

Annual Whistleblowing Report
2021-2022

NHS Education for Scotland
June 2022

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NHS Education for Scotland

Our vision: *A skilled and sustainable workforce for a healthier Scotland.*
Our mission: *Enabling excellence in health and care through education, workforce development and support.*

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1. Introduction

- 1.1. The National Whistleblowing Standards¹ (the Standards) came into force on 01 April 2021. In short, these Standards include a new procedure for handling any whistleblowing concerns across NHS Scotland and an overview of NHS board requirements. The importance of reporting, onward improvement and sharing lessons learned is also noted.
- 1.2. Other main developments included an Independent National Whistleblowing Officer (INWO) for NHS Scotland and the appointment of a Non-Executive “whistleblowing champion” for every NHS Scotland board.
- 1.3. We engaged with senior teams, and all staff in general, to implement the new procedure. Looking ahead, we continue to raise awareness of the Standards and the training available to all our staff.
- 1.4. This is our first NHS Education for Scotland (NES) Annual Whistleblowing Report under the new arrangements (covering 01 April 2021 to 31 March 2022). An overview of the new procedure is presented, as well as an outline of the actions we have taken to implement it.
- 1.5. This report is presented as follows:
 - The background and legislation to the Standards (p. 5).
 - A review of actions we have taken in implementing the Standards (p. 10).
 - The whistleblowing annual return (p. 13).

¹ Independent National Whistleblowing Officer (2021) ‘The National Whistleblowing Standards - April 2021’. Edinburgh: Scottish Public Services Ombudsman. Available at: <https://inwo.spsso.org.uk/sites/inwo/files/Standards/NationalWhistleblowingStandards-AllParts.pdf> (Accessed: 24 January 2022).

2. Background and legislation

- 2.1. The 2015 'Freedom to Speak up' report by Sir Robert Francis QC² highlighted that additional measures were required to ensure that all NHS staff could safely and freely raise any patient safety concerns. The report was related to NHS England; however, the Scottish Government welcomed the review and used it to support, encourage and promote whistleblowing in NHS Scotland³.
- 2.2. The report by John Sturrock QC in 2019 investigated cultural issues related to allegations of bullying and harassment in NHS Highland⁴. His review recommended a more enabling culture for people-centred leadership that was more compassionate, empowering and open to respectful challenge. Restorative and preventative measures to "reset the whole organisation" were also recommended. With respect to the whistleblowing agenda, the following were proposed:
- A clear and independent mechanism for speaking up (acknowledging the fact that whistleblowing would be the last resort).
 - All staff to understand the circumstances for raising any whistleblowing concerns and to be confident in doing so.
 - Provision of an independent and confidential "guardian" for those wishing to report inappropriate behaviour.
- 2.3. In response to the Sturrock review, the then Cabinet Secretary for Health and Sport, Jeane Freeman, acknowledged the learning for other NHS Scotland boards and set out a commitment to ensure that everyone in NHS Scotland feels welcome, safe and supported in their role. Specifically, the Scottish Government proposed new legislation to introduce an Independent National Whistleblowing Officer for NHS Scotland⁵. Proposals to embed independent Non-Executive whistleblowing champions in every NHS Scotland board and a revised suite of HR policies for NHS Scotland were also noted.
- 2.4. In the main, the Scottish Government advocated the need to improve whistleblowing arrangements across NHS Scotland and to support a more open, honest and inclusive culture.

² Francis, R. (2015) 'Freedom to speak up. An independent review into creating an open and honest reporting culture in the NHS.' Available at:

https://webarchive.nationalarchives.gov.uk/20150218150953/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf (Accessed: 11 November 2019).

³ Scottish Government (2017) 'Freedom to speak up for NHS Scotland staff'. Available at: <https://www.gov.scot/news/freedom-to-speak-up-for-nhs-scotland-staff/> (Accessed: 16 May 2022).

⁴ Sturrock, J. (2019) 'Report to the Cabinet Secretary for Health and Sport into: Cultural issues related to allegations of bullying and harassment in NHS Highland'. Edinburgh: Scottish Government. Available at: <https://www.gov.scot/publications/report-cultural-issues-related-allegations-bullying-harassment-nhs-highland/> (Accessed: 30 June 2019).

⁵ Scottish Government (2019) 'The Scottish Government Response to the Sturrock Review: into cultural issues related to allegations of bullying and harassment in NHS Highland'. Edinburgh: Scottish Government. Available at: <https://www.gov.scot/publications/scottish-government-response-report-bullying-harassment-nhs-highland/> (Accessed: 30 June 2019).

- 2.5. Legislation to allow the Scottish Public Services Ombudsman (SPSO)⁶ to take on the INWO role then followed. This route offers whistle-blowers the independent external review of the handling of any whistleblowing concerns about health services in Scotland.
- 2.6. The Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020⁷ defines “whistleblowing” 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.”*
- 2.7. This definition essentially covers any concerns raised in the public interest, by existing and former employees, bank and agency workers, contractors, volunteers, students, and anyone working with us to deliver services.

⁶ The SPSO currently covers three main functions: (1) the SPSO, which is the final stage for complaints about public service organisations in Scotland; (2) the Scottish Welfare Fund Independent Review, which reviews decisions made by councils on community care and crisis grant applications; and (3) the INWO, which is the final stage of the process for NHS workers raising concerns about health service delivery in Scotland.

⁷ Crown Copyright (2020) ‘Scottish Statutory Instruments: 2020 No. 5. Public Services Reform: Scottish Public Services Ombudsman. Public Health. National Health Service. The Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020’. The Stationery Office. Available at: https://www.legislation.gov.uk/ssi/2020/5/pdfs/ssi_20200005_en.pdf (Accessed: 21 April 2022).

3. The National Whistleblowing Standards

- 3.1. The Standards came into force on a “Once for Scotland” basis on 01 April 2021 and replaced any local Whistleblowing Policies in NHS Scotland boards.
- 3.2. The Standards present:
- The principles of whistleblowing, and the definitions of “whistleblowing” and “whistle-blower”.
 - An overview of the stages involved in handling any whistleblowing concerns.
 - The role of NHS boards and staff responsibilities.
 - The importance of recording, reporting and learning lessons.
 - An overview of board requirements.
 - Specific information for primary care providers and Integration Joint Boards.
 - Arrangements for students and volunteers.
- 3.3. In many cases, any concerns can be resolved through informal conversations and business as usual processes. These are not part of the formal whistleblowing procedure but can be an important precursor. We aim to support all staff, and those working with us, to report any concerns as early as possible so that they can be dealt with promptly and professionally (before they get to the formal stage).
- 3.4. When raising a concern informally is not an option, those metaphorically blowing the whistle under the Standards are afforded support and legal protections. This is in addition to the confidential nature of any investigation.
- 3.5. The following eligibility checks are made to follow the Standards:
- The concern is in the public interest. This could include areas like patient safety issues, unsafe working conditions, or fraud.
 - The business-as-usual process has already run its course (where appropriate).
 - The concern (and outcome required) is not related to a Human Resources process.
 - The concern is raised within the appropriate time-limit, i.e., normally within six months of becoming aware of the issue.
 - Given the aforementioned points, the whistle-blower can choose to use the process under the Standards if they so wish⁸. If this is not the case, then we (the organisation) will decide how to investigate.
- 3.6. Anonymous and unnamed whistleblowing concerns cannot be formally investigated under the Standards. An anonymous concern is one where nobody knows who provided the information. An unnamed concern is one that is raised with an organisation, but the person raising the concern is not willing to have their name or personal details recorded. These types of concerns limit the protections and support available to the whistle-blower and cannot be referred to the INWO. Under these circumstances, an organisation is not required to follow the Standards to conclude the case⁹.

⁸ It is up to the individual whether they want to formally raise a concern under the Standards. The concern is not recorded as whistleblowing if the person does not wish it to be.

⁹ Independent National Whistleblowing Officer (2021) ‘The National Whistleblowing Standards - April 2021’. Edinburgh: Scottish Public Services Ombudsman. Pages 24-25; paragraphs 66-73. Available at: <https://inwo.spsso.org.uk/sites/inwo/files/Standards/NationalWhistleblowingStandards-AllParts.pdf> (Accessed: 24 January 2022).

3.7. There are two main stages for NES under the Standards (Figure 1). At the end of stage two, whistle-blowers are signposted to the INWO.

3.8.

Stage 1 (NES)	Stage 2 (NES)	Stage 3 (INWO)
<ul style="list-style-type: none"> • Little or no investigation. • Response with an explanation of outcome issued within five working days. • Any actions taken in response to the concern raised are outlined. • Information on Stage two provided. 	<ul style="list-style-type: none"> • Would involve serious risks or complex issues that need investigation. • Stage two also used when stage one process is not appropriate. • Acknowledged within three working days. • Detailed response normally issued within 20 working days. 	<ul style="list-style-type: none"> • Offer of independent external review.

Figure 1: Summary of stages.

3.9. To support the national Standards, new dedicated Non-Executive whistleblowing champions were recruited to all NHS Scotland boards. The role was developed by the Scottish Government and complements the work of the INWO. Each appointment is independent and impartial, with no operational role in any board. The aim is to provide oversight and independent assurance, for example, by seeking assurance from executives and providing assurance to the Board that there is compliance with the Standards¹⁰. This is in accordance with the principles of corporate governance, whereby the work of board members is distinguished from the day-to-day operational management of the organisation by the Executive Leadership Team¹¹. The new dedicated Non-Executive whistleblowing champion role replaced the then nominated Non-Executive director who had additional whistleblowing responsibilities¹².

3.10. In terms of governance and monitoring, the Standards outline the role of board members in valuing a tone and culture of speaking up. Board members are also required to monitor (on a quarterly basis) the number of concerns raised at their public Board meetings. Each NHS Scotland board is also required to publish an annual report setting out their performance in handling whistleblowing concerns.

3.11. With respect to recording and reporting, all concerns need to be recorded in a systematic way so that the data can be further analysed to identify any themes and trends. This is to ensure learning and to identify opportunities to improve services.

¹⁰ As per the Scottish Government's role descriptor.

¹¹ Scottish Government (2019) 'A Blueprint for Good Governance'. Edinburgh: Scottish Government. Available at: [https://www.sehd.scot.nhs.uk/dl/DL\(2019\)02.pdf](https://www.sehd.scot.nhs.uk/dl/DL(2019)02.pdf) (Accessed: 5 August 2019).

¹² Gray, P. (2015) 'Non-Executive Whistleblowing Champion'. Letter to NHS Scotland Health Board Chairs (29 September 2015). Edinburgh: Scottish Government.

3.12. NHS Scotland's national workforce policies currently include¹³:

- Attendance
- Bullying and Harassment
- Capability
- Conduct
- Grievance
- Whistleblowing
- Workforce Policies Investigation Process

3.13. We continue to promote a culture of openness and transparency where staff, and partners working with us, feel confident to raise any concerns.

¹³ Crown Copyright (2022) 'Workforce Policies: NHS Scotland'. Available at: <https://workforce.nhs.scot/policies/> (Accessed: 26 April 2022).

4. Actions taken in support of the new arrangements

- 4.1. This section of the report presents a summary of the actions taken in support of the new whistleblowing arrangements.
- 4.2. Led by the then Director of Workforce (Dorothy Wright), a Short Life Working Group (SLWG) was set up in August 2019 to prepare for the implementation of the Standards. Members included representatives from Planning and Corporate Governance, Medicine and Finance.
- 4.3. As part of the SLWG, our review included:
 - The then whistleblowing arrangements in place.
 - The Scotland Deanery (medicine) quality management processes, which included sources of data, and information and intelligence available from trainers and doctors in training.
 - The Lead Employer Model and arrangements for doctors in training.
 - The Assurance Framework and governance arrangements for feedback, comments, concerns, complaints, whistleblowing and staff grievances.
 - The definitions of feedback, comments, concerns, complaints and whistleblowing.
 - Potential recording systems, our online presence and corporate induction.
 - Ongoing arrangements for the whistleblowing agenda via the Director of Planning and Corporate Resources and the Corporate Complaints Team.
- 4.4. Our aim was to comply with the then impending Standards and to ensure that our organisation was ready to deal with any whistleblowing concerns. We were aware that formal internal whistleblowing cases within our organisation were historically non-existent or very low.
- 4.5. As announced (in February 2020) by Jeane Freeman, the then Cabinet Secretary for Health and Sport, Gillian Mawdsley was appointed as the Non-Executive whistleblowing champion of the NES Board.
- 4.6. The NES Executive Team and NES Board were appraised of developments in an ongoing manner.
- 4.7. The NES Board delegated the governance and scrutiny of whistleblowing to the Staff Governance Committee, where it was agreed to include whistleblowing as a standing agenda item.
- 4.8. A workshop with a few members of the Corporate Complaints Team and Gillian Mawdsley, Non-Executive whistleblowing champion, was held in August 2020.
- 4.9. In September 2020, a recorded video by Gillian Mawdsley, Non-Executive whistleblowing champion, was disseminated to all staff via the intranet newsfeed.
- 4.10. The Terms of Reference for the Staff Governance Committee were updated (in tandem with a review of NES's corporate management structures) in November 2020.
- 4.11. Developed by the SPSO, whistleblowing training was made available on 'Turas Learn' in January 2021. Two levels were available: for all staff and managers.

- 4.12. Directorate Complaints' Leads and the Corporate Complaints Team were specifically signposted to the online training. The available training was also promoted through the Senior Operational Leadership Group (SOLG) and through a "management matters" newsletter (March 2021).
- 4.13. At the launch of the new whistleblowing arrangements (April 2021), we disseminated an all-staff video on the new arrangements. This comprised of a recorded message by Karen Reid, Chief Executive, and Gillian Mawdsley, Non-Executive whistleblowing champion. In addition to core NES staff, a communication was sent to doctors in training.
- 4.14. We engaged with directorates to ensure that the new whistleblowing arrangements were appropriately referenced in our documentation and webpages. Example updates included the NES Risk Register, the Board member induction pack, the Board Development Turas Learn site, the Scotland Deanery website, and our corporate website. Our Corporate Communications Team issued updates via social media. Individual teams also updated their partners and stakeholders on the new arrangements (including contractors, volunteers, higher education students and trainees). The Implementation Plan was kept updated in an ongoing manner.
- 4.15. We delivered a live "What you need to know" whistleblowing question and answer webinar for all staff in August 2021. This was presented by Donald Cameron, Director of Planning and Corporate Resources, Tracey Ashworth-Davies, Director of Workforce, Gillian Mawdsley, Non-Executive whistleblowing champion, and Morag McElhinney, Head of Service – Human Resources.
- 4.16. A discussion between the NHS Scotland Academy and NES, regarding joint whistleblowing governance arrangements, took place in August 2021.
- 4.17. The outcome of the internal audit of the newly implemented whistleblowing arrangements, was "significant assurance with minor improvement opportunities" (September 2021). It was agreed to mandate all NES line managers to complete the online training. Line managers could potentially receive whistleblowing concerns at stage one and should know when to escalate any matters to stage two. Led by the Workforce Directorate, the proposed target was 80% of line managers completing the manager-level training by 31 March 2022, and 95% by 30 June 2022. The Extended Executive Team was appraised of these developments (in September 2021).
- 4.18. A corporate training presentation was developed and made available for all teams and staff to use within any required meetings (September-October 2021). The intranet whistleblowing page is updated on an ongoing basis, where warranted.
- 4.19. Workforce Directorate colleagues led on the award of a new Employee Assistance Programme (launched in December 2021). This is an independent counselling and advisory service and is available to all NES employees.
- 4.20. In December 2021, Nancy El-Faragy, Planning and Corporate Governance, gave an overview of recent whistleblowing developments at the SOLG meeting. In addition, Gillian Mawdsley, Non-Executive whistleblowing champion, provided an overview of her role. The session was well received by SOLG members and the call to action to complete the online training was noted.

- 4.21. At their meeting on 03 February 2022, the Staff Governance Committee approved a 2022-2023 schedule of business that outlined the continued approach to quarterly and annual reporting. Separate annual reports from the designated executive whistleblowing lead and the Non-Executive whistleblowing champion were added to the schedule.
- 4.22. The governance and scrutiny of the whistleblowing agenda was reviewed in February to March 2022. This confirmed reporting responsibilities to both the Staff Governance Committee and the NES Board. This review also included the role of the Non-Executive whistleblowing champion, in which reference was made to the original role descriptor, as developed by the Scottish Government (in 2019). It clarified how an additional level of scrutiny and accountability for all whistleblowing activities would be followed through by the Non-Executive whistleblowing champion. Any issues (for example, in connection with the progress or handling of cases, etc.) would be reported to the Board. Assurance that there is compliance with the Standards is also sought. This descriptor highlighted that the Non-Executive whistleblowing champion's remit would not be an operational role. The aim is to ensure their independence, as well as ensuring transparency between the roles of executives and non-executives¹⁴.
- 4.23. Led by Workforce Directorate colleagues, a refreshed "Our Way" suite of resources was published and communicated to all our staff on 23 March 2022. This suite aims to promote and understand the types of behaviour acceptable across our organisation. It also aims to encourage reflection on how we interact, engage, respectfully challenge, and encourage positive ways of working together.

¹⁴ Scottish Government (2019) 'A Blueprint for Good Governance'. Edinburgh: Scottish Government. Available at: [https://www.sehd.scot.nhs.uk/dl/DL\(2019\)02.pdf](https://www.sehd.scot.nhs.uk/dl/DL(2019)02.pdf) (Accessed: 5 August 2019).

5. Whistleblowing annual return and performance indicators

- 5.1. The NES Board delegated the governance and scrutiny of whistleblowing to the Staff Governance Committee. Throughout 2021-2022, the committee received four reports (i.e., on a quarterly basis).
- 5.2. Between 01 April 2021 and 31 December 2021 inclusive (i.e., quarters one to three), there were no whistleblowing concerns received¹⁵. Between 01 January 2022 and 31 March 2022 (i.e., quarter four), one unnamed whistleblowing concern was received¹⁶.
- 5.3. Given various circumstances, the unnamed concern is currently open. Work with another NHS Scotland board is in place to jointly conclude the case and share onward learning and improvement.
- 5.4. There is no obligation to follow the Standards to conclude unnamed concerns; however, it is good practice to do so¹⁷. At the time of writing (given the extant status of the unnamed concern), a nil return for 2021-2022 is reported under the Standards.
- 5.5. The unnamed concern has afforded us the opportunity to triangulate evidence from another separate route, and to learn from the two sources in investigating the case.
- 5.6. Early feedback (received to date) on the experiences of those engaged with the whistleblowing process has been positive. Following the conclusion of a whistleblowing investigation, we aim to solicit formal feedback from the whistle-blower and any other relevant parties. The aim of this is to support onward learning and to make any other appropriate improvements to the whistleblowing procedure. We also aim to continue to engage with our staff to solicit their feedback on the national whistleblowing arrangements.
- 5.7. Online training from the SPSO was made available on Turas Learn from January 2021. Two training options were available; namely, training for all staff and training for managers¹⁸.
- 5.8. We promoted the (then available) online training to all staff and made the manager-focused training mandatory for all line managers. As of 31 March 2022, 332 core staff members completed the SPSO training. With respect to line managers, 140 (52%) completed the manager-focused training. We have welcomed unsolicited feedback on the training to date.

¹⁵ Upon their request, we have previously shared quarterly reports with the INWO team.

¹⁶ Due to the absence of reporting tables (templates), this section of the report aligns with the key performance indicators, where applicable (as presented in the Standards).

¹⁷ Independent National Whistleblowing Officer (2021) 'The National Whistleblowing Standards - April 2021'. Edinburgh: Scottish Public Services Ombudsman. Part 2: paragraphs 66-73. Available at: <https://inwo.spso.org.uk/sites/inwo/files/Standards/NationalWhistleblowingStandards-AllParts.pdf> (Accessed: 24 January 2022).

¹⁸ The SPSO learning programmes were refreshed in April 2022. Three new whistleblowing learning levels are available: (1) an overview; (2) for line managers; and (3) for senior managers.

- 5.9. We continue to raise awareness of the national whistleblowing arrangements and the training available via our intranet page and relevant communications. The SOLG has been instrumental in cascading this information to directorates. As of 31 March 2022, completion rates of “essential learning” were behind target for most directorates, reflecting in part, COVID-19-related work pressures and priorities in quarters three and four. We continue to encourage all line managers to complete the manager-focussed whistleblowing training and note their personal accountability in doing so. The Extended Executive Team has committed to improving compliance for all essential learning in their directorates by 30 June 2022.
- 5.10. Throughout the reporting period, we have proactively communicated the new national whistleblowing arrangements to all our staff. Examples included a recorded video at the launch of the Standards, an all-staff question and answer webinar, a training presentation for all directorates to use, and signposting to our intranet page.
- 5.11. We continue to welcome the opportunity to listen to our staff and those working with us to address any concerns raised and make any required improvements to services.

6. Conclusion

- 6.1. We are committed to dealing responsibly, openly, and professionally regarding any genuine concern about wrongdoing or malpractice in the workplace. We have highlighted the important role that whistle-blowers have in raising any unjust or unethical behaviour; potentially resulting in positive change.
- 6.2. All staff have been made aware of the new national arrangements and have been signposted to relevant training and awareness raising opportunities.
- 6.3. Quarterly reports have been submitted to the Staff Governance Committee over 2021-2022.
- 6.4. We have welcomed the opportunity to reflect on our whistleblowing arrangements, and the work delivered to date in fostering a more open, honest and inclusive working culture.
- 6.5. Looking ahead, Donald Cameron, Director of Planning and Corporate Resources, will be retiring in June 2022. Arrangements are in place for a successor to take up post in July 2022.

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