

NHS Education for Scotland

Whistleblowing Policy

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Whistleblowing Policy

NHS Education for Scotland

1. Policy Statement

- 1.1 NHS Education for Scotland (NES) is committed to achieving the highest possible standards of service and the highest possible ethical standards in healthcare and all aspects of practice. NES also seeks to promote a positive and transparent culture across the organisation, whilst ensuring robust governance arrangements are maintained. To achieve these ends, NES has in place a Whistleblowing Policy.
- 1.2 NES encourages individuals, including employees, contractors and anyone else who interacts with NES (e.g. trainees), to use internal mechanisms for raising any malpractice or illegal acts or omissions by NES employees or ex-employees, and as set out below, has robust procedures in place to allow this to happen. Individuals can be assured that concerns raised in good faith will be protected under current legislation.
- 1.3 Some professional groups have in place contractual arrangements in this area, and this policy is intended to complement professional and ethical guidelines of such bodies.

2. Introduction

- 2.1 This policy should be used for any worker to raise a qualifying disclosure under the Public Interest Disclosure Act 1998. This policy is available to all employees; workers and ex-employees of the organisation who have concerns about misconduct or wrongdoing.
- 2.2 In addition, this Policy is available to individuals who interact with NES, including trainees.
- 2.3 At one time or another an individual may have concerns about what is happening at work. Usually these concerns are easily resolved. However, when the concern feels serious because it is about a possible danger, professional misconduct or financial malpractice that might affect patients, colleagues, or NES itself, it can be difficult to know what to do.
- 2.4 Individuals may be worried about raising such an issue and may think it best to keep it to themselves, perhaps feeling it is none of their business or that it is only a suspicion, or due to concern that they will not be heard. Individuals may also feel that raising the matter would be disloyal to colleagues, to managers or to the organisation. It may also be the case that an individual has said something but found that they have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next.

- 2.5 This Policy has been developed in partnership and seeks to provide clear and concise guidance on whistle-blowing and how the policy can work for individuals.
- 2.6 The Policy is designed to protect those raising a genuine concern from suffering a detriment and/or unfair dismissal in compliance with the Public Interest Disclosure Act 1998. Providing that concerns and allegations are made lawfully, without malice and in the public interest, individuals will not be disadvantaged by the raising of a concern.
- 2.7 If an individual feels that something is of concern, and they feel that it is something which they think NES should know about or look into, they should use this procedure. Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others, and may be something which adversely affects patients, the public, other employees or the organisation itself. A grievance differs from a whistleblowing concern as it is a personal complaint regarding an individual's own employment situation. A whistleblowing concern is where an individual raises information as a witness whereas a grievance is where the individual is a complainant.
- 2.8 NES is committed to running the organisation in the best way possible. This policy has been introduced to reassure all individuals who interact with NES, that it is safe and acceptable to speak up, and to enable them to raise any concern which they may have at an early stage and in the right way. Rather than wait for proof, it is preferable if a matter is raised when it is still a concern. If in doubt raise it!

3. Scope

When does the policy apply and to whom?

- 3.1 The purpose of this policy is to encourage and provide the means for all workers, employees and ex-employees of NES, whether full-time or part-time, self-employed, or employed through an agency,¹ to raise and discuss genuine concerns about possible wrongdoing, corruption, malpractice and danger that is actually happening, took place in the past, or is likely to happen in the future. The policy is also available to other individuals who interact with NES e.g. trainees.
- 3.2 This policy should be used where there is a genuine concern that there are reasonable grounds for believing that:
- a person has failed, is failing, or is likely to fail to comply with their legal obligations; or
 - a criminal offence that has been committed, is being committed, or is likely to be committed; or

¹ It does not cover volunteers. For further information on NES arrangements for volunteers please see:

http://intranet.nes.scot.nhs.uk/pfpi/volunteering/documents/VolunteerPolicy_Final200510.pdf

- the health and safety of any individual has been, is being, or is likely to be endangered; or
 - a miscarriage of justice that has occurred, is occurring or is likely to occur; or
 - the environment has been, is being or is likely to be damaged; or
 - any of the above are being, or are likely to be, deliberately concealed.
- 3.3 In general, this policy covers actions or omissions an individual considers are illegal, contrary to policy or established procedure or outside the scope of an individual's authority, and actions which could damage NES' reputation. However, only disclosures concerning those actions falling strictly within the categories bullet pointed above will be eligible for the relevant statutory protection.
- 3.4 Any concerns reported in good faith under this procedure are valued. If individuals are uncertain whether the matters of concern are within the scope of policy, we encourage the reporting of concerns in accordance with this procedure.
- 3.5 This policy is concerned with risks, malpractice or wrongdoing that affects others. It could be something which adversely affects patients, the public, other employees or the organisation itself. A grievance on the other hand, is a personal complaint about an individual's own employment situation (i.e. in line with this policy an individual raises a concern as a witness, whereas a grievance is where the individual is a complainant).
- 3.6 The NES Dignity at Work Policy is clear that behaviour involving the bullying and harassment of any employees, or other individuals, for any reason is unacceptable and the organisation will not condone or tolerate bullying or harassment in any form. Where it is determined that bullying or harassment has taken place, it will be considered a disciplinary offence.

4. Relevant legislation

- 4.1 Please see Appendix 1 for a description of the relevant legislation. The main legislation in relation to Whistleblowing is the Public Interest Disclosure Act 1998 (PIDA). Please note that PIDA provides protection to workers under the law by providing that employers should not victimize any employee who raises a concern internally or to a prescribed regulator.

5. Other Policies and Procedures

- 5.1 NES has a range of policies and procedures which deal with standards of behaviour at work. Employees are encouraged to use the provisions of these procedures when appropriate.
- 5.2 The Whistleblowing Policy excludes issues covered by separate procedures/policies, including the:

Grievance Policy: To be used when employees feel unfairly treated within the workplace by a manager or colleagues;

Dignity at Work Policy: To be used when an employee perceives they are being bullied or harassed by a manager or colleagues. This policy seeks to address inappropriate and/ or oppressive behaviours by managers/ colleagues.

5.3 It may be appropriate to use the Whistleblowing Policy if, after having made use of the above policies, issues are identified that would be more appropriately dealt with under this policy.

5.4 There may be times, however, when the matter is not about personal employment position and needs to be handled in a different way. Examples of this might include:

- mistreatment of a client of NES by an employee;
- repeated mistreatment of a client, despite a complaint being made;
- criminal offence has been committed, is being committed or is likely to be committed;
- suspected fraud;
- disregard for legislation, particularly in relation to health and safety at work;
- breach of Standing Financial Instructions;
- display of undue favour over a contractual matter;
- display of favour to a job applicant;
- breach of a code of conduct;
- information on any of the above has been, is being, or is likely to be concealed.

In such instances appropriate policy will be followed following consideration of the specific circumstances.

5.5 NES will not tolerate any harassment or victimisation of any employee or individual who raises a concern (including informal pressures), and will treat this as a serious disciplinary offence, which will be dealt with under the relevant arrangements.

6. Our Assurances to Individuals

Protection:

6.1 The NES Board, Chief Executive and trade unions/ professional organisations are committed to this policy. If individuals raise an honest and genuine concern under this policy, they will not be at risk of losing their job or suffering any detriment (such as reprisal or victimisation).

6.2 Providing an individual is acting in good faith, it does not matter if he/she is mistaken provided there is a reasonable belief in the concerns that are raised. An individual raising a concern will not be asked to prove their claim. However, if a concern is raised maliciously,

in bad faith, or in the knowledge that it is untrue this will be investigated within the parameters of the disciplinary policy.

Confidence:

- 6.3 The fear of being labelled a trouble-maker or disloyal, fear of victimisation are powerful disincentives against raising issues about genuine concerns. NES will not tolerate the victimisation of anyone who raises a genuine concern. Such victimisation will be subject to disciplinary action. In addition, as outlined in the Dignity at Work Policy, NES is committed to providing a working environment free from harassment, bullying or intimidation of any nature. With these assurances, the Board hopes that individuals will raise concerns openly.
- 6.4 An individual may decide that he/ she wants to raise a concern in confidence (see section 7 below for suggested contacts). It is recognised that there may be circumstances when staff would prefer to speak to someone in confidence first. If this is the case, the individual raising the concern should say so at the outset. Every effort will be made to keep the identity of an individual who makes a disclosure under this policy confidential. If it is necessary for the individual to participate in an investigation, the fact that he/ she made the original disclosure will, so far as is reasonably practicable, be kept confidential and all reasonable steps will be taken to protect him/ her from any victimisation or detriment as a result of having made a disclosure. There may, however, be circumstances in which, because of the nature of the investigation or disclosure, it will be necessary to disclose identity. This may occur in connection with associated disciplinary or legal investigations or proceedings. If such circumstances exist, NES will make efforts to inform the individual that identity is likely to be disclosed and there will be a discussion as to whether and how we can proceed.
- 6.5 In order not to jeopardise the investigation into the alleged malpractice, individuals will be expected to keep the fact that an employee has raised a concern, the nature of the concern and the identity of those involved confidential.
- 6.6 If identity is not disclosed, it will be much more difficult for NES to look into this matter, or to protect an individual's position, or to give feedback. Accordingly, while NES will consider anonymous reports, this policy is not primarily designed for dealing with anonymous reports.
- 6.7 AXA - ICAS² may additionally act as a source of advice and support in these circumstances, although it must be emphasised that an appropriate intervention from ICAS is around providing emotional support to individuals either raising or implicated in any concerns that

²AXA- ICAS provide NES's Employee Assistance Programme, which is a free confidential counselling service. More information on this programme is available from HR and on the intranet. The contact number for ICAS is 0800 072 7 072.

are raised through the routes described above. It is not appropriate for ICAS to become involved in interpretation or application of NES corporate policy, or to attempt to mediate a solution.

7. Procedure for raising concerns

7.1 Individuals may be unsure about raising a concern. NES recognises that individuals may wish to seek independent advice at any stage from and/or be represented by their trade union/professional organisation representatives when using the provisions of this policy. NES acknowledges and endorses the role trade union/professional organisation representatives play in this respect.

7.2 Individuals should also remember that they do not need to have firm evidence before raising a concern. However, they should explain as fully as possible the information or circumstances that give rise to the concern.

7.3 NES wishes to strike an appropriate balance between encouraging concerns to be raised through appropriate channels, and protecting all individuals concerned. It is also important for concerns to be raised internally to NES in the first instance, as is intended by the PIDA, to allow these to be addressed as close to source as possible.

Step 1: If an individual has concern about a matter as defined in Section 3 it is hoped that he/ she will feel able to raise it first with the line manager/ educational supervisor/ Training Programme Director. This may be done verbally or in writing. It will help if the individual states the facts of the matter clearly and remembers to give details of how he/she can be contacted.

Step 2: If the individual does not wish to raise the issue with the line manager line manager/ educational supervisor/ Training Programme Director, an alternative point of contact in the first instance may be the “grandparent” line manager/ Training Programme Director/ Associate Postgraduate Dean, or the Head of Planning and Performance or a HR Business Partner/Associate Business Partner or a trade union representative.

Step 3: If these channels have been followed and the individual still has concerns, or they feel the matter is so serious that they cannot discuss it with any of the above, he/she should contact the Deputy Chief Executive. If, exceptionally, the concern is about the Deputy Chief Executive, contact should be made with the Chair, who will decide on how to take the issue forward.

7.4 NES recognises its accountability within NHSScotland. A National Confidential Alert Line is being piloted by the Scottish Government Health Directorate. Details of this can be found within Appendix 1a.

- 7.5 Other regulators may also be contacted.³ Provision is made for disclosures to bodies which are 'prescribed' under the Act. Whilst we hope this policy gives individuals the reassurance needed to raise a concern internally, NES would rather employees raised a matter with an appropriate external body such as a regulator than not at all. Trade unions/professional organisations will be able to advise on such a course of action.
- 7.6 If an individual is unsure whether to use this procedure or if he/ she wants independent advice please see Appendix 2 for a list of contacts.
- 7.7 If an individual is concerned about malpractice independent and confidential advice about the Act may also be sought from a solicitor or lawyer. Disclosures to solicitors and lawyers are protected.

8. Fraud

- 8.1 If the concern is about suspected fraud and/or corruption the individual should contact either the Director of Finance or the NHSScotland Counter Fraud Service (CFS) Fraud Hotline on 0800 15 16 28.

Examples of acts of fraud:

The deliberate falsification of expenses, claims and receipts

Example of corruption:

Gaining favour in the application of a contract under procurement

9. How we will handle the matter: The Investigation

- 9.1 Once NES is informed of a concern, it will be looked into to assess initially what action should be taken. The disclosing individual may be asked how he/ she thinks the matter might best be resolved. If there is personal interest in the matter, this should be disclosed at the outset. If the concerns fall more properly within the grievance procedure, this will be explained to the individual.
- 9.2 The initial action taken by NES may involve an internal inquiry or a more formal investigation. Guidance on how to conduct an investigation are provided at Appendix 3.⁴ The key principles of the investigation process are:
- the investigation is led by an independent individual;
 - the investigation process is transparent, and
 - the investigation seeks to protect anonymity wherever appropriate (see paragraph 6.4 above).
- 9.3 NES will confirm to the individual who is handling the matter, how they can be contacted and whether further assistance from the disclosing

³ e.g. Counter Fraud Services, General Medical Council, General Dental Council, British Psychological Society, General Pharmaceutical Council, General Optical Council, Nursing and Midwifery Council, please also see Appendix 1.

⁴ Appendix 3: Guidance on Carrying out an Investigation

individual may be needed. If requested by the individual, the concern will be summarised in writing, along with a proposal for how it will be handled, providing a timeframe for feedback. If the concern has been misunderstood, or there is any information missing, the individual should highlight this.

- 9.4 The investigation will be concluded without unreasonable delay. However, the organisation allows for flexibility given the possible complexity of concerns raised. Timescales should be reasonable and communicated in writing to all parties. Any subsequent changes to this date should also be advised to all parties in writing.
- 9.5 If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation should be conducted in accordance with the provisions of the disciplinary procedure. Should it be thought necessary to suspend an employee during the course of an investigation, the procedure outlined in the NES Disciplinary Policy should be followed. All parties involved will be guaranteed to be treated fairly and impartially.
- 9.6 Feedback will be provided on the outcome of any investigation. However, it should be noted that it may not be possible to give details of the precise actions taken, where this would infringe a duty of confidence owed to another person. While it cannot be guaranteed that all matters will be responded to in the way that the individual might wish, NES will strive to handle the matter fairly and properly. By using this policy this will help us to achieve this.
- 9.7 At all stages of the process all parties involved will have the right to be accompanied by a colleague or trade union/professional organisation representative, not acting in a legal capacity, if they wish. They will also have access to the Employee Assistance Programme, ICAS, provided by NES for counselling or general legal advice.
- 9.8 All employees and individuals involved in the investigation will be required to maintain confidentiality in relation to the issues being raised. Unauthorised disclosure of information about any patient, member of the public or employee will be regarded as misconduct and may result in disciplinary action being taken.
- 9.9 It may also be appropriate during the investigation to report concerns to external agencies such as the Scottish Government Health and Social Care Directorates; the police; local authority; Scottish Environmental Protection Agency (SEPA), the Health & Safety Executive (HSE) or NHS Counter Fraud Services (CFS). It may also be necessary to suspend internal investigations pending the outcome of criminal procedures.

9.10 It is possible that an employee may continue to be concerned about an issue. If this is the case there are a number of options open to him/her to pursue. S/he may:

- utilise the internal grievance procedure, raising the issue with a more senior manager;
- report the matter to the appropriate professional or regulatory body e.g. Nursing and Midwifery Council (NMC), General Medical Council (GMC), Health and Safety Executive;
- access an external agency for advice e.g. Public Concern At Work.

10. Review and Evaluation

10.1 This policy is owned by the Head of Planning and Performance.

10.2 Monitoring the application and uptake of this policy will be undertaken by the Finance and Performance Management Committee. This will include monitoring number and types of concerns raised; how they were handled; and outcomes (including any amendment to policy or procedure).

10.3 The policy will be reviewed every two years.

Appendix 1

Public Interest Disclosure Act 1998

- 1) This policy and procedure take account of the Public Interest Disclosure Act 1998 (PIDA), which amended the Employment Rights Act 1996. The PIDA gives protection to all employees who disclose information reasonably and responsibly in the public interest. It also affords protection to those who suffer victimisation as a result of a disclosure up to and including dismissal.
- 2) The PIDA directs the employee towards raising the matter internally in the first instance and where there is an internal raising concern procedure, to use it. If this procedure is not used in the first place it may result in disciplinary action. However the Act will protect employees where they make external disclosures in a range of circumstances. If an employee chooses to disclose information in a way that is not covered by the Act, they will lose their protection.
- 3) If an employee raises a genuine concern under this policy, they will not be at risk of losing their job or suffering any detriment (such as a reprisal or victimisation). Provided the employee acts in good faith, it does not matter if they are mistaken or if there is an innocent explanation for their concerns. Employees do not need to have firm evidence before raising a concern, however they should explain as fully as possible the information or circumstances that gave rise to the concern. An employee raising a concern will not be asked to prove their claim. However, this assurance will not be extended to an employee who maliciously raises a matter they know to be untrue, and will be considered under the Disciplinary Policy.

Bribery Act (2010)

- 1) As a result of the offences created under the Bribery Act 2010, NES would be liable for prosecution if an employee or a person associated with the organisation engages in bribery in order to obtain or retain business on behalf of NES.
- 2) Accordingly, all employees must be aware of what constitutes an act of bribery and must ensure that their actions are honest, impartial and transparent. Employees with concerns regarding the conduct of others have a responsibility to raise these through their line manager or via the mechanisms defined in this Policy. All issues will be treated seriously and a full and comprehensive investigation will be carried out as per the NES Disciplinary Policy and Procedures.
- 3) More information relating specifically to bribery and the Bribery Act (2010) can be found in the Standards of Business Conduct Policy, and in the NES Anti-Bribery Statement, which are available on the NES Intranet.

Appendix 1a

The Scottish Government is piloting a Confidential Alert Line for NHS Scotland staff (with effect from April 2013), to access it please call **0800 008 6112**.

For more information on the Confidential Alert Line please see:

<http://www.scotland.gov.uk/News/Releases/2013/04/NHSactionhotline010413>

Appendix 2

Further information may be available from:

- BSI Code of Practice on Whistleblowing Arrangements Organisations can download a free copy of the 2008 British Standards Institution's Code of Practice on Whistleblowing Arrangements from www.pcaw.co.uk/bsi
- Public Concern at Work For information about the Public Interest Disclosure Act 1998, please visit: www.pcaw.co.uk/law/uklegislation.htm
- NHSScotland Counter Fraud Service (CFS) Fraud Hotline on - 08000 15 16 28 www.cfs.scot.nhs.uk
- Health Improvement Scotland Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB, Call 0131 275 6000, www.healthcareimprovementscotland.org
- Audit Scotland 110 George Street Edinburgh EH2 4LH Tel: 0845 146 1010 www.audit-scotland.gov.uk/
- General Chiropractic Council 44 Wicklow Street London WC1X 9HL www.gcc-uk.org Tel: 020 7713 5155
- General Dental Council 37 Wimpole Street London W1G 8DQ www.gdc-uk.org Tel: 020 7887 3800
- General Medical Council GMC Scotland 5th Floor The Tun 4 Jackson's Entry Edinburgh EH8 8PJ www.gmc-uk.org Tel: 0131 525 8700
- General Optical Council 41 Harley Street London W1G 8DJ www.optical.org Tel: 020 7580 3898
- General Osteopathic Council 176 Tower Bridge Road London SE1 3LU www.osteopathy.org.uk Tel: 020 7357 6655
- Health Professions Council 184 Kennington Park Road London SE11 4BU www.hpc-uk.org Tel: 0845 300 4472 or 020 7840 9802
- Nursing and Midwifery Council 23 Portland Place London W1B 1PZ www.nmc-uk.org
- Royal Pharmaceutical Society of Great Britain 1 Lambeth High Street London SE1 7JN www.rpsgb.org.uk Tel: 020 7735 9141

Appendix 3: Guidance on carrying out an Investigation

The purpose of carrying out investigations is to gather promptly all the relevant facts relating to the allegations. An independent manager should be identified to be responsible for carrying out a thorough investigation into any allegation of misconduct. A member of HR & OD will be asked to support any investigation.

Normally the investigating manager together with an HR Representative would interview those individuals who may be able to provide information. When interviewing witnesses, the following points should be adhered to:

- Give the individual the opportunity to be supported by their trade union/professional organisation representative or work colleague;
- Ensure that the questions asked are clear and not leading;
- The individual should be advised that the information they provide may be used as evidence should the issue proceed to a disciplinary hearing and that they may be asked to attend any hearing as a witness;
- The individual should be asked to sign as confirmation of an accurate account, a written statement (prepared by the HR Representative) and advised that a copy of this may be given to the person being investigated or their trade union/professional organisation representative should the matter be considered at a disciplinary hearing. The individual should be given the opportunity to consult with their representative regarding the content of their statement.

As part of the investigation the employee against whom the allegations have been made should be interviewed to ensure that they are clear about the allegations/complaints that have been made against them. In these situations the following points should be considered:

- The employee should be given the opportunity to be accompanied by their trade union/professional organisation representative or work colleague, not acting in a legal capacity;
- The individual should be advised of the allegations/complaints that have been made and asked for their response to these;
- The employee should be given the opportunity to provide a written response/statement to the allegations/complaints (which should be dated and signed), and to consult with their representative regarding the content of their written response/statement prior to it being submitted;
- The employee should be advised as to the likely timescale of concluding the investigation.

Once all of the information has been gathered the investigating manager should collate the information and on the basis of this, decide if there is any substance to the allegations/complaints and put forward their recommendations to the Director of Workforce. If there appears to be a case to answer, then the individual should be advised that the matter would be considered at a disciplinary hearing. If there appears to be no case to answer, then the individual should be advised of this in writing and should be given reasons for this decision.

In some circumstances, the investigating manager may recommend that, although there is not enough evidence to recommend the issue being considered at a disciplinary hearing, there are enough concerns to suggest other action. This could include further training, support/input from the Occupational Health Service or a one to one meeting between the employee and their manager.