

Consultation on proposals for the introduction of the role of an independent National (Whistleblowing) Officer (INO)

Question 1: What should the role of the INO be?

Option 2 - To consider complaints about the application of the whistleblowing process, including examination on the decision making and outcome of the whistleblowing complaint.

Please explain your answer.

Option 2 is more likely to add value, improve decision making and be seen as carrying more weight. There seems little point in having a national whistleblowing officer if that person does not ensure the application of national protocols.

The early experience of Ombudsmen in Scotland was that restricting their remit to process issues alone added to the frustration felt by complainants when a high proportion of complaints were ruled out of remit or when the Ombudsman's report dealt only with the way things had been handled, not the substance of the complaint.

If option 1 were followed there is a likelihood that staff will not see the intervention of the INO as helpful; in the scenario given, it could actually further erode staff confidence in the process. However if option 2 were followed then the private/public distinction would have to be very clearly made and understood by all interested individuals and bodies. This would seem an obvious early task for the INO. If this was not undertaken at an early stage, it could later undermine the usefulness of the INO.

Question 2: Do you agree with the principles and process for raising concerns with the INO?

Yes

Please explain your answer.

There seems to be enough guidance, but also leeway, for referrals to be made and for the INO to refine and develop the role and scope as the office of the INO develops. The 'rules' have to avoid duplication and infringing on others' statutory duties, but this may make them difficult for staff and patients to understand and decide whether an approach to the INO would be within their powers.

We have some concerns about the 12 month restriction on historic cases, as there may be important issues which need to be explored and are relevant to current practice.

Question 2a: Do you feel that there should be any additional principles or changes to the process for raising concerns with the INO?

Yes

If yes, what do you feel these should be?

The proposal seems to assume the source of complaints will always be an employee. Who investigates if the source of a complaint is a patient, volunteer or member of the public?

We would suggest some consideration is given to a principle of finality, namely that no further appeals are eligible.

Question 2b: Do you agree with the proposed INO whistleblowing complaint criteria?

Yes

Please explain your answer.

Some people wishing to refer a case to the INO might get confused between criteria ii & iii in their statement. The INO should issue advice and examples to clarify what is required in a statement.

It may also be helpful to cross reference the criteria as applied to the Ombudsman and to clarify the limits of discretion.

Question 2c: Do you feel there should be any additional complaint criteria?

Yes

If yes, what do you feel this should be?

This section makes no mention of financial impropriety, which may not be a criminal offence per se.

Question 3: Do you agree that consideration should be given to the INO having prescribed powers?

Yes

Please explain your answer.

These proposals would represent a reasonable application of enhanced powers.

Without any prescribed powers, the role of the INO is likely to be disregarded and bypassed by both Boards and Staff. There is a need for powers to compel the provision of evidence; the issue of enforcement is less of an issue for the NHS (where Ministers can enforce compliance) but more important if the remit includes the private and third sectors and local authority social care services.

Question 3a: If yes, what do you think these powers should be?

Both

Do you have views on any other powers you think the INO should have?

Please explain your answer.

It seems illogical to have one without the other. If the INO can only demand information then who will follow up the decision of the INO? If it is another existing body or a new one, then there is likely to be duplication and waste of time and resources.

There is also a staff moral angle and to be effective and gain the trust of staff, it needs to be as streamlined a system as possible given that it is entering an arena where there are already many competing agencies and statutory authorities. It also helps the boards to understand who has to be listened to and adhered to, especially given that the INO can praise as well as criticise.

The document does not make clear what the powers of enforcement would be and how those powers would be monitored.

Question 4: Where should the INO role be hosted?

Option 1 - Healthcare Improvement Scotland (HIS)

Option 2 - Scottish Public Services Ombudsman (SPSO)

Do you feel there are alternative options for where the INO could be hosted, and if so where?

Please explain your answer.

We have received mixed responses to this question with the majority stating a preference for the SPSO.

The Ombudsman services have a positive public perception/presence and this would aid and assist the establishment of the INO service. The Ombudsman services already operates on a system of not intervening until almost all avenues have been investigated, thus staff should better understand the role of the INO based on their existing perception/experience of the existing Ombudsman services. The SPSO encompasses health and social services, therefore the opportunities would be open to all health and social care staff whether in the NHS or care sector.

We agree it would be a mistake to create a new public body which could undermine proper processes in decent reporting.

Whilst there is an overlap and synergy with HIS, its focus is - and should be - on patients rather than staff and there is a risk that its ability to undertake its primary responsibilities will be compromised by adding in too many other functions.

Question 5: Do you think employees of adult health and social care services, who are not employed by NHS Scotland, should have access to the INO?

Yes

Please explain your answer.

Again, we have received mixed responses to this question. Concerns have been raised that the INO service needs to be fully established for NHS Scotland staff first before considering expansion.

However, there is also the argument that the inclusion of Integrated Joint Boards (and thus services provided by local authorities and the private and third sectors) is essential. To do otherwise would give a negative signal about the Government's commitment to the integration agenda.

Question 5a: If yes, which IJB services should be covered?

Please explain your answer.

Presumably these will vary by area.

Question 5b: If yes to Q5, do you have a view on how the employees who could have access to the INO could be defined?

The health and social care sector both rely on volunteers for some of their functions, so they would be excluded by the term 'employees'.

Question 6: What do you feel would be an appropriate title for the INO in Scotland?

We have received mixed responses to this question. However, if the role is hosted by SPSO the 'Ombudsman' should appear in the title.

Question 6a: What do you feel would be an appropriate title for the INO in Scotland if the role also covered staff not employed by NHSScotland who deliver health and social care services in Scotland?

Both 'health and social care' and 'ombudsman' should appear in the title if possible.

Question 7: Do you have any other comments to make on the proposals for the introduction of the role of INO.

We agree that there needs to be a robust mechanism for dealing with issues which are not working well within the NHS and social care sectors and that this should be able to encompass whistleblowing. However, a whistleblowing function should not pre-empt a proper, timely focus on reporting issues and concerns which affect those being cared for or the standard of support provided to staff. Confidence in the team in which you work, and that issues pertaining to quality of service and patient safety are taken seriously, should be embedded.

We have some concerns about the creation of an INO. As the consultation document states, this is already a crowded field with a plethora of regulation, inspection, compliance and governance relating to standards, quality, and improvement which means that any new role has to be very tightly circumscribed to avoid duplication and infringement, something that already causes frustration and confusion for patients, the general public and NHS staff. Therefore it may be preferable to add this role to the remit of an existing body.

There is also the risk that the creation of the INO is seen as merely lip service and another layer of bureaucracy and as such will not contribute to making whistleblowers 'safe'. There is also the risk that individuals will be disinclined to initiate the INO route.

On page 5 the phrase 'handling of whistleblowers' may suggest they are a problem to be dealt with, perhaps unintentionally suggesting a sense of troublemaking. Over time the term 'whistleblower' has come to have a less neutral connotation, and the phrase – 'raising concerns' – seems a better one and is used towards the end of the consultation document. Replacing the term and adopting a new vocabulary might help to bring fresh impetus to the process and procedures associated with it.

It is important that staff are taken seriously when they raise issues of concern and that they are protected. It is also important that those who are involved in a whistleblowing report should be dealt with fairly during an investigation and appropriate action taken following this. Staff should feel empowered and receive constructive and honest feedback about how their concern has been dealt with, which may avoid the need for whistleblowing.

Section 8: Responding to this consultation and Respondent Information Form

Scottish Government consultation process

Consultation is an essential part the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our forthcoming, open and closed consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation.

Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Responding to this Consultation

We are inviting responses to this consultation **by Wednesday 10 February 2016.**

Please respond to this consultation online

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

You can save and return to your response while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) and return it with your response to:

Robyn McCormack, Workforce Practice Unit, Scottish Government, St Andrew’s House, Regent Road, Edinburgh, EH1 3DG.

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached at the end of this document as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at

<http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to **Anna Gilbert** at Anna.Gilbert@gov.scot.

Proposals for the introduction of the role of an Independent National (Whistleblowing) Officer (INO)

RESPONDENT INFORMATION FORM



Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Royal College of Physicians of Edinburgh

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☒ Please tick as appropriate

Surname

Dwarakanath

Forename

Deepak

2. Postal Address

| | | |
|------------------|---------------------|----------------------------|
| 9 Queen Street | | |
| Edinburgh | | |
| | | |
| | | |
| Postcode EH2 1JQ | Phone 0131 247 3658 | Email s.collier@rcpe.ac.uk |

3. Permissions - I am responding as...

| | | |
|----------------------------|---|-------------------------------------|
| Individual | / | Group/Organisation |
| <input type="checkbox"/> | | <input checked="" type="checkbox"/> |
| Please tick as appropriate | | X |

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ N/A ☐

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

| | | |
|--|--|--------------------------|
| | Yes, make my response, name and address all available | <input type="checkbox"/> |
| | | or |
| | Yes, make my response available, but not my name and address | <input type="checkbox"/> |
| | | or |
| | Yes, make my response and name available, but not my address | <input type="checkbox"/> |

Are you content for your **response** to be made available?

Please tick as appropriate
Yes

| | | |
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(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ **Yes**

☐ **No**



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