



**INDEPENDENT  
NATIONAL  
WHISTLEBLOWING  
OFFICER**

People Centred | Improvement Focused

# **Prescribed Person's report on protected disclosures – annual report for 2022-23**

**Independent National Whistleblowing  
Officer**



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## 1. Introduction

- 1.1 The Independent National Whistleblowing Officer (INWO) is responsible for setting out principles and a procedure for NHS Scotland providers to use in handling whistleblowing concerns. It also provides an independent review stage to this procedure. These principles and procedure are referred to as the National Whistleblowing Standards<sup>1</sup> (the Standards). They apply to all NHS providers in Scotland, including primary care and contracted providers. They also apply to students, trainees and volunteers as well as all temporary and permanent staff.
- 1.2 This report fulfils a statutory requirement to report on any protected disclosures brought to the INWO under the Employment Rights Act 1996<sup>2</sup>, as set out in [Appendix 1](#).

## 2. Statutory framework and definitions

- 2.1 The INWO became a 'prescribed person' on 15 December 2022<sup>3</sup>, as defined under the Public Interest Disclosure (Prescribed Persons) Order 2014. The INWO listing relates to '*whistleblowing disclosures and how they are handled in the NHS in Scotland*'. Therefore, NHS Scotland staff can report their concerns to the INWO. They can do this via our advice phone line, via a form on our website or via email.
- 2.2 The INWO has a duty to report on the 'qualifying disclosures' workers have made since this listing on 15 December 2022. The Prescribed Persons Regulations set out a definition of a qualifying disclosure which is somewhat different from the INWO's definition of whistleblowing. Details of these definitions are provided in [Appendix 2](#). The INWO definition is slightly wider

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<sup>1</sup> National Whistleblowing Standards 2021: [NationalWhistleblowingStandards-AllParts.pdf](https://www.spsso.org.uk/NationalWhistleblowingStandards-AllParts.pdf) ([spsso.org.uk](https://www.spsso.org.uk))

<sup>2</sup> Employment Rights Act 1996, c.18. Available at: [legislation.gov.uk/ukpga/1996/18/section/43B](https://www.legislation.gov.uk/ukpga/1996/18/section/43B)

<sup>3</sup> Whistleblowing: list of prescribed people and bodies, Department of Business, Energy and Industrial Strategy: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>



than that used for protected disclosures. However, all disclosures made to the INWO have been included here, to support the aim of increasing confidence in raising concerns.

### **3. Function and objectives of the INWO**

- 3.1 The INWO provides an independent review for whistleblowing concerns that have been raised through internal NHS whistleblowing procedures. It has the powers to investigate four aspects of these concerns:
- The provider's decisions and actions relating to the concern
  - The provider's handling of the concern against set procedures
  - How the whistleblower has been treated
  - How the provider supports a positive speak up culture.
- 3.2 In addition to our investigation powers, the INWO monitors implementation of the Standards, and follows up with NHS service providers where there are issues with its application, particularly where this relates to difficulties accessing the process.
- 3.3 Public interest disclosures are therefore a core part of our business. The INWO's objective is to improve speaking up in the NHS, so that everyone working for an NHS service is able to raise concerns as early as possible, for the benefit of all workers and service users. This is achieved through a focus on improving access to and safety of whistleblowing processes at the local level, and providing an independent third stage to the process when the local process has not resolved the issue.



## 4. Number of qualifying disclosures received, and action taken

4.1 Between 15 December 2022 and 31 March 2023 the INWO received 44 cases. 37 of these cases have since been closed, with action taken as detailed below:

PIDA reporting - closed case outcomes	TOTAL
Potentially whistleblowing, signposted appropriately to internal process or provided relevant information	24
Not whistleblowing \ does not meet the INWO definition	3
Signposted to other regulator	1
Case not appropriate for INWO due to timescales	2
HR \ employment issue	5
Whistleblower withdrew from the process	1
Monitored referral route	1
<b>Total cases closed</b>	<b>37</b>

4.2 The 'monitored referral route' refers to when the INWO provides oversight when a case is referred back to the NHS provider for them to investigate in line with the Standards. The INWO monitors the progress of these concerns, to ensure that the concern is responded to in full at the end of the process. The whistleblower can then come back to the INWO for an independent review of their concern, should that be necessary.

4.3 There were seven cases which remained open at 31 March 2023. Three of these were being assessed for what action might be appropriate to take next. Four were being investigated by the INWO team.



## Appendix 1: Statutory reporting requirement

- 4.4 The Employment Rights Act 1996<sup>4</sup> sets out requirements for all Prescribed Persons to publish a report of the disclosures brought to them each year. This report relates to disclosures the INWO received from 15 December 2022 to 31 March 2023. The report summarises:
- the number of disclosures received
  - how the INWO has responded to the disclosures, and what action has been taken as a result
  - how the disclosures have affected the INWO's ability to perform its functions and meet its objectives
  - an explanation of our functions and objectives.
- 4.5 This report follows the guidelines and advice provided by the Department of Business, Energy and Industrial Strategy<sup>5</sup>. The aim of this reporting process is to increase transparency in how whistleblowing concerns are handled and in turn, confidence that disclosures will be listened to and acted on.

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<sup>4</sup> Employment Rights Act 1996, c.18. Available at: [legislation.gov.uk/ukpga/1996/18/section/43B](https://legislation.gov.uk/ukpga/1996/18/section/43B)

<sup>5</sup> Whistleblowing: Prescribed persons guidance, Department of Business, Energy and Industrial Strategy (2017). Available at: [Whistleblowing: prescribed persons guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)



## Appendix 2: Statutory framework and definitions

- 4.6 The Public Interest Disclosure Act (PIDA) 1998 gives legal protection to employees against being dismissed or penalised by their employers as a result of disclosing information which is considered to be in the public interest. As defined under the Public Interest Disclosure (Prescribed Persons) Order 2014<sup>6</sup> the INWO became a ‘prescribed person’ on 15 December 2022<sup>7</sup>. The listing relates to *‘whistleblowing disclosures and how they are handled in the NHS in Scotland’*. Therefore, NHS Scotland staff can report their concerns to the INWO. They can do this via our advice phone line, via a form on our website or via email.
- 4.7 Under the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017<sup>8</sup>, the INWO has a duty to report on the ‘qualifying disclosures’ workers have made. These disclosures are defined by section 43B of the Employment Rights Act 1996<sup>9</sup> and relate to when a worker, reasonably believing they are acting in the public interest, discloses information about a relevant failure. This could include, for example, a breach of a legal obligation or a criminal offence.
- 4.8 Not all the concerns raised with the INWO fall within the definition of qualifying disclosures, but all are assessed and actioned.
- 4.9 The INWO determines a whistleblowing concern to be where the person raising the concern is a worker and their disclosure relates to the definition of whistleblowing set out in the Public Services Reform (SPSO) (Healthcare

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<sup>6</sup> The Public Interest Disclosure (Prescribed Persons) Order 2014: [The Public Interest Disclosure \(Prescribed Persons\) Order 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/1000/made)

<sup>7</sup> Whistleblowing: list of prescribed people and bodies, Department of Business, Energy and Industrial Strategy: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2/whistleblowing-list-of-prescribed-people-and-bodies>

<sup>8</sup> The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017: [The Prescribed Persons \(Reports on Disclosures of Information\) Regulations 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukreg/2017/1000/made)

<sup>9</sup> Employment Rights Act 1996, c.18.: [legislation.gov.uk/ukpga/1996/18/section/43B](https://www.legislation.gov.uk/ukpga/1996/18/section/43B)



Whistleblowing) Order 2020<sup>10</sup>:

*“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<sup>11</sup>) 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.”*

4.10 On the basis of this definition, the INWO can receive concerns raised by anyone working to deliver an NHS health service, and this can include:

- students
- trainees
- volunteers and
- agency staff.

4.11 This definition also relates to a ‘risk of harm or wrong doing,’ rather than a ‘failure’ such as a legal breach or criminal offence.

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<sup>10</sup> Public Services Reform (SPSO) (Healthcare Whistleblowing) Order 2020: [The Public Services Reform \(The Scottish Public Services Ombudsman\) \(Healthcare Whistleblowing\) Order 2020 \(legislation.gov.uk\)](#)

<sup>11</sup> Scottish Public Services Ombudsman Act 2002: [Scottish Public Services Ombudsman Act 2002 \(legislation.gov.uk\)](#)