

HEALTH AND SPORT COMMITTEE**CONSULTATION ON THE PROPOSALS FOR NEW INDEPENDENT NATIONAL WHISTLEBLOWING OFFICER ROLE****SUBMISSION FROM ROYAL COLLEGE OF PHYSICIANS OF EDINBURGH**

The Royal College of Physicians of Edinburgh (“the College”) is pleased to respond to the Committee’s call for views on the Proposed Draft Order - The Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019. The College is an independent clinical standard-setting body and professional membership organisation, which aims to improve and maintain the quality of patient care. Founded in 1681, we support and educate doctors in the hospital sector throughout Scotland and the world with over 12,000 Fellows and Members in 91 countries, covering 30 medical specialties.

How will the order affect the whistleblowing process?

This is a very complex area to address and the College suggests that the Committee make a realistic comparison between other systems both in the UK and internationally before making a fully informed judgement. As an example, in the Netherlands the Whistleblowers Authority Act came into force in 2016 and obliges all organisations in the Netherlands with more than 50 employees to introduce an internal reporting procedure for reporting abuses. The “House for Whistleblowers” is based at the National Ombudsman’s office. There is a very comprehensive academic paper *The Dutch Whistleblowers Authority in an international perspective: a comparative study*ⁱ which undertakes a comparison of tasks of Ombudsmen and Whistleblowers Authorities (p.39). In four of the countries included in this research, the whistleblowing agency is part of the National Ombudsman.

The order may “improve the exercise of public functions in regard to efficiency and effectiveness by enabling the Scottish Public Services Ombudsman to exercise similar functions for whistleblowing complaints as they do for patient complaints about health services” (page 1 explanatory notes), however by conferring the role and functions of an Independent National Whistleblowing Officer for NHS Scotland (INWO), upon the Scottish Public Services Ombudsman there is a concern that the intended potency of the INWO will be lost and merely absorbed into a multitude of other functions.

The appointment of a whistleblowing champion alone will not be sufficient to see a fundamental change in culture, however the College supports the creation of this role and recognises it conveys an important message.

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

When this question was originally posed in the 2015 Consultation on the proposals for the introduction of the role of an Independent National (Whistleblowing) Officer (INO), the College received views with a majority stating a preference for the INO to be hosted by the office of the Scottish Public Services Ombudsman (SPSO). However, the current proposals raise concerns that extending the role of the Ombudsman themselves to fulfil the status of the INWO could complicate and dilute their role. In particular, outlining a change of terms of reference could cause degrees of confusion for both public and NHS employees.

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

The powers proposed in the order for the INWO are different from the role of the National Guardian in England. The National Guardian - as recommended by Francis - is seen as the Independent Assessor for Whistleblowing matters. The National Guardian's role includes providing guidance and training to Freedom to Speak Up Guardians appointed to each NHS trust and reviewing the handling of concerns raised in trusts where there is evidence that this did not meet with good practice. This is seen as a distinctly different role to the Ombudsman and also aligns importantly to HSIB (Health Services Investigation Branch).

The College therefore suggests a stronger local preventative approach is investigated and the positions of whistleblowing champions in each NHS board, as recently highlighted by the Cabinet Secretary, be explored further and their roles accelerated where required.

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

In Governance terms, whilst Non-Executive Board Members may be aware that they have a role in supporting whistleblowers, there appears to be insufficient induction/training to instruct them in their precise responsibilities. It is therefore vital that the creation of a national position does not detract from locally based solutions as described above.

ⁱ University of Greenwich and University of Utrecht: *The Dutch Whistleblowers Authority in an international perspective: a comparative study* (Sep 2018) <https://huisvoorklokkenluiders.nl/wp-content/uploads/2018/10/The-Dutch-Whistleblowers-Authority-in-an-international-perspective-September-2018.pdf>