



**INDEPENDENT  
NATIONAL  
WHISTLEBLOWING  
OFFICER**

**People Centred | Improvement Focused**

The National Whistleblowing Standards

# Introduction to the Standards

**JANUARY 2020**

Final draft – shared for information by the SPSO, ahead of publication  
in Summer 2020 – exact date to be confirmed



1. These Standards set out how the Independent National Whistleblowing Officer (INWO) expects all NHS service providers to handle concerns that are raised with them and which meet the definition of a 'whistleblowing concern'.
2. The Standards are underpinned by a suite of supporting documents, which provide instructions on how the INWO expects concerns to be handled. Together these documents form a framework for the delivery of the National Whistleblowing Standards. A comprehensive list of the documents is provided on pages 5 and 6.
3. The Standards consist of:

### **3.1. Whistleblowing principles**

- 3.1.1. These underpin the approach that must be taken to handling any concerns raised by staff or those working in NHS services; and
- 3.1.2. They include definitions of whistleblowing and whistleblower (see Part 1).

### **3.2. Procedure overview**

- 3.2.1. This provides definitions and an explanation of what is a whistleblowing concern, who can raise a concern, and a brief description of the procedure for handling these concerns (see Part 2).

### **3.3. Supporting information**

- 3.3.1. This sets out how the INWO expects the procedure to be applied, together with the governance arrangements that must be in place (see Parts 3-10).

4. The aim is to provide a suite of documents and guidance which enable you to refer readily to the parts you most often use. The table of contents on pages 5 and 6 of this document gives an overview of what each document contains.
5. These Standards are applicable across **all NHS services**. This means they must be accessible to **anyone** working to deliver an NHS service, whether directly or indirectly. This includes current (and former) employees, bank and agency workers, contractors (including third sector providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NHS staff, such as those in health and social care partnerships. Specific instructions are provided for:
  - 5.1. NHS service providers (both primary care services and contracted services):
    - 5.1.1. Part 7 sets out what the INWO expects of these providers and how this should be achieved.

- 5.2. Health and social care partnerships (HSCPs):
  - 5.2.1. Part 8 sets out expectations in relation to joint working arrangements between local authority and NHS staff.
- 5.3. Organisations involved in providing student and trainee placements:
  - 5.3.1. Part 9 sets out expectations relating to students and trainees raising concerns.
- 5.4. Arrangements for volunteers:
  - 5.4.1. Part 10 sets out how volunteers should be given access to these Standards.
- 6. To ensure effective leadership and oversight, the INWO has developed governance requirements for boards, both in relation to their own internal processes (Parts 4 and 5) and in relation to management of their primary care and other contractual services (Part 6).
- 7. Further information about the INWO and additional resources for implementation of the Standards will be available on [www.inwo.org.uk](http://www.inwo.org.uk).
- 8. It is anticipated that the Standards will be reviewed three years after implementation, to identify any potential improvements or amendments.
- 9. Text marked in [square brackets] indicates a link or development that will be available in the final version of the Standards, but which is still currently under development.

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# Part 1

# Whistleblowing principles

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# Whistleblowing principles for the NHS

These principles underpin how NHS services **must** approach concerns that are raised by staff, students and volunteers about health services.

An effective procedure for raising concerns (whistleblowing) is:

1. **open**
2. **focused on improvement**
3. **objective, impartial and fair**
4. **accessible**
5. **supportive to people who raise a concern and all people involved in the procedure**
6. **simple and timely, and**
7. **thorough, proportionate and consistent.**

## 1. Open

- 1.1. Handle concerns **openly and transparently** throughout the process. At the same time, recognise and respect that everyone involved has the right to confidentiality.
- 1.2. Have clear governance arrangements that make sure someone is accountable for putting in place the procedure for raising concerns, and for monitoring and reviewing that procedure.
- 1.3. Following an investigation, make sure that any **lessons learned are shared** locally and more widely across the organisation. This should include telling people what improvements have been made as a result of the investigation.

## 2. Focused on improvement

- 2.1. Actively encourage staff, students and volunteers to report any concerns about patient safety or malpractice. Encourage them to do this as part of their day-to-day work, even before the start of any formal procedure.
- 2.2. The procedure for raising concerns should reflect and promote excellence in providing services.
- 2.3. Use the outcomes of concerns to identify and demonstrate **learning and improvement** and share best practice, both in providing services and in the procedure itself.
- 2.4. Have systems in place to make sure all reported whistleblowing concerns are investigated quickly and appropriately, and to monitor how they are handled.
- 2.5. Use information from cases where concerns have been raised to:
  - guide the organisation's performance, targets and standards; and
  - identify trends and highlight problems, with the overall purpose of **continuously improving** the way services are provided and concerns are handled.



### 3. Objective, impartial and fair

- 3.1. Procedures for raising concerns should be objective, based on evidence and driven by the facts and circumstances. They should not be based on assumptions. This should be clearly demonstrated.
- 3.2. Gather relevant facts and confirm these in an **objective, confidential and sensitive** way.
- 3.3. Staff investigating concerns should be **impartial, independent and accountable**. They must not be involved in investigations where they have a conflict of interest, or may be seen to have a conflict of interest.
- 3.4. Procedures for raising concerns should be **fair** to the person raising the concern, people investigating concerns, and anyone else involved in the investigation.

### 4. Accessible

- 4.1. Communicate the procedures for raising concerns **clearly**. The procedures should be **easy to understand and accessible to everyone**.
- 4.2. Senior staff must welcome concerns and make sure they are handled by people who have the appropriate skills and knowledge to investigate the concern and are authorised to take action.
- 4.3. Make sure the National Whistleblowing Standards and the organisation's procedures for raising concerns are well-publicised.

- 4.4. Procedures for raising concerns should be written in plain, clear language. Avoid jargon and technical terminology as far as possible. If you need to use technical terms, make sure they are explained. Procedures should be **clear to all staff** and **there should be no doubt about how whistleblowing and whistleblowers are supported**.

### 5. Supportive to people who raise a concern and all staff involved in the procedure

- 5.1. **Offer support and protection** to all staff, students and volunteers who raise a concern or who are directly involved in a concern, at all stages of the process.
- 5.2. When someone raises a concern, listen to them, support them, treat them with dignity and respect, and be sensitive and professional.
- 5.3. Offer alternative methods to people who may not want to raise concerns with their line manager. This should include access to a confidential and impartial contact.
- 5.4. As far as the law allows, respect the **confidentiality** of any person who raises a concern, unless they agree that you do not have to.
- 5.5. Make staff, students and volunteers aware of all forms of support and guidance that are available to people involved in whistleblowing.

- 5.6. People who raise a concern must not be victimised or suffer detrimental treatment as a result of raising a concern. This includes bullying and harassment, inappropriate use of policies, breaking the terms of their contract, financial loss and reputational or professional damage.

## 6. Simple and timely

- 6.1. Procedures for raising concerns should keep to the National Whistleblowing Standards.
- 6.2. Timescales should be clearly published and met wherever possible.
- 6.3. Investigations into a reported concern should be thorough. In particularly complex cases this may mean it is not possible to keep to published timescales. If timescales are not met for a good reason, tell the person who raised the concern (and any other relevant person) the reason, and give them a revised timescale for completing the investigation.

## 7. Thorough, proportionate and consistent

- 7.1. Procedures for raising concerns should provide **good-quality outcomes** through a thorough but proportionate investigation.
- 7.2. There should be detailed, well-publicised quality standards for handling concerns, and these should be supported by a clear explanation of what action will be taken if the standards are not met.
- 7.3. Investigation methods and approaches to handling concerns should be **thorough and consistent, but proportionate and appropriate** to the circumstances of the case.
- 7.4. All concerns should be treated seriously.
- 7.5. Findings and conclusions should be based on analysing evidence and weighing up the facts and circumstances. Decisions should explain your reasons and show clearly how findings and conclusions were used.
- 7.6. The outcomes of investigations should be appropriate to the findings, and should set out what actions will be taken, or have been taken, to put things right or improve practice.



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## **Part 2**

# **The procedure and when to use it**

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# Definitions

## What is whistleblowing?

1. **Whistleblowing** is defined in the Public Services Reform (the Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 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 in 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.*
2. This includes an issue that:
  - 2.1. has happened, is happening or is likely to happen; and
  - 2.2. affects the public, other staff or the NHS provider (the organisation) itself.
3. People also often 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.
4. Risks can relate to a wrongdoing, patient safety or malpractice which the organisation oversees or is responsible or accountable for. In a health setting, these concerns could include, for example:
  - 4.1. patient-safety issues;
  - 4.2. patient-care issues;
  - 4.3. poor practice;
  - 4.4. unsafe working conditions;
  - 4.5. fraud (theft, corruption, bribery or embezzlement);
  - 4.6. changing or falsifying information about performance;
  - 4.7. breaking any legal obligation;
  - 4.8. abusing authority; or
  - 4.9. deliberately trying to cover up any of the above.
5. A whistleblowing concern is different to a grievance. A grievance is typically a personal complaint about an individual's own employment situation. There is more information about raising concerns and bullying and harassment in Annex B.
6. Healthcare professionals may have a professional duty to report concerns. Managers and all staff (including students and volunteers) must be aware of this, as it can affect how and when concerns are raised. However, the processes for handling concerns should be the same for any concern raised.

## Who can raise a concern?

7. **Anyone** who provides services for the NHS can raise a concern, including current (and former) employees, agency workers (and others on short or insecure contracts such as locums and bank staff), contractors (including third-sector service providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NHS staff, such as those in health and social-care partnerships. A person raising a concern has usually witnessed an event, but they may have no direct personal involvement in the issue they are raising.
8. If the person does not want to use this procedure, see the section on confidentiality at paragraph 58 for more information.
9. More than one person can raise the same concern, either individually or together. Anyone receiving a concern must make sure they understand who wants to achieve what, and whether everyone wants to be kept informed and updated on the progress of any investigation.
10. It is important for everyone involved in this procedure to be aware that some people may feel at greater risk than others as a result of raising a concern. For example:
  - 10.1. employees whose employment may be less secure, such as agency staff or those who need a visa to work in the UK;
  - 10.2. students and others who are due to be assessed on their work; or
  - 10.3. people from any of the recognised equalities groups.
11. Some people may consider themselves to be more likely to be treated unfairly as a result of raising a concern, particularly if they are in more than one of the above groups. It is particularly important to make sure people are aware of the support available through this procedure, and that any concerns they raise are treated seriously.
12. If the person is raising a concern about a service that is not their employer, for example, a district nurse working in a GP service, a locum pharmacist working for an agency, or a care assistant working within an HSCP service, they must be able to raise concerns either direct with their employer or within the service itself, and they must have full access to the National Whistleblowing Standards (these Standards).

## How to raise a concern

13. These Standards are designed to work with, not repeat or replicate, NHS processes and procedures that staff use every day to report what is happening in local areas. These processes and procedures are called 'business as usual' in the Standards.
14. People may report or mention issues through business as usual processes which could meet the whistleblowing definition. To avoid duplication and confusion, the procedure set out in these Standards should normally only be used if:
  - 14.1. no other procedure or processes are being used;
  - 14.2. an existing procedure or process has been used but has not resulted in the outcome the person raising the concern expected; or
  - 14.3. the person asks for the whistleblowing procedure to be used.
15. See below for more information about moving from business as usual to this procedure for raising concerns.
16. People should raise concerns within six months of first becoming aware of the issue the concern relates to. For more information on this, see Part 3 of the Standards.

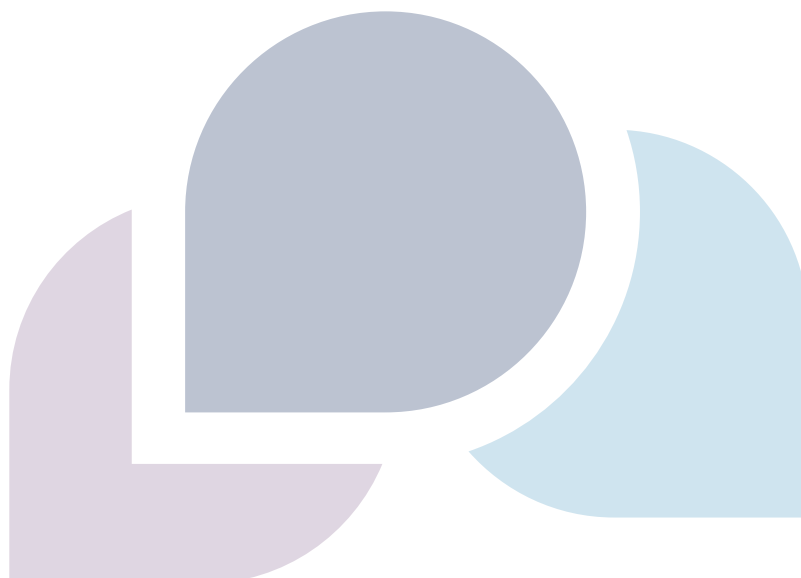
## Support and protection through the procedure

17. Nobody should be treated unfairly as a result of raising a concern, having a whistleblowing allegation made against them, or co-operating with any investigation. If staff are victimised as a result of being involved in a whistleblowing case, this must be treated as a disciplinary matter.

## Support for the person raising a concern

18. It can be stressful and isolating to raise a concern, but when someone does raise a concern, they are trusting the organisation and giving it an opportunity to put right a wrongdoing or reduce risk. The organisation must repay this trust by protecting the person throughout the process and making sure they do not suffer any harm as a result of speaking up.
19. Anyone receiving a concern must:
  - 19.1. thank the person for raising the concern;
  - 19.2. listen to them carefully;
  - 19.3. take the concern seriously; and
  - 19.4. reassure them that:
    - the concern will be handled sensitively;
    - they have done the right thing by raising the concern; and
    - they will not be treated badly, even if no risks are identified.

20. In some cases, it will be enough to thank the person raising the concern, and provide regular feedback on any resulting investigation. In other cases, the person may need more specialist support. Anyone receiving concerns must ask what support the person raising the matter may need and how this can be provided, when they first raise the concern. If support needs are identified, the appropriate resources must be provided wherever possible, and the person must be given contact details for support providers.
21. The support that is available may include:
  - 21.1. access to a confidential contact who can provide information and advice on the procedure for raising concerns, as well as support during the process;
  - 21.2. counselling or psychological support services for people suffering from stress because they are involved in this procedure;
  - 21.3. occupational health services which take account of the stress involved in raising a concern; and
  - 21.4. considering, with the person who has raised a concern, a range of actions to reduce any consequences they are facing (or think they may face) as a result of raising the concern. These actions may include making changes at work or putting in place temporary arrangements to reduce risk.
22. Anyone raising a concern may want to have someone to support them at meetings, or throughout the process. This could be a union representative, friend or colleague. If it is a friend, relative or colleague, their role is to support the person raising the concern rather than to represent them or respond on their behalf. Union representatives can be more involved in discussions, although it is best if the person raising the concern openly shares the information they have. It is worth noting that the person providing support may also face some risks through being involved in the process. The person the concern was raised with should discuss this with them, and provide appropriate support.



## Employer's duty of care

23. Employers have a duty of care to their employees and must take all reasonable steps to protect their health, safety and well-being. 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.
24. Under their duty of care, employers may have to:
  - 24.1. ensure, so far as is reasonably practicable, a safe work environment; and
  - 24.2. provide adequate training so that employees can safely carry out their designated role.
25. Employees also have a responsibility to take reasonable care for their own health and safety at work. For example, they should be able to refuse to do work that would be unsafe for them, without fearing disciplinary action. An employee also has a duty to take reasonable care for the health and safety of other employees who may be affected by their acts or omissions at work.
26. In the context of raising concerns, this means that the organisation should have systems in place to protect anyone who raises a concern from detriment.
27. If it becomes clear that a person who has raised a concern is being (or may be) treated unfairly or victimised, managers must take action. This may include informal action or formal disciplinary procedures. In most cases, removing the person who has raised a

concern from their workplace, either by relocating or suspending them, is not an appropriate response, as this reinforces the attitude that it is risky to raise concerns and shows that the organisation does not support people to speak up.

## Legal protection for those raising concerns

28. The Public Interest Disclosure Act 1998 (PIDA) is often called the 'whistleblowing law'. It is there to protect all 'workers' (as defined in the Employment Rights Act 1996 - this classification is broader than, but includes all employees), who have made a 'protected disclosure' from being treated unfairly as a result of raising a concern. Protection against discrimination on the grounds of being a whistleblower, or appearing to be a whistleblower, is also given to applicants for work with some NHS employers (including NHS boards).
29. A concern is considered a 'protected disclosure' when it meets this legal test: the person raising it must **reasonably believe** that it is in the public interest to raise a concern, and that the information available shows that the following has happened, is happening or is likely to happen. For example:
  - 29.1. a criminal offence
  - 29.2. an act that creates a risk to health and safety
  - 29.3. an act that damages the environment
  - 29.4. a miscarriage of justice
  - 29.5. a breach of any other legal obligation not being met
  - 29.6. concealment of any of the above being covered up

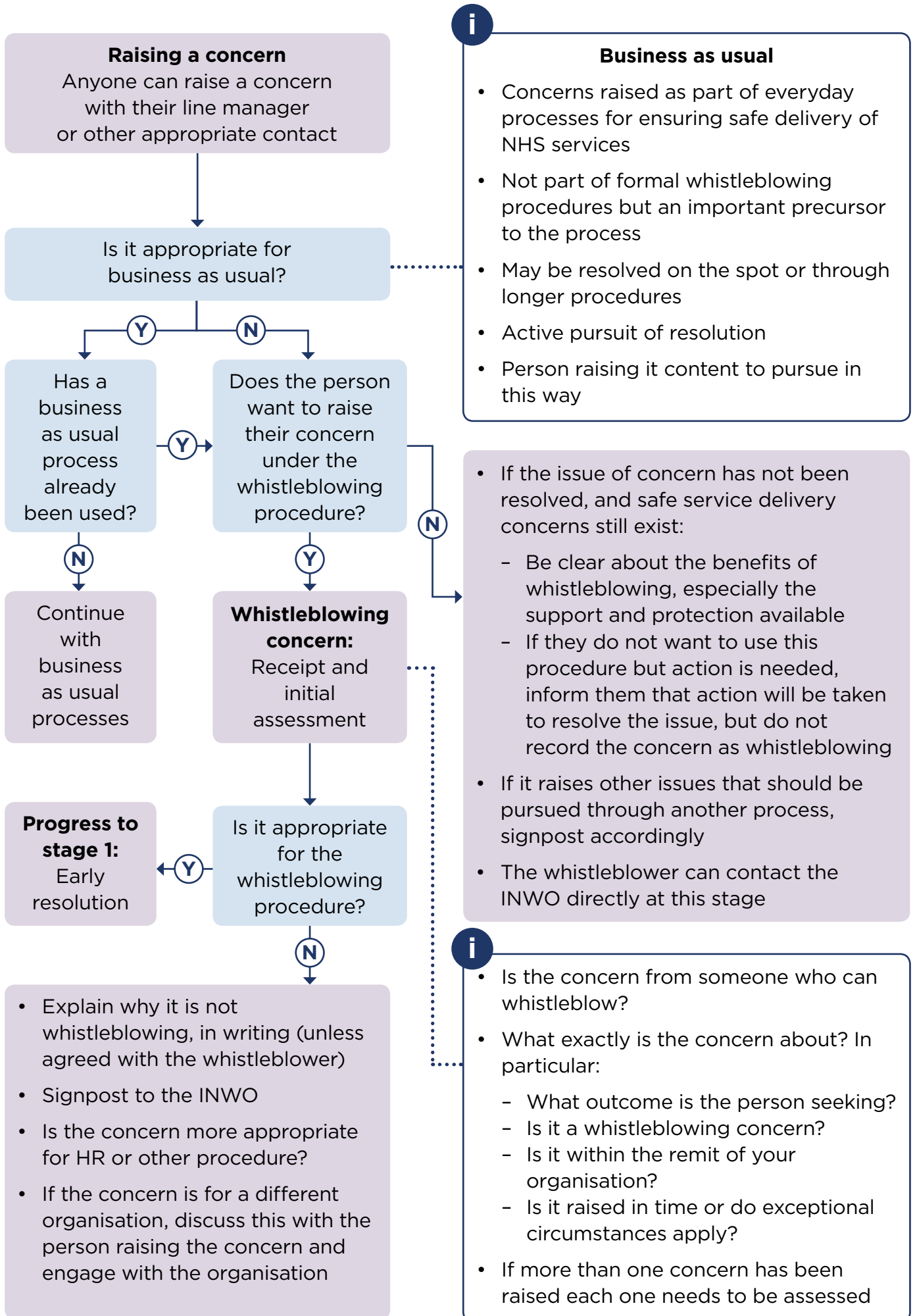


30. A full list is available in the legislation here: <http://www.legislation.gov.uk/ukpga/1998/23/section/1>
31. It is important to note that making a 'protected disclosure' does not mean that the concern must be raised or investigated in a certain way. It provides legal protection for workers who suffer detriment **after** raising concerns. If a worker is unfairly dismissed or treated unfairly as a result of raising a concern, they can claim compensation under PIDA at an employment tribunal.
32. PIDA encourages workers to make the 'protected disclosure' to their employer first, if possible. However, this is not essential as it recognises 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 lists the 'prescribed persons' with whom workers can raise a concern with, beyond their own employer, and still have their employment protected.
33. The Independent National Whistleblowing Officer (INWO) [is being added] to the list of organisations, so NHS employees [will be] able to raise their concerns direct. The INWO will approach each case on the basis that it is better for the organisation involved to identify the learning and improvements that are needed. However, they can agree to accept concerns direct if they do not feel it is reasonable to expect the person to use their employer's whistleblowing procedure. They will decide whether to do this case by case, but could take into account, for example, whether the organisation is very small or the issue involves very senior staff. In limited circumstances the INWO may be able to help make sure concerns are dealt with appropriately. This may include monitoring the progress of an investigation.

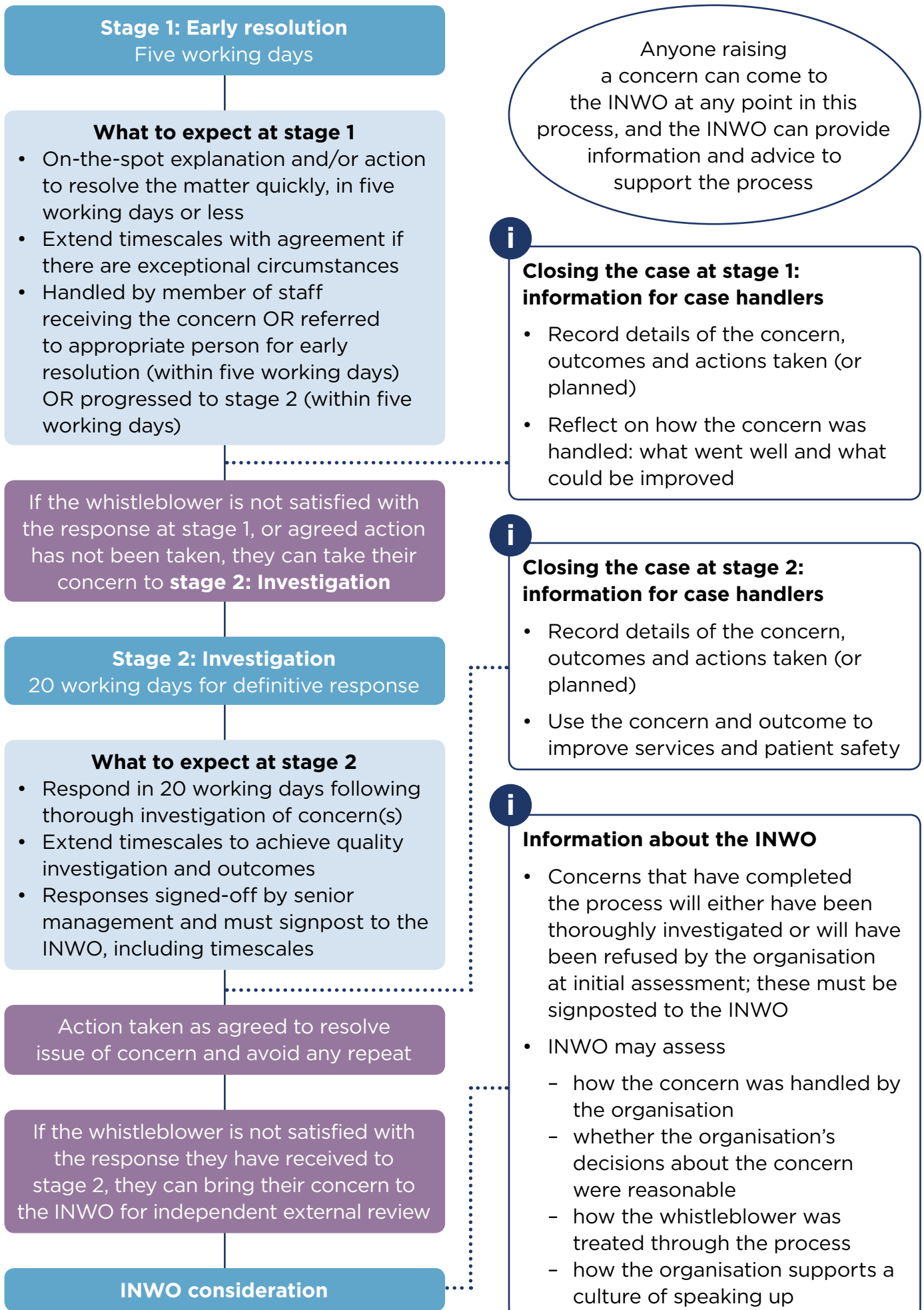
## Overview of the procedure for raising concerns

34. The procedure for raising concerns aims to provide a quick, simple and streamlined process for making sure concerns are dealt with early and locally by capable, well-trained staff. It also includes actions to make sure people who raise a concern receive any support they may need, so that the process allows people to share information safely.
35. This overview summarises the main points, and provides further information to explain each stage.

# Accessing the Standards



## Stage 1 and 2 overview



36. NHS boards and other NHS service providers must have arrangements in place to make sure the organisation supports people who raise a concern, takes all appropriate actions, and records and regularly reports on these concerns. They must also show they have learnt from any concerns that have been raised by putting in place service improvements, and share this learning with their staff and stakeholders.
- 39.1. reporting short staffing on DATIX (a system used for recording a range of incidents and reports by NHS boards), and action being taken to deal with this;
- 39.2. raising an issue during a team meeting or handover, leading to an investigation or action (or both); or
- 39.3. an issue being investigated through an existing safe-practice review or audit.

## Initial actions

37. All concerns are important to the organisation, and must be acted on to provide safe and effective care and treatment.
38. The *Accessing the Standards* flow diagram above works through whether a concern is appropriate for this procedure. The section below gives more information about how to make that decision.
40. It's not possible for these Standards to apply to every action that is taken through business as usual processes. These Standards will only apply if the person raising the concern asks for it to be handled under this procedure.
41. However, people who raise a concern should not necessarily need to know these Standards. Managers should identify issues which would be appropriate to handle under these Standards, and tell the person about the procedure. This might apply, for example, 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.

## Raising concerns through existing processes (business as usual)

39. 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. This is '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. Some examples would be:
  42. Organisations should have service standards in place for their various business as usual processes. 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.

## Who to raise a concern with

43. There should always be several options for raising concerns.
  - 43.1. people can raise a concern with their line manager or team leader;
  - 43.2. they can raise their concern with a more senior manager if circumstances mean this is more appropriate;
  - 43.3. organisations should have a confidential contact that people can raise concerns with (in some places there may also be speak-up ambassadors or advocates);
  - 43.4. large organisations should also provide a single phone number and email address for raising concerns.
44. Whoever receives it, each concern must be taken seriously and handled in line with the Standards.
45. 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 an independent service with which the organisation has a contract.
46. Each board must have clear arrangements in place so people know who to approach if they have any concerns about senior management or board members (see Part 4 of the Standards). These arrangements must be agreed with the whistleblowing champion, and must be available to staff, including through their confidential contact.
47. Anyone who wants to raise a concern about senior management must be able to discuss the most appropriate course of action with the board's confidential contact or other speak-up representative. They will be able to suggest the appropriate action to take, or pass on the concern, based on their assessment of the situation and the approach the person would prefer to take.
48. The arrangements within primary care (see Part 7 of the Standards), and for students (see Part 9) and volunteers (see Part 10), may be slightly different.
49. Concerns about fraud within the NHS can be raised directly with NHS Counter Fraud Services (CFS). There is more information about this service at <https://cfs.scot.nhs.uk/>. However, if someone with a concern about fraud wants to ensure access to these Standards they should first raise it with their confidential contact, or other appropriate manager. Details of any potential fraud must be passed onto the board's fraud liaison officer within two working days (in line with existing arrangements between the CFS and NHS boards). The fraud liaison officer will pass on these concerns to NHS CFS.

## Getting information or advice

50. Information and advice about what options are available, whether it is appropriate to deal with a concern under this procedure, or what to expect, are available from:
- 50.1. National Alert Line (phone 0800 008 6112 or email [alertline@protect-advice.org.uk](mailto:alertline@protect-advice.org.uk));
  - 50.2. the board's confidential contact for raising concerns or other speak-up representative;
  - 50.3. the INWO (they can provide information and advice about how a concern should be handled, and can provide support through the process);
  - 50.4. union representatives;
  - 50.5. professional bodies;
  - 50.6. university representatives (for students);
  - 50.7. NHS Education Scotland (for trainee doctors and dentists); and
  - 50.8. volunteer coordinators (for volunteers)
51. Anyone raising a concern may also be able to get support from other organisations, such as:
- their employer's occupational health service;
  - employee assistance programme;
  - chaplaincy services; and
  - Whistleblowers UK.
52. See Annex A for contact details for several relevant agencies.

## Initial discussion

53. Once a concern has been raised (in writing, in person or by phone), there needs to be some discussion about whether the concern can be handled under this procedure. This should include:
- 53.1. considering whether the issue fits the definition of a concern suitable for this procedure;
  - 53.2. considering whether the issue is being handled through business as usual;
  - 53.3. considering whether the person **wants** the issue to be handled through this procedure, and receive the support and protection that is available through it;
  - 53.4. directing the person to any other appropriate procedures (for example, HR procedures);
  - 53.5. considering issues relating to confidentiality; and
  - 53.6. considering what support would be helpful for the person.
54. If the person does not want to use this procedure, they can raise their concern without giving their name (see the section on anonymous and unnamed concerns below). The organisation can choose how to investigate the concern, but good practice would be to follow the whistleblowing principles, and investigate the concern in line with the Standards, particularly if existing business as usual procedures have not been able to deal with the issue successfully.

55. If the organisation decides a concern cannot be handled under this procedure (for some or all of the issues raised), even if the person raising the concern has asked for this procedure to be used, it must record this decision and tell the person how to refer the matter to the INWO. Both sides must agree whether a written response is needed, and this agreement must also be recorded. If possible, the organisation should tell the person face-to-face or over the phone that it won't be following this procedure. It is important to record full and accurate details of the decision not to consider the concern through this procedure, and to make sure that the person understands this decision. If there is information that the organisation cannot share with the person, it should explain why.
56. If the organisation is not responsible for the issue of concern, the person receiving the concern should signpost to the appropriate organisation, or contact the INWO directly to make sure the concern is passed on and acted on appropriately. Remember to keep the person's details confidential.

## Immediate threat to safety

57. If someone raises a concern that needs immediate action to avoid any further risk to patient safety, **action must be taken**. This is likely to involve referring the matter to an appropriate senior manager, but it will depend on the situation. The person raising the concern must also be told that this will happen, and why. Any confidentiality concerns must be taken into account and discussions should cover all the same issues as the initial discussion (above).

## Confidentiality and anonymity

58. **Confidentiality** refers to the requirement not to disclose information about the person raising a concern, unless the law says that it can or must be disclosed. This includes anyone else involved in the process, such as other witnesses.
59. **Anonymity** refers to a situation when nobody knows the identity of the member of staff who raised the concern.

## Confidentiality and data protection

60. Confidentiality **must** be maintained as far as possible in all aspects of the procedure for raising concerns. Staff need to know that their identity will not be shared with anyone other than the people they have agreed can know it, unless the law says that it can or must be. **The name of the person raising the concern must not be routinely or automatically shared at any point, either during the investigation or afterwards.** There are, however, times when information about the person raising a concern will become clear to others, or when it will be necessary to share this information in order to put things right or continue with an investigation.
61. It is important that all aspects of confidentiality are discussed when the person first raises the concern, as not doing so may lead to the organisation breaking data-protection law. The person should be given clear information by the person

that is applying the Standards and processing their personal data (or personal information) about what might or will happen to this data and about the lawful basis for processing it.

62. The discussion should include:

- 62.1. recording the concern, and who will have access to this information;
- 62.2. who the concern will be shared with and why;
- 62.3. who the person raising the concern is happy for their identity to be shared with, and in what circumstances;
- 62.4. who else might need to know their identity and why;
- 62.5. if there is a high risk that their identity could become clear to others, are there ways of reducing that risk; and
- 62.6. what action could be taken to limit the number of people who are made aware of the concern, while still taking appropriate action.

63. It is important that all of the issues raised in the investigation are treated confidentially unless there is a lawful basis or requirement for sharing information with others.

64. To protect the identity of the person raising the concern, managers and clinical leads should look for ways to investigate the concern without making others suspicious. For example, making the investigation appear like carrying out business as usual or a random spot check.

65. There is more information in Part 5 of the Standards – *Governance*:


*from recording to learning lessons, on the organisation’s responsibilities in relation to data protection and information sharing.*

## Anonymous and unnamed concerns

66. An anonymous concern is one that has been shared with the organisation in such a way that **nobody** knows who provided the information.
67. Alternatively, someone may raise a concern with the organisation but not be willing to have their name or personal details recorded. This is known as an ‘unnamed concern’ (someone is aware of their identity, so it is not completely anonymous).
68. While the organisation must respect the person’s request for their concern to be unnamed, it must also make it clear to the person that if their name is not recorded, their concern **cannot** be handled under the Standards and they cannot refer the matter to the INWO.
69. The organisation should make it clear to all staff that they will not have the same level of protection if they raise an anonymous or unnamed concern as they would if their details were shared and recorded confidentially. Raising an anonymous or unnamed concern limits:
  - 69.1. the legal protections available to the person raising it;
  - 69.2. the organisation’s ability to provide feedback and offer support; and
  - 69.3. the person’s ability to ask the INWO to consider the matter.



## The difference between a grievance and a concern

70. If other staff guess the identity of the person who has raised concerns, that person may be at risk of unfair treatment if they don't have the protection or support these Standards provide.
  71. Raising an anonymous or unnamed concern may also mean the concern cannot be investigated and handled effectively, as there may be significant gaps in the information needed for the investigation.
  72. If an anonymous or unnamed concern is raised, managers should record as much information as possible and carry out an appropriate investigation. The organisation can choose how to investigate the concern, and sometimes will need to take immediate action to reduce risks. Good practice would be to follow the whistleblowing principles and investigate the concern in line with the Standards, particularly if existing business as usual procedures have already been attempted.
  73. Although it is good practice, the organisation is not **required** to follow these Standards.
74. A person raising a concern is usually a witness and may have no direct personal 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.
  75. When a person raises a grievance or makes an allegation about being subject to bullying or harassment, this relates to their own employment situation, employment rights or how **they** have been treated.
  76. Examples of a grievance include if the person:
    - 76.1. is not satisfied with their pay and working conditions;
    - 76.2. disagrees with their terms of employment or workplace rules;
    - 76.3. claims they are being treated unfairly at work;
    - 76.4. claims they are being bullied or harassed; or
    - 76.5. has a disagreement with a colleague.
  77. See Annex B for examples of whistleblowing, grievances or bullying and harassment.
  78. Sometimes a person may raise issues which contain both whistleblowing and grievance concerns. These issues need to be dealt with separately through the appropriate policies or procedures.
- 

79. **If someone raises a combination of grievance and whistleblowing issues, the organisation must discuss all their concerns with them, and must tell them about all the options available to them, including services that may be able to support them.**

80. If a concern of public interest or patient safety is raised through a grievance procedure, the organisation must ask the person if they want the concern to be raised through these Standards, with the protection they provide.

81. Issues relating to employment rights may also have a wider public interest (for example, if poor working conditions are having a damaging effect on the service provided). If it is not clear whether an issue is a grievance or a whistleblowing concern, the manager (or confidential contact) should find out what the person raising the concern wants to achieve (for example, a solution for them personally or a solution for patients, the organisation or the public). It may be that, whatever outcome the person is hoping for, in the interests of providing a safe service, the public interest issue needs to be considered and investigated. The concern **must not** be recorded as whistleblowing if the person raising it does not want it to be.

## Claims of unfair treatment

82. If someone raises a concern and, at the same time, claims they have been treated unfairly as a result of raising this concern through business as usual, the initial discussion must identify what outcomes the person would like to achieve. The organisation must also direct them to any appropriate HR procedures to make sure this can be handled appropriately. It is also particularly important to make sure appropriate support is in place to prevent any further unfair treatment. If the organisation does not do this, it would be failing to meet its duty of care to its employee.

## Concerns raised maliciously

83. Every concern should be considered fully and properly, whatever others may say about why it has been raised. However, if a full investigation reveals that a concern was knowingly based on inaccurate information in order to create difficulties for a colleague, the organisation should take appropriate disciplinary action against the person who raised the concern.

# Annex A: Contact details for support agencies, regulators and professional bodies

## Allied Health Professions Federation

Phone: 0131 226 5250  
Email: [admin.ahpfs@ahpf.org.uk](mailto:admin.ahpfs@ahpf.org.uk)  
Website: [www.ahpf.org.uk/Contact.htm](http://www.ahpf.org.uk/Contact.htm)

## British Dental Association

Phone: 01786 476040  
Email: [enquiries@bda.org](mailto:enquiries@bda.org)  
Website: [www.bda.org/contact-us](http://www.bda.org/contact-us)

## British Medical Association

Phone: 0300 123 1233  
Website: [www.bma.org.uk/contact-bma](http://www.bma.org.uk/contact-bma)

## Care Inspectorate

Phone: 0345 600 9527  
Email: [enquiries@careinspectorate.com](mailto:enquiries@careinspectorate.com)  
Website: [www.careinspectorate.com/index.php/contact-us](http://www.careinspectorate.com/index.php/contact-us)

## Dental Defence Union

Phone: 0800 374 626  
Website: [www.theddu.com/](http://www.theddu.com/)

## General Dental Council (currently unable to provide support to their registrants)

Phone: 020 7167 6000  
Website: [www.gdc-uk.org/contact-us](http://www.gdc-uk.org/contact-us)

## General Medical Council (currently unable to provide support to their registrants)

Phone: 0161 923 6602  
Email: [gmc@gmc-uk.org](mailto:gmc@gmc-uk.org)  
Website: [www.gmc-uk.org/contact-us](http://www.gmc-uk.org/contact-us)

## General Pharmaceutical Council

Phone: 020 3713 8000  
Website: [www.pharmacyregulation.org/](http://www.pharmacyregulation.org/)

## General Optical Council

Phone: 020 7580 3898  
Website: [www.optical.org/](http://www.optical.org/)

## Health and Care Professions Council

Phone: 0300 500 6184  
Website: [www.hcpc-uk.org/contact-us/](http://www.hcpc-uk.org/contact-us/)

## Healthcare Improvement Scotland

Phone: 0131 623 4602  
Email: [hcis.respondingtoconcerns@nhs.net](mailto:hcis.respondingtoconcerns@nhs.net)  
Website: [www.healthcareimprovement.scotland.org/our\\_work/governance\\_and\\_assurance/responding\\_to\\_concerns.aspx](http://www.healthcareimprovement.scotland.org/our_work/governance_and_assurance/responding_to_concerns.aspx)

## Medical and Dental Defence Union of Scotland

Phone: 0333 043 444  
Website: [www.mddus.com/](http://www.mddus.com/)

## Medical Defence Union

Phone: 0800 716 646  
Website: [www.themdu.com/](http://www.themdu.com/)

## Medical Protection Society

Phone: 0800 136 759  
Website: [www.medicalprotection.org/uk/home](http://www.medicalprotection.org/uk/home)

## Mental Welfare Commission for Scotland

Phone: 0131 313 8777  
Email: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)  
Website: [www.mwscot.org.uk/contact-us](http://www.mwscot.org.uk/contact-us)

## NHS Education Scotland

Phone: 0131 656 3200  
Website: [www.nes.scot.nhs.uk/contact-us.aspx](http://www.nes.scot.nhs.uk/contact-us.aspx)

## NHS Scotland Confidential Alert Line

Phone: 0800 0086112  
Email: [alertline@protect-advice.org.uk](mailto:alertline@protect-advice.org.uk)

## NHS Scotland Counter Fraud Services

Phone: 01506 705200  
Website: [www.cfs.scot.nhs.uk/contact-us.aspx](http://www.cfs.scot.nhs.uk/contact-us.aspx)

**Nursing and Midwifery Council**

Phone: 020 7637 7181

Website: [www.nmc.org.uk/contact-us/](http://www.nmc.org.uk/contact-us/)

**Optometry Scotland**

Phone: 0141 202 0610

Email: [info@optometriscotland.org.uk](mailto:info@optometriscotland.org.uk)

Website: [www.optometriscotland.org.uk/contact-us/contact-us](http://www.optometriscotland.org.uk/contact-us/contact-us)

**Office Of The Uk Information Commissioner – Scotland**

Phone: 0303 123 1115

Email: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

Website: [www.ico.org](http://www.ico.org)

**Protect**

Phone: 020 7404 6609

Website: [www.protect-advice.org.uk/contact-us/](http://www.protect-advice.org.uk/contact-us/)

Email: [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk)

**Royal College of Nursing Scotland**

Phone: 0345 772 6100

Website: [www.rcn.org.uk/scotland/about/contact](http://www.rcn.org.uk/scotland/about/contact)

**Royal College of Anaesthetists**

Phone: 020 7092 1500

Website: [www.rcoa.ac.uk/](http://www.rcoa.ac.uk/)

**Royal College of Emergency Medicine**

Phone: 020 7404 1999

Website: [www.rcem.ac.uk/](http://www.rcem.ac.uk/)

**Royal College of General Practitioners**

Phone: 020 3188 7400

Website: [www.rcgp.org.uk/](http://www.rcgp.org.uk/)

**Royal College of Obstetricians and Gynaecology**

Phone; 020 7772 6200

Website: [www.rcog.org.uk/](http://www.rcog.org.uk/)

**Royal College of Ophthalmologists**

Website: [www.rcophth.ac.uk/](http://www.rcophth.ac.uk/)

**Royal College of Paediatrics and Child Health**

Phone: 020 7092 6000

Website: [www.rcpch.ac.uk/](http://www.rcpch.ac.uk/)

**Royal College of Pathologists**

Phone: 020 7451 6700

Website: [www.rcpath.org/](http://www.rcpath.org/)

**Royal College of Physicians of Edinburgh**

Website: [www.rcpe.ac.uk/](http://www.rcpe.ac.uk/)

**Royal College of Physicians and surgeons of Glasgow**

Phone: 0141 221 6072

Website: [www.rcpsg.ac.uk/](http://www.rcpsg.ac.uk/)

**Royal College of Psychiatrists**

Phone: 020 7235 2351

Website: [www.rcpsych.ac.uk/](http://www.rcpsych.ac.uk/)

**Royal College of Radiologists**

Phone: 020 7405 1282

Website: [www.rcr.ac.uk/](http://www.rcr.ac.uk/)

**Royal College of Surgeons of Edinburgh**

Phone: 0131 527 1600

Website: [www.rcsed.ac.uk/](http://www.rcsed.ac.uk/)

**Royal Pharmaceutical Society**

Phone: 0131 556 4386

Website: [www.rpharms.com/about-us/contact-us](http://www.rpharms.com/about-us/contact-us)

**Scotland Deanery**

Phone: 0131 65 3200

Website: [www.scotlanddeanery.nhs.scot/contact/](http://www.scotlanddeanery.nhs.scot/contact/)

**Scottish Social Services Council**

Phone: 0345 60 30 891

Website: [www.sssc.uk.com/contact-us/](http://www.sssc.uk.com/contact-us/)

## Annex B: Examples to help to distinguish between whistleblowing and a grievance or bullying and harassment issues

The following examples will help with deciding if the issue raised should be handled under this procedure or under the grievance or bullying and harassment procedure.

Whistleblowing	Grievance or bullying and harassment
<b>Key test:</b> The issue is in the public interest.	<b>Key test:</b> The issue relates solely to an individual and so is a matter of personal interest.
<b>Examples</b>	<b>Examples</b>
Management persistently pressurises the team into dangerous overtime conditions.	I haven't been granted my flexible-working request.
A person's dangerous working practices are leading to the risk of a serious incident.	I have been inappropriately shouted at by a senior manager in relation to an action that I took at work.
Working practices or actions may be a risk to others. [Note: Or it is suspected that there is something inappropriate happening in an area which could be a risk to the public, but there is not substantial evidence.]	I am not happy with the way my manager spoke to me when they discovered I was not following the correct health and safety procedures.





**INDEPENDENT  
NATIONAL  
WHISTLEBLOWING  
OFFICER**

**People Centred | Improvement Focused**

The National Whistleblowing Standards

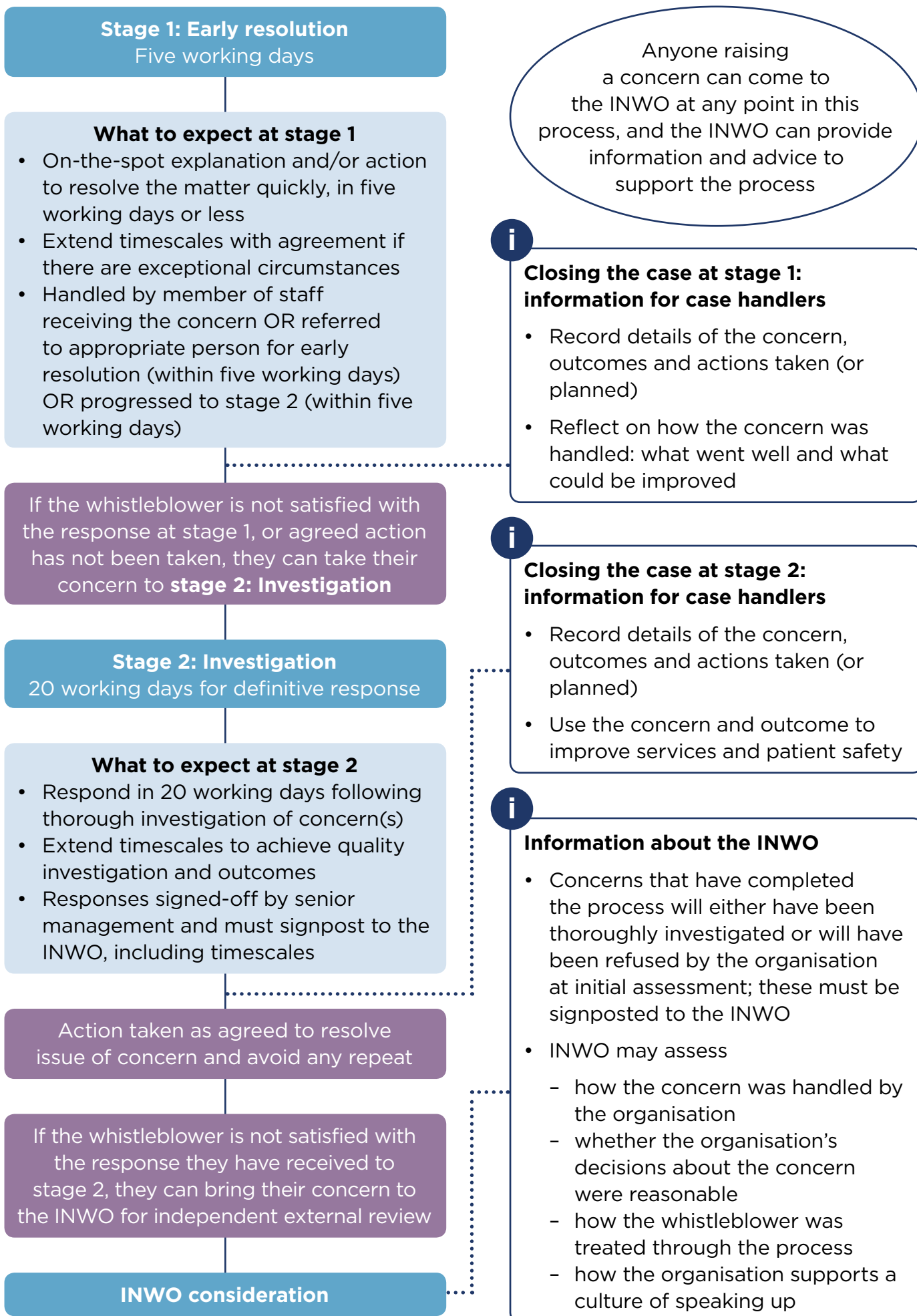
## **Part 3**

# **The two-stage procedure**

**JANUARY 2020**

Final draft – shared for information by the SPSO, ahead of publication  
in Summer 2020 – exact date to be confirmed

# Overview of the procedure



## Stage 1: Early resolution

1. Stage 1 is for simple and straightforward concerns that can be responded to within five working days or less. These concerns will involve little or no investigation, and can be handled by providing an explanation or taking limited action. The line manager should be involved in resolving the situation, where appropriate. Issues that are more complex, and will clearly take more than five working days to address, should move straight to stage 2.
2. Organisations must make sure staff have access to an impartial, confidential contact who they can contact by email or phone, or talk to in person. People can raise their concerns with their line manager, the confidential contact or another representative such as a senior manager.
3. Ideally, the person raising the concern will have a face-to-face discussion about the situation. However, if the concern is straightforward and has been raised with someone who is able to take appropriate action, this may be enough to resolve the issue. The person raising the concern must be updated with what has been done.
4. Anyone raising a concern can contact the INWO at any point in the process. The INWO can provide information and advice to support them, and can also give investigators and managers advice on how to handle concerns.

## Initial discussions

5. **Anyone** who provides services for the NHS can raise a concern. This includes current (and former) employees, bank and agency workers, contractors (including third-sector service providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NHS staff, such as those in health and social care partnerships.
6. The person raising the concern must want it to be handled using this procedure. The organisation must offer to support them with raising their concern. The person can be accompanied by a union representative, friend or colleague. See Part 2 of these Standards for more details of the support that is available.
7. If the person does not want to use this procedure, they can raise their concern without giving their name. (See the section on anonymous and unnamed concerns in Part 2 of these Standards for more information about this.) The organisation can choose how to investigate the concern, but good practice would be to follow the whistleblowing principles and investigate the concern in line with these Standards, particularly if existing 'business as usual' procedures have not been able to address the issue successfully.



## Time limit for raising concerns

8. The timescale for accepting a whistleblowing concern is within six months from when the person raising the concern became aware of the issue. The organisation can extend this time limit if there is good reason to do so, for example if the issue is still ongoing or if business as usual procedures have led to a delay. The most important thing to consider is whether there is any chance that the situation could create an ongoing risk of harm or wrongdoing.
9. If a case is not being handled under this procedure due to the timescales involved, this should be clearly explained to the person raising the concern. The organisation must also tell the person that they can ask the INWO to consider the decision.

## Timescales – five working days

10. The organisation has five working days to respond to any concerns that are raised. The manager or the person who received the concern will normally provide the response. If there are clear and justifiable reasons why they cannot meet this timescale, someone more senior in the organisation may agree to allow them a further five working days to respond. Reasons for allowing more time for stage 1 include staff absence or difficulty arranging a meeting. The organisation must tell the person why it is not able to respond within five days, and when they can expect a response.

11. If it is clear from the start that a concern is too complex for the organisation to respond to within five working days, it should move straight to stage 2. If the organisation needs more time to provide a response at stage 1, it must not use this as a reason to delay moving the concern to stage 2.

## Stage 1 discussion

12. Once the organisation has agreed that the concern should be handled under this procedure, the next stage is to discuss and agree:
  - 12.1. what outcomes the person who raised the concern is hoping to achieve, and whether these are possible;
  - 12.2. what action the organisation needs to take to put things right, and appropriate timescales for this;
  - 12.3. whether all the issues are appropriate for this procedure or whether it would be appropriate to handle some of them under other procedures, and if so, which procedures to direct the person to (see Part 2 of these Standards);
  - 12.4. whether any immediate action is needed to put things right or reduce risk to patient safety or the organisation; and
  - 12.5. whether the person who raised the concern needs support (see Part 2) and, if so, how they will get this.

13. If the discussion at stage 1 raises issues which a manager considers would be more appropriate to handle under other HR procedures (such as grievance procedures), they should carefully consider whether any parts of the concern should be handled under this whistleblowing procedure.
14. If someone raises a concern, but a manager decides it is a grievance not a whistleblowing concern, they should tell the person this in writing. They **must** tell the person they can ask the INWO to review this decision if they are not satisfied with it.
15. When a manager or other person receives a concern, they must make sure that the person who raised it receives the support and information they need to consider all appropriate options for handling the concern, including HR procedures. They must tell the person what support is available, and when and how they can get it.
16. Discussions about the concern must cover:
  - 16.1. what exactly the person is concerned about;
  - 16.2. who else is involved;
  - 16.3. what support the person raising the concern or other staff need (or are likely to need);
  - 16.4. the best way to maintain the person's confidentiality;
  - 16.5. the best person to respond to the concern; and
  - 16.6. whether the concern can be responded to in five working days or fewer, or whether it should be handled at stage 2.
17. There is more guidance on considering concerns in Annex A.

## Recording the concern

18. The organisation must record details of all concerns raised by staff and other workers. The manager (or other person) should record a concern when they receive it, and should consider any requests the person raising it makes to keep their details confidential (so they are only shared with people who need to know them in order to investigate and address the concern) or for the concern to be raised anonymously (so nobody in the organisation knows the identity of the person who raised it) (see Part 2). Full details on how to record concerns are provided in Part 5 of these Standards.

## Closing the concern

19. The organisation must provide a written response to a concern that has been handled at stage 1, unless it has agreed with the person who raised the concern that this is not needed (in which case this decision should be recorded). The response (however it is provided) must:
  - 19.1. respond to all the issues raised;
  - 19.2. give the organisation's reasons for any decisions;
  - 19.3. explain what action the organisation is taking in response to the concern; and
  - 19.4. explain how the person can take their concern to stage 2 if they do not feel it has been handled properly.

20. If the organisation does not provide its response in writing, it must still keep a record of its decision and tell the person who raised the concern. It must then close the case and update the records system as appropriate. The date the case is closed is the date when the person receives the response to their concern.

## Learning, improvements and recommendations

21. Concerns raised at stages 1 and 2 of this procedure will often identify changes that are needed to provide services more safely and efficiently, or improve governance arrangements (how the organisation is managed and held accountable for its actions). Any improvements must be appropriately planned, making sure that everyone concerned is kept informed of changes. There is more information on learning from concerns in Part 5 of these Standards. The organisation must include details of any changes that are identified as a result of a concern in the reports it produces on concerns (every three months and every year).

22. The organisation must also consider whether:
  - 22.1. wider learning is needed across other departments following the investigation; and
  - 22.2. the improvements would be beneficial to other NHS organisations across Scotland. If so, it should share them with national organisations or clinical groups to take forward as appropriate.

## When to move a concern to stage 2

23. Some concerns will not be appropriate for stage 1, and should move straight to stage 2. This includes concerns which:
  - 23.1. contain issues that are complex and need detailed investigation;
  - 23.2. relate to serious, high-risk or high-profile issues; or
  - 23.3. the person does not want to be considered at stage 1 because they believe a full investigation is needed.
24. Concerns that relate to serious, high-risk or high-profile issues may need someone more senior in the organisation to investigate them.
25. Or, after a concern has been considered at stage 1, the person who raised it can ask for it to be investigated at stage 2 if they do not feel that stage 1 has addressed the issue appropriately, and they still have concerns. They can do this immediately after receiving the decision at stage 1 or some time later.
26. The organisation should record that the concern has moved from stage 1 to stage 2, and the records system must be clear that this is the same concern, not a new one.

## Stage 2: Investigation

27. Concerns handled at stage 2 of the whistleblowing procedure tend to be serious or complex, and need a detailed examination before the organisation can provide a response. Concerns can move straight to stage 2 if they include issues which are too complex to handle at stage 1, which means a full investigation is needed from the start.
28. An investigation aims to establish all the facts relating to the points raised in the whistleblowing concern. It should be thorough, in proportion to the seriousness of the concern and impartial, so that the organisation can identify any problems and consider what improvements can be made. This may include action to put things right in the short term, or an action plan for future changes. It is also very important to give the person raising the concern a full response that is based on evidence and sets out the organisation's final position.
29. If a concern which is appropriate for stage 2 is raised with someone who was involved in the situation, or was involved in a decision at stage 1, the organisation should do all it can to make sure the person can discuss the situation and their concern with an appropriate person who has not been involved in the situation. This may be a confidential contact or an impartial manager.

## Timescales – 20 working days

30. The following timescales apply to stage 2.
  - 30.1. The organisation should acknowledge the concern in writing within three working days.
  - 30.2. It should provide a full response to all concerns as soon as possible, and within 20 working days, unless it needs to extend this time limit.
  - 30.3. If the organisation needs to extend the time limit, it must tell the person raising the concern when they can expect a full response within the first 20 working days (and then at least every 20 working days after that).
  - 30.4. The organisation should provide updates every 20 working days to everyone directly affected by the investigation. The updates should provide information about what progress has been made and what will happen before the organisation provides the next update or a full response.
  - 30.5. If it will take longer than expected to provide a full response to a concern, the organisation should offer support to those involved during this period.

## Acknowledgement

31. The acknowledgement should include:
  - 31.1. contact details for the person overseeing the investigation;
  - 31.2. an explanation of the timescales at stage 2, when these timescales might need to be extended and what this would mean; and
  - 31.3. details of the support that is available for the person, including information about other agencies and their professional body if appropriate.
32. It may also be appropriate to provide other information in the acknowledgement, including:
  - 32.1. appropriate contact details in case there are any urgent safety issues during the investigation;
  - 32.2. a summary of the concern and the outcomes the person who raised it are hoping to achieve;
  - 32.3. an outline of the proposed investigation and who will be involved;
  - 32.4. an offer for the person who raised the concern to discuss the issues either with the investigating officer or a senior member of staff; and
  - 32.5. a consent form that gives a clear mandate, if a representative has raised the concern on the person's behalf.

## Extending the timescale

33. The organisation should do all it can to meet the timescale above, as not doing so may delay changes that are needed to improve unsafe working practices, and could put patient safety or the organisation at risk, or have a harmful effect on the person raising the concern or the people involved in the investigation.
34. The organisation should aim to provide a full response within 20 working days, but this is not a target or performance measure. It **should carry out a thorough investigation that leads to good outcomes, even if that takes longer than 20 days**. The timescale is there to make sure that organisations take prompt action, and that there is an **ongoing focus on investigating and addressing the concern**, while keeping everyone involved updated on the progress of the investigation.
35. If the organisation cannot provide a final decision within 20 working days, it should still be able to show it has made **significant progress**. The investigation must not be delayed if this could be avoided.
36. There is no flexibility to pause or delay the whistleblowing procedure. The timescale can only be extended if there are clear and justifiable reasons for this. If there are, the investigator should ask a senior manager for authorisation to do so. The organisation must explain the revised timescales to the person who raised the concern and others involved in the investigation, as appropriate.

37. Reasons for extending the timescale might include:
- 37.1. the organisation needs essential accounts or statements from staff who are unavailable due to long-term sickness or leave;
  - 37.2. staff have asked a representative from their professional body to be with them at a meeting, and this has caused unavoidable delays;
  - 37.3. the organisation cannot get information that is essential to the investigation within normal timescales; or
  - 37.4. the investigation is disrupted by circumstances that the organisation could not have expected or avoided, for example industrial action or severe weather conditions.
38. If a complex concern, involving several issues, is likely to take longer than 20 working days to address fully, the organisation should consider whether it could respond to some of the issues in an interim report.

## First considerations

39. When a concern is raised at stage 2 the organisation should consider the following issues:
- 39.1. whether any immediate action is needed to put things right or reduce risk to patient safety or the organisation;
  - 39.2. who should investigate the concern. If possible, this should be a senior member of staff from another department or service. (Part 4 of these Standards on board and staff responsibilities reviews how to handle concerns about an organisation's senior leaders or board members.);
  - 39.3. what the investigation should cover, using the list in paragraphs 12 and 16 and Annex A to look into the concerns in more detail;
  - 39.4. how involved the person who raised the concern wants to be in the investigation, and whether this is appropriate;
  - 39.5. whether it is appropriate to direct the person who made the concern to any other procedures (for example, HR procedures);
  - 39.6. what risks are involved, how they could be reduced, what support the organisation can provide to the person who raised the concern and how to make sure they have access to this;
  - 39.7. what to expect in terms of timescales and updates.

40. Whenever possible, the organisation should discuss the above issues with the person raising the concern.
41. Managers should make sure they are aware of how the person would prefer to be contacted, and use this communication method whenever possible and appropriate. They must also take account of any data protection concerns when communicating, especially by email. If they are using an employee's work email address, the person raising the concern must have consented to this, as they may not always have access to it, or may have concerns about who else has access to it.
42. It is also important to take account of any accessibility issues the person has told the organisation about.
45. If a concern has already been through stage 1 of this procedure, the investigator should make sure they have all the case notes and associated information that was considered at stage 1. They must also work out, as early as possible, what extra information they will need and how they will get this.
46. It is good practice for the organisation to keep a record of meetings throughout the investigation (either notes or recordings), including any discussions with the person who raised the concern, and to share this record with those involved within an agreed timescale.
47. The investigation should be kept independent of any other procedures, including HR procedures. However, where possible, any linked procedures should be carried out in parallel with the whistleblowing procedure.

## The investigation

43. The investigation must focus on the practices or procedures that are unsafe or inappropriate. It must focus on patient safety, safe working practices and good governance; it must be fair, robust and proportionate to the risks identified. It must aim to handle and provide a full response to all the issues involved in the whistleblowing concern that has been raised.
44. The organisation must tell the person raising the concern how the investigation will be carried out and what their role in it will be.
48. Similarly, if NHS Counter Fraud Services are carrying out an investigation into allegations of fraud, the organisation may still be able to investigate other issues. The board's Fraud Liaison Officer will be able to confirm if there is an ongoing fraud investigation and whether it would be appropriate to carry out any concurrent investigations.
49. Investigators and decision-makers must take account of the whistleblowing principles (see Part 1 of the Standards), and must:

- 49.1. be trained in what their role involves and how to carry it out;
- 49.2. give everyone involved the right to be heard;
- 49.3. not have a personal interest in the situation or the outcome;
- 49.4. act only on the evidence;
- 49.5. make decisions in good faith and without bias;
- 49.6. consider any person whose interests will be affected by the decision; and
- 49.7. have time set aside to carry out the investigation.

## Other staff involved

- 50. Raising concerns can be stressful for anyone involved in the case, including the person who is being investigated, the investigator and witnesses. Everyone involved must be treated professionally and with respect.
- 51. If someone is accused of poor practice through this procedure, the organisation should tell them:
  - 51.1. that an investigation is taking place;
  - 51.2. of what they have been accused;
  - 51.3. what the investigation process is;
  - 51.4. what their rights and responsibilities are; and
  - 51.5. what support is available to them.
- 52. They do not need to know how the organisation found out about the concern, and the organisation must take care to protect the identity of the person who raised the concern.

## Responding to the concern

- 53. At the end of the investigation, the organisation must give the person who raised the concern a full and considered response, setting out its findings and conclusions, and how it reached these. It must also provide evidence that it has taken the concern seriously and investigated it thoroughly. It must include the conclusions of the investigation and information about any action it has taken or plans to take as a result of the concern, both to deal with the current situation and to avoid it from happening again in the future.
- 54. It is best practice for a single, senior member of staff (or someone authorised to act on their behalf) to be responsible for reviewing each decision made under this procedure before the organisation issues its response. This person must make sure that all necessary investigations have been finished and action is planned to prevent future risks.
- 55. The organisation's response must be in writing and should also be provided in the way the person who raised the concern has told the organisation they prefer to be contacted. The organisation must keep a record of the decision and how it gave this to the person who raised the concern.
- 56. It must be clear from the response that this is the organisation's final decision, and that if the person is still not satisfied with it, or the way their concern has been investigated, they can take their concern to the INWO.



57. The organisation must also keep other people who were directly involved in the investigation updated on the final outcome, and must tell them about any recommendations or action they have taken as a result of the whistleblowing concern. Any updates must be in line with data protection law.

58. The quality of the investigation and the final (and any interim) report is very important. The report should:

58.1. be clear and easy to understand, and written in a way that is non-confrontational and focuses on the people involved;

58.2. use language appropriate to the person who raised the concern and their understanding of the issues;

58.3. address all the issues raised and show that each element has been fully and fairly investigated;

58.4. include an apology where things have gone wrong;

58.5. highlight any areas where the organisation does not agree with the person's concern and explain why no further action can be taken;

58.6. give the name of a member of staff the person can speak to if they don't understand something in the letter; and

58.7. explain how the person can refer their concerns to the INWO if they are not satisfied with the outcome of the organisation's investigation.

59. If anyone involved in the investigation has had ongoing support from their union or another third party, the organisation should also tell the person or organisation providing the support that it has issued a decision, to make sure they can provide appropriate support when the person needs it. (What further details the organisation can give will depend on the situation.)

## Recording the concern

60. Details of all concerns investigated at stage 2 must be recorded. As with stage 1 concerns, the person who receives the concern should record it when they receive it, and consider any requests the person makes to keep their details confidential. (See Part 2 for information about anonymous and 'unnamed' concerns when no personal details are recorded).

61. The record at stage 2 must be a continuation of the record created at stage 1, if this applies. The organisation must update the details when the investigation ends.

62. Full details on how to record concerns are provided in Part 5 of these Standards.

## Learning, improvements and recommendations

63. The process for learning, improvements and recommendations is the same as for stage 1. See paragraphs 21 and 22.

64. At the end of stage 2, organisations may also be able to learn from reflecting on how they have handled the concern. One way to do this, and to make sure the organisation provides consistent responses to concerns, is to involve two different parts of the organisation in reviewing how concerns have been handled and the outcomes of concerns. Not all organisations will be able to do this, but, it is good practice if it is possible.

### **Meetings and correspondence with the person who raised the concern after the organisation's decision**

65. Once the person who raised the whistleblowing concern has received the organisation's decision, they can ask for more information or a meeting, but this should only be to explain the decision.
66. The organisation should make it clear before any meeting that it is for explanation only and not to reinvestigate or reopen the concerns raised. This meeting should be separate from any meeting relating to HR issues. If the person is not satisfied with the way they have been treated, the organisation should tell them they can ask the INWO to look into this. It should also direct them to any appropriate HR procedures.
67. The organisation should not consider any communication relating to how the investigation was carried out or the decisions or outcomes that were reached. Instead, it must refer the person who raised the concern to the INWO for stage 3 of this procedure.

## **Independent external review**

68. Anyone who has raised a concern through this procedure can ask the INWO to consider the way the concern was handled, the outcome of the investigation, or how the person was treated through the process. If someone has not been allowed to raise a concern using this procedure, they can also ask the INWO to investigate this refusal, or the concern.
69. An INWO investigation may include:
- 69.1. how the organisation has responded to the concern raised, applied these Standards and investigated the issues raised;
  - 69.2. whether the organisation's decisions and actions relating to the concern were reasonable in the circumstances;
  - 69.3. how the organisation treated the whistleblower and other people involved, including telling them about any relevant HR procedures;
  - 69.4. the organisation's wider approach to learning from concerns; including how it supports and encourages a culture of speaking up to improve patient safety and service delivery.

70. The INWO recommends that organisations use the wording below to tell people they can ask the INWO to consider the whistleblowing concern.

## Information about the Independent National Whistleblowing Officer (INWO)

The INWO is the final stage for whistleblowing concerns about the NHS in Scotland. If you remain dissatisfied with an NHS organisation after its process has concluded, you can ask the INWO to look into your concern.

The INWO cannot normally look at concerns:

- where you have not gone all the way through the whistleblowing procedure, or
- more than 12 months after you became aware of the matter you want to bring to the INWO.

The INWO's contact details are:

INWO  
Bridgeside House  
99 McDonald Road  
Edinburgh  
EH7 4NS

[Freepost TBC] (You don't need to use a stamp)

**Freephone:** 0800 377 7330

**Online:** [www.inwo.org.uk/contact-us](http://www.inwo.org.uk/contact-us)

**Website:** [www.inwo.org.uk](http://www.inwo.org.uk)

71. If a person raises a whistleblowing concern with the INWO, the INWO may ask the organisation to send all relevant papers and other information to their office, or to speak directly with staff. For more information about what to expect from an INWO investigation, visit [www.inwo.org.uk](http://www.inwo.org.uk).

## Time limits for raising concerns with the INWO

72. Anyone who has raised a concern and had a final response from the organisation can refer their concern to the INWO within 12 months from the date they became aware of the issue. (The INWO can decide to extend these timescales in a similar way as the organisation can, as described in paragraph 8 above.)
73. These Standards and the INWO's powers come into force in July 2020. The INWO only has powers to investigate if a concern has been raised, within the correct time limits, and under the procedure set out in these Standards.
74. Concerns which have been considered under previous whistleblowing procedures or arrangements (those that were in place before July 2020) must be handled under those procedures, and cannot be reviewed by the INWO. Issues raised under this procedure can relate to concerns that were first raised before July 2020, but the time limits above still apply.

75. If someone raises a concern directly with the INWO before the appropriate organisation has carried out a full investigation, the INWO can provide information and advice. They can also agree to investigate a concern that has not been raised with the organisation involved if they consider it is not reasonable to expect the person to use their employer's whistleblowing procedure. The INWO will approach each case on the principle that it is better for the organisation involved to investigate and identify the learning and improvements that are needed. The INWO will look at each case individually when deciding whether to accept a concern direct but could take into account, for example, whether the organisation is very small or the issue involves very senior staff. In limited circumstances the INWO may be able to help make sure concerns are handled appropriately. This may include, for example, monitoring the progress of an investigation.

## Annex A: Further guidance for people receiving concerns

### What does the person want to achieve by raising this concern, and can this be achieved?

When you receive a concern you need to be clear from the start about the outcome the person wants to achieve. The person may not be clear about this, or they may know that they want things to change but not be sure how. It may be appropriate to direct them to other HR procedures if there are connected issues.

Your discussions with the person should include whether the organisation can achieve the outcome they are hoping for. If it is not going to be possible to achieve the outcome, tell the person why. They may expect more than the organisation can provide, or you may feel that any action which would be needed to achieve the outcome is not in proportion to the risks that have been identified.

### What exactly is the person's concern?

It is important to understand exactly what concern the person is raising. It may be necessary to ask for more information to get a full picture. When you receive a concern, remember that the person who raised it may be nervous about doing so. Make sure they have enough time and privacy to explain their concern fully. It can also be stressful to speak about a concern, so if you have a meeting you may need to take breaks or have more than one meeting.

### **Who are the other people involved?**

Consider whether other staff are aware of the issue, or whether they should be. If so, who are the other staff, and has the person already discussed the concern with them? In particular, consider whether senior staff responsible for this area of work are aware of the issue, or whether they have been told about the concern. You should also take account of any previous investigations into this issue.

### **What support does the person raising the concern and other staff involved need?**

**Always** check if the person raising the concern needs support. Discuss with them what support would be helpful and how this can be provided. This may include getting support from their trade union or professional representative body. Also consider whether others involved in the situation also need support and, if so, how this can be provided. (See Part 2 for a list of contact details for support agencies and professional bodies.)

### **Does the person raising the concern want their involvement to remain confidential?**

It is important to discuss the level of confidentiality the person wants to maintain. Sometimes the investigator will need to know who raised the concern, but in other cases this isn't necessary or appropriate.

The person may want to remain completely anonymous (so their details are not recorded anywhere). Explain to them the limits of raising an anonymous concern. This would mean they wouldn't have access to the Standards, and the organisation would choose the best way to handle the concern. (See Part 2 of these Standards for more information about anonymous concerns.)

In all cases, the person's name must not be shared with anyone who does not need to know it in order to investigate the concern, unless it has to be shared by law. It is important to ensure that records containing the person's names have access restricted.

### **Who is the best person to respond to the concern at stage 1?**

If you cannot resolve the concern because, for example, you are not familiar with the issue or do not have the authority to make the changes that are needed, explain this to the person raising the concern, and pass details of the issue to someone who can. Keep the person who raised the concern informed about what is happening and who is responsible for investigating the matter.

**INDEPENDENT  
NATIONAL  
WHISTLEBLOWING  
OFFICER**



**People Centred | Improvement Focused**

The National Whistleblowing Standards

## **Part 4**

# **Governance: NHS board and staff responsibilities**

**JANUARY 2020**

Final draft – shared for information by the SPSO, ahead of publication  
in Summer 2020 – exact date to be confirmed

# Role of NHS board members

## Leadership

1. Board members have a critical role in setting a tone and culture in their organisation that values the contributions of all staff, including those who identify the need for changes through speaking up. This leadership role should not be underestimated, and is a critical function of the board when it comes to concerns raised about safe and effective service delivery.
2. Board members need to show interest and enthusiasm for issues that arise through concerns raised by staff, and in particular, to support the learning and improvements that stem from them. They also need to ensure that the arrangements in place act to promote trust between staff and the board in raising concerns.
3. Every NHS 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.

## Monitoring

4. The number of concerns raised by staff will be reported to a public meeting of the board on a quarterly basis. It is the board's responsibility to ensure this reporting is on time and accurate. The analysis should highlight issues that may cut across services and those that can inform wider decision-making. Board members should show interest in what this information is saying about issues in service delivery as well as organisational culture. This may mean on occasions that board members challenge the information being presented or seek additional supporting evidence of outcomes and improvements. They should also explore the reasons behind lower than expected numbers of concerns being raised, based on trend analysis and benchmarking data.

## Services provided by other organisations

5. All NHS boards are responsible for ensuring that the services that are contracted out by their organisation (including primary care and on site contracted services) have arrangements in place that encourage staff to raise concerns, including procedures that meet the requirements of the Standards.

6. The board also has responsibility for ensuring there are arrangements in place that ensure students and volunteers are made aware of their right to access this procedure. In addition, systems must be in place to allow for communication and the raising of concerns via the universities and colleges which they work with to deliver student placements and training opportunities.
7. NHS boards that work in partnership with local authorities, to provide health and social care with the oversight of an integration joint board (IJB), will also be expected to work with the IJB to ensure that all staff in the partnership can raise concerns about NHS services through this procedure.
8. More detailed information is available about requirements on board members in relation to monitoring contracted services, primary care providers contracted services, health and social care partnerships (HSCPs), higher education institutions and voluntary sector providers in other parts of the Standards.

## Support for the whistleblowing champion

9. As non-executive directors, whistleblowing champions are part of the board. The board must show support for the whistleblowing champion, and must listen to and take action as a result of the issues they raise.

## Support for the person raising concerns

10. The board members' leadership in relation to raising concerns extends to ensuring that there are support systems in place for members of their staff who raise concerns. The support available may include:
  - 10.1. access to a 'confidential contact' who is able to provide information and advice in relation to the procedure for raising concerns, as well as support during the process;
  - 10.2. counselling or psychological support services for those suffering from stress due to their involvement in this procedure;
  - 10.3. occupational health provision which would take account of the stresses involved in raising a concern;
  - 10.4. consideration of a range of actions to reduce the impact on the individual, in consultation with them, such as variations in their work or putting in place temporary arrangements to reduce risk.
11. It is not appropriate to redeploy staff who have raised a concern, even if their concern involves issues relating to other staff or line management. Alternative options should always be considered.



## The whistleblowing champion

12. Each NHS board has a whistleblowing champion 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).
13. The whistleblowing champion is predominantly an assurance role which helps NHS boards comply with their responsibilities in relation to whistleblowing. The whistleblowing champion provides critical oversight ensuring managers are responding to whistleblowing concerns appropriately, in accordance with these Standards. The whistleblowing champion is also expected to raise any issues of concern with the board as appropriate, either in relation to the implementation of the Standards, patterns in reporting of concerns or in relation to specific cases.
14. Beyond the services delivered directly by the NHS board, the whistleblowing champion will have responsibility for ensuring that the organisation has appropriate systems in place to ensure that services delivered indirectly, including primary care services, contracted services and those delivered by HSCPs, are meeting the requirements of the Standards. In particular, they may need to work with colleagues in IJBs to clarify expectations and requirements in relation to raising concerns.
15. The role of the whistleblowing champion is explained in more detail through guidance provided by the Scottish Government.

## The role of NHS staff

### Chief executive

16. Overall responsibility and accountability for the management of whistleblowing concerns lies with the organisation's chief executive, executive directors and appropriate senior management.
17. The chief executive provides leadership and direction in ways that guide and enable staff to perform effectively across all services. This includes ensuring that there is an effective whistleblowing procedure, with a robust investigation process which demonstrates how the organisation learns from the concerns they receive. The chief executive may take a personal interest in all or some of the concerns, or may delegate responsibility for the whistleblowing procedure to senior staff. Delegation must be clearly stated and accepted. Regular management reports assure the chief executive of the quality of performance.
18. The chief executive must work with board members to decide how oversight of the implementation of these Standards will be achieved, and who will have responsibility for this.

## Executive directors

19. On the chief executive's behalf, executive directors may be responsible for:
  - 19.1. managing whistleblowing concerns and the way the organisation learns from them;
  - 19.2. overseeing the implementation of actions required as a result of a concern being raised;
  - 19.3. investigating concerns; and/or
  - 19.4. deputising for the chief executive on occasion.
20. In particular, directors have responsibility and accountability for signing off stage 2 decision letters. They may also be responsible for preparing decision letters, though this may be delegated to other senior staff. Either way, they must be satisfied that the investigation is complete and their response addresses all aspects of the concern raised. This will reassure the person raising the issue that their concern has been taken seriously.
21. Wherever possible, it is important for the decision on a concern to be taken by an independent senior member of staff (i.e. a senior member of staff from another directorate, with no overlap with the concern that has been raised). Directors should retain ownership and accountability for the management and reporting of concerns.
22. If the director delegates responsibility for the process, then they must ensure that the person given this responsibility has the skills and resources to document the process, be able to evaluate the quality of the investigation, and ensure that recommendations are implemented.
23. The director responsible for primary care services has specific responsibilities for concerns raised within and about primary care service provision. They must ensure that all primary care services contracted by the NHS board are reporting appropriately on concerns raised and resolved by the provider. In addition, the director may be contacted in relation to concerns about primary care. These concerns may come to the NHS board in a range of ways:
  - 23.1. From staff within primary care services, who are reluctant to raise concerns to their employer;
  - 23.2. From staff who have already raised concerns with their employer, but have not had a satisfactory response (stage 2 concerns); or
  - 23.3. From representatives of students in primary care settings (or the students themselves), who have raised concerns in relation to their placement in a primary care service.
24. There is more detailed information available about requirements for NHS boards in relation to primary care services as well as requirements for primary care providers (see Part 7 of the Standards) and higher education institutions (see Part 9).

## HR or workforce director and their team

25. HR or workforce directors are responsible for ensuring all staff have access to this procedure, as well as the support they need if they raise a concern. They are also responsible for ensuring that anything raised within HR procedures which could amount to a whistleblowing concern is appropriately signposted to this procedure for full consideration.
26. HR teams will also be involved in assisting managers and confidential contacts to identify HR issues that are raised within concerns, and to provide appropriate signposting in relation to these HR issues.
27. The HR/workforce director is responsible for ensuring that all staff are made aware of the Standards and how to access them, including the channels available to them for raising concerns. They must also ensure that managers have the training they need to identify concerns that might be appropriate for the Standards, and have the skills to handle stage 1 concerns.
28. However, the HR/workforce director does not necessarily have any specific responsibilities in relation to implementing these procedures or investigating any concerns raised by staff, unless this is considered appropriate in a specific case. For example, they would be responsible for providing expert HR input when there is interaction between HR procedures and an investigation into a concern.
29. HR functions should not be involved in investigating whistleblowing concerns, unless the concern directly relates to staff conduct issues.

## Investigators

30. Investigations must be carried out by an appropriately skilled, senior member of staff from another directorate (where possible), and in particular, with no conflict of interest or perceived conflict of interest with the issue of concern. The investigator needs to take full account of the sensitivities of the case, and have strong inter-personal skills, including skills in supportive conversations. They need to be able to separate out the HR from the whistleblowing concerns, and to focus on the issues which are appropriate for this procedure.
31. Investigators have an important role in drafting recommendations. They should listen to those who have raised the concern or are involved in the service, to judge what is appropriate and reasonable, and how the service improvements can be taken forward.

## The 'confidential contact' or whistleblowing ambassador

32. All organisations that deliver services for NHS Scotland must ensure that they provide staff with at least one point of contact who is independent of normal management structures (for the purposes of this role) and who has the capacity and capability to be an initial point of contact for staff from across the organisation (or their part of the organisation) who want to raise concerns. Small organisations such as those in primary care should work with their NHS board to ensure

access to a confidential contact for their staff. The confidential contact must support staff by providing a safe space to discuss the concern, and assist the staff member in raising their concern with an appropriate manager. This will not always be the person's line manager, and in some instances it should be someone with a level of independence from the situation.

33. However, this role goes beyond simply providing advice and support to those raising concerns. In particular, the confidential contact needs to:
  - 33.1. work with the whistleblowing champion to ensure that all staff are aware of the arrangements for raising concerns within their organisation;
  - 33.2. promote a culture of trust, which values the raising of concerns as a route to learning and improvement;
  - 33.3. through direct contact with frontline staff, ensure they are aware of and have access to the support services available to them when they raise concerns;
  - 33.4. assist managers in using concerns as opportunities for learning and improvement;
  - 33.5. work with the chief executive and those they have identified to oversee application of the Standards, to ensure the Standards are functioning at all levels of the organisation.

34. Confidential contacts must have the appropriate skills to carry out a role that requires significant interpersonal skills and the capacity to work with all staff, from senior managers to support staff. This role is best suited to someone with experience of direct service provision rather than an HR representative.
35. NHS boards may choose to broaden the reach of their confidential contacts, by recruiting whistleblowing mentors, or similar roles. These staff members would work with the confidential contact to broaden access to raising concerns, and assist with raising awareness across the organisation. It is up to each NHS board to develop such roles that meet the needs of their own structure and organisational requirements.

## INWO liaison officer

36. The NHS board's INWO liaison officer is the main point of contact between the INWO and the organisation, particularly in relation to any concerns that are raised with the INWO. They have overall responsibility for providing the INWO with whistleblowing concern information in an orderly, structured way within requested timescales. They may also provide comments on factual accuracy on behalf of the organisation in response to INWO investigation reports. They are also expected to confirm and provide evidence that INWO recommendations have been implemented.

## Fraud liaison officer

37. If a concern includes issues of fraud, the board's fraud liaison officer should be contacted for advice. If appropriate, they will be able to pass information onto NHS Counter Fraud Services, for consideration and potential investigation. They will also be able to provide updates on the status of any investigation - whether it is ongoing, closed, or has been passed to the procurator fiscal. The fraud liaison officer will be responsible for sharing any updates with the appropriate case contact.
38. Fraud liaison officers must also be aware of these Standards, and if someone raises a concern about fraud directly with them, they must enquire whether they want to use the Standards. If so, they must make sure that appropriate steps are taken so that the concern is progressed appropriately. This may be by the fraud liaison officer, or by an appropriate manager, or the confidential contact.

## Managers

39. Any manager in the organisation may receive a whistleblowing concern. Therefore all managers must be aware of the whistleblowing procedure (see Part 3 of the Standards) and how to handle and record concerns that are raised with them. Managers must be trained and empowered to make decisions on concerns at stage 1 of this procedure. While all managers are encouraged to try to resolve concerns early and as close to the point of service delivery as possible, they should also be aware of who to refer a concern to if they are not able to personally handle it. They should also be aware of any barriers their staff may encounter in raising concerns, and work to reduce these barriers.

## All staff

40. Anyone who delivers an NHS service should feel able and empowered to raise concerns about harm or wrongdoing. They should be trained so they are aware of the channels available to them for raising concerns, and what access to the Standards means.

## Union representatives

41. Union representatives can provide helpful insights into the functioning of systems for raising concerns. They should be involved in implementation and monitoring of these systems where possible.

## Training

42. NHS boards need to ensure that their staff have the knowledge and skills to implement the Standards. In particular, those with specific responsibilities detailed in the Standards must have appropriate training to ensure they can fulfil their roles and are fully informed of the requirements of their role. This includes:
  - 42.1. whistleblowing champions;
  - 42.2. confidential contacts/ whistleblowing ambassadors, and any other representatives for raising concerns;
  - 42.3. executive directors involved in signing off investigations; and
  - 42.4. investigators.
43. All staff will need to be informed of how to raise concerns, the channels they can use, the support available if they do raise concerns, and the benefits for the organisation in them doing so. Those who may receive concerns will also need training in supportive conversations/interview skills.

## Handling concerns about senior staff

44. Whistleblowing concerns raised about senior staff<sup>1</sup> 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.
45. 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 through the process; who should investigate; and what support is in place to assist with the investigative process. For example, each NHS board must clearly set out how it intends to consider a concern raised about the chief executive or a board member.



<sup>1</sup> 'Senior staff' are those whose position in the organisation means that there are limited or no staff members with clear seniority over them.

## Working with other organisations

### Services provided on behalf of the NHS

46. NHS boards must ensure that all the services they use to deliver their services, including primary care providers or contractors, have procedures in place which are in line with these Standards. It is for each NHS board to ensure that external service providers are meeting the requirements of the Standards, and they must have mechanisms in place to provide this assurance.
47. These requirements include recording and reporting (see Part 6 of the Standards) on all concerns. This means that service providers must record concerns raised with them (or their confidential contact), monitor these concerns, and report them to the NHS board. The board is required to ensure that systems are in place to facilitate this reporting, and that they receive quarterly reports about concerns raised and performance against the Standards.
48. In addition to quarterly reporting of concerns raised within the board (and in relation to services delivered via an HSCP), there must also be systems in place to gather reports of concerns from primary care and contractors on a quarterly basis.

## Higher education providers

49. Higher education institutions (HEIs) work closely with the NHS in a wide range of settings. This includes staff (who can be contracted to work for an HEI, but nevertheless carry out work for the NHS) and students. Anyone working or learning in NHS services must be able to access a procedure for raising concerns which is in line with these Standards. NHS boards must ensure that staff under contract with an HEI have equal access to any systems and arrangements for raising concerns as those under contract with the NHS.
50. NHS boards must ensure that systems are in place to enable this access, particularly for students. This means that arrangements for placements must include information for the student and their course representative on how to raise a concern, including access to the confidential contact.
51. NHS boards also need to ensure that concerns raised by staff or students of HEIs about the board's services and considered through the Standards are included in any reporting of concerns to the board and externally.
52. Further information on arrangements for students (see Part 9) covers these requirements in more detail.

## Integration joint boards (IJBs)

53. Most NHS boards have arrangements with their local authority colleagues to provide health and social care services in an integrated way. The levels of integration vary between areas and services. However, NHS boards are expected to work with their local authority colleagues to ensure that arrangements are made by the IJB to enable all those working in NHS services to raise concerns about these services, whether they are employed by the local authority or directly by the NHS.
54. The requirement is for each IJB to develop an agreement that would allow for staff working across the partnership to raise concerns (in line with the Standards) across all the services they deliver, to ensure fair access to this procedure. The only procedural difference would relate to the final stage of the process: concerns relating to social work and care services should be signposted to the Care Inspectorate, whereas those relating to health services should be signposted to the INWO for review.
55. NHS boards also need to ensure that concerns raised by staff in integrated services are included in any reporting of concerns to the board and externally.

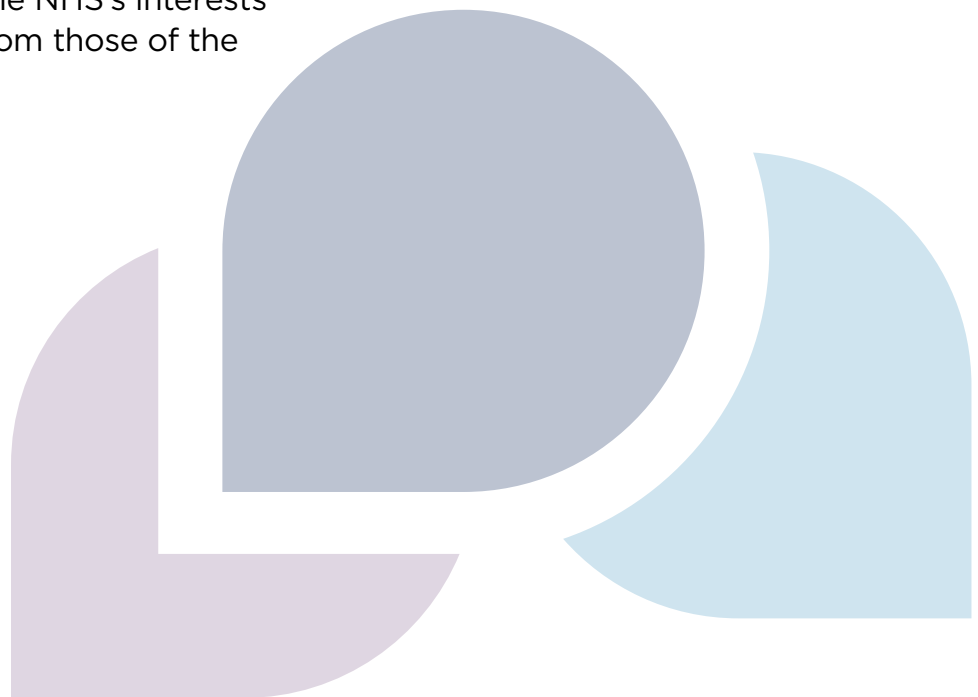
## Voluntary sector providers

56. Voluntary organisations work alongside and within the NHS in a range of settings, from providing transport to direct care and support for patients. Both staff and volunteers of these organisations may identify issues of concern about the board's services. It is for NHS boards to ensure that there is clear information for these organisations on how they can raise concerns, in line with these Standards. Their staff and volunteers must have access to the NHS board's confidential contact, or other representative for raising concerns.
57. Managers in areas that regularly work alongside voluntary organisations must be aware of the need to facilitate access to this procedure, and any other local arrangements that are in place to ensure access.
58. NHS boards also need to ensure that concerns raised by volunteers or volunteer coordinators about the board's services and considered through the Standards are included in any reporting to the board and externally.
59. Further information on arrangements for volunteers (see Part 10) covers these requirements in more detail.



## Regulatory investigations

60. NHS boards are expected to work with organisations that regulate their services or staff, to ensure that investigations are as effective and efficient as possible, even when a concern has been raised with both the NHS and the regulator.
61. 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. In some instances, it may be appropriate to have parallel investigations, as the NHS's interests may be different from those of the other regulator.
62. Regulators must be informed if an investigation identifies issues around a professional's fitness to practise. However, both regulators and NHS providers must be aware of the potential for staff to raise concerns as an act of retribution. The Standards should be used for specific consideration of issues relating to risks to safe practice and patient safety, and must be kept separate from disciplinary issues.





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## **Part 5**

# **Governance: from recording to learning lessons**

**JANUARY 2020**

Final draft – shared for information by the SPSO, ahead of publication in Summer 2020 – exact date to be confirmed

## The importance of recording and reporting

1. One of the main aims of the whistleblowing procedure is to ensure learning from the outcome of whistleblowing concerns and to identify opportunities to improve NHS services.
2. Managers must record all whistleblowing concerns, in a systematic way so that the concerns data can be analysed to identify themes, trends and patterns and to prepare management reports. By recording and using concerns information in this way, the root causes of concerns can be identified and addressed, such as through service improvements or training opportunities.

## IT systems

3. The organisation must have structured systems for recording whistleblowing concerns, their outcomes and any resulting action taken to resolve the concern. It is important that these systems are able to hold records in a way that takes full account of the need for staff confidentiality, the requirements of the General Data Protection Regulation (GDPR), and the current Scottish Government Records Management Code of Practice.

## Confidentiality and data protection

4. It is essential that recording systems are able to maintain confidentiality, and that access to personal data (such as the person's identity and other personal information) is restricted. In some cases, this will mean that only one person or a very select (and specific) group can access this personal data. The person raising the concern should be informed as to who their personal data will or may be shared with and the body sharing the personal data must ensure that they have a lawful basis for sharing that data.
5. Every data controller and data processor (i.e. anyone that is receiving a concern and applying the Standards) must satisfy themselves that they are meeting the requirements of the General Data Protection Regulation and the Data Protection Act 2018<sup>1</sup>, as well as their own duties of confidentiality. This relates both to the personal data of the person raising the concern and to all personal data and confidential information used in applying the Standards.
6. For example, the organisation should consider matters including, but not limited to, compliance with data protection law and confidentiality requirements when:

1 The General Data Protection Regulation and the Data Protection Act 2018 can be found at: <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

- 6.1. recording a concern and setting limits on who will have access to the information being processed in relation to the concern raised, based on an assessment of what is needed for the process; and
- 6.2. taking appropriate technical and organisational measures to preserve the integrity and security of the information;
7. Likewise, anyone that is receiving a concern and applying the Standards should give consideration to:
  - 7.1. deciding who the concern will be shared with and why;
  - 7.2. finding out whether anyone sharing their own personal data understand who their personal data may or will need to be shared with, and under what circumstances; and
  - 7.3. assessing who else might need to be informed of the identify of the person raising the concern and why.
8. Information relating to the concern can be shared more widely than the person's personal details, though care must still be taken to do this lawfully and to consider who will have access to this information and what assumptions may be made about who raised the concern. This information should be shared only where it is necessary to resolve or investigate the concern. There should be a presumption against sharing information unless there is good reason to do so, to reduce risks for patients and/or the organisation.
9. All managers and the organisation's confidential contact or whistleblowing ambassador must be able to record concerns. However, they must not be able to access other records, unless they have good reason to do so, and have been given specific permission.
10. It may be appropriate to hold personal data about the person who has raised the concern in a different part of the system from that which contains details of the concern raised and handling of the case. Each organisation's IT arrangements will vary, to reflect their structures and the size of the organisation.

## Enabling reporting

11. The organisation must ensure that systems allow for full reporting of all concerns raised under this procedure, regardless of who they have been raised with. There will be some members of staff who need access to data specifically for reporting purposes. As a minimum this would include the organisation's confidential contact or whistleblowing ambassador and the whistleblowing champion (for boards). Most organisations will need to ensure that others can also access some or all of this information, and it is for each organisation to establish how best to ensure effective reporting arrangements.

## What to record

12. It is essential to record all information on whistleblowing concerns (including concerns raised anonymously) as follows:
  - 12.1. person's name, work location (where appropriate), and contact details (mindful of their preferred method of contact) – access to this information must be restricted;
  - 12.2. the nature of the concern raised;
  - 12.3. if the concern was raised on behalf of another person, whether that other person has given consent to do so;
  - 12.4. what role the person raising the concern has (e.g. nurse, technician, doctor, administrator, etc);
  - 12.5. date the concern was received;
  - 12.6. date the event occurred;
  - 12.7. how the whistleblowing concern was received;
  - 12.8. service area to which the whistleblowing concern refers;
  - 12.9. whether the concern includes an element of bullying and harassment and/or other HR issue;
  - 12.10. whether the concern raises issues of patient safety;
  - 12.11. whether the person has already experienced detriment as a result of raising this concern;
  - 12.12. date the concern was closed at the early resolution stage (where appropriate);
  - 12.13. date the concern was escalated to the investigation stage (where appropriate);
  - 12.14. date the concern was closed at the investigation stage (where appropriate);
  - 12.15. outcome of the investigation at each stage;
  - 12.16. findings in relation to safety concerns and potential harm;
  - 12.17. findings in relation to concerns of fraud or administrative failures; and
  - 12.18. action taken to remedy any findings.

# Key performance indicators

## Reporting whistleblowing concerns

13. All NHS service providers **must** record and review information in relation to concerns raised about their services on a **quarterly basis**.
14. Data required for these quarterly reports is based on these key performance indicators (KPIs):
  - 14.1. a statement outlining learning, changes or improvements to services or procedures as a result of consideration of whistleblowing concerns;
  - 14.2. a statement to report the experiences of all those involved in the whistleblowing procedure (where this can be provided without compromising confidentiality);
  - 14.3. a statement to report on levels of staff perceptions, awareness and training;
  - 14.4. the total number of concerns received;
  - 14.5. concerns closed at stage 1 and stage 2 of the whistleblowing procedure as a percentage of all concerns closed;
  - 14.6. concerns upheld, partially upheld and not upheld at each stage of the whistleblowing procedure as a percentage of all concerns closed in full at each stage;
  - 14.7. the average time in working days for a full response to concerns at each stage of the whistleblowing procedure;
  - 14.8. the number and percentage of concerns at each stage which were closed in full within the set timescales of 5 and 20 working days;
  - 14.9. the number of concerns at stage 1 where an extension was authorised as a percentage of all concerns at stage 1; and
  - 14.10. the number of concerns at stage 2 where an extension was authorised as a percentage of all concerns at stage 2.
15. Further information and guidance will be available in relation to these KPIs, and in particular in relation to the INWO's expectations of the statements on the INWO website.

## Performance at stage 2 and extensions

16. The timescale of 20 working days for a concern to be closed at the investigation stage aims to ensure cases are progressed as efficiently as possible; while overall timescales will be measured, there is no performance measure or KPI that sets down how many cases must be closed within this timescale.
17. Extensions to timescales should be signed off by senior leadership, and only when it is clear that additional time is needed to ensure a thorough and robust investigation of the issues of concern. If an extension is granted,

those involved must all be informed of indicative revised timescales and regular updates on progress must be sent every 20 working days.

18. Any related HR processes should progress in parallel with an investigation into the concerns raised through this procedure. Every effort should be made to avoid delay in this procedure as a result of associated HR procedures, as this could raise the risk of unsafe or ineffective service delivery.

## Senior management review

19. Concerns must be analysed for trend information to ensure service failures are identified and appropriate action is taken. Quarterly reporting to senior management helps to identify how services could be improved or internal policies and procedures updated. Where appropriate, this review must also consider any recommendations made by the INWO in relation to the investigation of NHS whistleblowing concerns.
20. The outcomes of these reviews should be reported via the organisation's governance structure to the NHS board for review by its members, or equivalent governing body.

## Reporting from primary care and other contracted services

21. NHS boards are responsible for ensuring all primary care and other contracted service providers supply the appropriate KPI information to their board as soon as possible after the end of the quarter.

22. For contracted services, the contract or service level agreement must set out the requirements in relation to reporting concerns.
23. In instances where no concerns have been raised within either primary care or other contracted services, there is no need to provide a quarterly return to the board, but annual reports must still be submitted, setting out the concerns that have been raised over the year, or an explanation that there have been no concerns raised. The board should use this longer-term monitoring of the raising of concerns to gain assurances that staff have confidence in the systems in place.

## Learning from concerns

24. The two key ways of learning from concerns are:
  - 24.1. identifying improvements based on the findings of an investigation; and
  - 24.2. using statistical analysis of concerns raised at a departmental or organisational level to identify recurrent themes, trends or patterns of concerns.

## Improvements following investigations

25. When an investigation identifies that there is a need for change, the organisation must proactively explore the root causes of the concern, how widespread the issue is and the likelihood of recurrence.
26. Investigations may identify improvements which are applicable across other services or clinical departments, and it is important for senior leaders to ensure that every opportunity is taken to explore when service improvements can lead to wider organisational learning.

## Statistical analysis

27. Statistical analysis can be used to identify trends, themes and patterns from the concerns raised across a department or service. Given the potential for different routes to be used to raise concerns, and for confidentiality concerns to limit the number of people informed of them, it is particularly important that the outcomes of concerns are reported and analysed.
28. Where a pattern is identified, this must be fully explored to identify if there are any shared root causes which should be addressed. For example, several concerns raised about cleaning services may reflect a more significant issue in relation to the delivery of cleaning services within a department.

## Annual reporting and monitoring performance

29. Boards must publish an annual report setting out performance in handling whistleblowing concerns. This should summarise and build on the quarterly reports produced by the board, including performance against the requirements of the Standards, KPIs, the issues that have been raised and the actions that have been or will be taken to improve services as a result of concerns.
30. Boards must work with their services providers (including primary care (see Part 7 of the Standards)) to ensure they get the required information so that this annual report covers all the NHS services provided through the board. Integration joint board (IJB) (see Part 8) reporting must also be covered in this report, unless a separate annual report covering all IJB services is published by the IJB itself. The annual report must also include concerns raised by students (see Part 9) and volunteers (see Part 10) about NHS services.
31. This provides the opportunity for boards to show that they have listened to their staff, addressed the concerns raised and made improvements to services. A focus on the lessons learned will demonstrate that concerns are taken seriously and that staff are treated well through the process.
32. An increase in the number of whistleblowing concerns is not necessarily a cause for concern; it may reflect a shift towards a culture that values the raising of concerns as opportunities to learn and improve.



However, an increase in anonymous whistleblowing concerns may be driven by different considerations, and potentially a culture that does not value the raising of concerns. Likewise, very low numbers of concerns being reported may indicate a lack of confidence in the processes and support in place. The data should be considered in the context of existing trends and benchmarking data. The reason for any major variations must be fully explored, and appropriate action taken in response.

33. Every effort must be made during the preparation of these reports to ensure that the identities of those involved in whistleblowing concerns cannot be discerned from the information or context provided in the report. This is particularly relevant where small numbers of cases are involved. In such instances it may be necessary to provide more limited information.
34. These reports must be easily accessible to members of the public and available in alternative formats as requested.

## Sharing the learning

35. As well as publicising performance in relation to concerns handling, all providers should show that they encourage staff to speak up, and that doing so leads to improvements in services. This can be achieved through sharing the learning from concerns as widely as possible, and by publicising good news stories on a regular basis. This could be through staff newsletters, leaflets, posters or on staff intranet pages, to ensure that staff across the organisation have easy access to it. This helps to show staff that raising concerns can influence service delivery and improve the profile and transparency of the whistleblowing procedure.
36. Openly and regularly discussing improvements that have been made as a result of concerns raised by staff at a team or departmental level will also encourage staff to raise their concerns. This must be done carefully and with sensitivity, to ensure appropriate confidentiality is maintained. However, the benefits of gaining staff trust through discussing and sharing improvements should be explored when possible.



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## **Part 6**

# **Governance: NHS board requirements for external services**

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## Requirement to meet the Standards

1. This part of the Standards sets out the responsibilities of all NHS boards for the services they provide indirectly – through primary care, contracted services (including any maintenance and domiciliary services), health and social care partnerships (HSCPs), and in conjunction with higher education institutions and voluntary sector providers.
2. Further information on the requirements for these various service providers are available in Parts 7-10 of the Standards.
5. They must also ensure that they receive quarterly reports from all those organisations that deliver services on their behalf. In particular, boards will be expected to compile reports on concerns raised with primary care providers and contracted services.
6. Boards must review these quarterly reports and follow up on any issues that they raise. They must also take a considered approach to what these reports say about the culture of speaking up within the organisation and beyond. This is particularly important in relation to primary care services, where a lack of reporting of any concerns may indicate difficulties for staff in raising concerns.

## Board oversight

3. NHS boards must have effective mechanisms for oversight of the concerns raised about their own services. They must also have systems in place to ensure that they are aware of concerns that are raised about the services they fund or support through alternative delivery routes.
4. This means that boards must ensure that all services delivered by them or on their behalf have appropriate procedures in place for their staff, students, contractors, volunteers and others to access a whistleblowing procedure that is in line with these Standards.

## Ensuring compliance through contracts

7. As set out above, it is the **NHS board's responsibility to ensure that primary care and other contracted service providers have procedures in place that are in line with these Standards**. This must form a part of all contracts or service level agreements with contracted service providers.
8. Boards must have mechanisms for ensuring compliance with these requirements, including the requirement to report concerns handling information to the board on a quarterly basis when necessary.

9. Boards must have a confidential contact, who staff from primary care and contracted providers can contact if they do not feel able to raise their concerns within their own organisation.
10. This confidential contact must be able to provide information and support to the person raising a concern. They must also be familiar with routes for progressing such concerns and the requirements of the Standards, so they can discuss options with the person raising the concern.
11. Where an investigation within the contracted service is not possible, due to potential conflicts of interest, the provider must discuss the concern with the NHS board contracting the service, and work with the board to investigate the issue.
12. NHS boards must be willing to assist with the investigation of concerns raised in relation to primary care or contracted services. This assistance may involve providing an investigator with an appropriate level of experience and expertise, or advice on how to conduct an investigation. The board must gain assurances that appropriate action has been taken to address concerns raised with them about a service they are providing under contract.

## NHS boards and integration joint boards

13. Each integration joint board (IJB) must develop an agreement which sets out how staff employed by both the NHS board and the local authority can raise concerns about services that are the responsibility of either the NHS board or the local authority.
14. This agreement must ensure that concerns about NHS services can be considered through the Standards. While good practice would suggest that a similar approach is taken to local authority services, these cannot be reviewed by the INWO, but are more likely to be appropriate for consideration by the Care Inspectorate.
15. The board must satisfy itself that:
  - 15.1. concerns raised within the health and social care partnership (HSCP) are recorded and reported in line with the Standards;
  - 15.2. arrangements are in place for quarterly reporting of concerns raised by staff to the IJB itself; and
  - 15.3. quarterly reports reflect the concerns that have been raised within the HSCP, performance in handling these concerns and lessons learned.
16. Further information is provided in the Part 8 of the Standards, for IJBs.

## Working with higher education institutions

### Enabling students to raise concerns

17. Students and trainees work in a range of settings, and cover many disciplines. Students must be able to raise concerns and have access to support services, in line with the Standards.
18. Students must also be encouraged to raise concerns with an appropriate manager within the service they are working in. Feeling confident and able to do this is an important part of their training. They must also have access to the board's confidential contact or whistleblowing ambassador. However, it is acknowledged that students are, mostly, inexperienced and particularly at risk of detriment in relation to their course marks. For this reason, it is important that they also have access to an alternative route for raising concerns.
19. In order to achieve this, higher education institutions (HEIs) courses must identify an appropriate contact for any student group that will be working in an NHS service. This could be a course coordinator or similar. Their role will be to provide information and support to any students raising concerns with them. Further information is available in Part 9 of the Standards on arrangements for students.

## Higher education institution staff in the NHS

20. Many NHS boards have departments where staff from HEIs work alongside NHS staff, and their educational and health care roles normally overlap. These workers are as likely as anyone else to identify an issue within an NHS service which needs to be addressed for the benefit of patient safety, efficient service delivery or good governance. It is therefore important that, in relation to whistleblowing, they should have equal access to this procedure and to the support they need in raising their concern.
21. On occasion, these staff may wish to raise a concern with a supervisor or line manager who is outside the NHS. However, while they may be well placed to provide support for the individual, they may not be well placed to take forward appropriate service changes. On this basis, HEI staff should be encouraged to raise concerns with an appropriate manager within the department they are working in. They must also have access to the board's confidential contact.
22. Boards must also ensure that access to the Standards is included within their Allied Health Professionals' NES Practice Placement Agreements, so that boards, HEIs and students are aware of the process.

## Working with voluntary sector providers

23. Voluntary organisations work within the NHS in a number of ways, most common of which are:
  - 23.1. provision of additional services, paid for by the voluntary sector, e.g. Macmillan nurses;
  - 23.2. provision of services contracted by the NHS, e.g. delivery of nursing care at home; and
  - 23.3. volunteers working within an NHS setting, e.g. ward visitors.
24. All these groups may find there are issues which concern them about how work is being carried out in an NHS service, so all must be able to access this procedure, and have access to the support and protection provided by these Standards.
25. People working for voluntary organisations contracted to provide a service for the NHS are included through contractual arrangements, in line with all other contracted services.
26. People working (either paid or voluntarily) for voluntary services that are additional to NHS services, but work alongside them, must be able to raise any concern they have with the most appropriate local manager. They must also be able to have access to the board's confidential contact and to any support they need in relation to raising the concern.
27. These workers may prefer to raise their concern with a representative from the voluntary organisation (particularly volunteers, who may not feel able to raise concerns directly). It is expected that each voluntary organisation that works within an NHS setting will have at least one member of staff who is informed and able to support their volunteer or colleague through this procedure. They can act as an advocate if the individual does not feel able to raise the concern themselves. NHS managers must facilitate such raising of concerns and be open to the learning opportunities they provide.



## Providing a confidential contact

28. Details of the role of the confidential contact or whistleblowing ambassador are provided in Part 4 of these Standards. In relation to their role with external service providers, the confidential contacts must be aware of the board's obligation to receive concerns and provide support to anyone working within or alongside a service provided by the board. They must welcome such concerns and actively encourage them when promoting the raising of concerns.
29. Confidential contacts are encouraged to develop relations with representatives from HEIs and voluntary sector providers, to develop a mutual understanding of their roles, and so if issues do arise, communication is easier.
30. Boards may choose to have several confidential contacts; it may be appropriate to have one specifically for these groups, and another to work with primary care and contracted services, to encourage the raising of concerns in these areas.





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## **Part 7**

# **Information for primary care providers and other contracted services**

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## Promoting raising concerns

1. The Standards set out how the Independent National Whistleblowing Officer (INWO) expects all NHS service providers to respond when staff raise concerns. This document reviews the expectations for all primary care and contracted services in implementing the Standards.
2. Listening and responding to concerns raised by staff about the way services are provided is a vital way in which organisations of all sizes can improve their services. In primary care and other small organisations it is particularly important to make this process easy and straightforward, and to show the benefits of raising concerns.
3. Staff in small teams or organisations can find it particularly difficult to raise concerns about the work they or their colleagues are doing, and it is important that they receive the support and encouragement they need to raise concerns in a way which can improve safe, effective service delivery and good governance.
4. Senior managers play a critical role in promoting a culture that encourages staff to raise issues or concerns. Their leadership and behaviour will set the tone for the way other staff behave, particularly in a small organisation. All NHS

services must strive for a culture that welcomes concerns from people working within their services, whoever they are, and whatever their concern, with the focus on good governance and delivering safe and effective services.

5. The Standards set out how the INWO expects primary care providers and contracted services to respond when staff raise concerns, and this includes providing support within a culture that welcomes concerns from people working within their services.

## Requirement to meet the Standards

6. All primary care providers and contracted services are required to have a procedure that meets with the requirements of these Standards. This means that any organisation delivering NHS services, whether it is a private company, a third sector organisation or a primary care provider, has the same requirement to ensure access to a procedure in line with these Standards. This includes third sector organisations providing services on behalf of NHS Scotland and private companies under contract with NHS Scotland, including maintenance and domiciliary services.

7. All those delivering NHS services **must** be able to raise concerns about NHS services, and **must** have access to the support they need to do so. Access to the Standards **must** be available to:
  - 7.1. anyone who works directly for these services; and
  - 7.2. anyone working for another organisation, but within these services, such as district nurses, agency staff, students/trainees and volunteers.
8. If the individual is raising a concern about a service that is not their employer (such as a district nurse working in a GP service or a locum pharmacist working for an agency) then they must be able to raise concerns either directly with their employer or within the service itself, including full access to the Standards.
9. This includes:
  - 9.1. providing clear information about who staff and other workers can raise concerns with, both within the organisation and externally;
  - 9.2. access to a two stage procedure (see Part 3), where the worker has agreed to use this procedure;
  - 9.3. the availability of support (see Part 2) for those involved in raising a concern;
  - 9.4. arrangements for raising concerns about senior staff (see Part 4);
  - 9.5. the requirement to record (see Part 5) all concerns;
  - 9.6. the requirement to report (see Part 5) all concerns internally and to the board on a quarterly basis; and
  - 9.7. the requirement to share information about how services have improved following raising of concerns, taking care not to reveal who has raised the concern.
10. Anyone raising a concern about a service provided by NHS Scotland must be signposted to the INWO at the end of this process. More information about this is available in Part 3 of the Standards.
11. When a primary care or contracted service is being delivered by a much larger organisation, such as a local pharmacy that is run by a national company, this company must ensure that any services delivered on behalf of NHS Scotland are compliant with these requirements.

## How to raise concerns: options for small organisations

12. Small organisations face varying challenges around the raising of concerns, and it is important for managers to be aware of these. The most obvious difficulty is for staff to raise concerns in a confidential way, when the size of the team means it will be obvious who has raised the concern. This is likely to be exacerbated by worries that a concern may be investigated by another member of the team.
13. Small organisations can reduce the difficulties their workers may face in raising concerns by:
  - 13.1. providing an alternative point of contact for raising a concern, for example, sharing 'confidential contacts' with other local services or practices. They would not share the details of who had raised the concern, but would act as the person's advocate, passing on information and updates as appropriate; and
  - 13.2. using an external investigator to investigate concerns raised at stage 2.
14. To ensure all staff working for NHS providers can safely raise concerns about the services they provide, NHS boards are required to provide a confidential contact for primary care and contracted providers, and this person can provide information and advice to anyone considering raising a concern. If necessary the confidential contact will ensure that appropriate action is taken to reduce immediate patient risk.
15. Where an investigation within the organisation is not possible, due to potential conflicts of interest, the provider must discuss the concern with the NHS board contracting the service, and work with the board to investigate the issue.
16. For their part, NHS boards must be willing to assist with the investigation of concerns raised in relation to primary care or contracted services. This assistance may involve providing an investigator with an appropriate level of experience and expertise, or advice in how to conduct an investigation. The board must gain assurances that appropriate action has been taken to address concerns raised with them about a service they are providing under contract.
17. Sharing information about how services have been improved may be more difficult if there is a concern about confidentiality. Care must be taken in reporting both statistical and case specific information. However, where this information can be appropriately anonymised, it provides the potential to reassure staff that their concerns will be listened to and acted on, so every effort must be made to share information in some way.
18. At the end of this process, the worker must be signposted to the INWO. The INWO's assessment of a case will consider whether the procedures were in line with the Standards, and that sufficient attempts have been made to ensure staff can raise concerns confidentially.

## Informing staff

19. Encouraging staff to raise concerns early is the best way to resolve them easily. It is important, alongside encouraging staff to raise concerns, that they are also given the information they need to raise concerns through the Standards. This must include information on who they can raise concerns with, and how, including the board's confidential contact, as well as any local routes for raising concerns.
20. They must also be informed of the two stage process and contact details for the INWO, along with information about where they can access information and support on raising concerns. Ensuring this information is readily available will show staff that the organisation values the concerns that they raise.

## Recording of concerns

21. The detailed information about recording concerns (Part 5 of the Standards) is also applicable to primary care and contracted services.
22. There is not necessarily a need to have complex recording and reporting systems in place. However, it is important to ensure that there is the capacity to maintain confidentiality for the person raising the concern. This may be achieved by holding information on the person separate from information on the investigation of the concern. Ensuring that access to records is limited to those people for whom access is necessary in relation to the process is critical for compliance with confidentiality and data protection law. Ensuring that those raising concerns are informed of the extent of proposed information sharing before providing their personal information is equally important.



## Monitoring, reporting and learning from concerns

23. The detailed information about monitoring, reporting and learning from concerns (Part 5 of the Standards) is also applicable to primary care and contracted services.
24. It is important for all services to listen to staff concerns, and for this to lead to learning and service improvements. Learning can be identified from individual cases (including the potential for improvements across other areas of the service) and through statistical analysis of more minor concerns raised at stage 1 of the procedure. Any learning that is identified from concerns must be recorded within the case record, including any action planning.
26. The number of concerns raised within a single primary care service may be limited, making the outcomes of statistical analysis less valid. For this reason, it is particularly important that primary care services report their concerns data, including lessons learned, to their board. Each board will then be able to collate this information and identify areas for specific attention, based on the themes and trends within the services in their area. On this basis, primary care services must:
  - 26.1. **annually report** concerns data to the board, even if to report that there were no concerns raised; and
  - 26.2. **quarterly** only report to the board if concerns were raised in that quarter; if no concerns have been raised, there is no need to report, though it is good practice to let the board know.
27. Individual services are also expected to show their staff that they value the concerns that are raised by staff and other workers. There are a range of ways they show this, and one of the best ways is to use case studies when concerns have led to improvements. All primary care and contracted services must publish information about the concerns that have been raised with them, unless this is likely to identify any individuals. High level information (with very limited information about what was investigated) may still be appropriate, and will provide the opportunity to show staff that managers will listen and respond to concerns.



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## **Part 8**

# **Information for health and social care partnerships**

**JANUARY 2020**

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## Promoting raising concerns

1. The Standards set out how the Independent National Whistleblowing Officer (INWO) expects all NHS service providers to respond when staff raise concerns, including supporting the person raising a concern. This document reviews the expectations and options for health and social care partnerships (HSCPs) in implementing the Standards.
2. Listening and responding to concerns raised by staff about the way services are provided is a vital way in which organisations can improve their services. HSCPs are in an unusual position in having employees from two organisations delivering services together. The challenges this creates in governance arrangements must not get in the way of staff raising concerns when they see working practices which are unsafe or risky, or where they believe there has been improper conduct, mismanagement or fraud.
3. People working in joint teams may feel reluctant or uneasy in raising concerns relating to staff with different lines of management, or where employers have different arrangements in place for whistleblowing. It is, therefore, more important than ever that senior managers in HSCPs and the integration joint board (IJB) itself promote a culture that encourages staff to raise issues or concerns at the earliest opportunity.

4. Senior managers play a critical role in promoting a culture that encourages staff to raise issues or concerns. Their leadership and behaviour sets the tone for the way other staff behave. All NHS services must strive for a culture that welcomes concerns from people working within their services, whoever they are, and whatever their concern, with the focus on good governance and delivering safe and effective services.

## Requirement to meet the Standards

5. All those working in HSCPs **must** be able to raise concerns about NHS services, and **must** have access to the support they need to do so, whoever their employer is. Any concerns about the delivery of NHS services must be handled in line with the requirements of these Standards, and anyone raising a concern through these Standards will have access to the INWO, whoever their employer is.
6. IJBs must ensure that all HSCP staff, across both the local authority and the NHS, as well as any students, trainees, agency staff or volunteers, must be able to raise a concern through this procedure.

7. This includes:
  - 7.1. providing clear information about who staff and other workers can raise concerns with, either within their service or at a more senior level;
  - 7.2. ensuring access to the 2 stage procedure (see Part 3 of the National Whistleblowing Standards), where the worker has agreed to use this procedure;
  - 7.3. the availability of support (see Part 2) for those involved in raising a concern;
  - 7.4. the ability to raise concerns about senior staff (see Part 4);
  - 7.5. a requirement to record all concerns (see Part 5);
  - 7.6. a requirement to report all concerns to the IJB and the NHS board on a quarterly basis (see Part 5); and
  - 7.7. a requirement to share information about how services have improved as a result of concerns, taking care not to identify who raised the concern.
8. Anyone raising a concern about a service provided by NHS Scotland must be signposted to the INWO at the end of this process. More information about this is available in Part 3 of the Standards.
9. It may be that in considering concerns about NHS services, issues are identified which relate to local authority services. If that is the case, the whistleblower should be signposted to the INWO in respect of issues that relate to NHS services and the Care Inspectorate or other appropriate regulatory or oversight body for issues that relate to local authority services.
10. An agreement by the IJB may be required to ensure support and protection for all those working within the HSCP, in raising concerns about its NHS services.





## Ensuring equity for staff

11. The requirement to have the Standards in place for all NHS services and not for local authority services could lead to disparity between those working for HSCPs. It could also lead to some confusion around which procedure to use, these Standards or the local authority's procedure for raising concerns. This could be particularly difficult where these services are closely integrated.
12. While this procedure must be available to all those working within NHS services, it is also important for those working in any of the HSCP's other services to also feel able to raise concerns. This is critical to:
  - 12.1. ensure effective governance arrangements;
  - 12.2. enable safe and efficient delivery of services;
  - 12.3. ensure equity for staff whoever they work for;
  - 12.4. assist senior managers in sharing a consistent message in encouraging staff to raise concerns through a simple and straightforward procedure; and
  - 12.5. enable a joined up approach to raising concerns, where lessons can be learnt across the organisation.
13. With this in mind, and particularly where services have been effectively integrated, the INWO recommends that HSCPs adopt the same approach to handling concerns raised about local authority services as they do in relation to NHS services. This would extend any agreement in place in relation to the raising of concerns for NHS services, and would ensure that all those working within the HSCP have equal access to a procedure in line with these Standards. The only variation would need to be at the review stage, when concerns about different services would need to be signposted as appropriate, to the INWO, the Care Inspectorate or in some cases, Audit Scotland.
14. The details of any extended agreement are for each IJB and their HSCP to consider; each HSCP have different arrangements in place for the delivery of their services, and it will be for them to consider whether such an agreement should cover all of their services or only the NHS services. This may depend to some extent on how differentiated the HSCP's services are from other local authority services; it would not be appropriate to create confusion for local authority staff in how to raise concerns about their services.
15. Chief officers are responsible for ensuring that systems and procedures are in place for raising concerns within these Standards, in relation to NHS services. They must also take a leading role in reviewing arrangements in relation to local authority services, and taking forward any changes to ensure the Standards can be met, as well as any other changes to ensure equity of access across the HSCP.

## How to raise concerns

16. Those working in HSCPs must be able to raise concerns in several ways, including:
  - 16.1. with their line manager or team leader (whether they are employed by the NHS or the local authority);
  - 16.2. a more senior manager from either employer if circumstances mean this is more appropriate; or
  - 16.3. a confidential contact for raising concerns (in some places there may also be speak up ambassadors or advocates); this may be someone within the board.
17. A key element of the Standards is for those people who raise concerns to be advised of their right, and agree to access this procedure. This can be done in the initial conversation about the concern, or following receipt of an email.
18. Within HSCPs, the confidential contact will need to be familiar with the way concerns are handled across its services, as well as the board's expectations around handling concerns.
19. The board's whistleblowing champion will have a role in ensuring that appropriate arrangements are in place to ensure delivery of the Standards. (Further information

about this role is available in Part 2 of the Standards.) They will be able to provide guidance for HSCP managers on how concerns raised in relation to NHS services must be handled, as well as sharing information about appropriate governance arrangements.

## Recording of concerns

20. The detailed information about recording concerns (Part 5 of the Standards) is also applicable to concerns raised within HSCPs in relation to their NHS services.
21. Each HSCP needs to consider how they hold information about concerns that have been raised through this procedure. In particular, there need to be systems in place to ensure that personal information is only shared with individuals as agreed or explained to the person raising the concern. The details of the concern itself, and how it has been handled, need to be stored in a way that will enable reporting and monitoring of concerns and concerns handling.
22. This may mean that concerns about local authority services are recorded separately from those relating to NHS services. Any joint systems that are developed will need to be able to separate out concerns about NHS services from those about the local authority services, so the NHS board can carry out appropriate monitoring of these concerns.

## Monitoring, reporting and learning from concerns

23. The detailed information about monitoring, reporting and learning from concerns (Part 5 of the Standards) is also applicable to concerns raised within HSCPs in relation to their NHS services.
24. It is important for all services to listen to staff concerns, and, where appropriate, for this to lead to organisational learning and service improvements. Learning can be identified from individual cases closed at stage 2 and through statistical analysis of concerns resolved at stage 1 of the procedure. This may include the potential for improvements across other areas of the service. Any learning that is identified from concerns must be recorded within the case record, including any action planning.
25. NHS boards are responsible for collating reports of concerns raised in relation to the services they deliver, including those raised within the HSCPs in its area. In this way, boards will be able to identify areas for specific attention, based on the themes and trends across these HSCPs. Feedback from this process provides the opportunity to demonstrate the benefits of raising concerns.
26. Each HSCP is also expected to show their staff that they value the concerns that are raised by staff and other workers. All IJBs must ensure that information is published and promoted about the concerns that have been raised about their services, unless this is likely to identify individuals. High-level information (with very limited information about what was investigated) may still be appropriate, and will provide the opportunity to show staff that managers will listen and respond to concerns.



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## **Part 9**

# **Arrangements for students and trainees**

**JANUARY 2020**

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in Summer 2020 – exact date to be confirmed

## **Student and trainee access to the Standards and the Independent National Whistleblowing Officer (INWO)**

1. Students, trainees, and anyone on apprenticeships and internships working and/or studying within NHS services must have access to these Standards for raising concerns about NHS service delivery. They must be able to speak out by raising concerns over patient safety or malpractice, and they must have access to the support they need to do so.
2. Students and trainees are often at specific risk of detriment during placements, as they will be relying on managers and mentors for assessment and grading. They may be deterred from raising concerns if they feel this would impact on their marks, and this concern must be taken into consideration when responding to concerns raised by students.
3. During their training, most students will be informed of what whistleblowing means and how raising concerns provides an important mechanism for service improvements. Some will also be informed of the duty they will have to raise concerns, once they are registered professionals. Their confidence in putting this into practice will vary, depending on a range of factors, including their previous placements and the culture they experience around them where they are working.

## **Students raising concerns within NHS services**

4. Students and trainees working in an NHS setting should be encouraged to participate fully in the organisation's learning culture and should be encouraged to use the systems available to all regular members of staff to raise concerns.
5. They must have access to information and advice from all the same sources as other staff within the service, including:
  - 5.1. National Alert Line – 0800 008 6112 or email – [alertline@protect-advice.org.uk](mailto:alertline@protect-advice.org.uk);
  - 5.2. the board's confidential contact for raising concerns, or other confidential speak up contact;
  - 5.3. the INWO;
  - 5.4. union representatives;
  - 5.5. professional bodies;
  - 5.6. university representatives (for students); and
  - 5.7. NHS Education Scotland (for trainee doctors and dentists).
6. They must also be able to raise concerns with:
  - 6.1. a service manager or team leader;
  - 6.2. a more senior manager if circumstances mean this is more appropriate;
  - 6.3. a university representative (see below for details); or
  - 6.4. a confidential contact for raising concerns (in some places there may also be speak up ambassadors or advocates).

7. All NHS boards and service providers must be open to receiving concerns either directly from a student, or through a representative from their course, and must ensure that these concerns are responded to in line with the Standards.
  8. Students may have concerns that relate to the way their course has been managed or how their placement fits into their wider studies. Concerns such as these, that relate to their course rather than the delivery of NHS services, should be directed to the complaints procedure in their higher education institution (HEI). Concerns about NHS services should always be referred to the NHS for consideration, either by the student or via their course advocate, as detailed below.
  9. (Staff that have NHS as well as teaching responsibilities should raise their concerns through the NHS procedure, as this will provide protection through the Standards. See Part 6 of the Standards for further information.)
- does not feel confident that this would achieve the right outcomes for them, they must be able to raise their concern through their course representative or 'course advocate'.
11. Each course that provides placements, traineeships or work experience in NHS services must have a named person (such as the course coordinator), who can act as an advocate, and take the concern to the board or primary care service on their behalf. This person must be fully aware of these Standards, what students can expect when they raise a concern, and who to contact in each of the boards where their students work, in case any concerns are raised.
  12. The course advocate must provide information and advice to students, and discuss the implications of raising the concern either directly or through the advocate. This discussion must include:
    - 12.1. consideration of confidentiality issues;
    - 12.2. support available to the student and how to access it; and
    - 12.3. details of the procedure and what to expect.
  13. If a student chooses to, they can use the course advocate to raise the concern on their behalf, and can choose whether they then remain anonymous to the board or service provider. If they choose to be anonymous, all communication must go through the course advocate. This includes enquiries for further information, updates and a final response at the end of the process.

## **Students raising concerns through course advocates**

10. In addition to the routes normally available to staff, students can also raise their concerns with a representative on their course. It may be that information and advice is enough for the student to then raise the concern within the service. However, if this is not felt appropriate in the circumstances, or if the student

14. Trainees that are under a direct contract with NHS Education Scotland (NES) can choose to raise their concern directly with the NHS board they are working for, or through NES, with NES acting in the same way as an HEI. Trainees must be informed of who they can contact within NES if they want to raise a concern or would like advice or support in raising a concern.

## Recording student concerns

15. Student concerns should be recorded in the same way as any other concerns. Detailed information about what to record is available in Part 5 of these Standards.
16. For concerns that are raised by a course advocate rather than by the student, the record should indicate the role of the person bringing the concern, as well as their full contact details, and information about the concern being raised. The name, contact details or any other personal details (including course details) of the student must not be recorded, as this could put them at risk of detriment.

## Support for the student

17. Students raising concerns must have access to the same support as staff do in relation to raising concerns. Their course advocate will be able to provide some support in person. The advocate will also be expected to be able to advise on support options provided by the board or service provider. This may, on occasion, mean making special arrangements to ensure access, for example, to counselling which would normally be provided through an employee assistance scheme.

## Signposting to the INWO

18. The final decision provided by the NHS service on any concern raised with them must include signposting to the INWO. This applies equally to student concerns, and, where appropriate, course advocates must take responsibility for passing on this information to the students concerned.

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# Part 10

# Arrangements for volunteers

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## Volunteers' access to the Standards and the Independent National Whistleblowing Officer (INWO)

1. All volunteers working within NHS services must have access to these Standards; they must be able to speak out where they have concerns over patient safety or malpractice, and they must have access to the support they need to do so.
2. Volunteers often have a unique perspective on the work of a ward or service. Their regular presence may mean they become aware of issues which are of concern, and they may well be uncertain of how to deal with them. They may also be uncertain about how serious a problem is, or whether it is something they should have any involvement in.
3. Volunteers are unlikely to share their concerns unless they are encouraged and offered the opportunity to share their insights with others. They may not feel that a whistleblowing procedure applies to them, so it is particularly important to ensure that all volunteers are informed of the procedure and how they can access it.

## Volunteers raising concerns within NHS services

4. Volunteers do not have access to most NHS policies and procedures, but this procedure is an exception. They must have access to information and advice from all the same sources as board staff, including:
  - 4.1. National Alert Line - 0800 008 6112 or email - [alertline@protect-advice.org.uk](mailto:alertline@protect-advice.org.uk);
  - 4.2. the board's confidential contact for raising concerns, or other confidential speak up contact;
  - 4.3. the INWO; and
  - 4.4. coordinator for the organisation they are volunteering for.
5. They must also be able to raise concerns with:
  - 5.1. a service manager or team leader;
  - 5.2. a more senior manager if circumstances mean this is more appropriate;
  - 5.3. a volunteer representative (see below for details); or
  - 5.4. a confidential contact for raising concerns (in some places there may also be whistleblowing ambassadors or advocates).
6. NHS boards must be open to receiving concerns either directly from a volunteer, or through a volunteer coordinator or representative.

## Volunteers raising concerns through the charity's representative

7. In addition to the routes normally available to staff, volunteers can also raise their concerns with a volunteer representative. This is the person nominated by the organisation arranging the volunteering opportunity (which could be directly through the NHS, a charity or other third sector provider). It may be that information and advice is enough for the volunteer to then raise the concern within the service. However, if this is not felt appropriate in the circumstances, or if the volunteer does not feel confident that this would achieve the right outcome, they must be able to raise their concern through the organisation's representative or volunteer coordinator.
8. Any organisation that engages volunteers to work in NHS services must be provided with information about these Standards and asked to ensure that they have someone (such as the volunteer coordinator), who can act as an advocate, and take the concerns to the board or primary care service on the volunteer's behalf, if needed. This person must be fully aware of these Standards, what volunteers can expect when they raise a concern, and who to contact in each of the boards where their volunteers work, in case any concerns are raised.
9. The volunteer representative must provide information and advice to volunteers, and discuss the implications of raising the concern either directly or using the representative as an advocate. This discussion must include:
  - 9.1. consideration of confidentiality issues;
  - 9.2. support available to the volunteer and how to access it; and
  - 9.3. details of the procedure and what to expect.
10. If a volunteer chooses to, they can use the volunteer representative to raise a concern on their behalf, and can choose whether they then remain anonymous to the board or service provider. If they choose this anonymity, all communication must go through the volunteer representative. This includes enquiries for further information, updates and a final response at the end of the process.



## Recording volunteer concerns

11. Volunteer concerns should be recorded in the same way as any other concerns. Detailed information about what to record is available in Part 5 of the Standards.
12. For concerns that are raised by a volunteer representative rather than by the volunteer, the record should indicate the role of the person bringing the concern, as well as their full contact details, and information about the concern being raised. The name, contact details or any other personal details (including volunteering role) of the volunteer must not be recorded, as this could put them at risk of detriment.

## Support for the volunteer

13. Volunteers raising concerns must have access to all appropriate forms of support. Their representative will be able to provide some support in person. They will also be expected to be aware of, or seek out information about, support options provided by the board or service provider.
14. Boards must ensure that, wherever possible, volunteers have access to the same support as staff do in relation to raising concerns. This may, on occasion, mean making special arrangements to ensure access, for example, to counselling which would normally be provided through an employee assistance scheme.

## Signposting to the INWO

15. The final response or feedback provided by the NHS service on any concern raised with them must include signposting to the INWO. This also applies to concerns raised by volunteers, and the volunteer representative must take responsibility for passing on this information to the volunteer concerned.



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