



T: 0300 244 4000
E: scottish.ministers@gov.scot

Lewis Macdonald MSP
Convener
The Health & Sport Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

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HEALTH AND SPORT COMMITTEE: THE GOVERNANCE OF THE NHS IN SCOTLAND - ENSURING DELIVERY OF THE BEST HEALTHCARE FOR SCOTLAND

I am writing to provide a Scottish Government response to the Health and Sport Committee's report "The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland" which was published on 2 July.

The Scottish Government welcomes this wide ranging report and its overarching theme around the need for a more open and transparent culture in the NHS, both in respect of staff and patients, particularly where things have gone wrong. I agree that staff should be encouraged and enabled to speak up and the public should be confident that issues and concerns will be investigated, improvements made and lessons learnt.

As our detailed response sets out, we already have a programme of work underway to support a culture within health and social care in Scotland that is open and transparent; one that learns both when things go well and when they go wrong. This includes implementation of our statutory organisational duty of candour and measures to support staff to feel empowered to raise issues and concerns. The Committee's report highlights the shared political commitment to openness and transparency in Scotland and I am confident that this report will help add pace to this important area of work.

The 3 annexes to this letter set out the detailed response to the recommendations and key points in the Committee's report under the three main subject areas covered:

- Staff governance - Annex A
- Clinical governance - Annex B
- Corporate governance - Annex C

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I would very much welcome the opportunity to discuss the report and our programme of work with the Committee along with Paul Gray, Director General of Health and Social Care and Chief Executive of the NHS in Scotland and Professor Jason Leitch, the National Clinical Director. My office will be happy to work with the clerks to identify a suitable date.

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



At a national level our focus is on introducing legislation in the autumn to establish an Independent National Whistleblowing Officer for NHS Scotland to go live by end September 2019. This will provide an external review where a member of staff feels they have been bullied or harassed after raising whistleblowing concerns. We are clear that the INWO will have the ability to provide independent challenge and oversight with the statutory powers it needs to make a real difference and the power to access any relevant information needed to reach a view on a case and lay reports in parliament. The role includes reviewing the application of local process, decision making, and the outcome. This also includes whether the whistleblower has been treated in line with whistleblowing standards the SPSO intends to set and the organisational culture.

The INWO will also have a national leadership role, providing direction, support and guidance to the relevant bodies with the focus on continuous improvement, early resolution, recording and reporting.

We have also committed to reviewing the bullying and harassment workforce policy, and this has been prioritised in the first tranche of policies to be reviewed on a 'Once for Scotland' basis, by the end of February 2019.

Committee Recommendation

117. Whilst there has been an increase in NHS staff feeling confident to speak up, there is still over a third of staff who feel unwilling to do so. We believe this issue must be addressed. Ultimately there needs to be a culture of openness and transparency. There must also be mechanisms in place for staff to raise concerns in an environment where the support and guidance offered to NHS staff is both valued and trusted.

Response to the Committee Recommendation

We agree more needs to be done to promote an open and transparent culture.

Significant progress has been made but we agree that more should be done to encourage staff to speak up and reassure staff that concerns will be listened to and acted upon. Evidence shows the majority of staff feel it is safe to speak up and raise concerns. The latest (November 2017) Dignity at Work Survey show 65 per cent of staff feel it is safe to speak up and raise concerns up by almost 10 percentage points on the last survey in 2015. Only 19% of staff disagreed (less than 1/5th of respondents).

We are leading this at national level in conjunction with the SPSO, by introducing whistleblowing standards, including challenging timeframes which the new independent whistleblowing Officer will use to hold Boards to account as the final, external stage scrutiny of whistleblowing concerns.

This will provide an external review where a member of staff feels they have been bullied or harassed after raising whistleblowing concerns. We are clear that the INWO will have the ability to provide independent challenge and oversight with the statutory powers it needs to make a real difference and the power to access any relevant information needed to reach a view on a case and lay reports in parliament. The role includes reviewing the application of local process, decision making, and the outcome. This also includes whether the whistleblower has

been treated in line with whistleblowing standards the SPSO intends to set and the organisational culture.

The INWO will also have a national leadership role, providing direction, support and guidance to the relevant bodies with the focus on continuous improvement, early resolution, recording and reporting.

Legislation is being introduced in the autumn alongside a consultation on the new whistleblowing standards – with this work being led by the SPSO to ensure independence and impartiality. This builds on our earlier stakeholder events and will provide space for the Committee to input into the proposed approach. The INWO will be operational from September 2019.

Our policies are already clear that the unfair treatment of staff is a disciplinary matter. We have also committed to reviewing the whistleblowing workforce policy, and this has been prioritised in the first tranche of policies to be reviewed on a 'Once for Scotland' basis, by the end of February 2019.

Committee Recommendation

118. We welcome the acknowledgement by the Scottish Government that changes need to be made to support individuals to feel more confident to raise concerns. We welcome the recent introduction of the Duty of Candour and the forthcoming creation of the post of Independent National Whistleblowing Officer (INWO). We believe these measures have the potential to make valuable contributions to achieving a cultural change in how the NHS in Scotland treats whistleblowing. We ask the Scottish Government to provide further information on how it will monitor and assess the implementation and impact of these new policies and what difference it expects them to deliver. In particular we expect to see a significant improvement in the percentage of staff feeling 'confident to speak out' and ask the Scottish Government what level it expects to see in the 2018 Staff Experience Report as a result of these changes.

Response to the Committee Recommendation

We welcome the Committee's constructive comments on the Duty of Candour and the INWO.

Organisations must now publish annual reports on containing incidents that have activated the Duty of Candour procedure. This further layer of transparency will help inform understanding and assess the impact of this new policy.

We expect the creation of the INWO role and standards to drive improvements. The intention is for the INWO to support and improve the response of the relevant body when handling concerns raised by staff, including a duty to record and report all whistleblowing cases in a standardised way. The new Whistleblowing Procedure currently being developed for this purpose will provide a simple, time bound and streamlined process for resolving whistleblowing concerns early and locally by capable, well-trained staff.

Work is also underway to create a single standardised whistleblowing policy that is user friendly and puts staff and managers at the centre. This will result in a more consistent approach from Health Boards than under the current arrangements.

We anticipate that the INWO will also have a duty to report on its investigations and share a copy of the report with the Scottish Ministers and Parliament. This will allow us to assess the impact of this new role.

We have transformed our approach to staff experience through iMatter, which has become the most engaging and inclusive staff experience measurement ever run across NHS Scotland, with 108,230 respondents from 22 Health Boards and 23 HSCPs and a response rate of 63%.

In contrast to iMatter, the response rate to Dignity at Work (DaW) Survey remained stubbornly low (36%) and similar to previous national staff surveys. This suggests that staff are not engaging with this approach and we need to find a better way to engage with staff on the issues covered. We have recently commissioned Strathclyde University to evaluate our approach to measuring staff experience with a final report in June 2019, this will give us expert advice on how we can improve our levels of engagement on these issues. Whilst the DaW survey will not run in 2018, we expect Boards to use the time to take action on the results of the previous survey and for the evaluation to give us recommendations on how we can better monitor and take action on these important issues.

Committee Recommendation

119. We recommend that the Scottish Government introduce an investigative line for whistleblowing. We believe that an investigative line would work well in conjunction with the new role of Independent National Whistleblowing Officer in providing external oversight and support to the whistleblowing system.

Response to the Committee Recommendation

Working with the Scottish Public Services Ombudsman we are already introducing whistleblowing standards set independently that will be used to hold Health Boards to account.

An investigative line may be the correct solution for other employers where it is the main form of external scrutiny. However for NHS Scotland, Whistleblowers will have the opportunity to raise their concerns externally through the Independent National Whistleblowing Officer (INWO) with this function held by the Scottish Public Services Ombudsman. The potential exclusion of Health Boards from whistleblowing investigations at the first stage could complicate and extend any investigative process.

It is right that Boards, as employers have the responsibility to initially respond to a concern and this is key in improving local culture but where a whistleblower remains concerned they will be able to raise the issue with the INWO. This process is also supported by advice from the independent Whistleblowing Alert and Advice line service funded by the Scottish Government

In our view external scrutiny is more appropriate at this second stage than at stage one through an investigative line, this helps promote a culture where the majority of concerns can be raised and resolved locally, promoting continuous improvement.

Committee Recommendation

120. We recommend that the Scottish Government allow NHS boards to appoint individuals other than non-executive board directors to the role of Whistleblowing Champion. We also recommend there is staff involvement in the appointment process. A mixture of non-executive board members and non-board members which staff have been involved in appointing may assist in instilling confidence in the system. It will also enable a comparison to be made between the two different types of Whistleblowing Champion to determine if there is any difference in outcome depending on who is in the role.

Response to the Committee Recommendation

We support the Committee's view that the role of Non-Executive whistleblowing champion has added value in improving oversight and governance. Staff need to have the confidence to raise concerns locally and Health Boards need to ensure the right people are in place to respond to concerns with the right skills and training, recognising that the non-executive role is around governance rather than a contact point for staff in live whistleblowing cases.

We are leading on improving culture and processes at a national level in conjunction with the SPSO, by introducing whistleblowing standards, including challenging timeframes which the new independent whistleblowing Officer will use to hold Boards to account as the final, external stage scrutiny of whistleblowing concerns.

This will provide an external review where a member of staff feels they have been bullied or harassed after raising whistleblowing concerns. We are clear that the INWO will have the ability to provide independent challenge and oversight with the statutory powers it needs to make a real difference and the power to access any relevant information needed to reach a view on a case and lay reports in parliament. The role includes reviewing the application of local process, decision making, and the outcome. This also includes whether the whistleblower has been treated in line with whistleblowing standards the SPSO intends to set and the organisational culture.

The INWO will also have a national leadership role, providing direction, support and guidance to the relevant bodies with the focus on continuous improvement; early resolution, recording and reporting.

Legislation is being introduced in the autumn alongside a consultation on the new whistleblowing standards – with this work being led by the SPSO to ensure independence and impartiality. This builds on our earlier stakeholder events and will provide space for the Committee to input into the proposed approach. The INWO will be operational from September 2019.

We will be writing to Boards to ask them to prioritise preparedness for the new whistleblowing policy, standards, and the introduction of the Independent National Whistleblowing Officer.

We will ask them to consider the Committee's comments recognising this will be a decision for Boards to make within the context of their review of local policy support, training and governance arrangements.

Committee Recommendation

121. We believe the new INWO will have a key role to play in ensuring whistleblowers are treated fairly. We ask the Scottish Government

what avenues for redress will be open to the INWO if they establish that an individual has been treated unfairly as a result of raising concerns. We also ask the Scottish Government what sanctions it believes would be appropriate to impose on individual NHS employees who mistreat whistleblowers. We are keen to ensure that the NHS in Scotland encourages and supports whistleblowers and when faced with unfair treatment there should be a clear line of recourse and redress.

Response to the Committee Recommendation

Employment tribunals already provide redress where a whistleblower has suffered detriment as a result of whistleblowing. This is a reserved function, and the Scottish Parliament does not have legislative competence in this area.

We are clear that the INWO should have the ability to provide independent challenge and oversight with the statutory powers it needs to make a real difference. The intended powers which will be subject to parliamentary scrutiny through the legislative process - will give the INWO the power to access any relevant information needed to reach a view on a case, make recommendations and lay reports in parliament.

The INWO will provide an effective mechanism for external review where individual staff members have a concern about how a health body providing services on behalf of the NHS has handled their case. This includes the application of local process, decision making, and the outcome to provide closure for the individual. This also includes whether the whistleblower has been treated in line with whistleblowing standards and the organisational culture. The INWO will also have a national leadership role in setting standards, providing direction, support and guidance to Health Boards/relevant bodies with a focus on continuous improvement, early resolution, and good practice and reporting.

The intention is to bring whistleblowing cases to a clear, fair and final conclusion in a reasonable timeframe. Our policies are already clear that the unfair treatment of staff is a disciplinary matter.

Committee Recommendations

132. We recommend the Scottish Government undertake a review of the case for regulation of NHS management to determine the merits, steps and requirements that would be needed to deliver this change.

Response to the Committee Recommendation

NHS managers are required to make decisions which often have far-reaching and occasionally tragic consequences. We agree that they should be subject to professional accountability for their decisions and actions, and work is underway to identify suitable and proportionate mechanisms through which this might be best achieved.

Committee Recommendation

137. We are pleased to learn that the NHS staff governance principles are gradually being adopted across a number of Integration Authorities. Integration Authorities are now into their third year of operation and we believe there is merit in ensuring these principles are embedded across all Integration Authorities. If the integration of services across health and social care is to be achieved there must be