

NHS Greater Glasgow & Clyde	Paper No. 21/20
Meeting:	NHS Board
Date of Meeting:	Tuesday 27 April 2021
Purpose of Paper:	For approval
Classification:	Board Official Sensitive
Name of Reporting Committee:	Staff Governance Committee
Date of Reporting Committee:	15 April 2021
Committee Chairperson:	Mr Charles Vincent, Whistleblowing Champion and Non Executive Director

Whistleblowing Review

1. Recommendation

1.1 The Board is asked to:

- note the findings and recommendations of the Review which are set out in the attached paper, and approve the recommendations made.

2. Purpose of Paper

2.1 The launch of the National Whistleblowing Standards in April 2021 provided NHS Greater Glasgow and Clyde with an opportunity to update and further develop the Whistleblowing Policy.

2.2 In support of this, a retrospective 3-year Review of individual and management experience of Whistleblowing to inform the development of the Policy, was commissioned. The Terms of Reference for the Review were set out in a Paper approved at the Staff Governance Committee on 18th August 2020.

2.3 The Review objectives were to consider the current approach to Whistleblowing in NHS Greater Glasgow and Clyde and identify any actions required to ensure the ongoing effectiveness of the existing systems and processes, including any that will also improve the implementation of the new Whistleblowing Standards for NHS Scotland.

- 2.4 The attached paper outlines the findings of the Review and the recommendations made.

3. Key Issues to be considered

- 3.1 The Review identified eight headline recommendations that are designed to improve the Whistleblowing process within NHS Greater Glasgow and Clyde.
- 3.2 The recommendations are set out in full in Section 6 of the paper. Recommendation 6.8 was approved in November 2020 by the Staff Governance Committee as an interim recommendation and has already been implemented.
- 3.3 Following approval at the Board, the outcomes of the report will be highlighted through the formal Board communications. Furthermore, the recommendations from the review will be included in staff communications relation to the new Whistleblowing Standards and associated action plan for implementation.

Any Patient Safety /Patient Experience Issues – Yes

Any Financial Implications from this Paper – Yes

The review includes recommendations that are expected to increase whistleblowing workload, which could have cost implications to be determined by the CMT as part of implementation.

Any Staffing Implications from this Paper – Yes

The review includes recommendations that are expected to increase whistleblowing workload, which could have cost implications to be determined by the CMT as part of implementation.

Any Equality Implications from this Paper – No

Any Health Inequalities Implications from this Paper – N/A

Has a Risk Assessment been carried out for this issue? If yes, please detail the outcome. N/A

Highlight the Corporate Plan priorities to which your paper relates - Better workplace

Whistleblowing Review

April 2021

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2. Executive Summary

Introduction:

The launch of the National Whistleblowing Standards in April 2021 provided NHSGGC with an opportunity to update and further develop the Whistleblowing Policy.

In support of this, the Staff Governance Committee commissioned a retrospective 3-year Review of individual and Management experience of Whistleblowing to inform the development of the Policy.

The Review has been supported by the Board's Executive Team. Their high level of engagement and acceptance of the Review's Draft Recommendations is helpful. This will ensure the early and effective implementation of improvement in the Whistleblowing Policy and the Whistleblowing experience.

Effective Management of the Whistleblowing Process:

Feedback from those involved in the Review established that the Whistleblowing experience can be a time of significant stress and can result in negative perceptions of the workplace. It is unlikely that this can be easily eradicated, but good Governance arrangements and effective management can be combined to ensure that the act and outcome of Whistleblowing can make a positive contribution to continuous improvement. The Recommendations in the Whistleblowing Review focus on achieving this.

Members of staff directly involved in administration of the Whistleblowing process and staff leading investigations of Whistleblowing cases are clearly focussed on the diligent and effective discharge of their associated responsibilities. In the interviews conducted in the course of the Review, much evidence was presented which demonstrated the complexity and multifaceted nature of Whistleblowing concerns.

Classification of Cases:

It became clear that it would be greatly helpful to introduce and communicate the use of clear guidance on the classification of cases to ensure that the most appropriate NHSGGC Policy and Procedure is adopted in the management and disposal of each case. Classification categories will include Whistleblowing, Grievance, Dignity at Work and Disputes.

Importance of the Step 1 Process:

The Review recognises the important value to both the Whistleblower and NHSGGC through increased use of Step 1 investigations in the Whistleblowing Process. The opportunity to fully investigate, engage relevant colleagues, and communicate with all concerned should be optimised in the context of close management proximity to the subject of the Whistleblowing concerns.

This approach provides the valuable opportunity for examination and consideration of the concerns raised with local understanding of context.

Local skills, experience and capacity to conduct such investigations are essential in the effective, responsive and timely management of investigations. Effective communication and engagement with staff are also particularly important. A key learning drawn from staff interviews is that staff would welcome a clear understanding of the issues to be discussed prior to their attendance of a Whistleblowing interview.

The Whistleblowing Policy must provide clarity on delegated management responsibilities for investigation and decision-making at each Step of the investigatory process. Decisions and the rationale for decisions must be confirmed in writing and recorded on file for potential future reference.

Performance Management of Whistleblowing Cases:

The logging and tracking of Whistleblowing cases must be well-managed. Performance management of the implementation of Recommendations following investigation should be improved. At all stages of Whistleblowing, ownership must be established for decisions taken; and they must be documented with clear arrangements established to ensure follow-through on actions and outcomes.

Recommendations from Whistleblowing Case Reports at any Stage must be recorded on a Corporate Database and be held subject to performance management until complete.

The National Whistleblowing Standards:

The introduction of the National Whistleblowing Standards in April 2021 provides an opportunity to promote and refresh knowledge and awareness of the NHSGGC Whistleblowing Policy throughout the organisation. This must include awareness of the (new) 2 Step internal process and the increasing importance of effective utilisation of Step 1. Education will be important to promote Step 1 investigation and understanding how it can be used to resolve significant disagreements in a formal, structured way locally within a Department. Managers must also be made more aware of the legal requirement to record Whistleblowing cases.

There would be real benefit to NHSGGC in the production and wide distribution of a clear and comprehensive Whistleblowing Flowchart to provide advice, support and understanding of the comprehensive process.

Support for those Involved:

Finally, it is important for NHSGGC to recognise and provide appropriate levels of psychological and practical support for all staff involved in Whistleblowing processes. Acceptance of support should be widely encouraged for all. The impact on both Whistleblowers and Managers was found to be significant, and while New Standards put in specific supports for Whistleblowers by way of Confidential Contacts, no additional support for Managers is included.

3. Introduction

The Staff Governance Committee commissioned the NHSGGC Non-Executive Whistleblowing Champion to conduct a Review into Whistleblowing. The Terms of Reference for the Review were set out in a Paper approved at the Board's Staff Governance Committee on 18th August 2020.

The Review Objectives were:

To consider the current approach to Whistleblowing in NHS Greater Glasgow and Clyde and identify any actions required to ensure the ongoing effectiveness of the existing systems and processes, including any that will also improve the implementation of the new Whistleblowing Standards for NHS Scotland.

The Review undertook a retrospective assessment of experiences of staff participating in NHSGGC's Whistleblowing processes between 1st April 2017 and 31st March 2020.

The Review did not conduct retrospective or refreshed Case Reviews but had a clear focus on the procedures, processes and the practical experiences of involvement in Whistleblowing for all staff who volunteered to participate.

The Review was also asked to consider and report on accuracy of historical classification of Whistleblowing cases.

The key areas investigated in the Review include:

- A review of historical cases within the reference period which were not categorised as Whistleblowing, and formation of a view on the reasonableness of such decisions;
- Staff awareness of the Whistleblowing Process;
- The quality and effectiveness of investigations and reporting of Whistleblowing cases;
- Experience of colleagues (throughout NHSGGC) who were involved in the Whistleblowing cases;
- Implementation of Case Recommendations generated from the Whistleblowing investigations.
- Assessment of whether all cases not classified as Whistleblowing have a logged rationale providing an explanation for classification as such. *

*Note: No additional work should be generated by enactment of this approach. The introduction of a single Whistleblowing Log will reduce and simplify recordkeeping. Indeed, a Recommendation on this sensible, important development was approved in October 2020 and has been implemented.

The Review was led by Charles Vincent, Non-Executive Director and Whistleblowing Champion, NHS Greater Glasgow and Clyde, with professional support from Kenneth Small, (formerly) Director of Human Resources, NHS Lanarkshire.

Grateful thanks from the Review Team are due to all staff and former staff of NHS Greater Glasgow and Clyde who volunteered to willingly and helpfully participate in the work of the Review; and to Jennifer Haynes, Corporate Services Manager – Governance (formerly Board Complaints Manager), Elaine Vanhegan, Head of Board Administration and Corporate Governance, Emma Cardenas, Admin Assistant to Ms Haynes, and Gail Smith, Corporate Operational Support Manager, for their advice, support and hard work.

4. Methodology

Through helpful access to the NHSGGC Whistleblowing Database, the Review Team identified 23 cases that had been recorded and classified for investigation under the Whistleblowing Policy during the retrospective Review period. The cases were classified according to the levels in the Policy as follows:

Step	Number of Cases
1	1
2	20
3	2

The origins of Case submission were as follows:

Anonymous	11
Named Whistleblower	12

This resulted in the following numbers of staff or former members of staff who were invited for interview in the conduct of the Review. It should be noted that the numbers do not match the number of cases as each case may involve multiple Whistleblowers/Managers; and similarly, Investigators and Managers can be involved in multiple cases.

Type	Number of Individuals
Whistleblower	20
Manager	46
Investigator	8
Involved	Approx. 50

All concerned were invited to participate in a structured interview, which in most cases involved both Charles Vincent and Kenny Small. In a limited number of cases where Kenny or Charles were deemed to hold a conflict of interest, the interviews were conducted solo. This was also the case where special considerations were being given to an individual.

5. Findings

5.1 Investigations into Whistleblowing Cases were conducted in a way that was viewed as a positive experience by all involved.

Whistleblowers and Managers expressed a broadly positive experience in the course of interviews with the investigators. Staff universally felt that they were listened to and that they were treated well. Some commented that the investigators did not have the specialist knowledge required to fully understand the complexity of some aspects of the case, but when probed, this was never beyond what could have been reasonably expected of an outside investigator. There was evidence that on such occasions, investigators sought additional specialist support as necessary.

5.2 There are cases being incorrectly classified as not whistleblowing.

The Review assessed 16 cases that were not classified as Whistleblowing from the following sources:

- 15 cases from the Complaints Team;
- 1 unsolicited case from an individual who contacted the Review Team directly.

In accordance with the Terms of Reference, the Review Team looked at existing guidance documentation on Whistleblowing to establish whether or not the classification of each of these cases was correct. The following observations were made:

- Other than the NHSGGC Whistleblowing Policy (and the external linked documents), there is currently limited written guidance to assist in the classification process for Whistleblowing;
- The Whistleblowing Policy does not specify who holds delegated responsibility for decisions on the classification of Whistleblowing;
- Only cases classified as Whistleblowing are added to the Whistleblowing Log reported to the Staff Governance Committee;
- There is therefore no Governance scrutiny on the quality of classification decisions if the decision is that the case is not deemed Whistleblowing;
- The Staff Governance Committee (or other Governance Committee) is not able to deliver assurance as to the quality of such decisions.

In relation to the 16 reviewed cases, it was determined that 50% had been incorrectly classified, specifically that:

- 7 of the 15 cases provided by the Complaints Team should have been classified as Whistleblowing;
- The case that was submitted in an unsolicited manner should have been recorded as Whistleblowing.

In the interests of reassurance, it should be noted that Management provided assurance that action had been taken in response to these cases. The Review Team are therefore not recommending that a Whistleblowing investigation is commissioned for these cases.

The rationales for not classifying cases as Whistleblowing include:

- An allegation of fraud, where the case was passed to the central Fraud Team. Policy states fraud as one of the concerns that should be classified and recorded as Whistleblowing prior to disposal for investigation by the central Fraud Team. It is worthy of note that there is complexity here relating to the Once for Scotland conduct policy relating to fraud. The way

this complexity has been navigated has however resulted in individuals not receiving the protection that whistleblowing status affords them.

- Lack of evidence following an initial investigation. Establishing the existence of relevant evidence is a key part of a Whistleblowing investigation. Such cases should initially have been recorded as Whistleblowing and then a decision taken on investigation.
- The individual submitting the concern did not explicitly say that it was a Whistleblowing case. The definition of Whistleblowing in the Policy does not require the individual to explicitly say they want to Whistleblow.
- The concern was submitted anonymously. The classification decision on this occasion was based on a misunderstanding of the new Whistleblowing Standards. The correct Policy for application was the current NHSGGC Whistleblowing Policy – not the New Standards. However, had the New Standards been in place, they do not stipulate that anonymous concerns should not be investigated – the New Standards suggest it is best practice to do so. The protections afforded in the New Standards cannot however be applied in anonymous cases as there is no identifiable individual for application of protections.
- Complex cases where there is clear overlap with other processes, such as Grievance or Disciplinary investigation.

The Review has only been able to review cases logged by the Complaints Department or by unsolicited submission.

5.3 The current Whistleblowing experience has not been positive for many Whistleblowers, Managers and others involved.

Concerning evidence of the personal impact of being involved in a whistleblowing process by both Whistleblowers and Managers is the reported impact on their health. It was not possible to separate views of an individual Whistleblower or the experience of having Whistleblowing in your area of work, so the impacts were considered together.

Sixty percent of Whistleblowers reported that their mental health was negatively impacted by being involved in Whistleblowing. Given the sensitivity of some of the issues being discussed, only minimal probing was done beyond asking the standard questions in Appendix B – Review Questions. The main personal impact reported related to stress, including individuals that required treatment through access to Talking Therapies (such as Counselling) or medication in some instances.

Approximately 33% of the Managers interviewed also experienced impact on their Mental Health. Again, stress was reported as the main cause of this. Managers reported feeling “accused” of having done something wrong and feelings of uncertainty relating to this. With Managers less directly involved and Senior Managers, feelings of stress appeared to relate to a strong sense of responsibility for something having gone wrong in their workplace.

The Review was unable to identify any systematic support provided by NHSGGC to either group. Managers did however more frequently report that they were able to get support from their Line Manager. Whistleblowers reported that they never received support from their Managers.

It was of concern to the Review Team that a quarter of Whistleblowers stated that they would not Whistleblow again given their experience. As this was not one of the core questions in the Review, the actual percentage could be higher as this was only recorded if volunteered by Whistleblowers.

5.4 The Whistleblowing process is being used to investigate matters that are not Whistleblowing.

Given the confidential nature of Whistleblowing, it is not considered appropriate to provide real-life examples in support of this Finding. However, examples set out below are indicative of real Whistleblowing cases.

Whistleblowing cases almost always contain multiple claims. A simplified example of a reported Whistleblowing case might be:

- I. A change is being made to a clinical process that is unsafe for patients;
- II. There is a culture of bullying within our department;
- III. I was not permitted to take my holiday as I wanted last year;
- IV. My Manager received a trip to a conference paid for by a supplier in a manner contrary to Policy.

In many of the cases examined, the number of concerns included was higher than four issues.

To be considered as Whistleblowing under the Policy, the concerns must relate to:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to Health and Safety;
- an act causing damage to the environment;
- a breach of any other legal obligation; or
- concealment of any of the above.

Within a Healthcare setting, examples include:

- patient safety, malpractice or ill treatment of a patient by a member of staff;
- repeated ill treatment of a patient, despite a complaint being made;
- an unacceptable standard of patient/clinical care;
- a criminal offence is believed to have been committed, is being committed or is likely to have been committed;
- suspected fraud;
- disregard for legislation, particularly in relation to Health and Safety at Work;
- the environment has been, or is likely to be, damaged;
- breach of Standing Financial Instructions;
- showing undue favour over a contractual matter or to a job applicant;
- a breach of a Code of Conduct;
- information on any of the above has been, is being, or is likely to be concealed.

In the classification of all the Whistleblowing cases considered by the Review Team, it is likely that all of the four concerns set out in the simplified example above would have been included in the remit for the Whistleblowing investigation. In reality, only concerns I and IV should be considered as a legitimate inclusion, with concern I being an issue of patient safety and concern; and concern IV possibly fraud or a breach of Standing Financial Instructions. Concerns II and III should be classified and managed through alternative Policies and Procedures such as Dignity at Work or Grievance.

It is inappropriate to expect the Whistleblowing process to deal with complex HR issues and it was clear from a number of interviews that much of the conflict and negativity from Whistleblowers and Managers related to concerns that were not actually Whistleblowing.

In many cases, the Whistleblowing process would likely have been a better experience had legitimate Whistleblowing concerns been considered under the Whistleblowing Policy, and other concerns classified and addressed according to alternative, appropriate Policies.

Due to the nature of many Whistleblowing Claims, it is difficult to provide a detailed analysis of the number and nature of concerns raised and managed within Whistleblowing. However, the Review Team concluded that over 50% of Whistleblowing cases considered in the Review included concerns which should more appropriately have been investigated and considered under an alternative Policy or Procedure.

5.5 Knowledge and Understanding of the Whistleblowing Process and Procedures.

It was disappointing that only two interviewees (excluding Investigators) were aware of the ability to undertake a Step 1 Whistleblowing Investigation. By nature of their role, both of these interviewees were routinely involved in Whistleblowing processes.

Of the 23 cases considered in the Review, only 1 case was investigated at Step 1.

Most of the Whistleblowers and Managers interviewed professed awareness and knowledge of the Whistleblowing Policy and Procedures, but in reality, this was limited and patchy in nature.

Following an explanation to Managers of the existence of Step 1 within the Whistleblowing Policy, strong support was expressed to better utilise this as a first stage to facilitate local, timely investigation and response, seeking to resolve concerns and limit the need for further escalation.

It is worthy of note that in some cases, Managers had investigated some of the issues contained in the Whistleblow in a manner that partially aligns with a Step 1. However, the Managers were not aware of this at the time.

The survey of some staff uninvolved in whistleblowing that was conducted gave little valuable information other than demonstrating that there is no consistent understanding of what whistleblowing is, even if they are aware of it. A good example of this would be the results to the question “What is whistleblowing?” which gave the following diverse answers:

Reporting Malpractice	33%
Media Involvement	27%
Internal Escalation	15%
Unknown	15%
Policy	7%
Anonymous Reporting	7%
Miscellaneous	7%

*Note: Total is greater than 100% as individuals could give multiple answers.

5.6 Recommendations from Investigation Reports are not rigorously Performance Managed with resultant potential loss of Shared Learning.

At present, Corporate oversight of the Whistleblowing process does not include performance management of Recommendations resulting from Whistleblowing Reports. Recommendations are

not centrally recorded and there is no Corporate process to follow up on progress in the implementation of Recommendations.

There is also no Governance process to ensure scrutiny of the implementation and Corporate learning from Recommendations.

There is also no local process or practice of sharing Recommendations with other relevant areas, resulting in potential loss of quality or performance improvement.

In almost all cases included in the Review, individual Recommendations do not have specific owners.

The current Whistleblowing Policy does not define to whom the final Reports, Findings and Recommendations should be presented.

The result of this is that in the interviews, despite being identified as being involved in a Whistleblowing case, some Managers and Whistleblowers reported not having seen the Final Report or Recommendations from the investigation. The variety of situations encountered by the Review Team was extensive, despite the relatively small number of cases. After additional investigation, matters of relevance included:

- Individuals saying that Reports were not received despite evidence presented of the Reports having been sent;
- Only 'Draft' versions of Reports ever received;
- Reports being sent to a "lead" Whistleblower in the expectation that it would be passed on to colleagues – it wasn't.
- Reports being sent to a Manager who then did not circulate the Report, in full or part, when it would have reasonably been expected for that to happen.

Due to lack of knowledge or information from interviewees, it was not possible to identify the overall percentage of Recommendations which were ultimately completed. However, the review did not find any case where all agreed that the Recommendations had been completed in full.

The Review Team concluded that there is potential for real improvement and benefit to NHSGGC through enhanced performance management in this area.

Examples include two cases where it was openly stated by Managers that they were aware of no attempts made to implement the Recommendations. In discussions, these appeared to relate to an opinion that the investigation had concluded that the concerns raised were unfounded and therefore no action was to be taken on the Recommendations.

The emergent view from the interviews was that significant improvements could be made by NHSGGC in the allocation, ownership and performance management of implementation and shared learning from the Recommendations in Whistleblowing Reports.

5.7 Organisational Perceptions of Whistleblowing and Whistleblowers.

The Review Team developed a (recognised) subjective opinion that Managers in general do not believe that Whistleblowing should be promoted in support of the culture of being a learning organisation. The Review Team sensed an underlying tone which at times was reinforced by unguarded comment from Managers that Whistleblowing cases were viewed by NHSGGC as reflecting negatively on a Department. In a small number of cases, this appeared to manifest itself in a less than positive attitude towards Whistleblowers.

5.8 There is a lack of ownership of Whistleblowing within Departments.

In a number of interviews with Managers involved in Whistleblowing processes, a clear view was expressed that the conduct of Whistleblowing investigations felt that Executive Directors had been

parachuted into their part of the organisation without warning or contextual briefing. For many, this was their first interaction with a Board Director.

Although the interactions were generally viewed as positive, there was a distinct feeling amongst Managers that they did not own such a process and that they felt they would have been better served trying to resolve the concerns locally in the first instance. As interviews progressed, this matter was more thoroughly assessed; and with guidance and information, Managers increasingly sought the opportunity to be invited to attempt to resolve concerns locally using the Step 1 process.

5.9 Managers are committed to following the NHSGGC Whistleblowing Process.

All interviewees spoke positively to the Review Team about Managers, Investigators and the Corporate Administrative support staff in their commitment to implement the established NHSGGC Whistleblowing Policy and process. Investigations were generally agreed by all to be detailed and of high quality – recognising that not all parties were in agreement with the outcomes.

5.10 Early and Effective Management of Cases.

It is clear that there would be benefits from additional work reviewing and analysing Whistleblowing cases prior to investigation and ensuring informed closure on completion. Limitations on this appears to have had a negative impact on participants in a number of ways. Feedback on this gathered by the Review Team is set out below in a perceived order of importance.

Most of the Managers interviewed perceived that the contents of the Whistleblowing case presented to them were “accusations” (this is how they articulated it). They often did not receive a full copy of the formal written complaint(s) or even verbal details. This significantly increased the stress, frustration and ‘threat’ felt by the Managers.

They also felt unable to adequately prepare for what, for most, was their only opportunity to respond to the “allegations” (again a word used by more than one individual).

The complexity and time-consuming nature of redacting the original Whistleblowing submissions to protect confidentiality was explained in mitigation of this practice.

It is worth noting that the Investigators had little or no perception of the Manager’s feelings of ‘accusation’ and this probably contributed to the lack of importance placed on fully informing Managers of the nature of the case.

Final Investigation Reports on Whistleblowing cases were not received by all involved. This is an important omission and has contributed to feelings of lack of closure and understanding by Managers and Whistleblowers alike.

While there was no direct evidence of this, it is reasonable to expect that reducing the negative feelings of Managers towards Whistleblowing will also have a significant positive impact on their feelings towards Whistleblowers which, if even on an unconscious basis, is likely to have a positive impact on all involved.

The Review Team concluded that it would be a useful investment of time to proactively manage the Whistleblowing process to ensure important, comprehensive communication and engagement with all concerned throughout the process

5.11 Support Offered to Whistleblowers, Managers and Others Involved.

NHSGGC has a well-established professional support network for staff which includes Occupational Health Services, an Employee Counselling Service and an HR Advice Line. It may be useful to review arrangements for access to such support services in the context of involvement in a

Whistleblowing case. Given the significant Mental Health impacts described in Section 5.3, it is likely that proactive promotion of options for support would have benefited a number of individuals.

It is important to note that some of the individuals who were significantly affected were not those who would have been instinctively identified as those needing help. It was clear that colleagues responsible for administering and investigating the Whistleblowing process did so in a compassionate manner, however their roles do require a level of objective detachment, which may preclude offering the kind of support that individuals required.

5.12 No documented process to highlight serious, urgent issues to the appropriate Manager for immediate consideration or rectification.

The Review Team did receive an example of where urgent, necessary escalation of concerns did happen. However, it was clear that this relied on the diligence and initiative of those involved rather than a formal, established process to risk assess Whistleblowing concerns and escalate as necessary.

5.13 Clear Process Chart for Whistleblowing.

The current Whistleblowing process appears to rely heavily on the knowledge and experience of the Corporate Services Manager for Governance to ensure correct decision-making through engagement with Executive Directors, as necessary, on important matters such as classification, allocation for investigation, management of conflict and overall performance management – a responsibility which may be enhanced as a consequence of this Report.

The Review Team believe that NHSGGC should invest in the design and publication of an agreed, clear, understandable Flowchart which sets out the Step process for Whistleblowing, setting out rights, responsibilities, routes for decision-making and the context for access to the new National Whistleblowing Standards. This will assist in communication and understanding of the Whistleblowing Policy and process to Managers, Staff, Staff Governance Committee, and the NHS Board.

5.14 Benchmarking against other boards.

In the course of the Review an approach was made to territorial NHS Boards in Scotland for historical Whistleblowing trends and numbers to facilitate benchmarking in accordance with the Terms of Reference for the Review. Analysis of the results demonstrated that NHSGGC was sat second in the table based on raw numbers and in mid-table following adjustment to reflect the scale of NHS Boards.

It was not possible to assess the quality or consistency of approach adopted to categorisation or recording in other NHS Boards therefore no conclusion was reached on benchmarking and this was consciously omitted from the Review Report.

6 Recommendations to Improve Whistleblowing at NHSGGC

The Review has identified 8 headline Recommendations (each with sub-Recommendations) that are designed to improve the Whistleblowing process within NHSGGC. Recommendation 6.8 was approved in November 2020 by the Staff Governance Committee as an interim Recommendation.

The Recommendations are designed to promote:

- An environment where everyone involved feels supported by the organisation;
- Clear processes that detail how Whistleblowing cases should be progressed with clear actions and ownership of decision making throughout the Whistleblowing process;
- Effective recording of all decisions taken in Whistleblowing processes to inform effective performance management by the Executive Team and Governance scrutiny by the Board.

The implementation of all recommendations should sit with the Corporate Management Team, who should provide implementation updates to the Staff Governance Committee who should retain governance oversight on behalf of the board.

6.1 Active management of cases with particular emphasis at commencement and conclusion.

The investment of time and resources from the outset in the active management and classification of cases will pay dividends throughout the Whistleblowing process.

Investment of management time completing proper classification, Stage/Step allocation, identification/agreement/support of Investigator(s) and effective, confidential communication/engagement with all concerned to establish necessary awareness of the case is of significant importance.

Additional areas for consideration in the effective management of cases include production and provision of appropriate confidential case summaries to inform and assist witnesses called for interview, ensuring confidential circulation of the full or précis version of the case Report and ensuring knowledge of and the process to be followed exercising the right to escalate.

NHSGGC should design and implement a managed process to regularly survey all those involved in Whistleblowing cases to monitor experience and inform continuous improvement.

6.2 Classification of Cases for Investigation / Consideration under the Whistleblowing (or other appropriate) Policy.

There are clear definitions in the NHSGGC Whistleblowing Policy for classification and inclusion of cases under Whistleblowing. Additional guidance on this matter is provided in the National Whistleblowing Standards which go live on 1st April 2021.

Important, early access to similar, clear definitions and professional advice (as necessary) will inform the managed process for classification and inclusion of cases or partial cases under alternative, appropriate Human Resources Policies (Grievance, Dignity at Work, Disputes, etc.).

It is not uncommon for Whistleblowing cases to include multiple matters of concern and it can be challenging to appropriately separate and investigate concerns.

Each concern should be assessed through a managed process resulting in more effective classification and disposal of concerns – informed by the Policy definitions previously referenced.

Formal communication with the Whistleblower will follow on the classification and Policy route for investigation, consideration and decision making relating to the concerns raised. This will include any further actions required of the Whistleblower at that time.

The process above does not impact on or delay the obligation placed on the first Manager to receive Whistleblowing concerns set out in Recommendation 6.7 below – on the immediate escalation to senior management of any concerns deemed sufficiently serious to require immediate action.

6.3 Whistleblowing Cases should be Investigated at Step 1 unless Specific Reasons not to.

NHSGGC Whistleblowing Policy and the National Whistleblowing Standards promote that cases should be investigated and responded to at Step 1 in the process whenever possible unless there is a specific reason to immediately move to the Step 2.

Information from Whistleblowers interviewed during the Review confirmed that Whistleblowers may seek an immediate Step 2 process in the belief that their concerns will be investigated more objectively and by a more senior manager.

The contrary position in favour of promoting increased use of a Step 1 process was also articulated – in recognition of the potential benefits of the Investigator's likely application of local knowledge, understanding of local context and easier access to relevant witnesses etc.

It is proposed that following classification a Step 1 investigation should be the default allocation stage for all Whistleblowing cases unless:

- The Whistleblower is able to demonstrate good reasons for direct allocation to a Step 2 investigation and this is agreed with the NHSGGC Whistleblowing Manager.
- The significance of the concerns raised dictate that they be considered at Step 2 in the first instance.

Guidance should be developed and implemented by NHSGGC on the seniority of the Investigation Manager for Step 1 investigations. Given the increased importance placed on credible and effective Step 1 investigations it is proposed that Step 1 Investigators will, whenever possible, hold a role one level more senior in NHSGGC than the Whistleblower's Line Manager. Where this is not possible the reason why it is not possible should be documented.

In all cases, appropriate consideration should be given to:

- Support for the Investigator based on their seniority, knowledge and experience of the area(s) of concern raised;
- The importance of maintaining confidentiality in communication and engagement with the Whistleblower and minimising the number of individuals who are aware of the existence of the concerns raised;
- Agreement always being sought from the Whistleblower if it is found necessary to inform anyone of their identity.

6.4 Corporate Arrangements to Ensure the Logging and Tracking of all Whistleblowing Arrangements.

It is important to establish and maintain a contemporary and comprehensive, Corporate Database of all Whistleblowing activity throughout the Board. This will support effective performance management of the process and Governance reporting and scrutiny.

Proactive management of the Whistleblowing process through use of the Corporate Database will ensure that all Whistleblowing Investigations are properly concluded, that Case Reports are properly produced and issued to all those concerned, that implementation of Case Report Recommendations and Actions are owned by a named individual against recorded deadlines for delivery and that potential wider corporate learning and improvement generated in Case Reports

can be shared. The comprehensive Database should also facilitate ease of Corporate Whistleblowing Performance Management Reporting.

To compile a list of all whistleblowing recommendations from the start of the review period (Apr 2017) and seek an update from relevant area as to progress or why the recommendation is no longer valid. Recommendations that remain valid should be performance managed to completion with progress reported to the Staff Governance Committee. Recommendations that are no longer valid should have reasons attached for review by the Staff Governance Committee.

All key decisions should be recorded with a note of who made the decision and the reason/justification for the decision. Key decisions include:

- What Step the whistleblower is to be investigated at;
- Why all or part of the whistleblower will not be considered under the Policy;
- Who the investigator allocated is.

6.5 Staff Education on Whistleblowing.

In the work of the Review, clear evidence was presented by Whistleblowers, Managers and staff of a very poor understanding of the NHSGGC Whistleblowing Policy and process. Awareness of the important Step 1 process was found to be particularly poor.

Given the (almost) parallel launch of the National Whistleblowing Standards in April 2021, the opportunity should be taken by NHSGGC to urgently design and launch a comprehensive Whistleblowing Policy and process staff education campaign – similar to that deployed in the past in support of awareness of HR Policies and procedures.

It is recommended that this campaign should be prioritised in the NHSGGC Corporate Education and Training Plan for 2021/22 to reflect the low starting point of understanding and awareness compared to other Policies and processes. The staff Whistleblowing education campaign should include important reference to the significant changes introduced in the new National Whistleblowing Standards.

This education should also include sharing of the outcomes of the review both inside NHSGGC and outside with our wider health networks. At a minimum this will include the Whistleblowing Champion sharing with their fellow Whistleblowing Champions and the Board Chairman through their network, however all board members should be encouraged to share the report and what we have learned from it as widely as possible.

The education and training should also include sharing the outcomes of the Review internally within NHSGGC and externally with wider health networks. This will include the Whistleblowing Champion sharing the work and Recommendations from the Review nationally with colleague Whistleblowing Champions and the Board Chairman sharing likewise with the national Chairs Group. Board members will also be encourage to share the Report across their networks to promote learning and continuous improvement in support for Whistleblowing generally.

6.6 Support for all Concerned.

It is apparent from the Review that Whistleblowers, Managers and staff have had poor experience of NHSGGC explaining or directing to appropriate psychological or personal support in the course of their Whistleblowing experience. A significant majority of those interviewed described a detrimental psychological personal impact through involvement in a Whistleblowing case – and were not guided to Occupational Health or an Employee Counselling Service for support.

There is a clear need for early access to support services by those involved in a Whistleblowing process.

The support should be confidential and formally brought to the attention of all staff involved in a Whistleblowing process, with a written offer of support provided at least once during the process separate from any other communication.

6.7 Formal Procedure for Escalation of Serious Concerns to Senior Management.

The seriousness, urgency and potential broader service impact of Whistleblowing concerns argues for an urgent, clear documented process to be established for the escalation of such serious concerns to Senior Management for immediate assessment and Corporate response, as necessary.

6.8 Potential Whistleblowing cases should be Logged on the Corporate Database irrespective of the Determination of Validity as a Whistleblowing case.

It is recommended that:

- All cases that could potentially be classified as Whistleblowing should be recorded on the Whistleblowing Corporate Database;
- All cases that are not then classified as Whistleblowing are marked as such on the Whistleblowing Database with a rationale for this decision also recorded.

*Note: This Recommendation was approved at the November 2020 Staff Governance Committee and has already been implemented.

Appendix A – Terms of Reference

Review of the Approach to Whistleblowing in NHS Greater Glasgow and Clyde

Terms of Reference

1. Background

New whistleblowing standards for NHS Scotland were due to come into force in July 2020. This revised approach to responding to whistleblowing in the NHS aims to put in place a legal framework with a clear set of rules regarding the management and reporting of whistleblowing. This includes Step Three whistleblowing being investigated by the Scottish Public Sector Ombudsman (SPSO).

Unfortunately, the implementation of these new arrangements has been delayed indefinitely due to the Coronavirus pandemic and until the new standards are introduced, whistleblowing continues to be managed by NHS Greater Glasgow and Clyde (NHSGGC) utilising the existing systems and processes.

Therefore, the Board has commissioned a review of the current arrangements for whistleblowing to ensure that they remain effective and fit for purpose until the new standards are introduced.

The terms of reference for this review have been drafted following discussions between the Board Chair, the Whistleblowing Champion, the Co-Chairs of the Staff Governance Committee, the HR Director, and the Head of Corporate Governance & Board Administration. The Staff Governance Committee is responsible for approving the terms of reference of the review on behalf of the Board.

2. Review Objectives

The objectives of the review have been proposed by the Board Chair as follows:

“To consider the current approach to whistleblowing in NHS Greater Glasgow and Clyde and identify any actions required to ensure the ongoing effectiveness of the existing systems and processes including any that will also improve the implementation of the new whistleblowing standards for NHS Scotland.”

3. Review Scope

The review will cover a three-year period and include all cases initially raised as whistleblowing that were first initiated by the whistleblowers during the period from April 2017 to March 2020.

Therefore, the review will also consider any cases that were not accepted as whistleblowing and come to a view on the reasonableness of that decision.

The review will consider and report on the following key areas of the NHSGGC whistleblowing system:

- Staff awareness of the whistleblowing process.
- Investigations and reporting of whistleblowing cases.
- Experience of individuals involved in whistleblowing cases.
- Implementation of recommendations from whistleblowing investigations.

The following paragraphs describe more details of how these areas will be reviewed.

3.1 Staff Awareness

No member of staff expects to become a whistleblower and over the course of a career very few will. The confidentiality of the process also means that there is minimal ability for peer learning of the process.

The review will therefore look at the level of awareness of the whistleblowing system and processes across NHSGGC. This will include how staff are kept informed of the purpose and availability of the whistleblowing system and, where possible, assess the effectiveness of the communication approach adopted by NHSGGC.

3.2 Investigations and Reporting

The review will assess how effectively whistleblowing issues are investigated, processed and reported. This will primarily be a review of the management processes undertaken and will include looking into how confidentiality is maintained for whistleblowers.

A review of the available data around the numbers of whistleblowing cases will be conducted and this will include benchmarking against other similar organisations where comparative data is available.

The review will also consider the process utilised to decide who investigates whistleblowing cases at Steps One, Two and Three and how NHSGGC ensures that these individuals have relevant experience or have access to the appropriate training and support to thoroughly investigate and make reasonable decisions on cases under investigation, in line with the extant policy and procedures.

Consideration will also be given to whether effective arrangements are in place to quality assure and confirm that the outcomes of whistleblowing cases are consistent with correct processes having been followed and all available evidence having been examined at the time of the investigation.

How information on whistleblowing cases and the effectiveness of the whistleblowing system is reported to the Staff Governance Committee, the Board and the Scottish Government will also be considered as part of the review.

3.3 Experience of Individuals

The whistleblowing safety valve is essential for a Health Board trying to listen to the voice of its employees and ensuring the safety of its patients and service users. It can also help managers learn from mistakes and improve the quality of the services being delivered.

However, the response to whistleblowing can have a negative impact on everyone involved and this this can be particularly significant in the case of the whistleblowers. As a result, the current employment legislation has been designed to protect whistleblowers. This recognition of the position of whistleblowers is also a key part of the new standards being introduced by NHS Scotland.

In considering this particular aspect of whistleblowing, the review will seek feedback from whistleblowers, managers and investigators involved in whistleblowing on their experience of the whistleblowing system within NHSGGC. Where relevant, the review will also consider the impact of the whistleblowing case on other staff in the areas involved in the investigation.

It is recognised that being involved in a whistleblowing issue can be extremely stressful for the individual whistleblower, their colleagues and the managers concerned. How well this is fed back to individuals involved can help minimise this stress.

Therefore the review will specifically consider how those involved and affected by the whistleblowing case are given timely information during and on completion of the investigation.

Due to the confidential nature of whistleblowing, those asked for feedback will have the option not to respond or to provide anonymous written feedback.

3.4 Implementation of Recommendations

The implementation of findings is an essential part of the whistleblowing process, with over 80% of whistleblowing investigations within NHSGGC resulting in recommendations.

The review will investigate how recommendations have been acted upon over the past three years. It will also look into how the implementation of recommendations has been reported back to the Staff Governance Committee and the Board.

Where recommendations in a particular case have wider implications and may be applicable to other areas of NHSGGC, the review will consider how the lessons learned have been implemented and changes made across the organisation.

4. Review Methodology

A variety of methods will be utilised to complete the review. These will include:

- Analysis of the number and types of cases initiated through the NHSGGC whistleblowing system.
- Desk-top reviews of cases investigated and other written evidence submitted to the review team.
- Face to face interviews with whistleblowers, other staff, managers and investigators involved in the cases being reviewed.
- Examination of reports and updates on whistleblowing to the Staff Governance Committee, the Board and the Scottish Government.

5. Review Timescales

The review process will examine each of the key areas for review (see paragraph 3) and this programme of examinations will be conducted over the period from July 2020 to December 2020 with regular updates being brought to the Board via the Staff Governance Committee's meetings scheduled for 2020/21.

A high-level plan describing the timescales of the different stages of the review and when they will be reported to the Staff Governance Committee and the Board will be submitted for their agreement to the Staff Governance Committee on 18th August 2020.

6. Review Team

The review will be led by the Whistleblowing Champion, Charles Vincent, who will be advised and supported by Kenneth Small, an Independent Human Resource Management Specialist.

In addition to providing advice and support on the methodology and conduct of the review, Mr Small will assist in the examination of the cases and other information available to the review team. This will include reviewing those cases concerning the impact of the design, build, handover, and maintenance of the QEUH campus on the Infection Prevention & Control arrangements in the South Sector of NHSGGC. This reflects Mr Vincent's declaration of interest in one of the whistleblowing cases concerning these issues.

Further support and guidance to the review team will be provided by Elaine Vanhegan, Head of Corporate Governance and Board Administration.

7. Review Report

The Whistleblowing Champion and the Independent HRM Specialist will co-author a report to record their findings for each of the areas described in paragraph 3 of the Terms of Reference.

The report will detail their findings, highlighting any trend and themes that have emerged and make recommendations to the Staff Governance Committee on any areas requiring improvement.

The report will also highlight the impact of the new standards on any issues identified by this review.

Following scrutiny by the Staff Governance Committee, the final report of the review team will be considered by the Board and published on the NHSGGC website.

29 July 2020

Version 3.2

Appendix B – Review Questions

The questions used with all participants and provided prior to interview.

Introduction

Below is an outline of the questions that will be utilised during all meetings with those involved with whistleblowing regardless of their role:

- Whistleblowers;
- Managers;
- Investigators;
- Other Involved Individuals.

As a result, some questions may not be appropriate to all individuals. Those managing the meeting may also phrase or alter questions in line with previous responses and the specific concerns of the individuals.

This will however be the key elements being discussed in a meeting.

Review Purpose (From Terms of Reference)

Background

New whistleblowing standards for NHS Scotland were due to come into force in July 2020. This revised approach to responding to whistleblowing in the NHS aims to put in place a legal framework with a clear set of rules regarding the management and reporting of whistleblowing. This includes Step Three whistleblowing being investigated by the Scottish Public Sector Ombudsman (SPSO).

Unfortunately, the implementation of these new arrangements has been delayed indefinitely due to the Coronavirus pandemic and until the new standards are introduced, whistleblowing continues to be managed by NHS Greater Glasgow and Clyde (NHSGGC) utilising the existing systems and processes.

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- Experience of individuals involved in whistleblowing cases.
- Implementation of recommendations from whistleblowing investigations.

Author Charles Vincent

Tel No 07966 471 027

Date

Whistleblowing Questions Outline

Interviewer will take individuals through the Terms of Reference and ensure they understand purpose of the review. Interview will reinforce the fact that this is not a case review and the outcomes of whistleblows will not be changed as part of this review. Also reinforce that no answers will be taken forward in a way that will identify the individual giving the answer.

Personal Context

Seek an explanation of the individual's involvement in a WB Case(s), asking the individual to provide a high-level summary of the background to the Case and the nature of their involvement (Whistleblower, Witness etc).

Raising the Whistleblow –

Same Questions to be asked for each logged whistleblower where multiple are involved.

Whistleblower:

- Did you raise the concerns with managers or others including peers prior to raising your whistleblower? If so with who and when in relation to your whistleblower, days, weeks, months. Roles rather than names are fine.

Others:

- Were the concerns in the whistleblower raised with you prior to the whistleblowing process? If so when in relation to your whistleblower (days, weeks, months)

If the concerns were raised prior to the whistleblower was any action taken or response given, if so what and when.

Whistleblower:

- Did you feel encouraged or discouraged to raise a whistleblower? If so by who and how.

Others:

- Did you encourage or discourage the whistleblower to take the whistleblower forward? If so how and why?
- Did you, prior to the logged whistleblower [interviewer to make clear which case(s) are being discussed at this point], raise any concerns in a way that you believe should have been logged as whistleblowing that were not. If so, please provide details.

Personal Experience

Opportunity for the individual to describe their experience of involvement in the WB process.
Prompt questions to include:

- Prior to this involvement did you have knowledge/awareness of the WB Policy and procedure process?

- Did you feel you understood and were clear on the WB Policy and procedure/process?
- Did you have any help or support understanding this or participating in the process?
- Were you consulted and any domestic commitments/needs taken into account in making the arrangements for the WB investigation meeting?
- Was any relevant paperwork provided to you or by you in advance of the WB investigatory interview?
- Were you provided with a full opportunity to express yourself and make a full contribution meeting what you wanted to contribute to the case?
- Did you feel you the Panel listened to you?
- Did the members of the Panel appear knowledgeable about the case?
- Did the Panel members ask relevant and searching questions?
- How would you describe your overall experience of participation in the WB case?

Communication

Opportunity for the individual to discuss or comment on the quality and reliability of the communication process associated with the WB Case. Prompt questions to include:

- Was the correspondence you received in relation to the Case clear, understandable, relevant to the Case and received timeously?
- At the Investigatory interview, did Panel members speak using language that you understood (or did you experience use of 'management speak', technical/clinical terms or jargon)?
- Did you feel relaxed, at ease, uncomfortable, challenged (or even) intimidated by the manner in which people communicated with you in the process?
- Were you promised feedback on the outcome of the investigation process?
- Were you provided with information about the likely timescales for due process and completion of the investigation and the associated Report?
- Did you receive any feedback or information in relation to the outcome of the investigation?

Personal Impact:

Opportunity for the individual to share thoughts on any personal impact through participation in the WB process. Prompt questions to include:

Would you view participation in the WB process as a straightforward experience or would you describe the experience differently, if so how?

Have you experienced any impact on your health (physical or mental health) as a direct consequence of participation in the process? (If so) Did you suffer from any related such health issues prior to participation in the process?