

T: 0131-244 2532
E: Kathryn.fergusson@scotland.gsi.gov.uk

Sigrid Robinson
Assistant Clerk
Public Petitions Committee
T3.40
Scottish Parliament
EDINBURGH
EH99 1SP

25 January 2015

Dear Sigrid

CONSIDERATION OF PETITION PE1493

Thank you for contacting the Scottish Government following the Committee's meeting on Tuesday 11 November.

I will start by addressing the concerns raised by Dr Gordon, the petitioner, that he felt victimised by his former employer for raising concerns. It is vitally important that NHS workers feel they can raise any concerns they may have about patient safety and malpractice because it helps to improve our health service. The Scottish Government and NHSScotland continue to work together to make sure that NHS staff are protected when raising concerns. The 'Implementing & Reviewing Whistleblowing Arrangements in NHSScotland' PIN, published in December 2011, sets out the rights of staff in relation to whistleblowing, particularly in relation to protection from victimisation as a result of raising a concern. The Public Interest Disclosure Act ensures that employees who whistleblow are legally protected. The Act gives statutory protections to employees who disclose information reasonably and responsibly in the public interest, and where they have subsequently suffered a detriment or have been dismissed as a result of raising that concern. Individuals who have suffered a detriment, by any act, or, any deliberate failure to act, for whistleblowing can take their employer to an Employment Tribunal. Where an employee has lost their job as a result of whistleblowing, they could be fully compensated for their losses, with the limit of any compensation being uncapped.

Turning to the petition itself, and developments since April 2014. The Scottish Government has sought to establish, with NHS Boards, why action was not taken in 2004 on the HDL (2003) 62 circular. We have concluded that a range of issues including uncertainty on scope and definitions, resources, IT systems, accountability, enforcement and practicalities around independent contractors have led to the current situation.

However the Scottish Government has also taken the opportunity to take a broader view of this issue. It seems to us that, even if fully implemented, the circular from 2003 would fail to meet current demands for transparency. For example, the 2003 guidance does not state that registers should be public and searchable. This is an understandable demand from the petitioner. Our view is that there is merit in seeking wider views from the people of Scotland on what they think a robust, transparent and proportionate response to this issue should look like in 2015 and beyond. It is important to do this in the context of the existing legislation, role of professional and regulatory bodies and the significant progress towards voluntary registers by the pharmaceutical industry. We have read with interest the responses received by the Committee from a wide range of stakeholders. What we haven't yet seen is the views of patients and their families and we think this is essential in moving this issue forward.

There are a range of aspects where there is no consensus in the views given to the Committee including responsibility for keeping and updating registers; professions and groups covered; the thresholds of what should be disclosed; the status of the registers i.e. mandatory or voluntary and what should happen in the event of non-compliance. It is also worth mentioning that while the evidence provided to the Committee focuses on the pharmaceutical industry, clearly what the petitioner is seeking is wider than that.

In August 2014 the Scottish Government sought the views of Dr Gordon in response to correspondence received from him on this issue. In particular we were keen to understand his views on the scope of any registers. This followed support for registers being in place for "healthcare workers" however the view expressed by Dr Gordon to the Committee was that this would not include pharmacists at this stage, and possibly not GPs. At that time we said that if Dr Gordon wished to provide us with further information on his views on this aspect and views on where he believed best practice exists we would, of course, be happy to receive them. Although we have not received anything further from the petitioner on these points the Scottish Government remains happy to consider any views from Dr Gordon.

It is the Scottish Government's view that there is a real willingness from NHS Boards to make progress on this issue and move to a system fit for 2015 and beyond. Therefore the Scottish Government will lead on conducting a wider consultation on views to establish where we can achieve consensus among stakeholders and particularly the views of patients and their families. If such consensus can be achieved, then we can make an assessment of any associated resource implications.

I will repeat that the Scottish Government also remains happy to consider any recommendations from the Public Petitions Committee on this issue.

Yours sincerely

KATHRYN FERGUSSON
Head of Medicines Branch