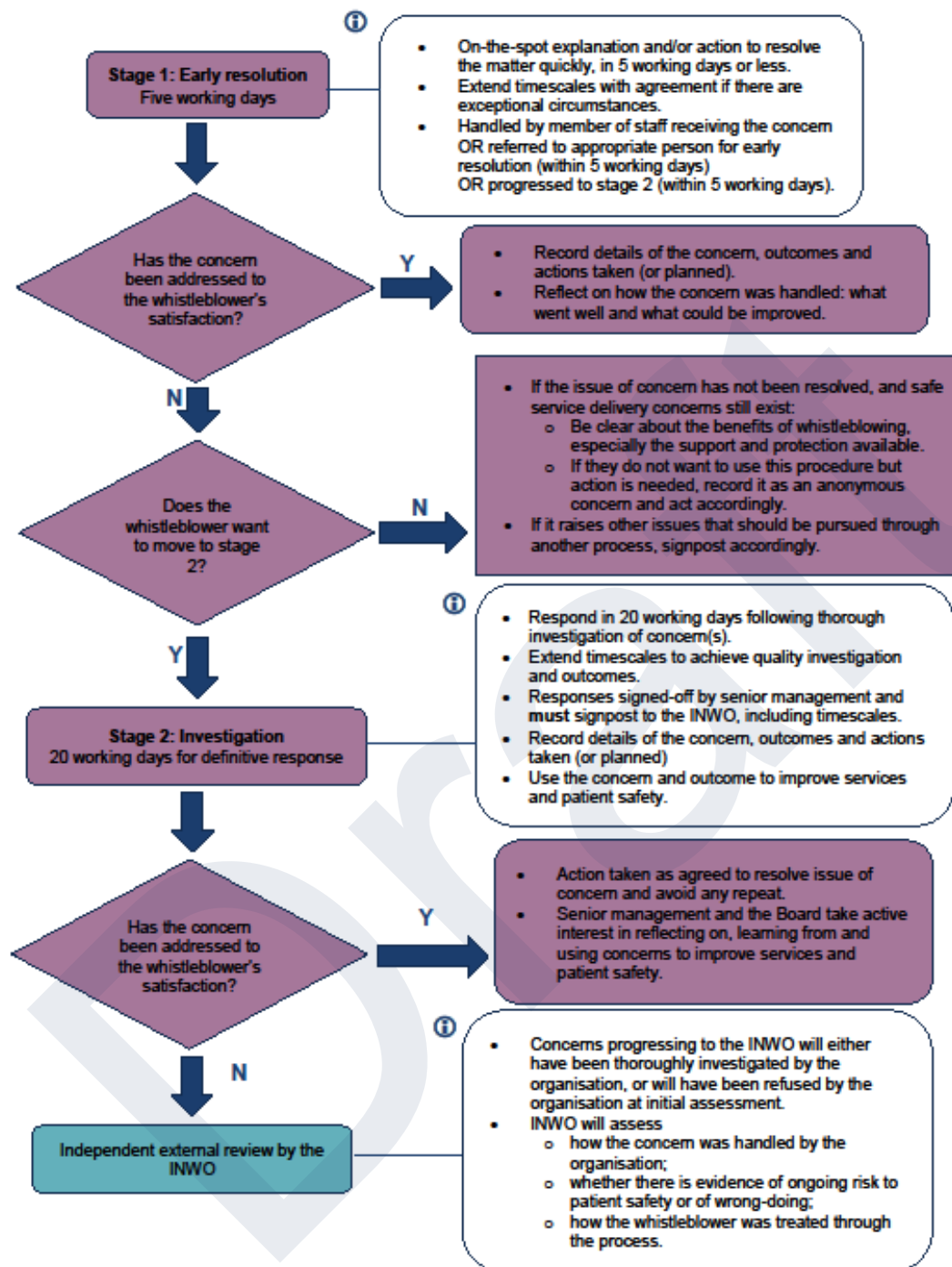


# The Draft National Whistleblowing Standards

## Part 4

### The 2 Stage Procedure

## Overview of the procedure



## Stage 1: Early resolution

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1. Stage 1 is for simple and straightforward concerns that can be resolved with an explanation and/or by taking limited action to resolve the issue within five working days or less. These concerns will involve little or no investigation. Resolution should involve the line manager when appropriate. Issues that are more complex and will clearly take more than five working days to resolve should be handled directly at Stage 2.
2. Ideally, this will involve a face-to-face discussion with the person, or it could mean asking an appropriate member of staff to deal directly with the issue.

### *Initial discussions*

3. Anyone that delivers NHS services can use this procedure, by raising a concern with their manager or other representative. They also need to agree that this is the route they want to take, and be advised of the benefits and support available (see Part 3). Even if a concern could amount to a whistleblowing concern, it does not formally become one unless the individual concerned expressly and specifically agrees to engaging in the whistleblowing procedure. If this agreement is not in place, the concern can be logged as an anonymous concern (see Part 3) and acted on as appropriate.

### *Timescales – five working days*

4. The organisation (normally the manager or whoever has received the concern) has five working days to provide a response. If there are clear and justifiable reasons why this timescale cannot be met, the five days can be extended by a further five working days, with approval by senior management. Reasons for this may be staff absence or difficulty in arranging a meeting. The person raising the concern must be told about the reasons for the extension, and when they can expect a response.
5. If it is clear from the outset that the concern is complex and could not be responded to in five working days, it should be handled directly at [Stage 2](#). Extensions to Stage 1 must not be used to delay moving the concern to Stage 2.

## *Stage 1 discussion*

6. Once there is agreement that the concern should be considered through this procedure, the next stage is to discuss and agree on:
  - 6.1. What outcomes are being sought and are they achievable;
  - 6.2. What action needs to be taken to put things right, and what timescales would be appropriate for this;
  - 6.3. Are all the issues appropriate for this procedure or are some appropriate for other procedures, and if so, what signposting (see Part 3) would be appropriate; and
  - 6.4. Review any need for support (see Part 3) and consider how this will be accessed.
7. Managers and others receiving concerns must ensure that those raising concerns have the support and information they need to pursue all appropriate avenues, including HR procedures. They must be informed of what support is available, and when and how they can access it.
8. Discussions around the issue of concern must cover:
  - 8.1. What exactly is the person's concern?
  - 8.2. Who are the other people involved?
  - 8.3. What support do they or other staff need (or are likely to need)?
  - 8.4. Does the whistleblower want their involvement to remain anonymous?
  - 8.5. Who is the best person to respond to the concern?
  - 8.6. Is this achievable in five working days or less, or should it be handled at Stage 2?
9. [Annex A](#) provides further guidance on exploring these issues.

## *Recording the concern*

10. Details of all concerns raised by staff and other workers must be recorded. Concerns should be recorded upon receipt, and appropriate consideration taken to any requests for anonymity and/or confidentiality (see Part 3). Full details of requirements in relation to recording concerns are provided in Part 6.

## *Closing the concern*

11. A response to a Stage 1 concern does not have to be in writing (although this may be helpful), but it must include:
  - 11.1. Responses to all the issues raised;
  - 11.2. Reasons for any decisions;
  - 11.3. What action is being taken in response; and
  - 11.4. Signposting to Stage 2 in case they consider that their concerns have not been resolved.
12. If the response is not provided in writing, a record must still be kept of the decision reached and the information given to the person raising the concern. The case must then be closed and the records system updated as appropriate. The case closure date is the date when the person was given the decision to the concern they raised.

## *Learning, improvements and recommendations*

13. Concerns raised both at Stages 1 and 2 of this procedure will often identify the need for changes to improve safe and efficient service delivery, or enhance governance arrangements. Any improvement action must be appropriately planned, ensuring that all those concerned are kept informed of changes. Further information on learning from concerns is available in Part 6 of these Standards.
14. Consideration must also be given to:
  - 14.1. The potential for wider learning across other departments following the conclusion of an investigation; and
  - 14.2. Whether the improvements would be beneficial to other NHS organisations across Scotland. If so, this should be shared with national organisations or clinical groups to take forward as appropriate.

## *When to move to Stage 2*

15. Some concerns will not be appropriate for Stage 1, and should be progressed directly to Stage 2:
  - 15.1. The issues raised are complex and require detailed investigation;
  - 15.2. The concern relates to serious, high risk or high profile issues; or

- 15.3. The person does not want to pursue the concern at Stage 1, and considers that an investigation is needed.
16. Issues that relate to serious, high risk or high profile issues may need more senior oversight and consideration.
17. Alternatively, a case can be brought to Stage 2 if the person does not feel that Stage 1 has appropriately resolved the issue, and they still have concerns. This may be immediately on receiving the decision at Stage 1 or could be some time later.
18. This escalation from Stage 1 to Stage 2 should be recorded, and the system must be clear that this is the same concern, not a new one.

### *Time limit for raising concerns*

19. The timescale for accepting a whistleblowing concern is within six months from when the person became aware of the issue of concern, unless the issue is ongoing. The manager has discretion to extend this time limit if there is good reason to do so, for example if the issue is still ongoing or if 'business as usual' procedures have led to delay.
20. If a case is not being progressed through the procedure due to the timescales involved, a clear explanation of the basis for this decision should be provided to the person raising the concern. They must also be advised that they can ask the INWO to consider the decision.

## **Stage 2: Investigation**

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21. Whistleblowing concerns handled at Stage 2 of the whistleblowing procedure are typically serious or complex, and require a detailed examination before the organisation can state its position.
22. An investigation aims to establish all the facts relevant to the points raised in the whistleblowing concern. It should be thorough, proportionate and objective, so that any problems can be identified, and improvements can be explored. This may include action to put things right in the short term, or an action plan for future changes. It is also very important to give the person raising the concern a full and evidence-based response that represents the organisation's final position.

## *Timescales – 20 working days*

23. The following timescales apply to Stage 2:
  - 23.1. Acknowledgement in writing within three working days;
  - 23.2. Full response to all concerns provided as soon as possible, and within 20 working days, unless an extension to this time limit is required;
  - 23.3. If an extension is needed, the person raising the concern must be given a clear indication of when they can expect a full response within the first 20 working days, and then subsequently updated at least every 20 working days; and
  - 23.4. Updates every 20 working days to all those directly affected by the investigation, providing information about what progress has been made and what will happen before the next update or full response is provided.

## *Acknowledgement*

24. The acknowledgement should include:
  - 24.1. Contact details for the person overseeing the investigation;
  - 24.2. Explanation of timescales, when an extension might be required and what this would mean; and
  - 24.3. Support available for the person, including information about other agencies and their professional body if appropriate.
25. It may also be appropriate to provide further information including:
  - 25.1. Appropriate contact details for urgent safety issues during the period of the investigation;
  - 25.2. A summary of the concerns and outcomes they are seeking;
  - 25.3. An outline of the proposed investigation, and who will be involved;
  - 25.4. An offer to discuss issues either with the investigation officer or a senior member of staff; and
  - 25.5. A consent form, if the concern is raised by a union representative or other advocate on the employee's behalf.

### *Extensions to the 20 working day timescale*

26. Every effort should be made to meet the 20 working day timescale, as failure to do so may delay changes to unsafe working practices, and could have a detrimental effect on patient safety, organisational risk, the person raising the concern or those that are the focus of the investigation.
27. While 20 working days should be the aim, and the norm, it is not a target or performance measure, and it should not be met at the expense of a thorough, robust investigation which delivers good outcomes. It is there to ensure that prompt action is taken, and that there is an ongoing focus on investigating and resolving the concern, while keeping those involved updated on progress.
28. There is an expectation that, when a final decision cannot be provided within 20 working days, significant progress must still be demonstrated, and the investigation must not be subject to avoidable delays.
29. There is no flexibility to 'stop the clock' in the whistleblowing procedure. Where there are clear and justifiable reasons for extending the timescale, the investigator should request authorisation from a senior manager to do so. These revised timescales must be explained to the person raising the concern and others involved in the investigation, as appropriate.
30. The reasons for an extension might include:
  - 30.1. essential accounts or statements are needed from staff but they are unavailable due to long-term sickness or leave;
  - 30.2. staff have requested a representative from their professional body to be with them at a meeting, and this has caused unavoidable delays;
  - 30.3. further essential information cannot be obtained within normal timescales; or
  - 30.4. progress of the investigation is disrupted by unforeseen or unavoidable operational circumstances, for example industrial action or severe weather conditions.

### *First considerations:*

31. When a concern is raised at Stage 2 there are a range of issues to consider:
  - 31.1. Is any immediate action needed to put things right/reduce patient safety or organisational risks;
  - 31.2. Who should investigate - they need to be a senior member of staff from another department or service whenever possible.



- (The Governance section reviews how to take account of concerns about senior leadership or Board members);
- 31.3. What should the investigation cover – using the list in [paragraph 8](#) and [Annex A](#) to explore the concerns in more detail;
  - 31.4. How much involvement the person wants in the investigation, and whether this is appropriate;
  - 31.5. Signposting to any other appropriate additional procedures (e.g. HR procedures);
  - 31.6. Consideration of what risks are involved, how they could be mitigated, and what support can be provided, ensuring access to it;
  - 31.7. Outline of what to expect in terms of timescales and updates.
32. Whenever possible, these issues should be explored through a discussion with the person raising the concern.
  33. Managers should ensure they are aware of the person's preferred method of communication, and use this whenever possible and appropriate. They must also take account of any data safety concerns when corresponding by email. If they are using an employee's work email address the person raising the concern must have consented to its use for this purpose.
  34. It is also important to take account of any accessibility issues the person has shared.

### *The investigation*

35. The investigation must focus on the practices or procedures that are unsafe or inappropriate. It must keep patient safety, safe working practices and good governance as its focus, and must be fair, robust and proportionate to the risks identified. It must seek to resolve and fully respond to all of the whistleblowing concerns that have been raised.
36. The person raising the concern must be told about how the investigation will be conducted, and what their role in it will be.
37. If Stage 2 follows attempted resolution at Stage 1, the investigator should ensure they have all the case notes and associated information considered at Stage 1. They must also clarify as early as possible what additional information will be needed and how it will be obtained.
38. It is good practice to keep a record of meetings throughout the investigation (either notes or recordings), including any discussions with the person raising the concern. This should be shared with those involved within an agreed timescale.

39. The investigation should be kept independent of any other procedures, including HR procedures, though where possible any linked procedures should be coordinated with the whistleblowing procedure or progressed in parallel.
40. Investigators and decision makers must take account of the Principles (see Part 1), and must:
  - 40.1. Give all parties the right to be heard;
  - 40.2. Not have a personal interest in the outcome;
  - 40.3. Act only on the basis of evidence;
  - 40.4. Make decisions in good faith and without bias; and
  - 40.5. Consider any person whose interests will be affected by the decision.

### *Other staff involved*

41. Raising concerns can be stressful for anyone involved in the case, including the subject of the investigation, the investigator and witnesses. Everyone involved must be treated professionally and with respect.
42. If someone is accused of poor practice through the procedure they should be advised of the following:
  - 42.1. That an investigation is taking place;
  - 42.2. The nature of the allegation;
  - 42.3. The investigation process;
  - 42.4. Their rights and responsibilities; and
  - 42.5. Their support options.
43. They do not need to know how the organisation learnt about the concern, and care must be taken to protect the identity of the person that raised the concern.

### *Responding to the concern*

44. At the end of the investigation the person raising the concern must be given a full and considered response, setting out the findings and conclusions, and how they were reached. It must also provide evidence that the issue has been taken seriously and been thoroughly investigated. It must include the conclusions of the investigation and information about any remedial action taken or proposed as a consequence of the concern, both in relation to the current situation and to avoid potential recurrence.
45. It is best practice for a single, senior member of staff (or someone authorised to act on their behalf) to be responsible for reviewing each decision prior to the

response being issued. They must ensure that all necessary investigations have concluded and action is underway to prevent future risks.

46. The response must be provided in writing, and also, if applicable, by the preferred alternative method of contact. A record must be kept of the decision, and details of how it was communicated to the person raising the concern.
47. It must be clear from the response that this is the organisation's final decision, and that if the person remains dissatisfied with the decision or the way it has been investigated, they can take their concern to the INWO.
48. Other people directly involved in the investigation must also be updated on the final outcome, and must be informed of any recommendations or actions taken as a result of the whistleblowing concern. Any such updates must take full account of data protection legislation.
49. The quality of the investigation and the subsequent report is very important and in terms of best practice should:
  - 49.1. Be clear and easy to understand, written in a way that is person-centred and non-confrontational;
  - 49.2. Use language appropriate to the person raising concerns, and their understanding of the issues;
  - 49.3. Address all the issues raised and demonstrate that each element has been fully and fairly investigated;
  - 49.4. Include an apology where things have gone wrong;
  - 49.5. Highlight any area of disagreement and explain why no further action can be taken;
  - 49.6. Indicate that a named member of staff is available to clarify any aspect of the letter; and
  - 49.7. Provide details of how to refer their concerns to the INWO if they are not satisfied with the outcome of the local process.

### *Recording the concern*

50. Details of all concerns investigated at Stage 2 must be recorded. As with Stage 1 concerns, they should be recorded upon receipt, and appropriate consideration given to any requests for anonymity or confidentiality.
51. Where applicable, the record must be done as a continuation of the record created at Stage 1. The details must be updated when the investigation ends.
52. Full details of requirements in relation to recording concerns are provided in Part 6 of these Standards.

## Learning, improvement and recommendations

53. As for Stage 1 concerns, see paragraphs 13 and 14 above.

### *Meetings and post-decision correspondence with the person raising the concern*

54. The person raising the whistleblowing concern may request further information or a meeting once they have received the decision. Further communication should only relate to requests for explanation or clarification of the decision.
55. It should be made clear prior to any meeting that it is for explanation only and not a reinvestigation or reopening of the concerns raised. This meeting should be separate from any meeting relating to HR issues. If the person raises concerns about the way they have been treated, they should be signposted to the INWO, where these concerns can be explored. They should also be signposted to any appropriate HR procedures, unless this action has already been taken.
56. Any communication relating to the conduct of the investigation or the subsequent decisions or outcomes should not be considered by the organisation; rather the person raising concerns must be signposted to the INWO for Stage 3 of this procedure.

## **Independent external review**

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57. Anyone who has raised a concern through this procedure can bring their concern to the INWO for further consideration, either in relation to the way the concern was handled, the outcome of the investigation, or their treatment through the process.
58. The INWO looks at:
- 58.1. How the organisation has applied these Standards and investigated the issues raised;
  - 58.2. Whether the decisions made in relation to whistleblowing concerns were reasonable; and
  - 58.3. The person's treatment, including any signposting relating to HR procedures linked to their raising a concern.
59. The INWO recommends that organisations use the wording below to inform people of their right to ask INWO to consider the whistleblowing concern.

### **Information about the Independent National Whistleblowing Officer (INWO)**

The INWO is the final stage for whistleblowing concerns about the NHS in Scotland. If you remain dissatisfied with an NHS organisation after its process has concluded, you can ask the INWO to look into your concern.

The INWO cannot normally look at concerns:

- where you have not gone all the way through the whistleblowing procedure, or
- more than 12 months after you became aware of the matter you want to bring to the INWO.

The INWO's contact details are:

INWO

Bridgeside House  
99 McDonald Road  
Edinburgh  
EH7 4NS

Freepost TBC

(You don't need to use a stamp)

Freephone: 0800 377 7330

Online: [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us) (to be updated to reflect INWO functions)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

60. If the whistleblowing concern is raised with the INWO, this may result in a request for all relevant papers and other information to be provided to the INWO's office. For more information about what to expect from an INWO investigation, visit [the INWO website].

### *Time limits for raising concerns with the INWO*

61. Someone who has raised a concern and had a final response from the NHS provider can bring their concern to the INWO within 12 months from the date they became aware of the issue. (The INWO has discretion to extend these

timescales, in a similar way to the organisation's discretion to extend timescales, as set out above.)

62. These Standards and the INWO's powers come into operation on [date the order comes into force]. The INWO only has powers to investigate where a concern has been raised, within time limits, under procedures in line with these Standards.
63. Issues which are or have been considered under previous processes or arrangements must be completed under those processes, and cannot be reviewed by the INWO.

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# Annex A: Further guidance on exploring the concern

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**What does the person want to achieve by raising this concern, and is this achievable?**

Anyone receiving a concern needs to clarify the outcome the person wants at the outset. The person may not be clear about this, or it may be that they want things to change but are unclear what this would look like. It may be appropriate to signpost the person to other HR procedures too, if there are overlapping issues.

Discussions should include whether the expected outcome can be achieved. If it is not going to be possible to achieve the expected outcome, the person raising the concern must be told why. They may expect more than the organisation can provide, or the manager may consider the form of resolution to be disproportionate to the risks that have been identified.

**What exactly is the person’s concern?**

It is important to be clear about exactly what concern(s) the person is raising. It may be necessary to ask for more information and probe further to get a full picture. Anyone receiving a concern should be aware that staff may be nervous about raising concerns; they should ensure there is enough time and space for the person to explain their concern fully.

**Who are the other people involved?**

Anyone receiving a concern should consider if other staff are aware of the issue, or whether they should be. If so, who are they, and has this been discussed with them already? In particular, consideration should be given to whether senior staff responsible for this area of work are aware, or whether they have been informed of the concern. They should also take account of any previous investigations into this issue.

**What support does the whistleblower and/or other staff need?**

Anyone receiving a concern must **always** check if the staff member needs support. They should discuss what support would be helpful, how this might be achieved and consider whether others involved in the situation also need support and how this might be provided. Some people may also benefit from seeking support from their trade union or professional representative body, if they consider the situation is serious enough. (A list of contact details for support agencies and professional bodies is available in Part 3.)

**Does the whistleblower want their involvement to remain anonymous?**

It is important to discuss the level of confidentiality the person wishes to retain. Sometimes the investigator will need to know who raised the concern, while in other instances this would not be necessary or appropriate.

The person may wish to remain completely anonymous (when their details are not recorded anywhere). The limitations of such an approach must be explained.

In all cases, the person's name will not be disclosed beyond what is necessary for the investigation, unless there is a legal requirement to do so.

**Who is the best person to respond to the concern at Stage 1?**

If the person receiving the concern cannot deal with it because, for example, they are unfamiliar with the issue or do not have the authority to make the changes that are required, tell the person raising the concern and pass details of the issue to someone who can attempt to resolve it. Keep the person raising the concern informed about what is happening and who is responsible for taking it forward.