HEALTH AND SPORT COMMITTEE

CONSULTATION ON THE PROPOSALS FOR NEW INDEPENDENT NATIONAL WHISTLEBLOWING OFFICER ROLE

SUBMISSION FROM AUDIT SCOTLAND

The call for written views is asking for responses to the following questions:

> How will the order affect the whistleblowing process?

Audit Scotland have been clear over a number of years about the need to foster a culture of openness and transparency within the NHS. Whistleblowing and the processes in place for staff to raise concerns are a key aspect of staff governance. It is very important that individuals feel confident to speak out when they feel they need to raise concerns.

In our 2017 report, NHS workforce planning: The clinical workforce in secondary care, we commented on the fact that while all NHS boards have whistleblowing procedures in place, in 2015, just over half (56%) of staff reported they felt safe to speak up and challenge the way things are done if they have concerns about quality, negligence or wrongdoing by staff. This suggests that the scale of staff concerns could be underestimated if those who do not feel safe to speak up do not do so.

The Dignity at Work Survey 2017 found that 65% of respondents believed it was safe to speak up and challenge the way things are done if they have concerns about quality, negligence or wrong doing by staff. This is a marked increase of 9% from the 2015 survey. However, the findings show that over a third of staff felt it was unsafe to speak up.

In the recent, independent review report looking at cultural issues related to allegations of bullying and harassment in NHS Highland, John Sturrock, noted that ‘the existing system for whistleblowing’ in NHS Highland ‘does not seem to have functioned as effectively as it needs to and that further steps should be taken to provide a properly functioning, clear, safe and respected wholly independent and confidential whistleblowing mechanism.’ Further to this, ‘all staff should be aware of how to use this and in what circumstances its use is relevant so that individuals with concerns are able to express these confidently in the future.’

Audit Scotland are clear that all organisations should have in place a well-publicised whistleblowing disclosure policy which explains how staff can safely raise a genuine issue of concern. We recommend that staff follow their organisation’s whistleblowing disclosure policy.

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5 Health and social care staff experience: report 2017, Scottish Government, March 2018
6 Report to the Cabinet Secretary for Health and Sport into Cultural Issues related to allegations of Bullying and Harassment in NHS Highland, John Sturrock QC, April 2019
policy before taking their concerns elsewhere unless they have concerns that by doing so, they believe they will be victimised, or the matter will be covered up. The whistleblower can then opt to raise their concerns with a ‘prescribed person’.

It should be noted that, Audit Scotland has a formal role under the Public Information Disclosure Order 1998. Audit Scotland, the Accounts Commission, the Auditor General and the audit teams we appoint are all ‘prescribed persons’ under the order. This means that whistleblowers (workers/employees) can raise issues of concern (disclosures), with us about fraud, corruption or wrongdoing within the public bodies we audit. However, we do not have a legal obligation to act on a whistleblowing disclosure.

Audit Scotland cannot give legal advice about raising a whistleblowing disclosure. However, we can direct whistleblowers to ‘Protect’ who are a charitable organisation that can provide independent and confidential advice to workers who are unsure whether or how to raise a public interest concern. Their advice line is managed by qualified lawyers with experience in whistleblowing law and practice.

We think it is right that the Independent National Whistleblowing Officer (INWO) is the final stage for whistleblowing concerns about the NHS in Scotland and that the INWO cannot normally look at concerns where a correspondent has not gone all the way through their organisation’s whistleblowing procedure.

Having an independent body that can provide independent challenge and oversight and investigate dissatisfaction about how a whistleblowing case was handled internally by the public body would provide that extra layer of reassurance, particularly for those who fear that blowing the whistle could detrimentally affect them.

The whistleblowing principles and standards, as well as a standardised process would ensure due process is followed and ensure consistency in the handling of whistleblowing concerns.

> Should the Ombudsman fulfil the role of Independent National Whistleblowing Officer?

Yes. Independence from the bodies in question is essential and it will be important that this role sits outside the governance of NHS Scotland. Public sector complaint handling processes can be complex. The system needs to be as simple as possible. The Ombudsman is best placed to fulfil this role; the Scottish Public Service Ombudsman (SPSO) is well-established and credible.

> Does the order give the Independent National Whistleblowing Officer adequate powers?

Yes. We think it is right that the Independent National Whistleblowing Officer (INWO) is the final stage for whistleblowing concerns about the NHS in Scotland and that the INWO
cannot normally look at concerns where a correspondent has not gone through either their organisation’s whistleblowing procedure or raised their concern with a prescribed person.

It is good to see that the review powers and the National Whistleblowing Standards would be also applicable to all those contracted to deliver NHS services and including primary care.

> Is there anything you would add, amend or remove from the order?