



The Scottish Parliament
Pàrlamaid na h-Alba

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Cabinet Secretary for Health and
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Via email only

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Dear Cabinet Secretary,

THE GOVERNANCE OF THE NHS IN SCOTLAND – ENSURING DELIVERY OF THE BEST HEALTHCARE FOR SCOTLAND

Thank you for your letter of 3 September providing the Scottish Government's response to our inquiry report "The Governance of the NHS in Scotland – ensuring delivery of the best healthcare for Scotland".

We are pleased that you acknowledge in your response that our report will add pace to the important work underway to improve the culture within health and social care in Scotland to ensure it is one of openness and transparency.

You request in your response an opportunity to discuss the report with the Committee. In the first instance we consider there are several areas within the report which we would like to request further information and clarification on in writing. These are detailed below grouped under the headings from the report and listing the report paragraph number that your response referred to.

Staff Governance

Pressure on staff- paragraphs 44-45

Our consideration of the Health and Care (Staffing) (Scotland) Bill has highlighted the statutory role Integration Authorities have in relation to workforce planning. Reference is made in your response to the Scottish Government working with COSLA to develop a comprehensive workforce planning approach in social care. Given Integration Authorities'

statutory responsibilities, are you able to confirm their involvement and that of Independent Care Providers in this specific work?

Consultation and staff relations - paragraph 63

Your response to our report details that legislation will be introduced in the autumn to establish an Independent National Whistleblowing Officer (INWO) for NHS Scotland. The former Cabinet Secretary for Health and Sport indicated it was expected this would be introduced by secondary legislation.

Are you able to confirm if this is still the case and if so whether the secondary legislation will be subject to affirmative or negative procedure? It would be helpful if you were able to indicate when you expect the legislation to be introduced.

Whistleblowing - paragraph 117

You state in your response to our report that whistleblowing standards will be introduced and consulted upon. Are you able to provide further details on whether these standards will require any legislative changes?

You detail that it is expected the INWO role will include reviewing local processes, decision making and outcomes and assessing whether whistleblowing standards have been followed. Can you provide further insights into what will happen if the INWO determines that processes and standards have not been met? Will sanctions be imposed on the NHS board or individual employees as a result? Where the INWO's findings indicate failings, where will responsibility lie for ensuring improvements are made?

Whistleblowing - paragraph 118

Reference is made in your response to organisations now being required to publish annual reports on incidents that have activated the Duty of Candour procedure. How will the impact of these reports and the duty of candour process be monitored? What will be the INWO's role in this process?

Your response details that nine Health and Social Care Partnerships are not using iMatter. Which HSCPs are these? It would be useful to know the reasons for this and what alternative monitoring they have in place to assess staff experience. What steps are the Scottish Government taking to encourage these remaining HSCPs to use iMatter?

We note in your response to our report reference is made to the Dignity at Work Survey not running in 2018. As we detail in our report it is important to monitor and assess whether new approaches to supporting individuals to feel more confident to raise concerns are delivering changes. With no survey in operation for 2018 how will this assessment be made?

Whistleblowing - paragraph 119

We note your response does not offer support to our recommendation that the Scottish Government introduce an investigative line for whistleblowing. We believe the introduction of a reporting line for NHS whistleblowers would further enhance the external support services available to NHS staff. The Committee's interest is in ensuring appropriate support is available at the first stage of the process to encourage individuals to speak out. Will the INWO have a role in encouraging whistleblowers to speak out or will they only become involved in the later stages of the process?

Whistleblowing - paragraph 120

We recommend in our report that the Scottish Government allow NHS boards to appoint individuals other than non-executive board directors to the role of Whistleblowing Champion. Your response states the Scottish Government will ask NHS boards to consider the Committee's comments. Are you able to provide further detail on the reasons you do not consider this direction should come from the Scottish Government given the previous instruction in a Chief Executive Letter to appoint a non-executive director to the role?

Whistleblowing - paragraph 121

You state in your response that employment tribunals provide redress where someone has suffered detriment as a result of whistleblowing. However, we are also interested to know the extent to which the individuals responsible for the maltreatment of whistleblowers are held to account. You state that the unfair treatment of staff is a disciplinary matter, but is the Scottish Government satisfied this happens to the extent to which it should? Will the INWO be able to recommend action against individual members of staff? Will the Scottish Government be taking any further steps to ensure those responsible for mistreating whistleblowers do not go unpunished?

Regulation of managers - paragraph 132

You state agreement with our recommendation that NHS management should be subject to professional accountability for their decisions and actions and indicate that work is underway to identify suitable and proportionate mechanisms through which this might be best achieved. Are you able to provide further detail on who is involved in the development of this work and when this work will report?

Integration authorities - paragraph 137

In discussion on the NHS staff governance standard you state you share the concerns expressed by COSLA on the apparent lack of engagement from the Committee with local government and the third and independent sectors during our inquiry. COSLA and local government were provided with several opportunities to engage with our inquiry but no submissions were received.

During our inquiry we issued three separate calls for written views on the staff, clinical and corporate governance of the NHS. These were general calls for views open to all and you will of course appreciate both included further targeted contact with the Committee's key stakeholders (including COSLA and local authorities) to encourage engagement. Whilst some responses were received from the third sector and trade unions we were disappointed not to receive any written responses from local authorities or COSLA despite providing an opportunity for them to engage. The Committee draws upon its written submissions to determine who it wishes to hear from in formal oral evidence sessions.

We would welcome any encouragement you are able to provide to COSLA to timeously engage with our work.

Staff Survey and iMatter - paragraphs 143-166

We asked in our report for the Scottish Government to detail what response rate it hopes to achieve in the next annual report of iMatter.

Our recommendations also highlight the significant variation in response rates for both the iMatter questionnaire and the Dignity at Work Survey between different board and NHS organisations. We asked the Scottish Government to provide an explanation for this variation between boards and how it would be tackled.

We also stated in our recommendations the huge variation across NHS boards in the extent to which iMatter action plans are being completed. We asked for the reasons for this variation and what steps it is taking to increase the usage of action plans by the NHS boards who are currently performing badly. We also asked what percentage share of completed action plans the Scottish Government would expect each NHS board to achieve in 2018. We would welcome all of the information above.

Your response refers to the current external evaluation of the approach to measuring staff experience being conducted by the University of Strathclyde. We recommended consideration be given to whether future assessment of staff experience should extend to an analysis looking at trends across staff groups or clinical specialisms as well as by NHS board. Are you able to confirm whether the current external evaluation will include consideration of this suggestion?

Clinical Governance

Standards and guidelines of care

Paragraph 214

In relation to the new Health and Social Care Standards we concluded that inspections should seek to identify the reasons for poor performance and assess whether there are systematic issues faced across NHS boards which need to be addressed. Your response does not cover these specific points and it would be helpful to receive your views on this.

The Role of HIS

Paragraph 216

The Committee's recommendation at this paragraph included concern over the lack of coherence in scrutiny by HIS, with the rationale for what is inspected and monitored and what is not being unclear. These concerns do not appear to be addressed in your response. Will the Scottish Government also commit to ensuring that HIS institutes a clear framework for inspection and scrutiny?

In your response you detail that HIS have the same legal status and largely the same range of scrutiny and inspection powers as the Care Quality Commission (CQC). We note the role the CQC has in patients raising concerns and complaints with them. Will the consideration of additional powers for HIS include it having a greater role in dealing with complaints?

Learning and improving when things go wrong

Paragraph 238

You refer to work being taken forward on identifying how systems such as Datix, duty of candour, adverse events or complaints etc. are currently supporting the overall aim of openness and learning; how their effectiveness could be further enhanced; and what else

needs to change to deliver the vision of a culture of openness and learning. Can you provide further information on the remit and timescale for this work?

Paragraph 241

We recommend in our report that at an NHS board level an individual within its complaints management team should be tasked to lead on driving improvements in complaint handling. Your response refers to Clinical Governance Committees of the boards considering a range of reporting systems to identify improvement priorities. Please can you indicate if this approach is proposed as an alternative to giving an individual within the complaints management team specific responsibility to lead on driving improvement. We would welcome elaboration of the reasons why you consider this approach will be more effective?

Serious Adverse Events- paragraphs 278-282

We welcome your statement that there must be consistency of approach across NHS Boards as regards to category one adverse events. Will the Scottish Government also confirm that this includes ensuring greater consistency between boards in the definition of adverse events?

We welcome your commitment to considering the introduction of a standardised national Adverse Event reporting process. It would be helpful if you could provide further information on what this consideration will involve and when it is expected a decision will be made on whether a reporting process will be introduced.

Corporate Governance

Accountability - paragraphs 330, 427

Your response to recommendations on accountability refers to the Scottish Government review of progress with integration. Are you able to provide further details on the remit and timescales for this review?

Your response makes no mention of the accountability arrangements for regional boards. Can you confirm whether any work is planned to address issues we heard regarding the lines of accountability between NHS Boards and regional boards?

Targets and Indicators - paragraph 333

We requested an update from the Scottish Government on the actions it is taking following the Targets and Indicators in Health and Social Care in Scotland review by Sir Harry Burns. This was not provided in your response to the report, and we would welcome such an update.

Scottish Health Council – paragraph 396

We called for the functions of the Scottish Health Council to be re-allocated to a fully independent body. The concerns we identified with the SHC rest primarily with a perception of it having a lack of independence than with it needing to engage more effectively at a strategic level. Your response discusses building capacity in the SHC and strengthening leadership and staffing to engage at a more strategic level. We would welcome details on how the changes that are proposed for the SHC will address concerns about the perception of its independence? Will there be any changes to remit and structure

of the SHC at board level as part of the steps being taken to strengthen leadership and staffing? Finally given earlier discussions with the SHC we would welcome detail of the user input into these proposed changes to the SHC.

In relation to integration authorities and public involvement, can the Cabinet Secretary confirm whether or not there are any plans to use the Ministerial power of direction to implement the same oversight of IJB decisions that are currently required of NHS boards (e.g. processes around service change as set out in CEL 4(2010))?

Your response to the issues raised above would be much appreciated by Friday 12 October. The Committee will then decide if it wishes to invite you and Scottish Government officials to a formal meeting of the Committee to discuss further.

Yours sincerely



Lewis Macdonald

Convener, Health and Sport Committee