



Briefing for the Public Petitions Committee

Petition Number: [PE1605](#)

Main Petitioner: Peter Gregson

Subject: Independent national whistleblower hotline for NHS Scotland.

Calls on the Parliament to urge the Scottish Government to establish an independent national whistleblower hotline for NHS staff to replace the current helpline. It would differ in that it would investigate reports about mismanagement and malpractice, often without recourse to NHS managers.

Current Whistleblowing Policy in NHS Scotland

Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others. This may include something which adversely affects patients, the public, other staff or the organisation itself. Whistleblowing differs from raising a grievance in that an individual raises the concern as a witness rather than a complainant.

NHS Boards are expected to have local policies for staff raising concerns and are also expected to adhere to the Staff Governance Standard¹. Compliance with the standard includes implementation of Partnership Information Network (PIN) policies. PIN policies define a minimum standard of best employment practice and are designed to achieve a consistent approach to the way NHSScotland deals with its employees.

In 2011, PIN produced the policy document 'Implementing and Reviewing Whistleblowing Arrangements in NHSScotland'². This detailed key principles for local policies, including that:

- Staff have the option to raise concerns outside of line management
- Staff are enabled to access confidential advice from independent bodies
- The organisation will, when requested, respect the confidentiality of a member of staff raising a concern
- The policy should make it clear when and how concerns may be properly raised out with the organisation (for example, with a regulator)

¹ [The Staff Governance Standard for NHS Scotland Employees: 4th Edition](#)

² [Implementing and reviewing whistleblowing arrangements in NHSScotland](#)

As part of the Staff Governance Standard Monitoring Framework, the NHS Scotland staff survey³ monitors staff experience against the key elements of the Staff Governance Standard. The most recent survey found that 56% of staff felt it is safe to “speak up and challenge the way things are done if [they] have concerns about quality, negligence or wrongdoing by staff”. 24% disagreed/strongly disagreed with this statement. NHS Boards are held accountable for implementing the Staff Governance Standard and they are expected to monitor and report on performance against it.

Public Interest Disclosure Act 1998

Whistleblowing policies in the NHS in Scotland generally encourage staff to raise their concerns locally. However, there are some avenues for individuals to take concerns to parties outwith their employer and this has some statutory protection in the Public Interest Disclosure Act 1998. This Act provides protection for workers who disclose information where they reasonably believe that one or more of the following matters is either happening, has taken place, or is likely to happen in the future:

- A criminal offence
- Breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- A deliberate attempt to conceal any of the above.

The matter must also be in the public interest and the individual should not stand to make any personal gain from disclosing it.

The Act does not specifically require a person to raise a concern with their employer and, if the individual does not feel that they can do so, they can go to a ‘prescribed’ person or body instead. Such people/bodies are set out in the [Public Interest Disclosure \(Prescribed Persons\) Order 2014](#). These include:

- Audit Scotland – for matters relating to value for money, fraud and corruption in public bodies (this will include the NHS)
- Care Inspectorate - Matters relating to the provision of care services, as defined in the Public Services Reform (Scotland) Act 2010.
- Regulatory bodies of the health professions (e.g. General Medical Council, General Dental Council) – for matters relating to the registration and fitness to practice of a member of the regulatory body, or any other of its functions
- Health & Safety Executive – for matters which may affect the health and safety of anyone at work
- Healthcare Improvement Scotland – for matters related to improving the quality of healthcare and any of HIS’ other functions.

³ [NHSScotland Staff Survey 2015: National Report](#)

However, a person should only raise the concern with a prescribed person/body rather than their employer if they:

- think that they will be treated unfairly
- believe that their employer will cover it up
- have already raised the concern and it has not been dealt with.

If any of these criteria are met then the individual will be afforded the same protection as someone raising an issue with their employer. This means that they should suffer no detriment from their employer (e.g. they cannot be sacked because they raised the concern).

An individual can also choose to raise the matter with someone other than their employer or a prescribed person, but in order to receive the protection of the 1998 Act, they would need to show that they reasonably believed that (in raising it with an employer or prescribed person):

- they would be treated unfairly
- their employer would cover it up
- they had already raised the concern and it has not been dealt with

In judging whether it was reasonable to make the disclosure to someone other than the employer or a prescribed person, the 1998 Act sets out that regard should be had to; the identity of the person disclosed to, the seriousness of the failure, whether the failure is continuing or likely to occur again, whether the disclosure breaches an employer's duty of confidentiality and, if a person made a previous disclosure, whether it followed any internal procedures and the employer's action following that.

The National Confidential Alert Line

The National Confidential Alert Line (NCAL) for NHSScotland employees was launched on 2 April 2013. This service is run by [Public Concern at Work \(PCaW\)](#), which is an independent whistleblowing charity. The NCAL is meant to complement existing whistleblowing policies by providing a safe space for staff (who feel that they may be victimised as a result of whistleblowing) to raise concerns about patient safety and malpractice. The NCAL does not investigate concerns but legally trained staff offer support and advice and, where appropriate, concerns can be passed to the appropriate regulatory body or NHS boards. This is intended to give people confidence to highlight patient safety issues or malpractice without fear of recrimination.

The NCAL publishes six monthly reviews, with the most recent published in November 2015⁴. This details the number of cases and the outcomes. The Cabinet Secretary for Health, Wellbeing and Sport recently announced the extension of the NCAL contract for one year up until 31 July 2017.

⁴ [NHSScotland Confidential Alert Line six month review \(1 February 2015 – 31 July 2015\)](#)

Scottish Government Action

As mentioned above, the Scottish Government has introduced the NCAL, the staff governance standard and the PIN policy on whistleblowing.

In addition, following the publication and recommendations of Sir Robert Francis' "Freedom to Speak Up"⁵ review, the Scottish Government committed to introducing non-executive whistleblowing champions in each NHS board. The role is intended to act predominantly as an oversight and assurance mechanism, as well as to ensure that internal mechanisms within Boards are working effectively to support whistleblowing arrangements.

The Scottish Government has also committed to developing and establishing an Independent National Officer (INO) to provide an independent and external level of review on the handling of whistleblowing cases. A public consultation on the creation of an INO closed in February 2016⁶.

Scottish Parliament Action

In 2013, the Public Petitions Committee considered petition PE01495 in the name of Rab Wilson which called on the Scottish Government to ban the use of confidentiality clauses in compromise agreements with NHS Scotland staff.

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23 June 2016

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⁵ [Freedom to Speak Up? An independent review into creating an open and honest reporting culture in the NHS](#)

⁶ [Consultation on the proposals for the introduction of an Independent National \(Whistleblowing\) Officer \(INO\)](#)