

Case: 202404084, Shetland NHS Board

Subject: Complaint handling

Decision: Fully upheld

Summary

C worked for a third sector organisation contracted by NHS Shetland to deliver services on a short-term basis. C raised concerns with the Board about information that had come to light during their work with NHS staff members. C felt that the information met their organisation's threshold for disclosure because of the potential risks to patient safety and staff wellbeing.

The Board took advice from the INWO's Improvement, Standards and Engagement team (ISE) about the eligibility of third sector providers to raise concerns under the National Whistleblowing Standards (the Standards). The ISE team explained that the point had not been tested but advised that their interpretation of the Standards was that there should be a link between the service provided by the contractor and the concern being raised.

At the same time, the Board received a concern from a NHS staff member about the same issues and arranged for an external investigation to be carried out under the Standards.

The Board wrote to C to explain the steps that they would take to investigate the NHS staff member's concerns. They also signposted to the INWO, signalling the end to the whistleblowing process for C.

C complained to the INWO that the Board did not handle their concerns in line with the Standards. They said that they thought they were eligible to raise concerns and complained that the communications from the Board were unclear.

We acknowledged the differing interpretations of the Standards in relation to contracted services. We found that staff from contracted services (including third-sector providers) are eligible to raise concerns under the Standards. As long as the whistleblower is delivering a service on behalf of the NHS, and the concerns being raised meet the whistleblowing definition, the concern does not have to relate to the service being provided by the whistleblower.

We also found that, in line with the Standards:

- it is possible for multiple parties to raise the same concern, and
- the person raising a concern may have no direct personal involvement in the issue that they are raising.

Finally, we found that although there was some good practice in the Board's response to C, it did not provide a clear explanation of the decision and the reasons for it. Our decision in this case was to uphold the complaint.

We recognised that although the Board did not accept C's eligibility as a whistleblower, they did take prompt and proportionate action to arrange an investigation into the linked concerns raised by a third party. This included use of the information provided by C.

We provided feedback to the Board on their handling of the concern.