

Meeting:	NHS Highland Board
Meeting date:	30 March 2021
Title:	Implementation of the Whistleblowing Standards
Responsible Executive/Non-Executive:	Fiona Hogg, Director of HR & OD
Report Author:	Fiona Hogg, Director of HR & OD

1 Purpose

This is presented to the Board for:

- Discussion

This report relates to a:

- Legal requirement

This aligns to the following NHS Scotland quality ambition(s):

- Safe
- Effective
- Person Centred

2 Report summary

2.1 Situation

This report provides an update on the progress made with the implementation of the Whistleblowing Standards across NHS Highland, which come into effect on 1 April 2021. It sets out activity already completed, in progress and planned and any specific challenges or risks we face in implementation and compliance with the standards.

For clarity, information on the scope of the standards is included below.

2.2 Background

The National Whistleblowing 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'.

All NHS organisations will be required to follow the National Whistleblowing Principles and Standards with effect from 1 April 2021. By the go-live date, any organisation providing an NHS service should have procedures in place that enable their staff, students, volunteers and others delivering health services, to access the National Whistleblowing Standards.

The INWO will then be able to investigate complaints about concerns that have been through the local whistleblowing process.

The Standards are applicable across **all NHS services**. This means that 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.

Whistleblowing is defined in the Public Services Reform (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."

This includes an issue that:

- has happened, is happening or is likely to happen
- affects the public, other staff or the NHS provider (the organisation) itself.

People also often talk about 'raising concerns' or 'speaking up'. These terms can also refer to whistleblowing. Whatever language is being used to describe it, the whistleblowing definition as set out above is the key. 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:

- patient-safety issues
- patient-care issues
- poor practice
- unsafe working conditions
- fraud (theft, corruption, bribery or embezzlement)
- changing or falsifying information about performance
- breaking any legal obligation
- abusing authority

- deliberately trying to cover up any of the above.

A whistleblowing concern is different to a grievance or to other employment policies such as bullying and harassment. These are typically a personal complaint about an individual's own situation in employment.

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.

The 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.

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 the Standards should normally only be used if:

- no other procedure or processes are being used
- an existing procedure or process has been used but has not resulted in the outcome the person raising the concern expected, or
- the person asks for the whistleblowing procedure to be used.

People should raise concerns within six months of first becoming aware of the issue the concern relates to.

2.3 Assessment

2.3.1 Roles and Responsibilities

Everyone in the organisation has a responsibility under the Standards, however, there are some specific roles which are particularly important.

NHS Highland Board

The Board plays a critical role in ensuring the standards are adhered to.

Leadership – Setting the tone to encourage speaking up and ensuring concerns are addressed appropriately

Monitoring – through ensuring quarterly reporting is presented and robust challenge and interrogation of this

Overseeing access – ensuring HSCP, third party and independent contractors who provide services are able to raise concerns, as well as students and volunteers.

Support – providing support the Whistleblowing champion and to those who raise concerns.

Board Non-Executive Whistleblowing Champion

This role is taken on by **Albert Donald**, who has been in place since February 2020.

The role monitors and supports the effective delivery of the organisation's whistleblowing policy and is predominantly an assurance role which helps NHS boards comply with their responsibilities in relation to whistleblowing. 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.

INWO Liaison Officer

This role is taken on by **Fiona Hogg**, Director of HR and OD, as a result of her executive lead role in Culture and Communications. This 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.

HR Lead

This role is taken on by Gaye Boyd, Deputy Director of HR and is 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, 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 to manage them appropriately.

However, it is important to note that Whistleblowing is not a process overseen by the HR team and as set out above, it is separate to our main people processes, reflecting the different scope and nature of Whistleblowing complaints .

Confidential Contacts

This "confidential contact" role which is set out in the Standards, is carried out in NHS Highland by our independent Speak Up **Guardian Service**. 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 and who has the capacity and capability to be an initial point of contact for staff who want to raise concerns. They

support staff by providing a safe space to discuss the concern and assist the staff member in raising their concern with an appropriate manager.

Our Guardian Service will provide this role across all areas that the standards cover, including independent contractors and primary care. They also work with the organisation to promote the standards and ensure they are being applied correctly.

There are lots of other contacts and routes for colleagues to chose to discuss a concern and to raise this,

Chief Executive / Executive Directors / Senior Management

Overall responsibility and accountability for the management of whistleblowing concerns lies with the organisation's chief executive, executive directors and appropriate senior management

Managers

Any manager in the organisation may receive a whistleblowing concern. Therefore all managers must be aware of the whistleblowing procedure and how to handle and record concerns that are raised with them, with their colleagues and also with any third party or independent contractors who deliver services on our behalf.

Union representatives

Union representatives play a key role in supporting members to raise concerns and providing insight into the effectiveness of our systems and processes.

All colleagues

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

Integrated Joint Boards (IJB) and Health and Social Care Partnerships (HSCP)

IJBs and other monitoring arrangements must ensure that all HSCP staff, across both the local authority and the NHS, as well as any students, trainees, agency staff or volunteers, are be able to raise a concern through this procedure. 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.

Primary Care

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. NHS Highland colleagues who manage the contracts and relationships with Primary Care will be critical in promoting awareness of the Standards.

Managers and Supervisors of Students and Trainees

Those who supervise students and trainees who are working in our organisation, but aren't usually employed by us, have a specific responsibility to ensure that they are aware of the Standards and how they can raise a concern.

Volunteer Coordinator

The Standards also apply to Volunteers, who are working in our services. It is important that they are made aware of the Standards and how to raise a concern and access support.

2.3.2 Training

Training in the Standards and how to make or receive a concern is critical. To help with this, the INWO team have created two learning programmes. One is for staff needing an overview of the Standards and the other is for managers. The managers' programme is for any person working in the NHS who is likely to receive concerns. It covers in-depth what a manager needs to know to be able to respond to a concern. NHS Highland would expect all Executives and Senior Managers to complete the manager training and to identify anyone in their wider teams who they would expect to carry this out, recognising that due to the serious nature of whistleblowing concerns, these should be escalated to and dealt with at an appropriate level.

These are available on the TURAS Learn site to which all NHS colleagues have access and is being promoted now. [National Whistleblowing Standards training | Turas | Learn \(nhs.scot\)](https://inwo.spsso.org.uk/) . Non NHS colleagues can also get access to this by signing up for a free account. We will be actively promoting this via leadership cascades and our communications channels.

There is also an excellent website, <https://inwo.spsso.org.uk/> again publicly available, which is easy to navigate and has lots of helpful information and resources.

Through the Turas Learn portal, managers can see who in their team has completed the learning and this will go down several levels in the structure. We will also be able to provide customised reporting which will give us an organisational picture of how many people have completed the training.

We will be setting up "Ask Me Anything" sessions on the Standards, where we can further promote the training and encourage people to discuss and ask questions they have.

There is a requirement for us to ensure any investigations are carried out by managers who are appropriately trained and skilled, and this skill is part of our ongoing Once for

Scotland policy training and our People Processes workstream. Initially, we will rely on our most senior and experienced leaders to support any requirements, whilst we complete further training. These individuals wouldn't just be trained to investigate Whistleblowing concerns, they would form part of a highly skilled resource to support a range of investigations which the organisation undertakes.

2.3.3 Investigating and Recording Concerns

A key part of the standards is ensuring that concerns are recorded, tracked and investigated appropriately and in a timely manner. This is why NHS Highland is using the Speak up Guardian service to support this, as it has been in place since August 2020 and is well known across the organisation as an independent channel to raise concerns and has two dedicated full time staff, an established reporting process and agreed channels and escalation routes into all areas of the organisation.

The role of the Guardian service is not to determine if the concern is or isn't a whistleblowing concern or investigate the concerns, but to ensure that the appropriate person within the organisation is made aware of the concern, a decision made and recorded by an appropriate person about the status and how it is handled, and to track and monitor the progress with the concern, escalating as required, if it is not being addressed in line with agreed policy and / or the standards. This has been in place for all concerns since August 2020 and has taken on over 100 cases to date, which is why we are confident the process is well established and robust.

NHS Highland have agreed a number of specific contact points for the Guardian Service, to make the decision on whether something is a whistleblowing complaint. This includes senior Professional Leadership, Clinical Governance Leads, senior Finance and HR professionals, the Fraud Liaison Officer, Deputy Chief Executive and the Head of Occupational Health & Safety.

Where a concern is raised to another person, they will make contact with the Guardian Service to register the concern and for progress to be tracked and recorded by the Guardian service, to ensure this is in line with our processes and the standards.

An additional benefit of this approach is that where a concern is deemed not to be a Whistleblowing concern, the Guardian service can still provide advice and support to colleagues and it would still be reported under our usual processes so we can learn from this.

NHS Highland will not be using the Datix system in recording or reporting Whistleblowing concerns, although clearly an incident or concern recorded in the system could end up being a source of a whistleblowing concern. However, we will not have to rely on this for our tracking and reporting and we believe the Guardian Service will provide us with much more robust and accurate data, given their expertise and their role in the wider process.

2.3.4 Route for logging Whistleblowing concerns

The Guardian Service have set up a dedicated Whistleblowing Line for NHS Highland, which will operate Monday – Friday 9am to 5pm on 0333 733 8448 and an email route via contact@theguardianservice.co.uk. This will ensure that any potential whistleblowing concern, whether from an NHS Highland employee or a third party, can be picked up and addressed. This can be contacted by the individual or someone else on their behalf who they have discussed this with, to register the concern, such as a manager, colleague or union rep.

This will be promoted as part of our campaign to promote understanding of the Whistleblowing Standards and encouraging Speaking Up.

There is also the ability to contact the **INWO** by phone 0800 008 6112 or email INWO@sps.gov.scot, who can provide information and advice about how a concern should be handled, and can provide support through the process. However, it is the responsibility of NHS Highland to manage the complaint through the 2 stage process.

There are lots of other channels for support, including managers, colleagues, trade unions and professional bodies, as well as our Occupational Health service, Employee Assistance Programme and Chaplaincy service.

2.3.5 Oversight of Implementation

An Implementation Group has been established and has been meeting fortnightly, and currently is meeting weekly over the launch period. This is chaired by the Director / Deputy Director of HR and attended by the Whistleblowing Non Executive, alongside representative from across the organisation and professional groups, as well as third parties, including primary care, adult social care and Argyll & Bute and Highland Council.

They have been reviewing plans, commenting on proposals and tracking progress and providing feedback about their respective areas and will continue to meet for the coming weeks until we are confident that initial phase of implementation is complete, with meetings then less frequent, but still checking in to ensure ongoing promotion, awareness and highlighting of any issues.

They will also form a network out into the wider organisation and our third parties, to promote awareness and share information about the standards.

The Implementation Group will continue to meet until it is felt all elements of the Standards have been implemented and are working effectively. It will provide reporting on progress to the Staff Governance Committee and Highland Partnership Forum, as well as the Culture Oversight Group.

2.3.6 Communication

We have a communications plan which has been drafted with input from a working group, including colleagues from Communications, HR, Culture, Staffside and Clinical leadership.

Our approach to communications and awareness raising is to build this into a wider multi-channel campaign entitled “Speak Up, Listen Up” which will run from late March to late May. It’s important that we don’t overload people with lots of communication in early April, especially given the proximity to Easter holidays, the ongoing pressures on delivering services and remobilising as there is a risk this would be missed.

Our “Speak Up, Listen Up” campaign will have several distinct aims:

- Promote the launch of the standards and our response to this
- Build understanding of what whistleblowing is and what it isn’t,
- Promote the raising of concerns and whistleblowing and the routes to do so,
- Promote the required actions we need to take when someone raises a concern,
- Promote understanding of the role of the Whistleblowing Champion.
- Promote and link to the wider cultural development work, including values and behaviours, civility saves lives,
- Encourage colleagues to engage with the organisation and each other, to give feedback not just about concerns but about suggestions and praise and thanks.

And will be delivered through the following channels

- Email
- Intranet
- Posters
- Social Media
- Ask me anything sessions
- Webinars / E Learning and Turas
- Team Briefing packs
- Virtual sessions with Guardian Service, Staffside, HR, WB champion and others
- Awareness sessions at key meetings and committees, including Board, IJB, EDG
- Videos / Podcasts / Story telling about experiences of raising concerns
- Staffside and national Trade unions / Professional bodies

We are also exploring the concept of holding a virtual conference on the subject of Speaking Up, given our experience and our access to a range of individuals and organisations who have supported this.

We’ve already initiated the communications, with an initial message in the weekly update email to all colleagues on 19 March. There will be several further communications via email in the lead up to the 1 April and afterwards. Posters are being commissioned for

display in key locations, and an Ask Me Anything session will be scheduled for early April and recorded.

We've already discussed the Standards at the Executive Directors Group on 15th and 22nd March, at the Highland Partnership Forum on 19th and 26th March and at the Argyll & Bute Clinical and Care Governance Meeting on 18th March. This paper will also be presented at the Argyll & Bute IJB meeting on 31st March. Executives and Senior Managers will add this to their leadership meeting agendas and it will also be covered at the Corporate Services Management meeting on 31st March.

We believe that our longer term "Speak Up, Listen Up" campaign running across several months, will ensure that widespread awareness and understanding is built, not just of the Standards and Whistleblowing, but encouraging colleagues to understand how to share concerns and for the organisation to know how to respond to these.

2.3.7 Readiness Assessment

The Whistleblowing Standards are extensive and place a significant responsibility on the organisation, at a time when we our capacity to deliver and absorb change is limited. We will not be fully compliant with every aspect of the standards on the 1st April however, as set out in a recent letter from the INWO, it is understood that this will be a work in progress and the important thing is that Boards have a plan to address this effectively, which we have set out here.

I am confident that we have put systems and processes in place that mean that on or after 1 April 2021, concerns raised will be able to be appropriately dealt with in line with the Standards, through a dedicated phone line open to all, including 3rd parties, and that an appropriate tracking and escalation system is already in place to ensure we address and record in line with the standards.

Initial awareness raising activity will have been delivered through internal and external channels, as set out above, and so as many people as possible will have been made aware of the Standards and what they mean and encouraged to access the training and more information. Management will be actively promoting this with their teams and key contacts will share the information with third parties.

Most important to us is that we will spend significant time and effort over an extended time period, to both establish the standards, but also their place in our wider system of raising and addressing concerns and improving trust and developing ourselves as a listening and learning organisation. This will ensure that everyone hears about and understands the standards and their place in our organisation.

The Board will not be fully compliant with the Standards on 1 April 2021, with ongoing work to fully document investigation processes and to roll out investigation training a key

area for us to continue to progress. Awareness with third parties who deliver services on our behalf will also not be fully covered off on 1 April, but again, plans are in place to do so, through a range of channels and contacts. Training will be available, but attention will be needed to ensure that this is promoted effectively, especially given the pressure the organisation continues to be under. We would expect these elements to be fully in place by 31 July.

2.3.7 Risks and Mitigation

The main risk is that a concern is raised, on or after 1 April, inside our organisation or with a service provider, which is a whistleblowing concern, and it is not handled correctly.

We will mitigate that risk by ensuring all those who may be involved in a concern, understand the requirements and the process, including managers, staff side, HR, our clinical governance and complaints teams, and those who deal with primary care, HSCPs third parties and contracts. This is part of our communication and engagement approach.

Our Guardian Service is also a key mitigation, in already being established as the mechanism for raising concerns and who will be able to direct any concerns raised into the correct process, if they believe they may be in scope.

There is also a risk as not all of the Standards will be fully in place on 1 April 2021, as set out above. However, as noted in the INWO letter of 26 February, the important thing is that we have an action plan in place to address this, which we do have. The Implementation Group will continue to meet fortnightly to oversee progress until it is felt that all areas have been established and are running effectively.

For NHS Highland, the establishment of the Standards and our response to these has ensured that we do now have a effective process and policy for Whistleblowing, which has been a previous challenge for the Board in being able to identify and track concerns which may be whistleblowing.

2.3.1 Quality/ Patient Care

The Whistleblowing Standards are designed to support timely and appropriate reporting of concerns in relation to Quality and Patient Care and ensure we take action to address and resolve these.

2.3.2 Workforce

The Whistleblowing Standards will require some additional resource including to lead investigations, but this is being covered as part of the wider people processes work under the Culture programme and a resource request will be confirmed in the next few weeks. Our workforce will have additional protection in place under these standards.

2.3.3 Financial

The Whistleblowing Standards also offer another route for addressing allegations of a financial nature. There are no immediate cost implications of implementing the standards as the Guardian Service is already in place, although there may be some small costs for promotion, however, ensuring there is a robust mechanism for addressing concerns could lead to significant future cost avoidance due to litigation or other claims.

2.3.4 Risk Assessment/Management

The risks of the implementation have been assessed and included. Consideration is being given to where this would sit on our operational and board level risks.

2.3.5 Equality and Diversity, including health inequalities

No specific impacts

2.3.6 Other impacts

None

2.3.7 Communication, involvement, engagement and consultation

The Board has carried out its duties to involve and engage external stakeholders where appropriate:

- INWO
- Councils and key third party stakeholders who deliver services

2.3.8 Route to the Meeting

This has been previously considered by the following groups as part of its development. The groups have either supported the content, or their feedback has informed the development of the content presented in this report.

- Highland Partnership Forum, Friday 19 March 2021
- Whistleblowing Standards Implementation Group, Monday 22 March 2021
- Executive Directors Group, Monday 22 March 2021
- Culture Oversight Group, Monday 22 March 2021

Confirmation received from EDG on 22 March 2021

2.4 Recommendation

- **Discussion** – Examine and consider progress and the proposed approach to implementation and any associated risks and issues.