

Meeting:	NSS Board
Meeting date:	Wednesday, 24 March 2021
Title:	Whistleblowing Report
Responsible Executives:	Jacqui Reilly and Jacqui Jones
Report Author:	Professor Jacqui Reilly

<b>B/21/07</b>
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## 1 Purpose

**This is presented to the NSS Board for:**

- **Information** - This report provides an update on the NSS plans for implementation of the new National Whistleblowing Standards with effect from 1<sup>st</sup> April 2021.

**This report relates to a:**

- National policy for Local adoption (national whistleblowing standards and national policy)
- Part of Staff Governance Process

**This aligns to the following NHSScotland quality ambition(s):**

- Safe
- Effective
- Person Centred

## 2 Report summary

### 2.1 Situation

The National Whistleblowing Standards have a new process and procedure for handling whistleblowing concerns raised by staff and others delivering NHS services. These will be formally published when the INWO goes live on 1 April 2021. For NHSScotland staff, these will form the 'Once for Scotland' Whistleblowing Policy that will go-live at the same time. The national policy and guidance was published on 5 February 2021. A RAG status Compliance Self-Assessment Checklist is attached at Appendix 1 for information.

### 2.2 Background

The Whistleblowing National Policy was subject to a soft launch on 5 February 2021 and there is an expected implementation date of 1 April 2021.

The scope for this policy within NSS is inclusive of its current (and former) employees, bank and agency workers, contractors (including third sector providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NSS staff.

In line with our strategic intent, we must also continue to learn from all feedback the organisation can gain through whistleblowing, in order to improve the way we do things. We are required to continue to report annually on the whistleblowing cases our organisation receives. Evidence of our organisational learning to date has been previously presented to the Staff Governance Committee.

NSS has an established whistleblowing implementation group who have been working to make the organisation ready for the implementation to a plan approved by EMT in December 2020.

SPSO have worked with NHS Education Scotland (NES) to develop training materials that are now available through the TURAS Learn website. There are two training modules - one for raising staff awareness of whistleblowing and one for managers and people who receive concerns. The NSS partnership forum and staff governance committees in February approved that this training would be mandatory for NSS staff and require review every 3 years.

## **2.3 Assessment**

### **2.3.1 Quality/ Patient Care**

Whistleblowing is an important policy and process for staff to enable them to speak up about any concerns they may have in the organisation with respect to quality and safety in patient care. The information in this report has no direct impact on patient care, except in those circumstances when the whistleblowing process is used to highlight patient safety concerns or other quality matters in the organisation. Any recommendations or actions that come out of future whistleblowing cases will help to improve quality of NSS services and patient care. This will be reported at NSS management level and any escalations would then be via the staff governance routes and EMT to the board.

### **2.3.2 Workforce**

There is no more likely impact on workforce than the existing policy, with the exception of defining more specific roles and responsibilities defined in the SPSO WB standards for existing post holders and a decision with respect to the training requirements of staff in NSS with respect to the requirement to undertake the training and frequency of this (this is not defined in the standards specifically). There is staff related impact to complete the new training in the next financial year and the refresh every 3 years, as well as for induction of new staff.

### **2.3.3 Financial**

It is not anticipated that there will be any significant financial impact for NSS in implementing the national WB standards or national policy.

### **2.3.4 Risk Assessment/Management**

All necessary risk relating to this report and any outcomes will be managed through the NSS Integrated Risk Management framework and reported to relevant NSS Committees. The risks are articulated in the context of the Data Protection and Equality and Fairer Scotland Impact Assessments approvals completed as part of the implementation process.

The NSS delivery in terms of the national policy and alignment to our processes and publication on GeNSS, templates and reporting being in place with a communications strategy for launch is on track for delivery by April 2021, this is in line with the requirements of us as a board. There is a dependency on HR services for this delivery, to date this has been reported as on track.

It should be recognised that the current pandemic response will impact the ability of NSS staff (and the wider scope of all this policy applies to) to be able to engage with additional requests regarding implementation of the policy, thus implementation planning inclusive of additional communications and training, and the timing of this, will be considered for year one (2021/22) and the annual requirements thereafter. This annual planning will also consider any required indicators and actions to ensure this policy is well embedded in the organisation and that we continue to learn from cases when they arise.

### **2.3.5 Equality and Diversity and Data protection**

An Equality Impact Assessment and Data Protection Impact Assessment have been undertaken in respect of the new planned Whistleblowing policy implementation.

The Whistleblowing Operational Delivery Group have considered whether it is necessary to record equality information at this time and have agreed that the numbers of individuals raising concerns under whistleblowing are currently too small to make any captured data meaningful. The group also noted that any Whistleblowing concerns which related to these matters would be examined under themes emerging from reports and organisational learning enabled therein. This will, however, be kept under review.

### **2.3.6 Other impacts**

### **2.3.7 Communication, involvement, engagement and consultation**

The draft standards for whistleblowing were nationally consulted on and NSS contributed to this in 2019.

NSS established an internal working group to consider the required actions in support of implementing the new standards. This group are leading the implementation from January to March 2021 and include membership from CG/ governance, E&D, HR, corporate

governance and communications, staff side and the WB ambassador. The first meeting was attended by the WB champion/ NED. The group has an action plan and tasks for HR, E&D, IG/CD and communications. These are all on track for delivery and the communications actions have commenced to plan.

The scope for this policy within NSS is inclusive of its current (and former) employees, bank and agency workers, contractors (including third sector providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NSS staff. 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 sectors organizations providing services on behalf of NHS Scotland and private companies under contract with NHS Scotland, including maintenance and domiciliary services. It is not clear to what extent NSS is required to ensure these are in place for all those services we do business. The standards do indicate we are required to engage with primary care and other contract managers to ensure they are aware of the requirements, develop effective reporting arrangements (from them to us) and include these requirements into contractual agreements. We therefore must ensure all those in scope are aware of our policy and process and know who to contact to raise a concern, in the same way our staff should. Our communication plans take account of this scope and can be flexed to meet any additional need. In addition a number of additional actions to mitigate the risk associated with the potential scope of this for NSS detailed in the attached risk jotter (available at Appendix 2).

### **2.3.8 Route to the Meeting**

A more detailed version of this paper has previously been considered by the Partnership Forum and Staff Governance Committee and approved.

## **2.4 Recommendation**

- **To note progress made.**

## **3 List of appendices**

The following appendices are included with this report:

- Appendix No 1 Compliance Self-Assessment Checklist for NHS Providers
- Appendix No 2 Risk Jotter in respect of third parties
- Appendix No3 Roles and Responsibilities

### **Whistleblowing Policy – Compliance Self-Assessment Checklist for NHS Providers**

The National Whistleblowing Standards (the Standards) come into force on the 1st April 2021. From that date onwards, all NHS providers delivering services on behalf of the NHS in Scotland must have a whistleblowing policy and procedure in place that complies with the Standards. This must be accessible to all staff, students and volunteers providing services on their behalf.

This self-assessment sheet includes a comprehensive list of the key requirements from the Standards and enables providers to check that their policy and procedures are compliant.

Parts 2, 3 and 5 of the Standards can be easily adapted for used as a template for the local policy. If a different approach is used, the content of the local policy and procedures must match the requirements of the Standards.

An alternative approach would be to have a summarised policy, including reference to all the elements below, but with links to the Standards for more detail on how it will be implemented.

The procedure and when to use it – the policy must			
Define whistleblowing and whistleblower to match the definitions in the Standards		Signpost to external sources of information and advice	
Define and explain what constitutes a whistleblowing concern		Explain what should be discussed when deciding if a concern can be handled under the procedure (the 'initial discussion')	
Clarify who can raise a concern		Explain the difference between confidentiality and anonymity	
Include the requirement to provide support to anyone raising a concern		Include confidentiality and data protection (including details of what should be discussed with the whistleblower)	
Allow for whistleblowers to be accompanied at meetings by a trade union representative, friend or colleague		Protect the identity of the whistleblower during investigations	
Refer to the employer's duty of care to the person raising the concern		Guidance on handling anonymous and unnamed concerns	
Refer to the legal protections available to whistleblowers		Explain the difference between a whistleblowing concern and a grievance	
Explain how to raise a concern through existing processes (business as usual)		Include information on how to deal with claims of unfair treatment	
Explain who to raise a concern with		Explain how the organisation will handle concerns raised maliciously	
Provide a confidential contact (e.g. contact within the local Health Board)	See Note 1	Provide a brief overview of the procedure for raising a concern (e.g. a flowchart) for sharing with staff and others covered by the Standards.	

The two stage procedure – the policy must			
Include a descriptor of the early resolution stage of the procedure		Explain the action to take in closing the concern at Stage 1	
Explain that the person raising the concern must want it to be handled under the procedure, and explain what to do if they do not want to		Explain when to escalate a concern to Stage 2	
Set a time limit of six months for accepting a concern, unless there is good reason for considering complaints beyond this time		Include a description of Stage 2 of the procedure	
Include the correct timeline at stage 1 – five working days		Explain the requirement to acknowledge the concern within three working days at Stage 2	
Explain the basis for an extension to the timeline at Stage 1		Explain the requirement to provide a full response to concerns within 20 working days at the investigation stage.	
Explain the issues to be covered and agreed with the whistleblower during the Stage 1 discussion		Specify the information to be provided when acknowledging a concern	

The two stage procedure (cont) – the policy must			
Explain the basis for an extension to the timeline at Stage 2		Explain the organisation's responsibilities to other staff involved in the concern.	
Include an outline of what should be considered when a concern is received at Stage 2		Explain the required action when responding to the concern at Stage 2	
Cover the need to tell the person who has raised the concern how the investigation will be carried out and what their role will be		Include detail of recording concerns at Stage 2	
State that investigations should be kept independent of any other procedures, including HR		Include guidance in relation to meetings and post decision correspondence with the person who raised the concern	
Outline what is expected of investigators and decisions makers in Stage 2 (paragraph 49 of the standards)		Explain the requirement to provide information about the INWO at the conclusion of the Stage 2 Investigation.	

Governance Arrangements – the policy must			
Explain the roles and responsibilities of staff involved in handling whistleblowing concerns, including a confidential contact		Include the requirement for senior management to review the information gathered from concerns regularly, and consider how services could be improved or internal policies and procedures updated	
Explain how to handle concerns about senior staff	See Note 2	Commit to reporting concerns to the relevant NHS Board on a quarterly basis (if there have been concerns raised)	See Note 3
Where relevant, include information on working with other organisations (including higher education providers and voluntary sector providers)		Commit to reporting concerns to the relevant NHS board on an annual basis, even if it is to report that no concerns have been raised	See Note 4
Cover confidentiality and data protection in relation to recording concerns (including reference the data Protection Act 1998)	See Note 5	Include the requirement to learn from concerns and make improvements following investigations at stage 1 and stage 2	
Include a list of the essential information to be recorded in relation to the concern		Include the requirement to discuss the concern with the relevant NHS Board? (For small organisations, if an investigation within the organisation is not possible.)	
Include arrangements to monitor concerns (including the key performance indicators in the Standards) Include the requirement for senior management to review the information gathered from concerns regularly, and consider how services could be improved or internal policies and procedures updated	See Note 6		

NSS will be using the Once for Scotland policy which is based on the National Whistleblowing Standards.

Note 1 – there is one confidential contact identified (LM). The role of the confidential contact, and how it will work in NSS beyond this single role, has still to be agreed. If approved, NSS will recruit up to five confidential contacts over the coming year. These roles will not be limited to supporting staff with whistleblowing concerns but also Grievances, Bullying and Harassment and other services which may be necessary to support individuals.

Note 2 – NSS documentation previously had detail on how to raise a concern about the chief executive and this should be referred to the board chair, the same will apply re all board members and in the case of the chair having a concern raised about them, the deputy chair will be the contact for investigations. For other EMT level staff the chief executive will be the contact.

Note 3 – Quarterly updates will be provided to the Partnership Forum and Staff Governance Committee.

Note 4 – An annual Report will be provided to the NSS Board in June of each year.

Note 5 – A detailed Data Protection Impact Assessment has been undertaken and reviewed by the NSS DPO to ensure confidentiality is maintained at all times.

Note 6 – Regular updates will be provided to the Executive Management Team to enable them to review and learn from concerns raised.



## APPENDIX 2

### Risk Jotter

<b>Risk Description:</b>	<p>New Whistleblowing standards require any organisation delivering NHS services, whether it is a private company, a third sector organisation or a primary care provider, to have 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. All boards, including <b>NSS</b>, are required to 'Engage with primary care and other contract managers to ensure they are aware of the requirements, develop effective reporting arrangements and include these requirements into contracts' and to ensure they have systems in place for recording in the same way the NHS boards do. Reporting of concerns need to be passed onto the board in relation to concerns raised about the services provided for that board. Boards can then use this information to inform their contract management.</p> <p>The scope of engagement with all contract managers and providers for NSS is very broad due to the nature of our business. There is a risk that NSS is unable to secure individual assurance around whistleblowing with each individual provider, contracted service or other stakeholders. This may result in not all staff, past and present (i.e. agency workers, contractors (including third sector providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NSS staff) being supported by the whistleblowing standards</p>	<b>Proximity Date:</b>
		31/03/2021

<b>Impact Description:</b>		<b>Impact (1-5)</b>	<b>Likelihood (1-5)</b>	<b>RAG (I x L)</b>
<b>Clinical</b>	Negligible impact on the delivery of services given current whistle blowing activity in NSS, but unknown for providers to NSS currently.	2	1	2
<b>Business</b>	Where there is a case of whistleblowing it could lead to minor impact on contract management	2	3	6
<b>Staff</b>	Not all staff (as detailed in the scope for WB standards above in risk description) are fully supported by the whistleblowing standards	3	1	3
<b>Reputation</b>	NSS does not complete its due diligence around the implementation of the whistleblowing standards in relation to contract management and with all relevant providers/contractors/stakeholders.	3	3	9

<b>Primary Category:</b>	<b>Residual Risk for Primary:</b>		<b>Secondary Category:</b>	<b>Mitigating Strategy:</b>
Clinical <input type="checkbox"/> Business <input type="checkbox"/> Staff <input type="checkbox"/> Reputation <input checked="" type="checkbox"/>	Impact (1-5)	1	Clinical <input type="checkbox"/> Business <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Reputation <input type="checkbox"/>	Acceptance <input type="checkbox"/>
	Likelihood (1-5)	1		Contingency <input type="checkbox"/>
	RAG (I x L)	1		Prevention (<likelihood) <input checked="" type="checkbox"/>
				Reduction (<impact) <input type="checkbox"/>
				Transference <input type="checkbox"/>

## APPENDIX 2

### Risk Jotter

Mitigating Actions:	
1	Inclusion of whistleblowing requirements for process and reporting assurance within all contracts and communications with NHS providers and HCSP's in scope.
2	Agree a standard form of words to be used in contracts. CLO will draft a form of words for NSS for inclusion of this in all prospective work, which should include new and any planned review of existing contracts NSS has in place.
3	Agree a corporate communication for all SBUs to use in proactive communications with all contractors and providers to raise awareness of the requirements and include in NSS web content for wider audience purposes.
4	Include audits of whistle blowing processes and reporting to NSS as part of annual service audits by KPMG.
5	HR to consider the wider policy impacts of this requirement for contracts and SLA/ MOUs
6	As part of our quality management system agenda ensure all whistleblowing cases reported to SBUs from provider/ contractor organisations are reviewed with lessons identified and improvement plan completed and reviewed as part of the contractual process. This will be reported quarterly to the Staff Governance Committee and included in summary annual reporting.

Strategic Objective (Select 1)					
Customer at Heart of everything we do		Improving the way we do things	x	N/A	
Increase service Impact		Be a great place to work			

Health Impact (Select 1):	
No. people potentially affected	
Zero	
<5K	x
5-50K	
50K – 500K	
500K – 5M	
>5M	

Health Impact (Select 1):	
Potential adverse Health Impact	
Nil (no clinical impact)	
Realisation of minor adverse event ( <i>aligned to clinical impact 2 "minor"</i> )	x
Disruption to provision of clinical services ( <i>aligned to clinical impact 3 "moderate"</i> )	
Moderate reversible effect on health ( <i>aligned to clinical impact 3 "moderate"</i> )	
Irreversible effect on health status ( <i>aligned to clinical impact 4 "major"</i> )	
Severe adverse event occurs ( <i>aligned to clinical impact 5 "catastrophic"</i> )	

## Whistleblowing – proposed roles in NSS

Role	Responsibility	Named Person	SBU/Directorate
<b>Chief Executive</b>	Overall responsibility and accountability for the management of whistleblowing concerns lies with the organisation's chief executive, executive directors and appropriate senior management	Colin Sinclair (until 31/3/31) Mary Morgan (from 1/4/21)	
<b>Whistleblowing Champion</b>	Monitors and supports the effective delivery of the organisation's whistleblowing policy. Provides critical oversight ensures managers are responding to whistleblowing concerns appropriately, in accordance with the Standards. 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.	Professor Arturo Langa	NSS Non-Executive Director
<b>Executive directors (NSS EMT)</b>	Managing whistleblowing concerns and the way the organisation learns from them Overseeing the implementation of actions required as a result of a concern being raised.  Investigating concerns, and/or Deputising for the chief executive on occasion		All SBU/Directorate Leads
<b>HR Director or Workforce Lead</b>	HR Director are responsible for ensuring all staff have access to this procedure, as well as the support they need if they raise a concern. 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. HR functions should not be involved in investigating whistleblowing concerns, unless the concern directly relates to staff conduct issues	Jacqui Jones	HR
<b>Investigators</b>	Investigations 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. Draft recommendations and improvements	Existing trained NSS management investigations	All SBU/Directorates
<b>The 'confidential contact supporting the whistleblowing ambassador' or whistleblowing ambassador</b>	Work with the whistleblowing champion to ensure staff are aware of the arrangements for raising concerns Promote a culture of trust, which values the raising of concerns as a route to learning and improvement Direct contact with frontline staff, ensure they are aware of and have access to the support services available to them when they raise concerns Assist managers in using concerns as opportunities for learning and improvement 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.	Professor Jacqui Reilly (Ambassador) Lynn Morrow (Confidential Contact supporting the ambassador)	Clinical Directorate SPST
<b>INWO liaison officer</b>	Main point of contact between the INWO and the organisation, particularly in relation to any concerns that are raised with the INWO. 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	Lynn Morrow	SPST
<b>Fraud Liaison Officer</b>	Any issues of fraud, the board's fraud liaison officer should be contacted for advice. Liaise with 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.	Laura Howard	Finance

<b>Managers (All Line Managers)</b>	All managers must be aware of the whistleblowing procedure 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. They should also be aware of who to refer a concern to if they are not able to personally handle it.		All SBUs and Directorates
<b>Union representatives</b>	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		All SBUs and Directorates and NSS partnership forum
<b>Confidential Contacts (supporting role for wider HR policy implementation organisationally)</b>	<p>This is not a specific requirement of the WB standards, however NSS is currently considering this based on the NHS Lothian model, to support signposting staff to Grievance, B&amp;H and other services which may be necessary to support the individual. The aim of these roles would be to offer help beyond HR and managerial routes and to offer another person to be able to speak to help build confidence in the employee that concerns will be listened to and addressed.</p> <p>The roles would be voluntary and work across the organisation to offer impartial support and guidance to staff who wish to raise concerns. Signpost staff to suitable routes for raising concerns, advising them of the options available under the relevant policies. Support staff to understand their responsibility to pursue their issue through existing channels, especially in cases of bullying and harassment.</p> <p>Identify which policy the issue that the individual is raising falls under and tailor their advice and support, for example if it is clear it is a whistleblowing concerns then individual should be signposted to dedicated whistleblowing reporting contact.</p> <p>The contacts could also feed back to the Confidential contacts lead/Ambassador any instances where people have had difficulties in raising concerns</p>		Five Contacts across NSS