

Consultation on Draft Whistleblowing Standards for the NHS in Scotland: Principles and Procedure

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Independent National Whistleblowing
Officer for the NHS in Scotland

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Ombudsman's introduction

The NHS in Scotland relies on staff, students and volunteers to deliver a wide range of services. They are essential to the delivery of safe care and treatment and good governance. They are also best placed to spot errors, wrong-doing or processes that put patients at unnecessary risk. We need to listen to them, but in order to do that we must give each and every one of them the space, opportunity and confidence to speak up. NHS staff need to feel they can raise issues safe in the knowledge they will be listened to and their concerns acted on promptly, and where appropriate, confidentially.

This is what the National Whistleblowing Standards set out to achieve. They set out the requirements for our NHS services to listen to staff when they raise a concern. We have developed these draft Standards in collaboration with a range of stakeholders including The Scottish Government, the health sector in Scotland, Protect¹ and whistleblowers. Through this public consultation we want to share, and receive comments on these Standards. We want to ensure that staff feel safe to speak up and that organisations value the raising of concerns as a source of learning for continuous improvement.

If you have any comments in respect of these Standards, or simply want to confirm you are content with them, we'd really appreciate your contribution though responding to this consultation.

¹ Protect – formerly Public Concern at Work – are leading experts in whistleblowing <https://www.pcaw.org.uk/>

Overview of the proposed INWO role

The Scottish Government are also consulting on draft legislation that will see the introduction of a new role – an Independent National Whistleblowing Officer (INWO) for the NHS in Scotland.

The Scottish Government's draft legislation proposes the INWO be given statutory powers to investigate the handling of a whistleblowing case for individuals who are not satisfied with the outcome of an internal investigation. This independent oversight and scrutiny will include consideration of the decision reached during the investigation, how these concerns were handled, and how the whistleblower was treated through the process.

We expect that the legislation will enable the INWO to develop **National Whistleblowing Standards** (The Standards), to be implemented across NHS Scotland's services. In anticipation of the legislation, we have developed draft Standards for the NHS, which include a set of high level Principles and a detailed Procedure. These will guide NHS service providers through the process of identifying and investigating whistleblowing concerns raised by staff and other workers.

The aim is to ensure that the Standards and the new role of the INWO will come into force at the same time. We are, therefore, consulting on the Standards at the same time as the Scottish Government is consulting on the draft legislation.

The provision of high level Principles and a detailed Procedure within the Standards provides clear information on how the INWO expects concerns to be handled and staff to be treated. An additional benefit is that, in line with the Scottish Public Services Ombudsman Act 2002, the new Whistleblowing Principles would be put to Parliament for approval. This would allow the Scottish Parliament to endorse the Principles and ensure that whistleblowing Standards are given the same status as those for complaint handling. This consultation is designed to fulfil the requirements to consult on principles and procedures in the 2002 Act.

We welcome this opportunity to ensure the Standards are clear and meet the needs of managers and others in the NHS who have responsibility for investigating whistleblowing concerns raised by their staff.

Relationship to the draft Order

Our ability to take our proposals forward in practice will be dependent on an order being placed before Parliament which provides us with clear legislative authority to do so. We would recommend anyone interested in whistleblowing in the NHS should also review the draft order and the Scottish Government's consultation. We intend to share with the Scottish Government any outcomes from this consultation which would require changes to our legislation.

Application of the draft Whistleblowing Standards for the NHS

The Scottish Government's draft legislation proposes that the INWO's authority will cover all NHS services delivered by or on behalf of NHS Scotland. This means that the INWO's review powers and the National Whistleblowing Standards would be applicable to employers beyond NHS Boards, to all those contracted to deliver NHS services, including primary care service providers.

The Scottish Government and the SPSO are aware of the challenge that this will present for Boards and their contracted service providers. For this reason, together with the Scottish Government, we are proposing a six month implementation period, from January to July 2020. This will allow NHS Boards and other NHS service providers to prepare for implementation of the Standards. The finalised draft Standards will be available by the end of 2019.

The intention is that NHS Boards will implement the Standards through a revised national 'Once for Scotland' whistleblowing policy, that would apply to all NHS employees in Scotland. This process is being overseen by the Scottish Workforce Action Group (SWAG), and a working group is currently developing an interim policy in partnership with key stakeholders. Members of this group have also been involved in the development of the Standards, and have taken these draft Standards into account in the development of the Once for Scotland policy. The interim policy will be updated and replaced by a revised Once for Scotland policy when the Standards 'go live'.

For other NHS services, the expectation is that the Standards will be used as a basis for developing internal procedures. It is important to note that while internal procedures may be adapted locally, the Principles and Standards themselves must be adhered to in full. The INWO will assess cases brought to her against these Standards. The INWO will also be able to provide support and assistance for those organisations developing their own policies and procedures in line with the Standards. We will provide further guidance and advice for implementation of the Standards over the coming months.

Development of the draft Whistleblowing Standards for the NHS

We have developed the draft Standards through co-production, with colleagues from across the health sector and other key stakeholders. A Steering Group provided direction and oversight of our work, while a very active Working Group met on several occasions and took ownership in developing core content of the Standards. Those involved in this work have included NHS workforce directors, the Scottish Government, Health Improvement Scotland, the Care Inspectorate, the Royal College of Nurses, UNISON, Protect, a whistleblower and Whistleblowing Champion.

Their work has been instrumental in developing Principles and a Procedure which will encourage a culture of openness within the NHS where staff can feel safe to raise their concerns about working practices.

Overview of the Whistleblowing Standards for the NHS

The Standards consist of five key elements, split into 11 documents.

1. An over-arching set of Whistleblowing Principles;
2. A definition of 'whistleblower' to meet the expectations set out in the draft Order, alongside more detailed information to clarify how to identify a whistleblowing concern, and who the Standards apply to, as well as information about how to access the procedure and how staff should be treated;
3. A detailed guide on how whistleblowing concerns should be handled, including stages and timescales;
4. Governance of the whistleblowing procedure, including requirements of NHS Boards and expectations on organisations in relation to reporting, recording and monitoring whistleblowing concerns; and
5. Governance arrangements and expectations for applying the Standards across primary care, in integrated health and social care settings, and for students and volunteers.

Also included are case studies providing good practice examples of how whistleblowing concerns should be handled.

About the consultation

The draft National Whistleblowing Standards are available [here](#).

This consultation runs concurrently with the Scottish Government's consultation on the Scottish Public Services Ombudsman (NHS Whistleblowing) Order 2018 that would introduce the role and functions of the INWO. Any comments on the content or detail of **draft legislation** should be directed to the Scottish Government. You can obtain a copy of this consultation by emailing john.malone@gov.scot. This includes any comments relating to the extent of the proposed INWO role, its application across all NHS services, or the timescales for implementation. The Standards will be revised to take into account any changes in the draft legislation made by the Scottish Government prior to publication.

SPSO's consultation is focused on those elements of the draft Whistleblowing Standards where we have flexibility in terms of application and presentation; we want to ensure they are clear and easy to understand.

We are also keen to receive comments on each of the major elements of the Standards, and, where appropriate to understand how it can be improved or clarified.

The questionnaire guides respondents through the documents, and focuses on the issues which we consider would benefit most from the input of a wider audience.

How to complete the questionnaire

To complete the questionnaire, please follow this [link](#) to our survey on Survey Monkey. Alternatively you can email CSA@spsso.org.uk, and we will send you a Word version of the questionnaire. If you have any difficulties accessing the questionnaire, please email or phone us on 0131 240 2992.

The consultation will be open until 17:00 on 28 June 2019. You can complete the questionnaire at any time until the deadline, and you can return to it as many times as you need until it is 'submitted'. None of the questions are compulsory, and we would be happy to receive comments only on specific parts if that is appropriate.

Please note that **only one survey response should be provided per organisation**, rather than providing multiple responses from different service areas or divisions. However, **individuals are welcome to respond** in their own capacity.

What we will do with your information.

The responses will be analysed and we may produce a report of consultation responses. Where permission is given, we may publish responses in full or in part. We may include personal data where permission has been given to do so. We never publish email or postal addresses. Where permission is given, we may contact respondents for further comment.

The SPSO privacy policy can be found here: <https://www.spsso.org.uk/privacy-notice-and-disclaimer> or from the home page of the SPSO website.