

The Draft National Whistleblowing Standards

Part 3

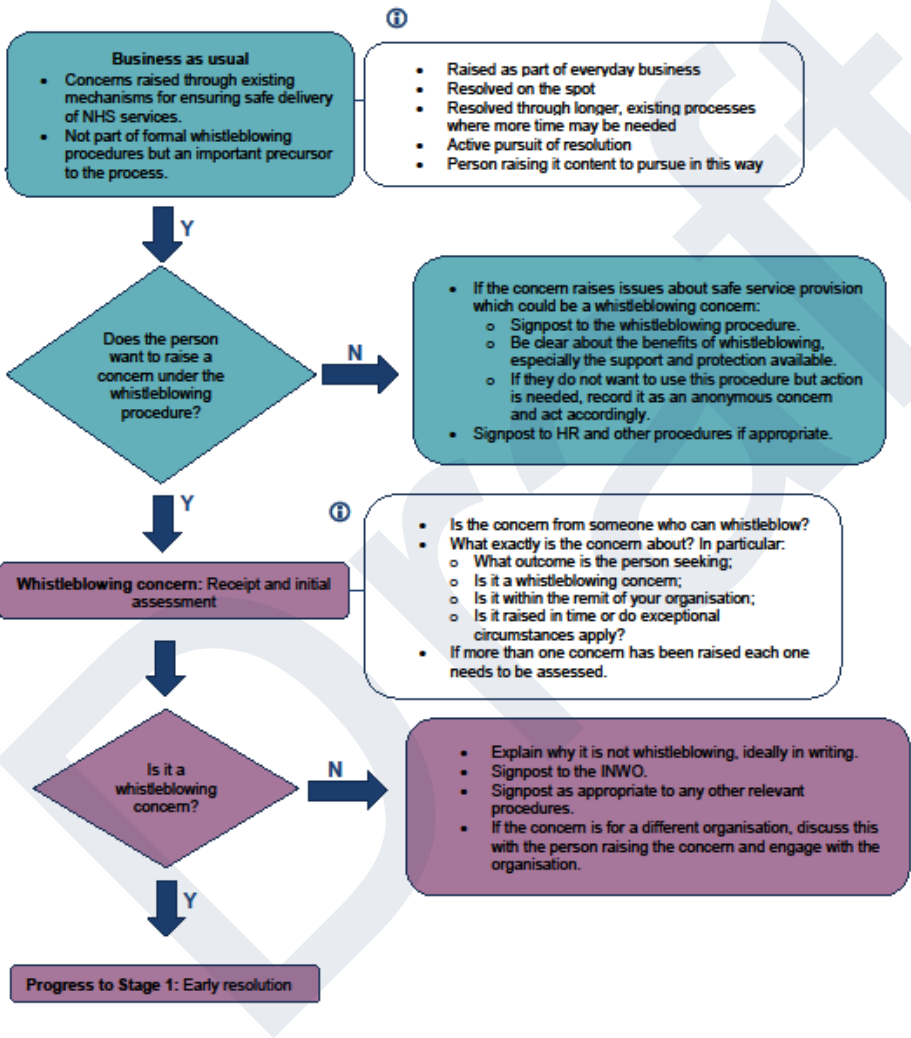
When to use the Whistleblowing Procedure

May 2019

Initial actions

1. All concerns are important to the organisation, and must be acted on to ensure safe and effective care and treatment.
2. The Initial Actions flow diagram below helps to identify whether a concern is appropriate for this procedure. Additional information is provided here in relation to some aspects of this decision process.

Initial actions:



Business as usual

3. This describes any normal, everyday process or action that is actively being used to address an issue or concern. This includes regular, everyday activities, as well as more formal processes for identifying and improving patient safety etc. Some examples would be:
 - 3.1. Reporting short staffing on DATIX, with the expectation that this will be noted and action taken;
 - 3.2. An issue raised during a team meeting or hand-over, including any subsequent investigation or action to address the issue; or
 - 3.3. An issue that is being investigated through an existing safe practice review or audit.
4. When concerns relating to the safe delivery of NHS services are raised within the context of existing processes for addressing such concerns, there is no need to take further action under this procedure, even if the concern could fall within the definition of a whistleblowing concern.
5. An issue or concern can only move from 'business as usual' to being handled through this procedure if the person raising it wants and agrees to pursue it in this way. There are, however, significant advantages to using this procedure in terms of [support](#) for the individual and potentially for their colleagues too.

Who to raise a concern with

6. There should always be several options, at least:
 - 6.1. The person's line manager or team leader;
 - 6.2. A more senior manager if circumstances mean this is more appropriate;
 - 6.3. A confidential contact for raising concerns (in some places there may also be speak up ambassadors or advocates).
7. Irrespective of whoever receives it, the concern must be taken equally seriously and handled in line with the requirements of the Standards.
8. Any organisation that provides NHS services in Scotland must provide access to a confidential contact. This could be a contact within the Board, with another service provider or through a contracted independent service.
9. Each Board must have clear arrangements in place for who to approach with concerns about senior leadership and Board members (see Part 5). These must be agreed with the Whistleblowing Champion, and must be available to staff, including through their confidential contact.
10. Anyone wanting to raise a concern about senior leadership must be able to discuss the most appropriate course of action with the Board's confidential contact or other speak up representative.

11. Arrangements within primary care (see Part 8), and for students (see Part 10) and volunteers (see Part 11) may be slightly different.

Initial discussion

12. Once a concern has been raised (and however it is received – in writing, in person or by phone), there needs to be some discussion around whether the concern is suitable for this procedure. This should include:
 - 12.1. Consideration of whether the issue fits with the definition (see Part 1) of a concern for this procedure;
 - 12.2. Whether the issue is being actively progressed through [‘business as usual’](#);
 - 12.3. Consideration of whether the person wants to pursue the issue through this procedure, including discussion of the support and protection available through it;
 - 12.4. Signposting to any other appropriate additional procedures (eg. [HR procedures](#));
 - 12.5. Consideration of issues around [confidentiality](#); and
 - 12.6. Consideration of what [support](#) would be helpful for the individual.
13. If a decision is taken not to accept a concern through this procedure (for some or all of the issues raised), even when this route has been requested by the person raising the concern, this decision must be recorded. Where possible, the person raising concerns should be informed face-to-face or on the telephone. The person raising the concern must also be told that they can take this decision to the Independent National Whistleblowing Officer (INWO) if they are dissatisfied with the explanation they have been given. There is no requirement to write to the person as well, although this may be helpful. It is important, however, to record full and accurate details of the decision not to consider the concern through this procedure, and to ensure that the person understands this outcome. If there is information that cannot be shared, the manager should explain why.
14. If the issue raised is not within the remit of the organisation, the person receiving the concern should signpost to the appropriate organisation, or actively engage with this organisation, to ensure the concern is passed on and appropriately acted on. Remember that confidentiality for the individual still applies.
15. If the person raising the concern does not want to formalise their concerns by taking them through this procedure, but action is still needed to reduce risks to patients or service delivery, then the issue must be recorded as an [anonymous concern](#), and appropriate action taken as quickly as possible.

Immediate threat to safety

16. If someone raises a concern that needs immediate action, to avoid any further risk to patient safety, **action must be taken**. The person must also be told that this will happen, and why, and confidentiality concerns should be taken account of, with appropriate consideration to how to record the concern.

Getting information or advice

17. Information and advice about what options are available, whether a concern is appropriate for this procedure, or what to expect, can be obtained from:
 - 17.1. National Alert Line – 0800 008 6112 or alertline@protect-advice.org.uk
 - 17.2. The Board's confidential contact for raising concerns, or other confidential speak up contact
 - 17.3. The INWO
 - 17.4. Union representatives
 - 17.5. Professional bodies
 - 17.6. University representatives (for students).
18. Other organisations may also be able to provide support for anyone raising a concern, such as:
 - 18.1. Employer's occupational health service
 - 18.2. Employer's support
 - 18.3. Chaplaincy services
 - 18.4. Whistleblowers UK.
19. Contact details for several relevant agencies are provided in Annex A below.

Involvement of other organisations

20. If professional bodies or other regulators are already investigating an issue, it may not be appropriate for another investigation to take place at the same time; it may be more appropriate to wait for the outcome. However, if a concern is raised with more than one organisation, it is always important to make sure that it is clear which elements of the concern are being pursued by which organisation, and what outcomes are being sought by the person raising the concern.

Confidentiality and anonymity

21. **Confidentiality** refers to the need to limit the sharing of personal information about who raised the concern.
22. **Anonymity** refers to a situation when nobody knows the identity of the member of staff who raised the concern.

Confidentiality

23. Confidentiality *must* be maintained as far as possible in all aspects of the procedure for raising concerns. Staff need to have confidence that their identity will not be shared beyond what is agreed. *The name of the person raising the concern must not be routinely or automatically shared at any point of the investigation or during the implementation of any subsequent recommendations.* There are, however, times when information about the person raising a concern will become apparent, or when it will be necessary to share this information in order to put things right or progress with an investigation.
24. It is important that all aspects of confidentiality are discussed at the outset; not doing so may lead to violations of data protection legislation. This should include:
 - 24.1. Recording of the concern, and who will have access to this information;
 - 24.2. Who will the concern be shared with and why;
 - 24.3. Who are they happy for their identity to be shared with, and under what circumstances;
 - 24.4. Who else might need to be informed of their identity and why;
 - 24.5. Where it appears inevitable that their identity will become apparent, are there ways of ensuring this does not happen;
 - 24.6. What action could be taken to limit the number of people who are made aware of the concern, while still taking appropriate action.
25. It is important that all of the issues raised in the investigation are treated confidentially unless there is a legitimate reason for sharing information with other parties.
26. To protect the identity of the person raising the concern, managers and clinical leads should explore ways of investigating the concern which will not arouse the suspicion of others. For example, making the investigation appear like conducting business as usual or conducting a random spot check.

27. The organisation must take full account of data protection legislation in the way it holds and processes information both in relation to the person raising the concern and in relation to other staff involved. This includes:
 - 27.1. Storing data securely, so only those with a legitimate interest in the investigation have access
 - 27.2. Careful assessment of any reference to raising concerns in personnel records, and only if it directly relates to other HR related issues.

Anonymous concerns

28. It should be made clear to all staff that raising a concern anonymously does not give the person the same protections as if they share their identity with a manager or confidential contact. It limits:
 - 28.1. the legal protections available to the person raising the concern;
 - 28.2. the ability to provide feedback and offer support; and
 - 28.3. the ability to ask the INWO to consider a matter.
29. In other words, the protections provided by these Standards *cannot* be invoked, so the supportive environment they provide cannot be ensured. If staff guess the identity of the person raising concerns, that person would be at risk of detriment, and would not have recourse to the protection or support that would otherwise be required of these Standards.
30. Raising a concern anonymously may also have an impact on how well the concern can be investigated and ultimately resolved.
31. If a concern is raised anonymously managers should ensure as much information as possible is recorded and an appropriate investigation is undertaken, in line with the Standards as far as possible.
32. If a member of staff raises a concern that fits with the definition (see Part 1), but they say they do not want to pursue it through this procedure, then their concerns should be recorded as an anonymous concern, and the issue of concern should be investigated and resolved, to ensure safe working practices. *The individual's personal data must not be recorded and every effort should be taken to ensure that records do not include details that could reveal who raised the concern.*

The difference between a grievance and a concern

33. A person raising a concern is usually a witness and may have no direct personal involvement in the issue(s) they are raising. They are simply trying to alert management to the risk(s) they have identified. These concerns usually

have wider implications; they are not *only* about the personal impact on the individual.

34. When a person raises a grievance or makes an allegation about bullying or harassment they are raising issues about their own employment situation, employment rights or how they have been *personally* treated.
35. Examples of grievance issues include:
 - 35.1. dissatisfaction with pay and working conditions
 - 35.2. disagreements about terms of employment and workplace rules
 - 35.3. allegations of unfair treatment at work
 - 35.4. individual claims of bullying and/or harassment
 - 35.5. disagreement between co-workers.
36. Examples of whistleblowing vs grievance or bullying and harassment are available in Part 12.
37. Sometimes the person may raise issues which contain elements of both whistleblowing and grievance concerns. These need to be dealt with *separately* through the appropriate policies/procedures.
- 38. If someone raises a combination of grievance and whistleblowing issues, all their concerns must be discussed, and the person must be appropriately signposted to all the options available to them, including support options and services.**
39. If an issue of public interest or patient safety emerges through a grievance procedure, the person must be asked if they want the concern to be raised through the Standards, with the protection that they provide.
40. Issues relating to employment rights, may also have a wider public interest; for example, if poor working conditions are having a detrimental effect on service delivery. If it is not clear whether an issue is a grievance or a whistleblowing concern the manager (or confidential contact) should explore what the individual wants to achieve, i.e. resolution for the individual, or resolution for the patient/organisation/or wider public. It may be that, in the interests of safe service delivery, the public interest issue needs to be considered through this procedure whatever the individual's desired outcome is. However, it must but noted as an anonymous concern if the individual does not want to pursue this option.

Claims of detriment

41. If someone raises a concern and at the same time claims that they have suffered detriment as a result of raising this concern through business as usual, the initial discussion must identify what outcomes they would like to achieve. It must also include signposting to any appropriate HR procedures, to ensure any detriment can be appropriately addressed. It is also of particular importance to

ensure appropriate support is in place to limit any further detriment. Failing to do so would mean the organisation was failing its duty of care for their employee.

Support and protection through the procedure

42. **Nobody should be treated unfairly for raising a concern, for having a whistleblowing allegation made against them or for cooperating with any investigation.** The victimisation of staff as a result of any involvement in a whistleblowing case will be treated as a disciplinary matter.

Support for the person raising a concern

43. Raising concerns can be stressful and isolating; but when someone does raise a concern, they are trusting the organisation and giving it an opportunity to resolve wrong-doing or risk. The organisation must reciprocate this trust by making sure the person is protected throughout the process and does not suffer any harm as a result of speaking up.
44. Anyone receiving a concern must:
- 44.1. Thank the person for raising the concern;
 - 44.2. Listen to them carefully;
 - 44.3. Take the concern seriously; and
 - 44.4. Provide reassurance that:
 - 44.4.1. the concern will be handled sensitively;
 - 44.4.2. they have done the right thing by raising the concern; and
 - 44.4.3. they will not be treated badly, even if no risks are identified.
45. In some instances, it will be sufficient to thank the person raising the concern, and provide regular feedback on any resulting investigation. In other cases, they might need to be given more specialist support. Anyone receiving concerns must enquire what support may be needed, and actively explore these issues with the individual when they first raise the concern. Where these needs are identified, the appropriate resources must be provided wherever practical, and any contact with support providers must be facilitated.

Employer's duty of care

46. Employers have a duty of care to their employees and must take all reasonable steps to ensure their health, safety and wellbeing. They must do everything that is reasonable in the circumstances to keep their employees safe from harm.

They also have a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury.

47. Requirements under an employer's duty of care may include:
 - 47.1. Ensuring a safe work environment
 - 47.2. Providing adequate training and feedback on performance
 - 47.3. Ensuring that staff do not work excessive hours
 - 47.4. Ensuring staff are not bullied and harassed by colleagues or others, and
 - 47.5. Providing channels for employees to raise concerns.
48. Employees also have responsibilities for their own health and wellbeing at work. For example, they can refuse to do work that would be unsafe for them, without fear of disciplinary action.
49. In the context of raising concerns, this means that the organisation should take active steps to protect those that raise concerns from victimisation.
50. If detriment or victimisation becomes evident or is of concern, action must be taken. This may include informal managerial intervention or formal disciplinary procedures. Removing those raising concerns from a workplace, either through relocation or suspension, is not an appropriate response in most instances, since this reinforces attitudes that raising concerns is risky and indicates a culture that does not support speaking up.

Legal protection for those raising concerns

51. The Public Interest Disclosure Act 1998 (PIDA) is often called the 'whistleblowing law'. It is there to protect 'workers' (as defined in the Employment Rights Act 1996) who have made a 'protected' or 'qualifying' disclosure from detriment, where this is a result of making the disclosure.
52. There is a legal test which a worker needs to meet for this legislation to apply. They must *reasonably believe* that the disclosure is in the public interest and that the information tends to show that the following has occurred, is occurring or is likely to occur:
 - 52.1. a criminal offence
 - 52.2. an act creating risk to health and safety
 - 52.3. an act causing damage to the environment
 - 52.4. a miscarriage of justice
 - 52.5. a breach of any other legal obligation, or
 - 52.6. concealment of any of the above.
53. It is important to note that making a 'protected disclosure' (as defined by PIDA) does not set out a route to raise concerns or a process for investigation; it

provides legal protection for workers who are victimised *after* raising concerns. If a worker suffers detriment for raising a concern or is unfairly dismissed, they can bring a claim for compensation under PIDA to an Employment Tribunal.

54. PIDA encourages, but does not require, an employee to make the 'protected disclosure' to their employer first, if possible. It is recognised that workers may have good reason for raising a protected disclosure outside their workplace (either before or after reporting the concern to their employer). PIDA sets out requirements for a [list of organisations](#) which employees can raise a concern with, beyond their own employer, and still have their employment protected.
55. INWO [is being added] to the list of designated organisations, so NHS employees [will be] able to raise their concerns directly. The INWO [will have] discretion to take concerns directly, if she considers it is not reasonable to expect the person to use the employer's whistleblowing procedure. Such decisions will be made on a case by case basis but could take into account, for example, if the organisation is very small or the issue involves very senior staff.

Annex A: Contact details for support agencies and professional bodies

ALLIED HEALTH PROFESSIONS FEDERATION

0131 226 5250

admin.ahpfs@ahpf.org.uk

www.ahpf.org.uk

BRITISH DENTAL ASSOCIATION

01786 476040

enquiries@bda.org

www.bda.org/contact-us

BRITISH MEDICAL ASSOCIATION

0300 123 1233

www.bma.org.uk/contact-bma

CARE INSPECTORATE

0345 600 9527

enquiries@careinspectorate.com

www.careinspectorate.com/index.php/contact-us

GENERAL DENTAL COUNCIL

020 7167 6000

<https://contactus.gdc-uk.org/>

GENERAL MEDICAL COUNCIL

0161 923 6602

gmc@gmc-uk.org

www.gmc-uk.org/contact-us

HEALTH IMPROVEMENT SCOTLAND

0131 623 4300

comments.his@nhs.net

www.healthcareimprovementscotland.org/about_us/contact_healthcare_improvement.aspx

NHSScotland CONFIDENTIAL ALERT LINE

0800 0086112

alertline@protect-advice.org.uk

NHSScotland COUNTER FRAUD SERVICES

01506 705200

www.cfs.scot.nhs.uk/contact-us

NURSING AND MIDWIFERY COUNCIL

020 7637 7181

www.nmc.org.uk/contact-us/

OPTOMETRY SCOTLAND

0141 202 0610

info@optometryscotland.org.uk

www.optometryscotland.org.uk/contact-us/contact-us

PUBLIC CONCERN AT WORK

020 7404 6609

www.pcaw.org.uk/about/contact-us

helpline@pcaw.co.uk

ROYAL COLLEGE OF NURSING SCOTLAND

0345 772 6100

www.rcn.org.uk/scotland

ROYAL PHARMACEUTICAL SOCIETY

0131 556 4386

www.rpharms.com/about-us/contact-us

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