the skills and resources required

'The Confidential Contact' or Whistleblowing Ambassador

Requirement of the Standards to have such a point of contact in place;

- they need to have- the capacity and capability to undertake this role; must support staff in providing a safe space to discuss concerns; the role goes beyond advice and in particular needs to
- Work with the NWC to ensure that all staff are aware of the arrangements for raising concerns in the organisation
- Promotes a culture of trust which values the raising of concerns
- Through direct contact with frontline staff ensure they are aware of and have access to the support services they require
- Work with the Chief Executive and other colleagues to ensure standards are functioning at all levels in the organisation

HR/Workforce Director and their team

- Responsible for ensuring staff all staff have access to the procedure, support and ensuring anything raised within HR procedures which could amount to a whistleblowing concern is signposted accordingly
- Ensuring staff are aware of the Standards, how to access etc and that managers have appropriate training
- HR functions should not be involved in investigating whistleblowing concerns unless the concern relates to staff conduct issues

INWO Liaison Officer

- The Board's INWO Liaison Officer is the main point of contact between the INWO and the organisation
- Overall responsibility for providing the INWO with whistleblowing information in a structured and orderly manner
- Confirm and provide evidence that INWO recommendations have been implemented

Fraud Liaison Officer

- If a concern raises an issues of fraud, the Board's Fraud Liaison Officer should be contacted for advice
- If appropriate pass information to NHS Counter Fraud Services

Investigators

- investigations must be carried out by an appropriately skilled senior member of staff
- have an important role in drafting recommendations

Managers

- All managers to be aware of the procedure and how to handle and record concerns
- Trained and empowered to make decisions at Stage 1

All Staff

- Trained and made aware of channels and what access to the Standards means

Union Representatives

- Providing insights
- Involved in implementation and monitoring of the system