**Guidance and Information for NHSScotland Non-Executive Whistleblowing Champions**

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Introduction

The Scottish Government and NHSScotland are committed to ensuring a culture of openness, transparency and candour, where staff are actively encouraged to speak up about wrongdoing and malpractice within their organisation, particularly in relation to patient safety, without fear of recrimination.

This document provides useful information to those who are appointed as non executive Whistleblowing Champions (WBCs) for Boards, and includes frequently asked questions and contact information.

Background

**The Freedom to Speak up Review** chaired by Sir Robert Francis QC (<https://www.gov.uk/government/publications/sir-robert-francis-freedom-to-speak-up-review>), was published in February 2015. Whilst the report and its recommendations relate to NHS England, the Scottish Government took the opportunity to consider the findings in relation to their existing whistleblowing policy and frameworks and to change NHS Scotland’s whistleblowing approach.

**The review of Culture in NHS Highland** by John Sturrock QC (<https://www.gov.scot/publications/report-cultural-issues-related-allegations-bullying-harassment-nhs-highland/>) was commissioned by Scottish Government in response to allegations of a bullying culture in NHS Highland. It had already committed to revise the approach to whistleblowing in the NHS in Scotland prior to this. Whilst the allegations centred around a “systematic culture of bullying”, there were also allegations that NHS Highland had been suppressing clinicians’ concerns. The review was conducted in November 2018 and the report was published in May 2019. The Scottish Government response can be viewed here: <https://www.gov.scot/publications/scottish-government-response-report-bullying-harassment-nhs-highland/>.

Following the NHS Highland review, the Health Secretary wrote to all health boards asking them to consider the recommendations and look again at the effectiveness of their own internal systems, leadership and governance.

Over the past few years Scottish Government officials have worked closely with our partners to develop a package of supportive measures that encourage and support staff to raise any concerns they may have.

Measures to Support and Promote Whistleblowing in NHSScotland

**The dedicated non-executive WBC** This is a dedicated role, which was developed in partnership, offering an approach to scrutiny ensuring that boards comply with the whistleblowing standards (see section below).

**The Independent National Whistleblowing Officer (INWO)**, implemented in April 2021, provides an effective mechanism for external review where those delivering services on behalf of the NHS Scotland in Health Boards, primary care and independent provider settings have a concern about how their case has been handled. This includes staff, trainees, students, volunteers and contractors. The INWO also has a national leadership role, providing direction, support and guidance to the relevant bodies with the focus on continuous improvement, early resolution, recording and reporting. You can read more about the role here [www.inwo.org.uk](http://www.inwo.org.uk).

**The Whistleblowing Standards** were developed by the SPSO and published in April 2021. These Standards set out how NHSScotland service providers should handle concerns that have been raised with them that meet the definition of a ‘whistleblowing concern’. The INWO uses these as the standard against which to assess how health service bodies, family health service providers or independent providers have handled whistleblowing cases, where a concern is raised directly with them. This will include the treatment of individuals who have raised concerns or who have been involved in the whistleblowing investigation (e.g. witnesses, managers, those investigating) and the local culture for speaking up. These can been found at [www.inwo.org.uk](http://www.inwo.org.uk).

**The Once for Scotland policy programme** is refreshing the extant Partnership Information Network (PIN) policies in order to deliver standardised policies and supporting documents which are accessible, simplified, and person-centred to ensure consistent treatment of staff throughout NHSScotland. A number of workforce policies are now available in this new format including: bullying and harassment, grievance; and conduct. A new Whistleblowing Policy which refers readers to the Whistleblowing Standards was launched in April 2021. You can read more about the Once for Scotland programme here: <https://www.staffgovernance.scot.nhs.uk/partnership/once-for-scotland-workforce-policies/>

**A confidential advice and information line** provided by the INWO provides a safe space where advice is provided by trained staff. The number for this is 0800 008 6112.

**The guidance on the use of confidentiality clauses** aims to support and inform employees and employers of their rights and responsibilities should they decide, for whatever reason, the use of a confidentiality/derogatory statement clause when considering entering into a settlement agreement. The guidance can be viewed here: [**Guidance on the use of Confidentiality Clauses and Derogatory Statement Clauses within Settlement Agreement*s***](http://www.gov.scot/Resource/0049/00496370.pdf),

**The NHSScotland Staff Governance Standards** includes the specific responsibility of employers to ensure that it is safe and acceptable for staff to speak up about wrongdoing or malpractice within their organisation, particularly in relation to patient safety. The Standard also places a responsibility on staff to speak up when they see practice that endangers patient safety and/or which causes upset and alarm in the workplace in line with the whistleblowing policy. The full Staff Governance Standards can be viewed here: [NHSScotland Staff Governance standards.](https://www.staffgovernance.scot.nhs.uk/what-is-staff-governance/overview/#:~:text=The%20Standard%20requires%20all%20NHS%20Boards%20to%20ensure,wellbeing%20of%20staff%2C%20patients%20and%20the%20wider%20community.)

The **Workforce Practice Unit (Pay, Practice and Partnership division) in DG Heath and Social care at Scottish Government** is responsible for developing the policy framework in relation to this role and for whistleblowing practice policy in NHSScotland in general. Officials in this unit will engage with both the INWO and the WBCs on a regular basis to provide updates and seek feedback on policy implementation, and seek assurances on behalf of the Cabinet Secretary for Health and Social Care of the effectiveness of the Whistleblowing policy and standards in Health Boards. Contact Nicola Anderson, Head of Workforce Relations ([nicola.anderson@gov.scot](mailto:nicola.anderson@gov.scot)).

Whistleblowing Champions - the non-executive Board Member role

The WBC is appointed as a non-executive board member who monitors and supports the effective delivery of the organisation’s whistleblowing policy.  This role has been developed by the Scottish Government and complements the work of the Independent National Whistleblowing Officer (INWO).

The WBC is predominantly an assurance role which helps NHS boards comply with their responsibilities in relation to whistleblowing.  The WBC provides critical oversight and ensures managers are responding to whistleblowing concerns appropriately, in accordance with these National Whistleblowing Standards.  The WBC is also expected to raise any issues of concern with the board as appropriate, either in relation to the implementation of the National Whistleblowing Standards, patterns in reporting of concerns or in relation to specific cases.

The WBC role does not become operationally involved in whistleblowing cases and does not have any personal authority or powers in relation to individual cases.

The WBC has a responsibility to seek assurance that:

* Staff are actively encouraged and supported to report any concerns about patient safety or malpractice they may have.
* Boards have systems in place that are used and monitored appropriately to ensure that all reported concerns are investigated in a timely and appropriate way.
* Boards have systems in place to ensure that any learning from Whistleblowing concerns is identified, shared and used to deliver improvements where appropriate.
* The staff member (the whistleblower), and any other staff member implicated in the reported concern, is supported and updated on progress throughout the process. Boards should have systems in place to protect from detriment anyone who raises a concern.
* The outcome is fed back to the member of staff who raised the concern, and any resultant recommended actions are progressed by the Board.
* Any detriment or potential detriment to the whistleblower is properly addressed.

It should be noted that although this is a dedicated role, it is undertaken on behalf of the Board. All board members retain collective responsibility for any aspect of Board governance.

As this role provides for the WBC to raise concerns/issues with the system of governance in a Board in relation to whistleblowing, it is not possible for the WBC to also take on the role of Board Chair or Vice Chair within NHS Scotland. Taking on the role of Chair of an IJB may be considered, however, it would need to be clearly established that there is no conflict of interest (perceived or actual) and the time commitment is acceptable.

The WBC may be appointed to other NHSScotland Board or Committee roles provided that the Board is satisfied as to the management of potential conflicts of interest and the time commitments.

Support and networks for Whistleblowing Champions

The WBCs have established a network which meets on a regular basis. The purpose of this is to exchange thoughts and ideas, share learning, and to provide a safe space for conversations. Representatives from INWO and Scottish Government may also attend by invitation to provide updates and seek feedback on topical issues.

Legal framework

The Scottish Public Services Ombudsman Act 2002 requires that the model complaints handling procedure for healthcare whistleblowing (The Whistleblowing Standards) must include the following definition of whistleblowing:

***“Whistleblowing is 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 in Section 23 of the 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.”***

The [*Public Interest Disclosure Act (PIDA) 1998*](http://www.legislation.gov.uk/ukpga/1998/23/section/1) outlines various types of disclosure which may qualify for protection. These are ones made by an employee who feels that one of the following is being committed, has been committed, or, is likely to be committed:

* A criminal offence;
* A miscarriage of justice;
* An act creating risk to health and/or safety
* An act causing damage to the environment;
* A breach of any other legal obligation; or,
* Concealment of any of the above.

All relevant provisions of PIDA are incorporated within the [*Employment Rights Act (ERA)1996*](http://www.legislation.gov.uk/ukpga/1996/18/contents). This Act ensures that employees who whistleblow are legally protected giving protections to employees who disclose information reasonably and responsibly in the public interest, and where they have subsequently suffered a detriment or have been dismissed as a result of raising that concern.

Individuals who have suffered a detriment, by any act, or any deliberate failure to act, for whistleblowing can take their employer to an Employment Tribunal.

Where an employee has lost their job as a result of whistleblowing, they could be fully compensated for their losses, with the limit of any compensation being uncapped.

Awards for detriment suffered, which is short of dismissal (e.g. passed over for promotion, having disciplinary action taken against them) will also be uncapped and will be based on what is deemed to be fair and equitable in the circumstances.

Ultimately, it would be for an Employment Tribunal to decide whether an employee had suffered any form of detriment in breach of PIDA, and if so, whether any award of compensation is due.