

30 October 2018

David Cullum  
Clerk to the Committee  
Health and Sport Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr Cullum

**The Governance of the NHS in Scotland – Ensuring Delivery of the best healthcare for Scotland**

I and my office have been reflecting on the above report published on 2 July 2018. I very much welcome the findings of the Health and Sport Committee's inquiry into NHS Governance. I have a number of observations which I hope you find helpful, in particular in relation to the treatment of Whistleblowers.

In relation to the section of the report 'Treatment of Whistleblowers' (page 12), I was encouraged by the Committee's view that *'NHS employees are meant to be protected from detrimental treatment when raising concerns. We believe the new INWO will have a key role to play in ensuring whistleblowers are treated fairly'*.

Part of the INWO role is being responsible for developing the new Whistleblowing Principles, Standards and Procedure that will guide and underpin the NHS's handling of protected disclosures. The protection all staff involved in the whistleblowing process (those whistleblowing, who are the subject of whistleblowing and who give evidence) is a central tenet of our approach. We hope to consult on the draft principles within the next few weeks. If you would like me to alert you specifically to the consultation when it goes live, please let me know.

In relation to the report's second strand of inquiry, Clinical Governance, I have the following observations relating to NHS complaints.

Paragraphs 227-230 and 239, state findings of a number of barriers to patients making complaints:

- a) patients' lack of awareness and understanding of the process
- b) each NHS Board has its own procedure for complaints
- c) concerns that raising a complaint would have repercussions on care

- d) lack of confidence that raising a complaint would result in changes to care and treatment.

These barriers largely replicate the findings of the Scottish Health Council's report '*Listening and Learning - How Feedback, Comments, Concerns and Complaints Can Improve NHS Services in Scotland*' published in April 2014, which was the catalyst for the NHS model complaints handling procedure (CHP) which came into force on 1 April 2017. Specifically, the procedure:

- a) requires NHS bodies to ensure that people are aware of their right to complain, and that information about the procedure is widely publicised, simple and clear, and easily accessible at all times, not just made available when someone wishes to complain.
- b) requires all NHS bodies to operate the same standardised two-stage complaints handling procedure. This includes NHS Boards as well as health care providers such as GPs, dentists, opticians, pharmacists, and other contractors such as cleaning or catering providers.
- c) places a strong focus on introducing a culture that values complaints and actively encourages and monitors all forms of feedback. Each NHS body's CHP clearly states a commitment to welcoming complaints, and using complaints outcomes to continuously improve services. The procedure focuses on building positive relationships with people who use the service and rebuild trust when things go wrong. At the heart of the process is the person making the complaint, their families and carers.
- d) aims to address the lack of confidence about whether complaints lead to improvements by placing the learning from complaints as an NHS complaints performance indicators. The Complaints Directions place a responsibility on Boards to gather and review information on this indicator (and eight other complaints indicators) on a quarterly basis.

The concern raised in paragraph 231 that there should be more involvement of patients at an early phase of a complaint investigation is one with which I agree entirely. The model procedure requires the NHS body to ensure they understand exactly what the complaint is, the outcome the person is seeking and, where these expectations are not realistic or possible, to manage the person's expectations from the outset. The procedure also provides guidance on meeting with the person during the complaint investigation as well as after the decision is issued, thus keeping the person at the heart of the process.

My office monitors complaint handling through the complains we receive. While we see some very good examples, we also recognise that there is some way to go. With this in mind we ourselves are soon to publish our Support and Intervention Policy which will set out how we will support all Scottish public bodies in learning from complaints, and where appropriate what formal action we will take to drive action from such learning.

Finally, in relation to the recommendation made in paragraph 241 that '*at an NHS board level an individual within its complaints management team is tasked to lead on driving these improvements in complaint handling*'. Under regulation 3(3) (The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012), each relevant NHS body must appoint a feedback and complaints manager, to ensure compliance with the arrangements, and in particular to ensure that the feedback, comments, concerns or

complaints received are monitored with a view to improving the performance of functions. It could be that this function meets the requirement that the Committee is looking for?

I hope this is helpful. Once again, thank you for sharing the Committee's report. Should the Committee require any clarification or further comment please let me know.

Yours sincerely

A handwritten signature in black ink that reads "Rosemary Agnew". The signature is written in a cursive style with a large initial 'R' and 'A'.

Rosemary Agnew  
**Scottish Public Services Ombudsman**

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