

Proposal for the development of the Whistleblowers' Support Scheme for Secondary Care

We support providers to give patients safe, high quality, compassionate care within local health systems that are financially sustainable

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Summary

1. This proposal sets out our ambition to deliver a Whistleblowers' Support Scheme for Secondary Care. NHS England will run the scheme for primary care. Both schemes aim to support both staff and employers when whistleblowing concerns have been raised. Both NHS Improvement and NHS England have an interest in information provided in relation to quality of care, financial governance and leadership and improvement capability. Whistleblowers often raise concerns about these areas.
2. The key aim of this scheme is to support NHS staff and former NHS staff who are having difficulty finding employment as a result of raising concerns about safety, risk, malpractice or wrongdoing at work which they thought was harming services in secondary care providers.
3. The scheme will be delivered through key functions set out in detail below. It is proposed to set up the scheme as a pilot initially and start with a small cohort of around 10 individuals who are seeking to return to work. Individuals who have worked in a secondary care organisation, ie an NHS trust or NHS foundation trust, will be invited to express an interest in taking part. We will send the invitation via a range of networks including whistleblowing organisations.
4. There are a number of decisions that will need to be addressed before the final proposal is developed. We will build on the ongoing engagement with whistleblowers and NHS employers to ensure that the scheme is fit for purpose and supports all parties involved.

Introduction

5. The *Freedom to Speak Up* review was announced on 24 June 2014 by the Secretary of State for Health and was led by Sir Robert Francis QC. It was an independent review into creating an open and honest reporting culture in the NHS. The review aimed to provide advice and recommendations to ensure that NHS staff in England feel safe to raise concerns, confident that they will be listened to and the concerns will be acted on.

“Just as patients whose complaints are ignored can become mistrustful of all, even those trying to help them, staff who have been badly treated can become isolated, and disadvantaged in their ability to obtain appropriate alternative employment.”

Sir Robert Francis, *Freedom to Speak Up* review, 2015

6. The review made two recommendations:

- **Recommendation 1**

All organisations which provide NHS healthcare and regulators should implement the principles and actions set out in the report in line with the good practice described in the report.¹

- **Recommendation 2**

The Secretary of State for Health should review at least annually the progress made in the implementation of these principles and actions and the performance of the NHS in handling concerns and the treatment of those who raise them, and report to Parliament.

7. NHS England and NHS Improvement are working in partnership to respond to those recommendations, starting with developing a standard integrated policy² for NHS organisations in England to adopt as a minimum standard to help normalise the raising of concerns for the benefits of patients.

8. This proposal aims to meet the following principle and actions set out by Francis:

- Principle 12: Support to find alternative employment in the NHS

Where a NHS worker who has raised a concern cannot, as a result, continue in their current employment, the NHS should fulfil its moral obligation to offer support

- *Action 12.1*: NHS England, the NHS Trust Development Authority and Monitor [the NHS Trust Development Authority and Monitor now operating as NHS Improvement] should jointly devise and establish a

¹ Sir Robert Francis QC (2015) *Freedom to Speak Up: An independent review into creating an open and honest reporting culture in the NHS*, pp 17, 22-27

² https://improvement.nhs.uk/uploads/documents/whistleblowing_policy_final.pdf

support scheme for NHS workers and former NHS workers whose performance is sound and who can demonstrate that they are having difficulty finding employment in the NHS as a result of having made protected disclosures.

- *Action 12.2:* All NHS organisations should actively support a scheme to help current and former NHS workers whose performance is sound to find alternative employment in the NHS.

9. NHS Improvement offers the support NHS foundation trusts and NHS trusts need “to give patients consistently safe, high quality, compassionate care within local health systems that are financially and clinically sustainable”.³ By holding providers to account and, where necessary, intervening, we help the NHS to meet its short-term challenges and secure its future.

Proposal

10. Building on the work to develop an integrated policy, NHS England and NHS Improvement are developing a Whistleblowers’ Support Scheme, informed and influenced through the discussions and contributions of a range of stakeholders and experts who have attended design workshops.⁴

Purpose of the scheme for secondary care

11. The Whistleblowers’ Support Scheme aims to support NHS staff and former staff who are having difficulty finding employment in the NHS as a result of raising concerns about safety, risk, malpractice or wrongdoing at work which they thought was harming services in secondary care providers.
12. As a minimum, it should provide:
 - remedial training or work experience for registered and non-registered healthcare professionals who have been away from the workplace for long periods of time
 - advice and assistance in relation to applications for appropriate employment in the NHS

³ NHS Improvement: *Single Oversight Framework* September 2016

⁴ Stakeholders represented at the workshops in 2016 included Public Concern at Work, whistleblowers, Department of Health, Care Quality Commission, Patients First, Care Right Now, General Medical Council, Midwifery and Nursing Council, *Nursing Times*, NHS Providers.

- the development of a ‘pool’ of NHS employers prepared to offer trial employment to persons being supported through the scheme
- guidance to employers to encourage them to support whistleblowers back into the NHS.¹

Principles

13. The principles underpinning development of the scheme are:
- taking account of stakeholder input on the development, design and testing
 - creating a shared understanding and shared language between participants and the designers
 - aligning the scheme with NHS England’s scheme for primary care while recognising key differences
 - creating a robust process to support the scheme that builds on best practice from a range of sectors
 - using an iterative approach – pilot, test and learn – for continuous improvement.

Scheme offer

14. The scheme will offer as a minimum⁵ the help/support set out in paragraph 12. We are currently developing these areas and welcome comments. Please send them to the Whistleblowers’ Support Scheme Manager at NHSI.wbss@nhs.net
15. We will commission external suppliers to deliver the support outlined in paragraph 12, where necessary, and identify a pool of employers to offer work experience/trial employment.
16. Both applicant and scheme representative will be required to sign an agreement to confirm the expectations and commitments on both sides and ensure support packages are tailored and delivered according to individual needs.
17. Payment for work experience/trial employment will depend on whether the provider offering the work experience/trial employment can fund this. Basic

⁵ http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf para 7.3.8

travel expenses may be paid in accordance with NHS Improvement expenses policy. Providers offering placements will need to ensure they comply with all relevant employment legislation and with their own policies and processes.

18. We are currently considering what support can be offered to clinicians and professionals to manage maintenance of their professional status, for example revalidation.

Current status of the primary care scheme

19. Phase 1 of the primary care scheme has begun. The pilot phase of the scheme has been tested and NHS England has commissioned a formal evaluation.
20. Individuals who had worked in a primary care organisation such as a former primary care trust, clinical commissioning group or general practice were invited to express an interest in taking part in the pilot. The invitation was sent via a range of networks including whistleblowing organisations. A small mixed cohort of around 10 individuals was identified following this process and they were invited to take part in an independent panel process to access a place on the scheme.
21. Once established the scheme will also include individuals who have raised a concern and are still in their employment, but this group was not included in the pilot scheme. These individuals will be identified through the regional NHS England commissioning teams which are supporting individuals at a local level, where the opportunity to take part in the scheme will be discussed and offered if deemed appropriate. Any participants who enter the pilot scheme through this route will not be required to be assessed by the independent panel, due to their current status of being in employment.
22. The NHS Improvement pilot for secondary care is likely to mirror the principles of the primary care pilot set out in paragraphs 20 and 21. It is aimed at individuals who have worked in secondary care but are currently unable to secure further employment.
23. NHS Improvement will liaise with NHS England on the evaluation of the pilot scheme in primary care to ensure shared learning informs the development of the pilot scheme in secondary care.

The scheme design

24. The following proposed structure for the scheme is informed by engagement and discussions with a range of stakeholders.

Accessing the scheme

25. Individuals who are eligible for the scheme will be those who are having difficulty finding employment in the NHS as a result of raising concerns about safety, risk, malpractice or wrongdoing at work which they thought was harming services in secondary care providers. In the pilot phase of the scheme, priority will be given to former NHS staff who are unemployed at the time of application. Following evaluation of the pilot, this may extend at a later stage to those who are still in employment.

Support for employers

26. NHS Improvement will work with NHS Employers and HR directors in NHS foundation trusts and NHS trusts to develop scheme guidance and support for trusts to help whistleblowers return to employment, and to identify associated work placements.

Application process

27. To ensure applications can be assessed fairly and objectively, individuals currently out of NHS employment wishing to access the scheme will need to apply and be assessed through a panel process. The pilot application process outlined in this proposal is based on stakeholder feedback on the need to ensure:
 - equality and fairness in access to the scheme
 - clear eligibility criteria
 - the provision of evidence and documentation by the applicant to support eligibility.
28. It has also been informed by a review of some existing panels and processes used elsewhere in the NHS.

29. In the main scheme after the pilot is concluded there may be the option for movement between the primary and secondary care schemes where individuals have relevant or transferable skills.

Eligibility criteria

30. The main areas of eligibility are informed by the principles and recommendations set out in the *Freedom to Speak Up* review and with reference to the eligibility criteria developed for the primary care scheme.
31. Eligibility will be based on existing or former employment in the NHS in England only. Geographical location may need to be a criterion where placements are limited to particular areas and individuals are unable to travel or temporarily relocate.
32. See Appendix 1 for the proposed eligibility criteria for the secondary care scheme.

Documentation to support application

33. To access the scheme individuals will need to complete and submit an application form and provide evidence demonstrating that they meet the eligibility criteria. The application form provides the opportunity to set out supporting statements outlining the individual's interest in applying to the pilot scheme. It also gives examples of documentation that might be suitable supporting evidence. All applicants will be required to submit a brief timeline of whistleblowing events and subsequent events to support their application.
34. In providing evidence of eligibility to the scheme, it is important to highlight that the application process is about focus on employment aims and support needed to return to employment. Any discussion of whistleblowing experiences, the handling of whistleblowing concerns and former employers' actions with regard to employment disputes arising after whistleblowing should focus on any potential, continuing barriers to employment.
35. All evidence submitted will be kept confidential and will only be reviewed by the Whistleblowers' Support Scheme panel and support scheme manager to assess eligibility to the scheme and for no other purpose.

36. If successful, applicants may be asked to give consent to share the information, where relevant and appropriate, with the nominated pilot scheme provider and evaluator to help determine appropriate support.
37. If successful, applicants may be required to undergo occupational health assessment before taking up placements on the support scheme and further assessments for specific work placements where required once participating in the scheme.

Whistleblowers' Support Scheme panel

38. NHS Improvement will facilitate and host the Whistleblowers' Support Scheme panel in the secondary care phase of the pilot.
39. The overall purpose of the panel is to consider applications to the scheme and ensure there is a robust process and decision-making framework for the panel/s to reach the best judgement they can and facilitate fair and transparent access to the scheme.
40. In summary, the role of the panel is to:
 - review evidence submitted by applicants to the scheme
 - assess eligibility, reach a judgement and make decisions regarding placements on the scheme
 - communicate the rationale for decisions to each applicant
 - make recommendations for access to the scheme to be taken forward by the nominated scheme provider and those organisations offering training or work experience.

Membership of the panel

41. It is essential that the Whistleblowers' Support Scheme panel has an appropriate constitution to ensure fairness and transparency while maintaining robustness and credibility of the review process.
42. The panel should have knowledge and expertise in whistleblowing, performance procedures and professional standards/education and training and be able to access advice on human resources and personal/professional performance development.

43. It is proposed that membership of the panel should comprise the following::

- a former NHS whistleblower
- an NHS professional who will understand the applicant's profession and have the relevant clinical/managerial expertise as far as possible
- an executive/senior clinician /manager with experience of any relevant regulations and/or an equivalent NHS manager with the relevant knowledge and expertise.

In the pilot phase, there may also be an NHS Improvement representative from the Trust Resourcing Team observing the panel to inform the final scheme

44. We acknowledge that many NHS whistleblowers have experienced unfair treatment, disadvantage and discrimination as a result of raising and reporting concerns and have suffered both personally and professionally. In particular, certain vulnerable groups may have had a more detrimental experience when raising concerns than others. NHS Improvement will ensure that those involved in the panel are sensitive to these issues and/or have the appropriate experience in dealing with them.

Panel review of evidence

45. The panel/s will use an evidence review and decision template to support them in reviewing evidence and assessing eligibility and reaching a judgement regarding access to the scheme. This will help ensure consistency and provide a record of decision-making by the panel.

46. There will be a pre-panel briefing between members of the NHS Improvement Trust Resourcing Team and panel members to identify if any further information or evidence is required from applicants before the final panel meeting where the decision will be made.

Outcome of panel

47. The panel will communicate the rationale and outcomes of decisions to applicants in writing.

48. The panel decision in the secondary care pilot will not be subject to appeal. However, if an applicant is not selected for the pilot, this should not prevent

them from applying to the scheme when it goes live following evaluation of the pilot scheme.

Feedback on the pilot scheme

49. Panel members and applicants will be asked to complete feedback forms to give their preliminary views on the panel process ahead of the formal evaluation of the scheme. If any concerns are raised, these will be escalated to the Head of Trust Resourcing at NHS Improvement, who is responsible for the scheme, for information and for a decision on any action.

Terms of reference

50. Terms of reference based on those developed for the pilot phase of the Whistleblowers' Support Scheme for Primary care will be drafted to support the operation of the panel/s in secondary care.

Sustainability of the Whistleblowers' Support Scheme

51. Issues around ensuring the longer term sustainability and viability of the Whistleblowers' Support Scheme are highlighted and discussed below.

Capacity and resource-planning

52. We do not currently know the number of people who may wish to join the scheme in secondary care, although it may be quite high. It is possible that the panel will not be able to accommodate all individuals who wish to join the scheme, even if they meet the eligibility criteria. If so, a fair process will be set up to manage this. Also, sufficient capacity and resource will need to be set aside to establish the panels. This should include a budget to cover reimbursement of panel members' time for both the preparation and meeting time, as well as the recruitment of a sufficient number of panel members to ensure there is capacity, flexibility and the appropriate constitution of panels when required.

Recruitment and training of panel members

53. As highlighted previously, potential panel members will need specific knowledge and expertise to ensure fairness and transparency while

maintaining robustness and credibility of the review process. Some panel schemes in the NHS have appointment processes, competency frameworks and membership agreements for panel members, as well as specific training to help panel members with their role. Initial feedback from some panel members in the primary care pilot scheme suggests they would welcome training.

Establishing a database of trained panel members

54. This will be important to ensure there are enough trained panel members to constitute panel meetings at regular intervals and reflect the diverse backgrounds and experience of applicants.

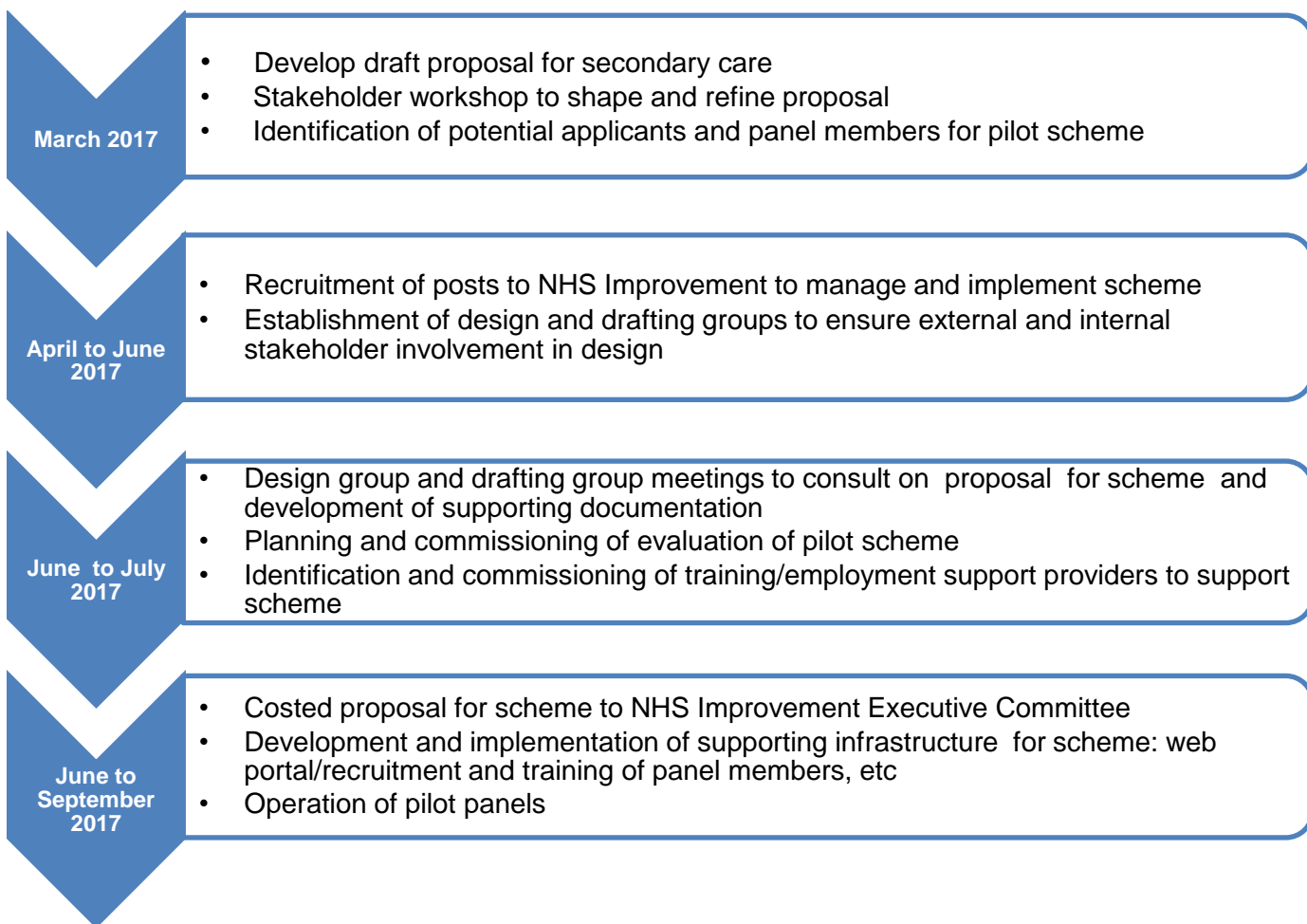
Developing a secure information portal

55. Applicants to the scheme are submitting sensitive and personal information. It is essential the scheme complies with data protection and information governance frameworks governing the use of personal confidential data.
56. In the interim, the primary care pilot used a secure, dedicated email address for the submission of applications; however, to ensure security of information and sufficient system capacity to deal with a large amount of information, it may be necessary to develop a specific web portal.

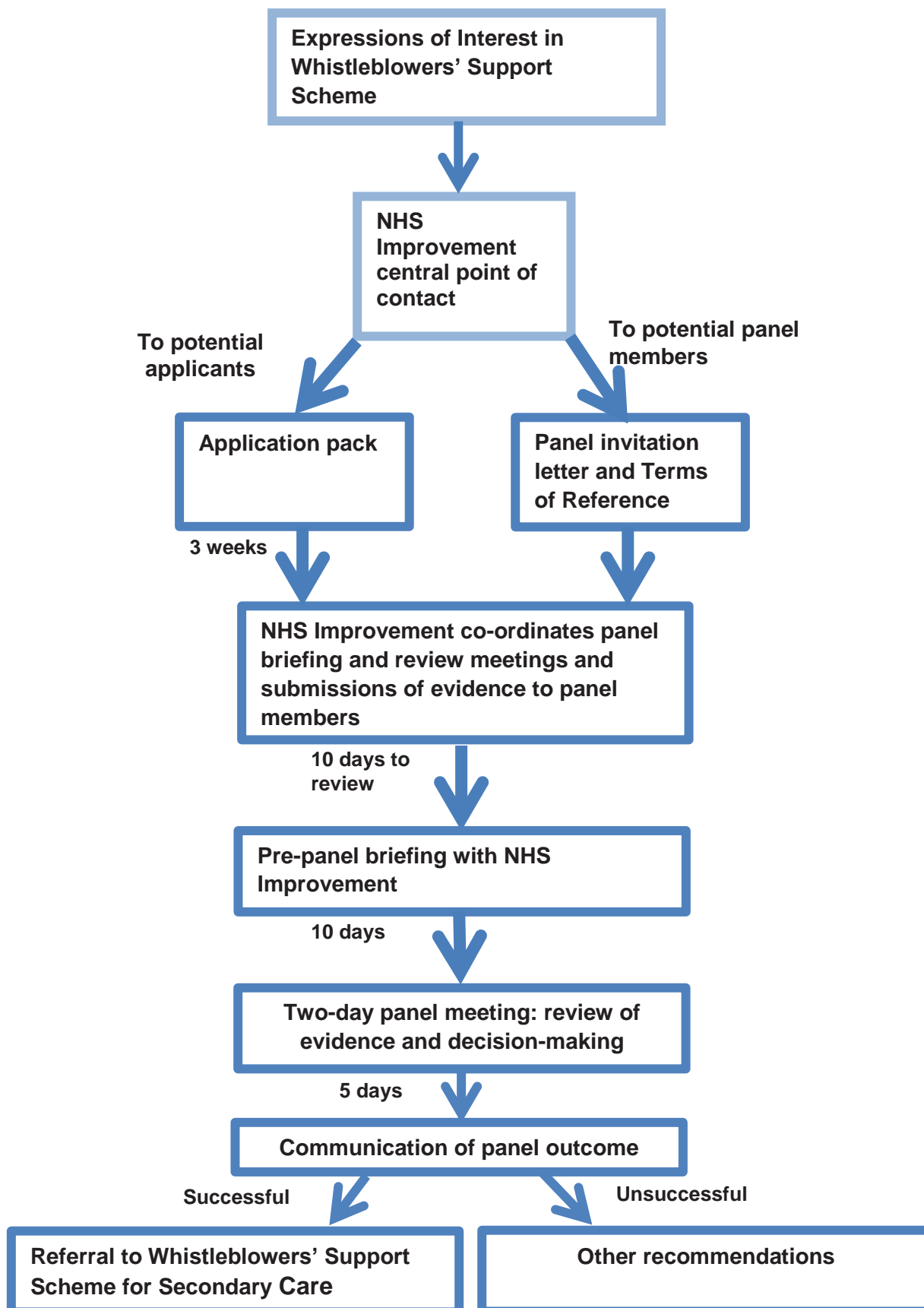
Proposed timescales for implementation of the scheme for secondary care

57. The suggested timescales below are indicative only and will depend on factors including resource allocation and recruitment of individuals to support implementation of the scheme.

Proposed timescales for implementing the Whistleblowers' Support Scheme for secondary care



Overview of the Whistleblowers' Support Scheme panel process



Appendix 1: Eligibility criteria for Whistleblowers' Support Scheme for Secondary Care

Criteria	Further explanation
<p>1. Is a NHS Whistleblower</p> <p>NHS staff or former staff member who has raised concerns about safety, risk, malpractice or wrongdoing at work in secondary care provider in England which they thought was harming the services at their place of work</p>	<p>Examples include:</p> <ul style="list-style-type: none"> unsafe patient care unsafe working conditions inadequate induction or training for staff lack of, or poor, response to a reported patient safety incident a bullying culture (across a team organisation rather than individual instances of bullying). <p>Staff members would include employees, temporary agency staff, trainees and self-employed staff who are working for and supervised by the NHS. Volunteers would not be covered.</p> <p>Note: There is no requirement to have been through an employment tribunal to access the scheme.</p>
<p>2. No significant concerns in relation to conduct and capability at work prior to raising concerns</p>	<p>Where a high level of concern has been identified which would result for example in suspension and /or there are specific concerns and issues related to: safeguarding; existing restrictions and conditions regarding medical and professional registration, current criminal investigations; and revalidation issues, individuals will be ineligible for the scheme.</p> <p>We appreciate that conduct and capability concerns have sometimes been raised by employers where a staff member has raised whistleblowing concerns. The panel will have appropriate regard to this and conduct and capability concerns raised where a staff member has raised whistleblowing concerns will not necessarily result in ineligibility for the scheme.</p> <p>Note: Applicants will be responsible for highlighting any concerns relevant to this criterion and will be required to declare that any information submitted in support of their application to the scheme is true, accurate and complete.</p>
<p>3. Can demonstrate difficulty in finding employment since raising concerns in the NHS</p>	<p>Applicants will be asked to provide a description and explanation of how they have experienced difficulty in finding employment since raising concerns and of their current employment status.</p>

Sources of information

Sir Robert Francis QC (2015) *Freedom to Speak Up Report: An independent review into creating an open and honest reporting culture in the NHS.*

Whistleblowing Helpline (2014) *Raising Concerns at Work: Whistleblowing Guidance for Workers and Employers in Health and Social Care.*

House of Commons Library (2015) *NHS whistleblowing procedure in England*, Briefing Paper CBP06490, 18 September 2015.

[Whistleblowing for employees](http://www.gov.uk/whistleblowing). Available at www.gov.uk/whistleblowing

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