



# NHS Highland

## Internal Audit Report 2021/22

### Whistleblowing Arrangements

October 2021





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### Whistleblowing Arrangements

Executive Summary	1
Management Action Plan	5
Appendix A – Definitions	16

Audit Sponsor	Key Contacts	Audit team
<i>Fiona Hogg, Director of People and Culture</i>	<i>Gaye Boyd, Deputy Director of People</i> <i>Albert Donald, Non-Executive Director and Whistleblowing Champion</i> <i>Sarah Compton-Bishop, Non-Executive Director and Chair of Staff Governance Committee</i> <i>Ruth Fry, Head of Communications and Engagement</i> <i>Derek McIlroy, The Guardian Service</i> <i>Julie McAndrews, The Guardian Service</i>	<i>Chris Brown, Partner</i> <i>Stephanie Hume, Senior Audit Manager</i> <i>Lorna Munro, Internal Auditor</i>



# Executive Summary

## Conclusion

We have confirmed that NHS Highland has a process in place to raise and investigate whistleblowing concerns. However, we found that there was some disparity in the number of concerns classed as whistleblowing, assurance reporting was focussed on a single whistleblowing route and reports lacked detail on emerging issues, risks and trends, such as the high contact level reflecting positively on the communication activity. NHS Highland has recorded nine potential whistleblowing concerns, of which only two have met the criteria and been subject to a Stage 2<sup>1</sup> investigation. Although neither Stage 2 investigation is complete, we found inconsistencies in the approaches taken and non-compliance with timescales to update the whistleblower.

Management have undertaken a range of activities to address the implementation of the National Whistleblowing Standards. We identified further potential improvements to existing arrangements, including clarifying roles and responsibilities and providing supporting materials for Investigation Officers. We also identified a number of areas of activity where work is still at an early stage or has not yet been addressed in plans, including developing communication and training to support wider internal/external population, capturing feedback, and actioning lessons learned.

## Background and scope

Through a Whistleblowing<sup>2</sup> Policy, staff are encouraged to raise any serious concern they may have about malpractice or serious risk and are guaranteed to have their concerns considered. Importantly, it should help to deal with a problem before any damage is done. The Scottish Government requires all NHS Scotland Boards to have a Whistleblowing Policy and in February 2020 they appointed a Whistleblowing Champion at Board level in all Boards.

NHS Highland's independent 'Speak Up' Guardian Service went live in August 2020, offering a 24/7 service for staff to independently discuss their concerns relating to patient care and safety, bullying and harassment, and work grievances, as part of the culture programme. The management and reporting of Whistleblowing concerns and the role of confidential contact for the standards were added as a 9am-5pm Monday to Friday service in April 2021.

The National Whistleblowing Standards and the full Independent National Whistleblowing Officer (INWO) service, covering the whole of NHS Scotland, went live on 1 April 2021. The Standards are designed to be as comprehensive as possible and cover anyone involved in the delivery of an NHS service, such as current and former employees, volunteers, students and contractors.

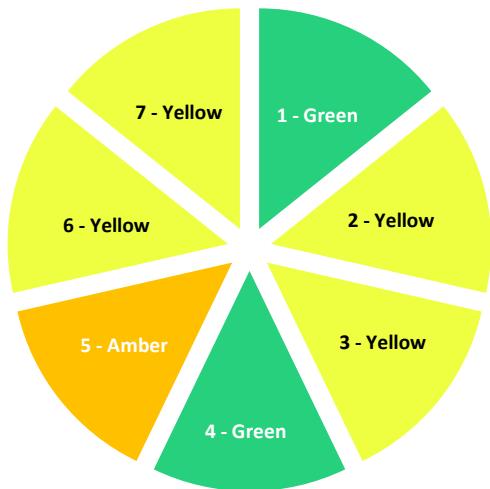
In accordance with the 2020/21 Internal Audit Plan, we reviewed the whistleblowing processes in NHS Highland.

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<sup>1</sup> Stage 1 is for more straightforward concerns that can be responded to within five working days or fewer. Stage 2 concerns tend to be more serious or complex and need a detailed examination before the organisation can provide a response, initially within a 20-working day timescale.

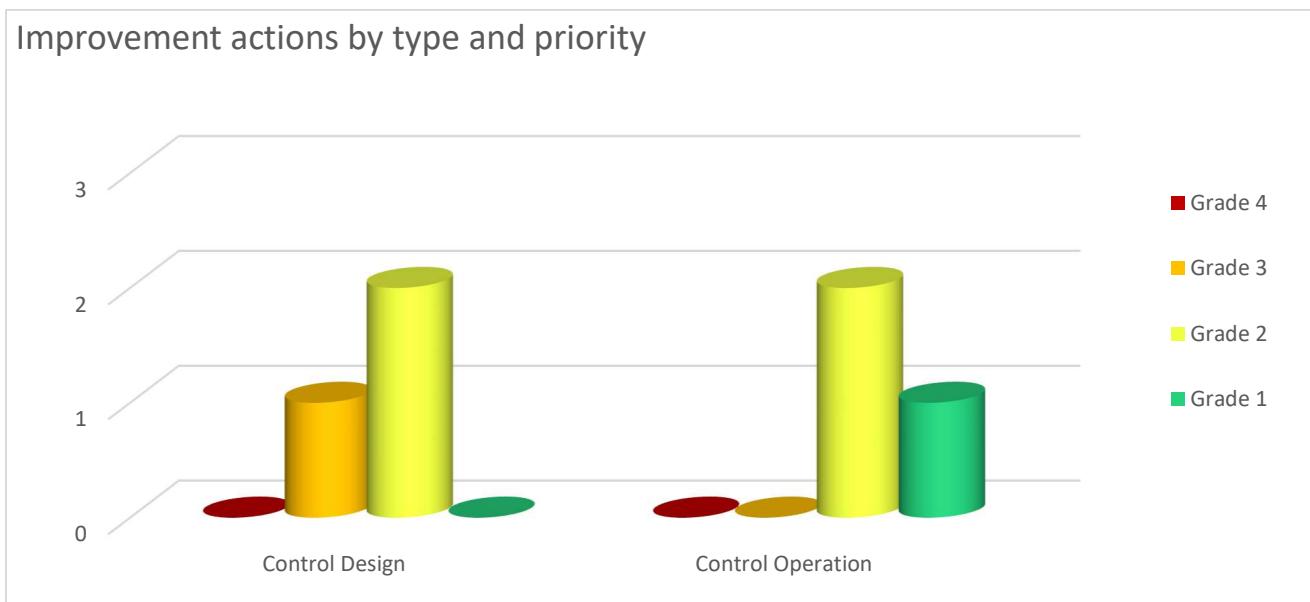
<sup>2</sup> The Public Interest Disclosure Act 1998 (PIDA) amended the Employment Rights Act 1996.

# Control assessment



- 1. The requirements of the national Whistleblowing Standard have been implemented in NHS Highland.
- 2. There are clear roles and responsibilities in place and individual and collective responsibilities clearly identified in line with the requirements of the Whistleblowing Standards.
- 3. Potential issues (i.e. whistleblowing) are assessed recorded and investigated using a consistent methodology by suitably trained staff and employees who file such a report are suitably protected.
- 4. Decisions where cases are not whistleblowing are clearly documented and decisions recorded and reported.
- 5. The outcomes of investigations and whistleblowing activities are reported appropriately to relevant committees, including timely communication of any lessons learned.
- 6. NHS Highland has an ongoing programme of communications, engagement and training to ensure colleagues and wider stakeholders are aware of the Whistleblowing standards and how to report a concern.
- 7. NHS Highland has involved key stakeholders in the development of the Guardian Service and has mechanisms for gathering feedback on the service and for reporting to management.

## Improvement actions by type and priority



Six improvement actions have been identified from this review, three of which relate to compliance with existing procedures and three which relate to the design of controls themselves. See Appendix A for definitions of colour coding.

# Key findings

## Good practice

We have gained assurance that NHS Highland's procedures reflect good practice in a number of areas:

- There is a clearly articulated Whistleblowing Implementation Group action plan in place covering the expectations of the Whistleblowing Standards.
- Staff from key business areas who are members of the Whistleblowing Implementation Group attended a series of targeted workshops to help ensure they had a good understanding of the subject matter and to support effective decision making.
- Implementation of the Whistleblowing Standards is a project within the Culture Programme, helping to ensure alignment with culture related activities and minimise the need for additional governance structures.
- The Whistleblowing Champion attends national whistleblowing related meetings and actively seeks opportunities internally and externally to promote the Whistleblowing Standards.
- A wide range of awareness activities have taken place, including staff engagement sessions 'Ask Me Anything', Board papers and development sessions, internal announcements including all staff emails and manager cascades, posters, social and local media articles.
- TURAS whistleblowing and Once for Scotland Workforce training modules are in place to support the whistleblowing process.
- NHS Highland has used an external independent service to act as a first point of contact for whistleblowing to help build trust in the process.
- We identified that all concerns raised since April 2021 with the Confidential Whistleblowing Service were assessed and the concerns, we sample tested were appropriately handled and the whistleblower contacted to advise how the concern would be dealt with.
- Within our sample we confirmed that Investigation Officers were appointed in both cases where a whistleblowing concern was raised.

## Areas for improvement

We have identified a number of areas for improvement which, if addressed, would strengthen NHS Highland's control framework. These include:

- Providing assurance to the Board on whistleblowing activity based on accurate and complete data supported by comprehensive and insightful narratives.
- Documenting and sharing governance and day to day roles and responsibilities for all aspects of the process, building on the information presented to the March 2021 Board update.
- Maintaining oversight of compliance with Whistleblowing Standard timescales and developing further communication and training, to support Investigating Officers and the wider employee population.

- Capturing existing lessons learned and ensuring that comprehensive action plans are developed to support delivery of the Whistleblowing Standards in the longer term.

These are further discussed in the Management Action Plan below.

## Impact on risk register

NHS Highland's corporate risk register (dated February 2021) included the following risks relevant to this review:

- Risk 632: HIGH - There is a reputational and workforce risk in relation to the culture of the organisation. This could impact on recruitment, retention, and performance as well as patient confidence in the organisation.

## Acknowledgements

We would like to thank all staff consulted during this review for their assistance and co-operation.

# Management Action Plan

Control Objective 1: The requirements of the national Whistleblowing Standard have been implemented in NHS Highland.

A solid green circular icon with the word "Green" written in white capital letters inside it.

## 1.1 Whistleblowing Policy

NHS Highland has not created its own Whistleblowing Policy, instead directing individuals to the National Whistleblowing Standards website. However, in searching for the Whistleblowing Policy, we noted that:

- The NHS Highland internet pages identifies the 2014 NHS Highland Whistleblowing policy, including on the HR connect page.
- The NHS Highland intranet pages identifies old versions of the policy in the first two search items.

### Risk

There is a risk that out-of-date policies which are not aligned to the National Whistleblowing Standards are still available to staff, leading to confusion, inconsistency of approach and/or non-compliance with the standards.

### Recommendation

NHS Highland should ensure that historical whistleblowing policies are appropriately tagged as such and/or removed from key information sources.

#### Management Action

Grade 1  
(Operation)

This has already been addressed with all old policies removed and hidden, searching for whistleblowing policy on the Intranet now brings up the top search result with a document including details of where to access the national standards and all other relevant information.

**Action owner:** Deputy Director of People

**Due date:** Completed

# Control Objective 2: There are clear roles and responsibilities in place and individual and collective responsibilities clearly identified in line with the requirements of the Whistleblowing Standards.

Yellow

## 2.1 Roles and Responsibilities

The NHS Highland Board Paper dated 30 March 2021 confirmed the roles and responsibilities of key staff involved in the whistleblowing process. However, this paper did not identify the roles or responsibilities of the Governance Committees in the process. Both the Staff Governance Committee and Audit Committee have a role in oversight and assurance, however only the Audit Committee Terms of Reference makes clear the role of the committee via the Fraud Policy and Response Plan.

In addition, we noted feedback from those involved in oversight and implementation of the investigation process that:

- They did not believe a concern should have been handled under the whistleblowing process and we noted some confusion over who made the decision to do so. Following completion of fieldwork it was clarified for staff that decisions about whether or not a case is to be handled as Whistleblowing is coordinated by the Director of People and Culture, as INWO Liaison Officer, involving relevant opinions and views as required.
- Expectations of greater HR involvement and support during the whistleblowing investigation process. While management have confirmed this is not a HR process, it was acknowledged that all parties need to be clear on responsibilities and this should be documented.

### Risk

There is a risk that roles and responsibilities are not clear, as these have not been fully defined or made available, resulting in whistleblowing activity not being appropriately resolved, lessons not being learned, and increasing the likelihood of reputational damage.

### Recommendation

Management should confirm:

- The complete governance structure in relation to whistleblowing, along with updating the relevant terms of reference and workplans as appropriate.
- The roles, responsibilities and decision-making assessment methodology for concerns.
- The support for managers assigned cases and those investigating concerns is clearly documented and communicated to investigating officers.

Grade 2  
(Design)

### Management Action

Further clarification of the process to be followed and the relevant roles and responsibilities and governance was included in the first Whistleblowing report to the board in September 2021. This information along with the support available, will form an NHS Highland Whistleblowing Management process document to be available on the Intranet and via the Guardian Service which will ensure everyone is able to access this.

**Action owner:** Director of People and Culture

**Due date:** 31 March 2022

## 2.2 Whistleblowing Champion Contact Details

NHS Highland has a non-executive Whistleblowing Champion, whose role is to provide assurance over both the implementation of the whistleblowing standards and that concerns are being effectively managed and addressed. This role is as identified on the NHS Highland website, however the contact details provided are to a generic board email address.

### Risk

Whistleblowers may be deterred from making contact if they are concerned the email is not sent directly to the Whistleblowing Champion and/or the communication is not sufficiently confidential. This impairs opportunity to identify, learn from and improve practices to which the concern(s) relate.

### Recommendation

Management should provide contact information for the Whistleblowing Champion and/or the Whistleblowing Service (providing by the Guardian Service) against the relevant biographical statement on the NHS Highland website, ensuring the route for raising concerns is via the Guardian Service.

#### Management Action

Grade 2  
(Operation)

Contact information for the Whistleblowing service is widely shared, but an additional action to include direct email address for the Whistleblowing Champion as part of the board information and to use the opportunity to add the Whistleblowing concern email and phone line as well.

**Action owner:** Board Secretary

**Due date:** 31 January 2022

**Control Objective 3: Potential issues (i.e. whistleblowing) are assessed recorded and investigated using a consistent methodology by suitably trained staff and employees who file such a report are suitably protected.**



Yellow

### **3.1 Compliance and Investigation Processes**

We reviewed two Stage 2 investigations as part of fieldwork and confirmed that the Whistleblowing Standards state that the whistleblower should be advised if their concern cannot be responded to within 20 working days. They are entitled to an update every 20 working days thereafter. Our testing identified that in one of the two investigations the whistleblower was not provided with ongoing formal updates every 20 days (though we note that there was ongoing communication with them and their union representative in terms of evidence gathering).

The Whistleblowing Standards also provide guidance for the Investigating Officer on the process to be followed. However, NHS Highland has determined this should be supplemented with the Once for Scotland Workforce Policy on Investigations, as the use of standard templates/methodology ensures consistency of approach. Neither Investigating Officer had been referred to the Workforce Investigation information and they did not use the expected templates, with only one Investigating Officer having agreed a terms of reference for the work.

We also noted that, although experienced, neither Investigating Officer had undertaken the TURAS whistleblowing training or the Once for Scotland Workforce Investigation training. Indeed, more generally, there was low completion of the TURAS training, with only 53 staff having completed the whistleblowing overview course and only 15 having completed the manager whistleblowing course. These are not considered mandatory training.

#### **Risk**

There is a risk that investigations are not conducted in line with standards and associated policies, as training, communication and oversight has not been sufficiently robust. This could impair results and outcomes, reducing morale and risking disengagement by those with concerns.

#### **Recommendation**

Management should:

- Ensure there is sufficient management oversight of all ongoing whistleblowing investigations to affirm compliance with the Whistleblowing Standards, such as the 20-day response time.
- Provide all Investigating Officers a link to appropriate guidance and templates, including those related to the Whistleblowing Standards and the Once for Scotland Workforce Investigation process.
- Determine the level of training required by officers investigating under the Whistleblowing Standards and taking appropriate action as a result.
- Consider additional activities to improve uptake of whistleblowing training within NHS Highland and its service providers.

Grade 2  
(Operation)

### **Management Action**

There is now a robust oversight in place of all ongoing Whistleblowing concerns, with timescales and responses being actively managed. Given the low level of concerns raised and the potential seriousness of those progressed, this is all personally overseen by the Director of People and Culture, as INWO Liaison Officer to ensure consistency and appropriate seniority and expertise of investigating managers.

As part of the NHS Highland Whistleblowing Management Process (set out above under 2.1) signposting to relevant support, documents and training will be included.

**Action owner:** Director of People and Culture

**Due date:** 31 March 2022

## Control Objective 4: Decisions where cases are not whistleblowing are clearly documented and decisions recorded and reported.

Green

### No reportable weaknesses identified

We confirmed that since April 2021 seven concerns raised were assessed and not taken forward as whistleblowing investigations. We tested two and confirmed that the decision was clearly documented and the person raising the concern was advised of the outcome and reasons for the assessment. Where appropriate individuals are advised that they were entitled to appeal via the Independent National Whistleblowing Officer.

Neither of the concerns tested required to be addressed through other business routes, such as the complaints process.

# Control Objective 5: The outcomes of investigations and whistleblowing activities are reported appropriately to relevant committees, including timely communication of any lessons learned.

Amber

## 5.1 Recording Whistleblowing Concerns and Assurance

We were initially advised by the Confidential Whistleblowing Contact Service that there had been 10 potential concerns raised since April 2021, seven of which related to whistleblowing and three which did not. During testing we confirmed that these numbers were incorrect and appeared to stem from a different interpretation of the classifications used when recording concerns. It was noted that this was early on in the implementation of the standards and has been highlighted in the first quarterly report as a resolved issue. Management confirmed in the quarterly assurance report that only nine potential concerns were raised, of which two met the criteria for whistleblowing investigations.

Although the Confidential Whistleblowing Contact Service is the central point for recording and reporting all whistleblowing concerns, we were unable to confirm that all relevant concerns had been recorded this way, as there are other routes available for staff to raise concerns (e.g. management hierarchy, trade unions, Counter Fraud Services and Datix). It is expected that potential whistleblowing concerns raised via these routes will be identified as whistleblowing and subsequently recorded with the Confidential Whistleblowing Contact Service, but there is a risk that this may not happen if the person receiving the concern is not aware of the process. Although mitigated by internal and external communications from the Guardian Service, the Whistleblowing Champion, the Whistleblowing Implementation Group and others, e.g. Senior Leadership, there remains a risk that the information being provided may not be complete and the correct process may not be followed in some cases. Management have advised that the majority of the cases raised to date as potential Whistleblowing concerns have been from staffside, and this suggests that the process is well known.

We reviewed the draft of the first quarterly assurance report, to the Staff Governance Committee, covering the areas and metrics required by the Whistleblowing Standards and found it was lacking in insight such as emerging trends, issues and risks and did not capture the activity that has already been undertaken in the implementation of the Standards.

### Risk

There is a risk that assurance is not accurate, sufficient or complete. It may impair scrutiny and challenge by those overseeing the arrangements and could result in non-compliance with the Whistleblowing Standards and increased likelihood of reputational damage.

### Recommendation

Management should:

- Ensure the concern assessment process is clearly documented and agreed with the contact service, providing clarity on the classification of concerns raised.
- Ensure ongoing communication and engagement with key stakeholders so that all parties understand how to route Whistleblowing concerns to the correct process. Consider implementation of a co-ordinated assurance report for areas such as whistleblowing, complaints, frauds etc,

- Provide adequate insight and narrative on activity to implement the Whistleblowing Standards with assurance reports.

### **Management Action**

Grade 3  
(Design)

Further work on the assurance report was completed ahead of it being submitted to Board and it addressed the majority of the issues identified above. Feedback will be used to improve the insights and assurance and this will be an ongoing review as data is gathered and further analysis is possible, particularly in relation to trends, issues and risks.

A further communication and engagement plan around the standards and whistleblowing is underway, which will cover visits by the Whistleblowing Champion across the board area, a stakeholder survey carried out in January 2022 to establish how well known the standards are to non-employed colleagues as well as promotion of the training and the publication of the Q2 report in January 2022, and the Q3 report in March 2022.

**Action owner:** Director of People and Culture

**Due date:** 31 March 2022

Control Objective 6 & 7: NHS Highland has an ongoing programme of communications, engagement and training to ensure colleagues and wider stakeholders are aware of the Whistleblowing standards and how to report a concern and has involved key stakeholders in the development of the Guardian Service with mechanisms for gathering feedback on the service and for reporting to management.



Yellow

## 6.1 Planning

Whilst activity to implement the Whistleblowing Standards has progressed sufficiently to allow concerns to be raised and investigated, there are several areas of work still at an early stage of development or not yet included within any formalised and documented action plans. These include:

- Engaging with volunteers, students, contractors and other service providers on the standards and their rights (in development through the Implementation group).
- Obtaining feedback on Confidential Whistleblowing Contact Service (in development).
- Assessing future needs for the Confidential Whistleblowing Contact role (not yet commenced, anticipated Q2 2022).
- Lessons learned from investigations, the implementation of the standards and associated processes (to commence in Q2 2022).
- Once for Scotland training, including investigations (already available).
- Developing awareness and sources of support, e.g. whistleblowing being covered during induction (in development).

### Risk

There is a risk that the remaining work is not included or associated with clear timescales in the implementation plans resulting in slow or no progress to improve engagement/compliance with the Whistleblowing Standards.

### Recommendation

Management should ensure that the above areas of work are included within implementation plans and, where appropriate developing medium to longer term plans for review/refresh of whistleblowing as needed.

Grade 2  
(Design)

**Management Action**

The Implementation Group continue to work through the communication and engagement plans and have good engagement from a range of internal and external stakeholders.

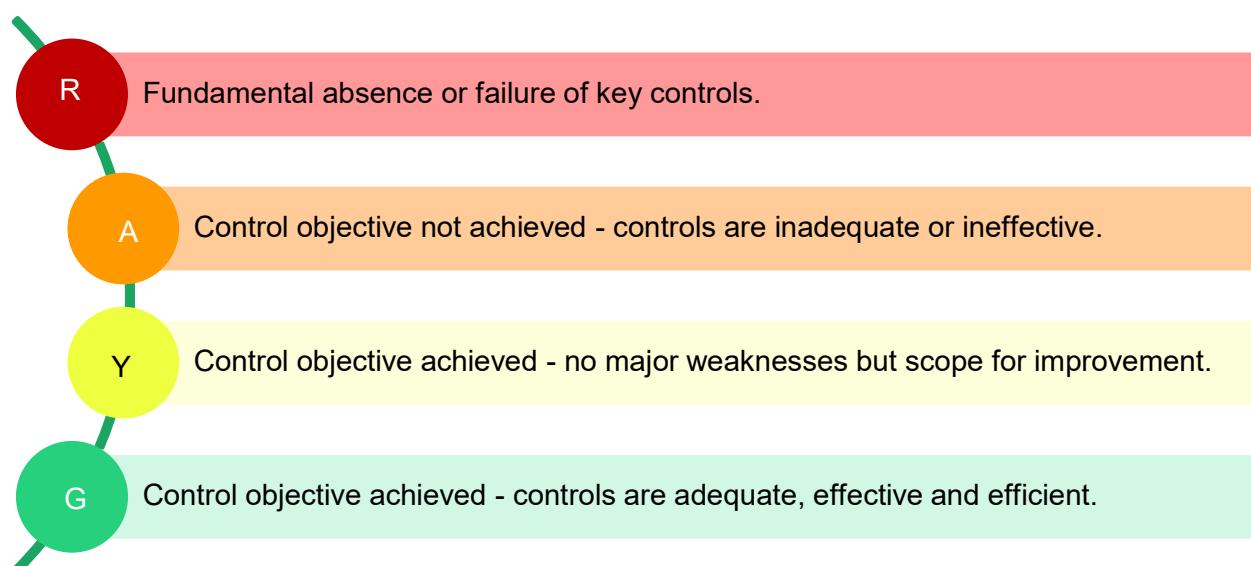
It has been agreed that any lessons learned, themes or follow up actions which need wider organisational oversight, either from reviews of the cases to date or from the group activity, will be captured as part of the Culture Oversight Group action tracking, which is reported to Staff Governance Committee and Board. This will ensure themes and learnings from independent review panel of the Healing Process, which may have overlap, can be joined up with these outcomes where appropriate.

**Action owner:** Director of People and Culture

**Due date:** 31 March 2022

# Appendix A – Definitions

## Control assessments



## Management action grades

4	•Very high risk exposure - major concerns requiring immediate senior attention that create fundamental risks within the organisation.
3	•High risk exposure - absence / failure of key controls that create significant risks within the organisation.
2	•Moderate risk exposure - controls are not working effectively and efficiently and may create moderate risks within the organisation.
1	•Limited risk exposure - controls are working effectively, but could be strengthened to prevent the creation of minor risks or address general house-keeping issues.

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