



EMPLOYMENT POLICIES AND PROCEDURES

WHISTLEBLOWING POLICY AND PROCEDURE

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EXECUTIVE SUMMARY

Key Messages

NHS Lothian is committed to achieving the highest possible standards of care in the delivery of health care. This policy provides the basis by which concerns can be fairly and effectively raised and responded to. The policy also provides NHS Lothian, in the first instance, with the opportunity to address issues of concern and, where appropriate, take action to remedy such issues.

NHS Lothian is firmly committed to an open, honest organisational culture. NHS Lothian is striving to create a climate which ensures employees have absolute confidence in the fairness and objectivity of the procedures through which their concerns are raised and are assured that concerns raised will be acted upon.

The purpose of this policy is to ensure employees have a proper and widely publicised procedure for voicing whistleblowing concerns relating to issues such as:

- perceived malpractice or ill treatment of a patient/client/customer by a member of staff;
- ill treatment of a patient/client/customer, despite a complaint being made;
- a 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;
- the environment has been, or is likely to be, damaged;
- breach of Standing Financial Instructions;
- showing undue favour over a contractual matter;
- showing favour 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;
- systematic discrimination
- management instructions which are contradictory to safe and effective person centred care.

If a member of staff feels that something is of concern, and they feel that it is something which NHS Lothian should know about or look into, they should use this procedure. If, however, a member of staff wishes to make a complaint about their employment or how they have been treated, NHS Lothian has a range of policies and procedures which deal with standards of behaviour at work. These policies include Equality, Diversity and Human Rights, Grievance, Preventing Bullying and Harassment and Management of Employee Conduct.

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1 INTRODUCTION

NHS Lothian has introduced this policy to enable staff to raise concerns about whistleblowing issues at an early stage and through an agreed procedure. It is important that any matter of concern is raised at the earliest possible stage in order to protect the safety of patients, staff or members of the public and/or public resources.

Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others, and may be something which adversely affects patients, the public, other staff or the organisation itself.

A grievance differs from a whistleblowing concern as it is a personal complaint regarding an individual's own employment situation (i.e the individual is the complainant). NHS Lothian believes that in most situations these concerns could be resolved by utilising the NHS Lothian Grievance Procedure and/or incident reporting via Datix.

2 POLICY CONTEXT

2.1 Policy Purpose, Principles and Values

NHS Lothian is committed to achieving the highest possible standards of care in the delivery of health care. This policy provides the basis by which concerns can be fairly and effectively raised and responded to. The policy also provides NHS Lothian, in the first instance, with the opportunity to address issues of concern and, where appropriate, take action to remedy such issues.

NHS Lothian is firmly committed to an open, honest organisational culture. NHS Lothian is striving to create a climate which ensures employees have absolute confidence in the fairness and objectivity of the procedures through which their concerns are raised and are assured that concerns raised will be acted upon.

The purpose of this policy is to ensure employees have a proper and widely publicised procedure for voicing whistleblowing concerns relating to issues such as:

- perceived malpractice or ill treatment of a patient/client/customer by a member of staff;
- ill treatment of a patient/client/customer, despite a complaint being made;
- a 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;
- the environment has been, or is likely to be, damaged;
- breach of Standing Financial Instructions;
- showing undue favour over a contractual matter;
- showing favour 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;
- systematic discrimination
- management instructions which are contradictory to safe and effective person centred care.

If a member of staff feels that something is of concern, and they feel that it is something which NHS Lothian should know about or look into, they should use this procedure. If, however, a member of staff wishes to make a complaint about their employment or how they have been treated, NHS Lothian has a range of policies and procedures which deal with standards of behaviour at work. These policies include Equality, Diversity and Human Rights, Grievance, Preventing Bullying and Harassment and Management of Employee Conduct.

2.2 Scope

This policy is for staff to raise a qualifying disclosure under the Public Interest Disclosure Act 1998. The legal framework relating to this policy is set out in **Appendix C**. The policy applies to all those who work for NHS Lothian whether full-time or part-time, or who work within, or supply services to NHS premises and those who supply services including agency and locum staff; contractors; volunteers; students and trainees; independent consultants; home workers; work experience trainees; and independent NHS contractors and ex employees of the organisation who have concerns about misconduct or wrongdoing.

NHS Lothian is committed to running the organisation in the best way possible. This policy has been introduced to reassure all staff 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 a member of staff is unsure as to which policy to use it is best to first seek advice from their line manager, HR Enquiries or their staff representative, who will advise them of the options for disclosure. If they feel unable to approach any of these, they can contact a **Speak Up Advocate** [link] for advice and support.

3 COMMITMENT TO STAFF

3.1 Your Safety

The Board, the Chief Executive and the trade unions/professional organisations are committed to this policy. If a member of staff 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). It does not matter if they are mistaken or if there is an innocent explanation for their concerns. A member of staff raising a concern will not be asked to prove their claim. However, this assurance will not be extended to a member of staff who maliciously raises a matter they know to be untrue.

3.2 The Confidence of Staff

With these assurances, the Board hopes that staff will raise concerns openly. However, 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 member of staff raising the concern should say so at the outset. If the organisation is asked not to disclose someone's identity, we will not do so without that person's consent unless required by law. Staff should however understand that there may be times when the organisation will be unable to resolve a concern without revealing someone's identity, for example where personal evidence is essential. In such cases, it will discuss with the member of staff whether and how the matter can best proceed.

It should be remembered that if staff do not disclose their identity, it will be much more difficult for NHS Lothian to look into the matter. It will also not be possible to protect the staff member's position or give them feedback. Accordingly, a member of staff raising a concern should not assume that the Board can provide the same assurances where a concern is reported anonymously.

4 PROCEDURE

At all stages of this procedure staff may seek advice from, and be represented by their trade union or professional organisation representative, or accompanied by an NHS Lothian colleague.

If members of staff are unsure about raising a concern, they can get independent advice at any stage from their trade union/professional organisation or from one of the organisations listed in **Appendix A**. Staff 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 gave rise to the concern.

A flowchart of the procedure to be followed can be found in **Appendix B**.

4.1 How to raise a concern

If you are worried that something wrong or dangerous is happening at work, please do not keep it to yourself. Unless you tell us about any concerns you may have about fraud, safety risks including clinical safety, or other wrongdoing, the chances are we will not find out until it is too late.

As some of you may be nervous about raising such matters, here are some tips:

- Raise it when it is a concern - we will not ask you to prove it;
- Keep it in perspective - there may be an innocent explanation;
- It will help us if you can say how you think things can be put right;
- Stay calm – you are doing the right thing.

4.1.1 Step One

If a member of staff has a concern about a risk, malpractice or wrongdoing at work, it is hoped that they will feel able to raise it first with their line manager or lead clinician, either verbally or in writing.

If the concern is about the Chief Executive, then it should be raised (in the first instance) with the Chair, who will decide how the investigation will proceed.

4.1.2 Step Two

If the member of staff still has concerns, or if they feel unable to raise the matter with their line manager, they should raise the matter with one of the following:

Job Title	Name	Email Address	Contact Number
Medical Director - Acute	Dr Brian Cook	Brian.cook@nhslothian.scot.nhs.uk	0131 242 3308
Medical Directors – Primary Care	Dr Nigel Williams	Nigel.williams@nhslothian.scot.nhs.uk	0131 537 8407
AHP Director	Lynne Douglas	Lynne.douglas@nhslothian.scot.nhs.uk	0131 242 1986

These people have been given special responsibility for dealing with whistleblowing concerns. If the matter is to be raised in confidence, then the member of staff should advise this at the outset. See section 3.2 above.

4.1.3 Step Three

If these channels have been followed and the member of staff still has concerns, or if they feel that the matter is so serious that they cannot discuss it with any of the above, they should contact the Chief Executive, Medical Director or Nurse Director as follows:

Job Title	Name	Email Address	Contact Number
Nurse Director	Alex McMahon	Alex.McMahon@nhslothian.scot.nhs.uk	0131 465 5496
Medical Director	Dr Tracey Gillies	Tracey.Gillies@nhslothian.scot.nhs.uk	0131 465 5818
Chief Executive	Tim Davison	Chief.executive@nhslothian.scot.nhs.uk	0131 465 5807

In addition NHS Lothian recognises its accountability within NHS Scotland. The Whistleblowing Alert and Advice Services for NHS Scotland (AALS) is now in place through the Scottish Government Health Directorate. Details of this can be found in **Appendix D**. If a member of staff feels unable to raise their concerns within NHS Lothian, they should raise their concerns by contacting the National Alert Line. The number is 0800 008 6112.

4.2 Advice for Managers Responding to a Concern

- Thank the staff member for raising the concern, even if they may appear to be mistaken;
- Respect and heed staff concerns about their own position or career;
- Manage expectations and respect promises of confidentiality;
- Discuss reasonable timeframes for feedback with the member of staff;
- Remember there are different perspectives to every story;
- Determine whether there are grounds for concern and investigate if necessary as soon as possible. If the concern is potentially very serious or wide-reaching, consider who should handle the investigation and know when to ask for help. If asked, managers should put their response in writing;
- Managers should bear in mind that they may have to explain how they have handled the concern;
- Consider the need to escalate to a higher level of management the outcome of any genuine concern where malpractice or a serious safety risk is identified and addressed;.
- Feed back to the member of staff any outcome and/or proposed remedial action, but be careful if this could infringe any rights or duties which may be relevant to other parties;
- Remind staff of support available during the process;
- Record-keeping - it is prudent to keep a record of any serious concern raised with those designated under the policy, and these records should be anonymous where necessary.

4.3 How NHS Lothian Will Handle the Matter

Once a concern has been raised, it will be assessed by the appropriate person and consideration will be given as to what action needs to be taken. This may involve an informal review, an internal inquiry or a more formal investigation. The member of staff

raising the concern will be advised who will be handling the matter, how they can contact them, and what further assistance may be needed. The organisation will write to the member of staff summarising the concern and advising how they propose to handle it, and providing a timeframe for feedback. If the concern has been misunderstood, or there is any information missing, the member of staff should highlight this.

When raising a concern, it will be helpful to know how the member of staff thinks the matter might best be resolved. If the member of staff has any personal interest in the matter, they should confirm this at the outset. If it is felt that the concern falls more properly within the scope of one of the other NHS Lothian policies, this will also be explained to the member of staff.

Managers will give feedback 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 member of staff might wish, NHS Lothian will strive to handle the matter fairly and properly.

If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation will be conducted in accordance with the provisions of NHS Lothian's Management of Employee Conduct Policy. Should it be thought necessary to suspend an employee during the course of any such investigation, the procedure outlined in the Management of Employee Conduct Policy will be followed.

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 to all parties.

At all stages of the process any employee involved will have the right to be accompanied by a colleague or trade union/professional organisation representative.

5 CONTACTS OUTWITH NHS Lothian

The emphasis of this policy is on encouraging staff to raise their concerns internally, as this is the quickest way to resolve concerns and to enable NHS Lothian to provide appropriate support if required. Whilst NHS Lothian hopes this policy gives staff the reassurance they need to raise such matters internally, it is recognised that there may be circumstances where they can properly report matters to outside bodies, such as those detailed in **Appendix A**. If a member of staff chooses to make a disclosure to an outside body, they must have an honest and reasonable suspicion that malpractice has occurred, is occurring or is likely to occur, and must believe the information to be substantially true.

Although the internal process, as detailed in **Section 4.1 - How to Raise a Concern**, exists for disclosure, in exceptional circumstances wider disclosures, i.e. to the police, Members of the Scottish Parliament or Members of Parliament may be justified. Staff

will be protected under the Public Interest Disclosure Act 1998 if they meet the criteria (see Appendix C), have not made the disclosure for personal gain and have first raised the concern within NHS Lothian or a prescribed regulatory body, as detailed in Appendix A. The only exceptions to this are if the member of staff believes they would have been victimised as a result of making such a disclosure; a prescribed regulator is not applicable; or if there is reasonable belief that there would be an attempt to cover up the matter causing concern.

The charity Protect and any trade union or professional organisation will be able to advise a member of staff on such an option and the circumstances in which they may be able to contact an outside body safely. It is strongly recommended that any member of staff seeks advice from such parties before making an external disclosure.

6 RECORD KEEPING AND MONITORING

Records will be kept of all disclosures made under this policy. These disclosures will be securely and confidentially stored.

NHS Lothian has appointed a Non Executive Whistleblowing Champion in an assurance role to help NHS Lothian to comply with their responsibility to ensure that staff are actively encouraged and supported to report any concerns about patient safety or malpractice. The role of the Non Executive Whistleblowing Champion is to ensure:

- all reported concerns are investigated in a timely and appropriate way;
- the staff member is supported and updated on progress throughout the process;
- the outcome is fed back to the member of staff who raised the concern;
- any resultant recommended actions are progressed by the Board.

The Whistleblowing Champion will provide critical oversight and assurance in making sure that these responsibilities are acted upon and working effectively, and where not, bring these issues to the attention of the Board. However, the role of the Champion does not form any part of this policy, will not be a point of contact for staff and will not investigate or be involved in the investigation of any cases. Monitoring information around cases raised will be provided at each meeting of the Staff Governance Committee to allow the assurance and scrutiny role in relation to the investigation of concerns to be carried out in a timely and appropriate way.

In addition an annual report will be provided to the Staff Governance Committee on the implementation of this policy. In particular, information will be provided on the number of complaints raised under the policy, outcomes and adherence to the policy and the number of times this policy has been accessed on HR Online.

7 DATA PROTECTION

In line with Data Protection legislation and NHS Lothian's Record Management Policy, any documentation generated in accordance with this policy will be held on one personal file by the line manager, and the relevant Human Resource function may also keep a paper and/or electronic file.

8 REVIEW

This policy and procedure will be reviewed by the NHS Lothian Partnership Forum every **2 years**.

FURTHER INFORMATION AND EXTERNAL CONTACTS

- **Protect for information about the Public Interest Disclosure Act 1998,**
please visit: <https://www.pcaw.org.uk/a-guide-to-pida/>
- **NHSScotland Counter Fraud Service (CFS)**
Fraud Hotline on - 08000 15 16 28
cfs.scot.nhs.uk
- **Health Improvement Scotland (Edinburgh Office)**
Gyle Square
1 South Gyle Crescent
Edinburgh
EH12 9EB
Call 0131 623 4300
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**
10 Old Bailey
London EC4M 7NG
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: 0300 500 6184

- **Nursing and Midwifery Council**

23 Portland Place

London W1B 1PZ

www.nmc-uk.org

Tel: 020 7637 7181

- **The General Pharmaceutical Council**

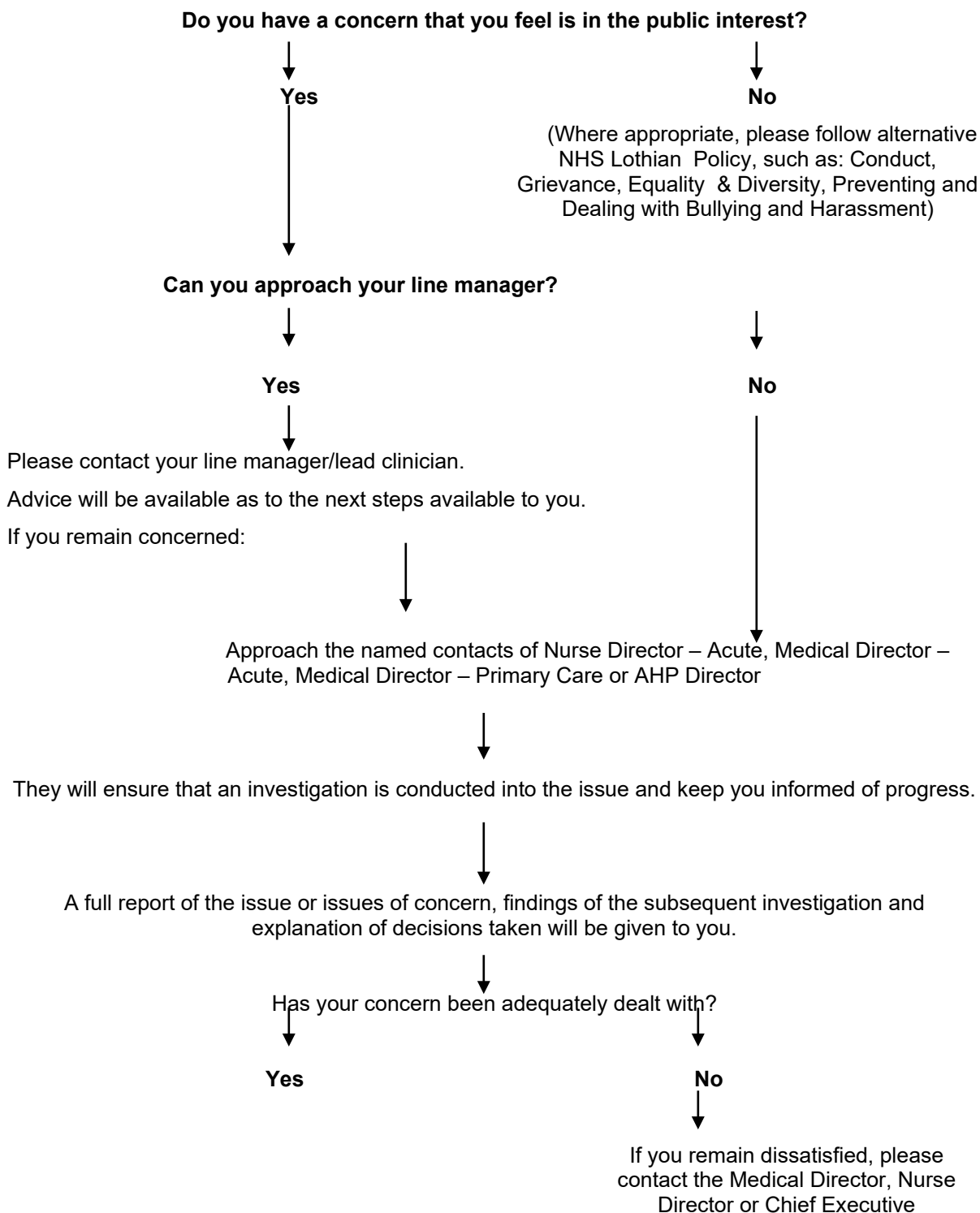
25 Canada Square

London E14 5LQ

info@pharmacyregulation.org

Tel: 020 3713 8000

NHS Lothian Whistleblowing Policy - Flowchart



LEGAL FRAMEWORK

The Public Interest Disclosure Act 1998 (PIDA)⁷ amended the Employment Rights Act 1996⁸ to protect the public by providing a remedy for individuals who suffer a detriment by any act or any deliberate failure to act by their employer for raising a genuine concern, whether it be a risk to patients, financial malpractice, or other wrongdoing. These are called "qualifying disclosures". A qualifying disclosure is one made by an employee who has a reasonable belief that one of the following is being, has been, or is likely to be, committed:

- 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.

The Act's tiered disclosure regime promotes internal and regulatory disclosures, and encourages workplace accountability and self-regulation.

Under the Act, workers who act honestly and reasonably are given automatic protection for raising a matter internally. In NHS Scotland an internal disclosure can go up to the highest level. Protection is also readily available to individuals who make disclosures to prescribed regulators such as Audit Scotland.

In certain circumstances, wider disclosures (for example to an MSP, an MP or the media) may also be protected. A number of additional tests apply when going wider, including:

- Whether it is an exceptionally serious concern;
- Whether the matter has already been raised;
- Whether there is good reason to believe that the individual will be subject to a detriment by their employer if the matter were raised internally or with the appropriate regulator; or
- Whether disclosure was reasonable given all the circumstances.

The Act covers all workers including temporary agency staff, persons on training courses and self-employed staff who are working for and supervised by NHS Scotland.

It does not cover volunteers. PIDA also makes it clear that any clause in a contract that purports to gag an individual from raising a concern that would have been protected under the Act is void.

To enable a whistleblowing policy to work in practice and to avoid unnecessary damage, it is important to ensure that policies authorise all staff, not just health and medical professionals, to raise a concern, and identifies who they can contact.

Legal protection is very important if staff are to be encouraged to raise a concern about wrongdoing or malpractice. However, it is vital that employers develop an open culture that recognises the potential for staff to make a valuable contribution to the running of public services, and to the protection of the public interest.

Where an individual is subjected to a detriment by their employer for raising a concern or is dismissed in breach of PIDA, they can bring a claim for compensation under PIDA to an Employment Tribunal. Awards are uncapped and based on the losses suffered.

APPENDIX D

Whistleblowing Alert and Advice Services for NHSScotland (AALS) (Telephone [REDACTED])

1. Protect will establish the nature of the concern and provide advice tailored to individual circumstances.
2. Protect will categorise each call as either public interest or private (individual employment issue).
3. Protect will encourage individuals to raise their concern with their employer. Individuals will be advised that employers will respect confidentiality but will not accept concerns raised anonymously.
4. In all cases categorised as individual employment issues, Protect will direct the caller to their employer.
5. Where Protect considers that there is a public interest issue and the internal process appears to have been exhausted, or the individual has sound reasons for not raising the concern with their employer, they will either direct the individual to the appropriate regulator or at the individual's request will make the initial approach to the regulator on the individual's behalf. If Protect determine that the issue should be referred to Healthcare Improvement Scotland then this will always be referred by Protect rather than the individual themselves.
6. Protect is able to refer anonymous cases or, where the regulator is unable to accept anonymous concerns (Audit Scotland will accept anonymous concerns, HSE will not), will act as an intermediary for information.
7. Protect and the regulators will respect callers' confidentiality.
8. Protect will record cases electronically. For management information purposes each case will be closed by Protect after providing advice to the individual on who they should raise their concern with or on completion of any follow up work they have been asked to do by the individual. This may include contacting either the employer or the regulator and seeking feedback.
9. Reporting back on the action taken by the employer or regulator will be to the individual who raised the concern. In the case of Healthcare Improvement Scotland, which is not a regulator, they will report back to the individual and Protect.
10. The regulators' responsibility is to the individual who raises the concern and they will only report to Scottish Government on cases where investigation confirms that there is a concern that needs to be addressed. In the case of Healthcare Improvement Scotland, which is not a regulator, their responsibility is to Protect since they would refer the case to Healthcare Improvement Scotland *[and through Protect to the Scottish Government as commissioner of the Alert Line]*.



Whistleblowing Alert and Advice Services Flow Chart

