

PE1605/M

Scottish Government letter of 14 October 2016

CONSIDERATION OF PETITION PE01605 - (Whistleblowing in the NHS – a safer way to report mismanagement and bullying)

Dear Stephen

Thank you for your letter of 16 September 2016 addressed to Carole Finnigan, Committee Liaison Officer, seeking the Scottish Government's view on the above petition; and to establish what progress is being made in relation to the implementation of the non-executive Whistleblowing Champion role in each NHSScotland Board.

It may be helpful for me to explain from the outset that the Scottish Government, NHSScotland Boards, trade unions and professional organisations have a long tradition of working together to improve our health services. All policies to encourage and promote whistleblowing in NHSScotland and to support staff that whistleblow have been developed and agreed in partnership and as such we are confident that these policies are robust and fit for purpose.

NHSScotland Confidential Alert Line (NCAL)

This includes the establishment of NCAL which provides a confidential service should staff have any doubt about whether or how to raise a whistleblowing concern, or worry about doing so. NCAL provides a safe space for staff to discuss their concerns with legally trained advisers who help the caller identify and consider their options. Also, NCAL can, if appropriate, pass cases to the Board or appropriate Regulatory or scrutiny body on behalf of the staff member for further investigation.

Increasingly, callers have raised their concern internally first which may suggest that staff are feeling more confident about escalating issues using internal procedures. The last NCAL six month review report (for the period 1 August 2015 to 31 January 2016) highlighted that none of the callers said that their concern had been ignored and the majority of concerns were either admitted or under investigation.

Since its launch on 2 April 2013 to 31 March 2016, a total of 276 cases have been raised with the NCAL. This figure includes both public (whistleblowing) and private (contractual) cases. Although the number of cases raised through the Alert Line has decreased from 146 in 2013 to 44 in 2015, we have no evidence to suggest that this is because staff do not have confidence in the service.

Turning to the petition, it is worth noting that the key feature requested in the petition (referral for external scrutiny) already exists, as NCAL can, if appropriate, pass cases to the appropriate Regulatory or scrutiny body on behalf of the staff member for further investigation. To date, Public Concern at Work (PCaW), the independent whistleblowing charity that run the Alert Line has referred 9 cases to Healthcare Improvement Scotland (HIS) under this process. The [HIS website](#) includes case studies of their handling of cases received through this process. The website also

contains reports on the findings and recommendations from reviews of concerns presented to HIS via NCAL.

You may wish to note that the NCAL contract has been renegotiated and extended from 1 August 2016 until 31 July 2017. This will ensure that PCaW continue to provide a cost effective service that reflects the number of calls received and other services they provide, including, user feedback, training for NHSScotland staff and information on the numbers of cases of bullying and harassment reported through the line.

Non-executive Whistleblowing Champions

The Whistleblowing Champion role was also developed in partnership, in direct response to the recommendations from the Freedom to Speak Up Review. The Scottish Government, along with our partners, are confident that the appointment of non-executive Board members to undertake the role of the Whistleblowing Champion is appropriate as they can provide independent assurance at local level.

Whistleblowing Champions were introduced in each NHSScotland Board in November 2015 and have a critical oversight and assurance role which includes:

- a conduit role, working closely with the named Whistleblowing Policy contact(s), HR, Governance Committees, NHSScotland Boards and the Independent National Officer (INO) (when this role is established)
- assurance that the benefits of raising concerns about patient safety and malpractice are highlighted and widely publicised
- assurance that staff at all levels have access to the range of mechanisms and support available to report or discuss any concerns they may have about patient safety or malpractice
- discussing the number of and nature concerns at the Staff Governance Committee and reporting to the NHSScotland Board on a quarterly basis

The Whistleblowing Champion looks for assurance that investigations are being handled fairly and effectively by ensuring that:

- reported cases are being investigated
- regular updates are provided on the progress of the investigations of reported cases
- staff members who report concerns are being treated and supported appropriately and not victimised
- staff are regularly updated on the progress of the concern they reported and advised of investigation outcomes
- any resultant actions are progressed.
- relevant Governance Committees staff, staff representatives and whistleblowing policy contacts are updated on the progress and outcomes of cases and recommended actions resulting from investigations
- positive outcomes and experiences are publicised and championed

It is important to note that Whistleblowing Champions do not form any part of whistleblowing policy. They are not a point of contact for staff nor do they get

involved in the investigation of any cases as this could potentially compromise their independence and subsequently their oversight role.

Whistleblowing Champions have had training to develop their knowledge and understanding of the legal and support mechanisms for whistleblowers, and to gain a detailed insight into the complexities and challenges surrounding whistleblowing. The content of the sessions included:

- the history of developments in speak up policy and the creation of the Whistleblowing Champion role - including a session considering responsibilities and what the position entails
- interplay and integration of various existing policies and procedures and consideration of key policy messages and best practice
- methods, ideas and suggestions on reporting and review
- exploring the Whistleblowing Champion's oversight and assurance role

The training also identified what the Whistleblowing Champions would find helpful in Guidance and this is currently being developed, in consultation with the Whistleblowing Champions themselves. We are also planning further training for staff including the named whistleblowing contacts in every NHSScotland Board on whistleblowing policies and practice to enhance awareness and ensure consistency in the handling of whistleblowing cases.

Independent National Whistleblowing Officer (INO)

Also, in direct response to the recommendations from the Freedom to Speak Up Review, work is underway to establish an INO to complement existing policies and provide independent and external review on the handling of whistleblowing cases in NHSScotland. This will further contribute to better patient safety and also encourage an open and honest reporting culture.

Following a full public consultation on detailed proposals an independent external analysis of the consultation responses was undertaken and the analysis report published. Our proposals have been welcomed with strong support. The Scottish Government has responded and the documents can be viewed here:

<https://consult.scotland.gov.uk/health-workforce/independent-national-whistleblowing-officer>

Whistleblowing policy in NHSScotland

In addition to the above, much has already been done to develop policies where staff are encouraged and supported to raise any concerns. The NHSScotland Staff Governance Standard places a specific obligation upon employers to ensure that it is safe and acceptable for staff to speak up about wrongdoing or malpractice within their organisation, particularly in relation to patient safety. Under the Standard, staff must also ensure that they speak up when they see practice that endangers patient safety and/or which causes upset and alarm in the workplace - in line with the whistleblowing policy. The Scottish Government also undertake an annual monitoring exercise to ensure compliance with the Standard.

The national Whistleblowing policy “Implementing & Reviewing Whistleblowing Arrangements in NHSScotland” Partnership Information Network (PIN) policy encourages staff to raise any valid concerns and the policy specifies that they will have their concerns taken seriously and investigated appropriately. The policy also makes it clear that if a member of staff raises a genuine concern, they will not be at risk of losing their job or suffer any detriment. Our policies also ensure that anyone who victimises staff for genuine whistleblowing will be subject to disciplinary procedures.

In 2014, the Scottish Government took the lead and stopped the standard practice of using of confidentiality clauses in NHSScotland settlement agreements. This was in response to a perception that they were used to “gag” staff, and they are now only used with the explicit consent of staff. This has seen a dramatic drop in their use. We have developed and published Guidance for NHSScotland employees and employers on the appropriate use of confidentiality clauses and derogatory statement clauses in settlement agreements.

We have also worked closely with the UK Government to ensure that NHSScotland employers are included in new legislation to protect whistleblowers applying for jobs within NHSScotland from discrimination from prospective employers. It is anticipated that the new regulations will be introduced in early 2017.

The Scottish Government is clear that there should be absolutely no impediment to employees raising concerns about patient safety or malpractice in NHSScotland. We recognise that staff are best placed to notice if something isn’t good enough or below the standard we expect, so supporting them to speak out is vital to ensuring that poor practice is highlighted wherever and whenever it occurs. We value whistleblowing and are keen that we have the right environment and measures in place to support whistleblowers.

I hope this clarifies the Scottish Government’s position.

Yours sincerely

Alison Carmichael
Staff Governance Associate