

HEALTH AND SOCIAL CARE

Consultation on proposals for the introduction of the role of an Independent National (Whistleblowing) Officer (INO): Analysis of Responses

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The Scottish Government and NHSScotland are committed to ensuring that all NHS employees in Scotland are encouraged, supported and confident in raising any concerns they may have about patient safety, behaviours which may lead to harm, or malpractice in the NHS. Such reporting is known as whistleblowing or “making a protected disclosure” or “qualifying disclosure”. The Freedom to Speak Up Review in England, chaired by Sir Robert Francis QC highlighted a number of practical actions which the Scottish Government considered will enhance and add value to the measures it already has in place in Scotland. One particular gap was oversight of how an NHSScotland body deals with concerns raised about patient safety, malpractice or wrongdoing and a mechanism for external review of how concerns have been handled at a local level. Scottish Ministers propose to establish the role of Independent National (Whistleblowing) Officer (INO) to provide the external review function. They sought views on the role and remit of the INO in a consultation paper published on 17 November 2015. 58 responses to the consultation were received, 31 from organisations and 27 from individuals. A summary of views from the responses to the consultation follows.

Main Findings

- Most respondents considered that the role of the INO should be to consider complaints about the application of the local whistleblowing process, including examination of the decision-making and outcomes of the whistleblowing complaint.
- Most respondents agreed with the principles and process for raising concerns with the INO proposed in the consultation. In particular, the emphasis on the INO being the final stage in the process was welcomed as helping to avoid duplication and supporting local effort and processes.
- A common view was that consideration should be given to the INO having prescribed powers as without these respondents considered that the INO’s effectiveness would be curtailed. Many felt that prescribed powers would provide the INO with credibility and would generate respect.
- Recurring views were that the INO should be hosted within the Scottish Public Service Ombudsman and should be called “Independent National Whistleblowing Officer for NHSScotland”.
- Most respondents who provided a view agreed that employees of adult health and social care services, who are not employed by NHSScotland, should have access to the INO.

Background

The Scottish Government and NHSScotland are committed to ensuring that all NHS employees in Scotland are encouraged, supported and confident in raising any concerns they may have about patient safety, behaviours which may lead to harm, or malpractice in the NHS. In Scotland, measures are in place or in development to support this commitment, for example, the NHSScotland Confidential Alert Line; training sessions for key NHS staff; removal of the routine inclusion of confidentiality clauses and derogatory statement clauses from settlement agreements; and guidance for NHSScotland staff and employers on the appropriate use of confidentiality clauses and derogatory statement clauses in settlement agreements.

The Freedom to Speak Up Review in England, chaired by Sir Robert Francis QC¹, highlighted a number of practical actions which the Scottish Government considered will further enhance and add value to the existing measures. One particular gap was oversight of how an NHSScotland body deals with concerns raised and a mechanism for external review of how concerns have been handled at a local level.

Scottish Ministers propose to establish the role of Independent National (Whistleblowing) Officer (INO) to provide the external review function and sought views on the role and remit of the INO in a consultation paper² published on 17 November 2015.

Overview of respondents

58 responses to the consultation were received, 31 from organisations and 27 from individuals. The largest category of respondent amongst organisations was NHSScotland Territorial and Special Boards comprising 16% of all respondents.

Role of the INO

Most of those who provided a view considered that the role of the INO should be to consider complaints about the application of the local whistleblowing process, including examination

¹www.gov.uk/government/publications/sir-robert-francis-freedom-to-speak-up-review

²<http://www.gov.scot/Publications/2015/11/512>

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of the decision-making and outcomes of the whistleblowing complaint. This was viewed as a holistic approach to examining complaints which would contribute to the effectiveness of the role, instil confidence in complainants, build trust and provide independence and impartial scrutiny.

Principles and process for raising concerns with the INO

Most respondents agreed with the principles and process for raising concerns with the INO proposed in the consultation. In particular, the emphasis on the INO being the final stage in the process was welcomed as helping to avoid duplication or undermining local effort and processes.

Views were mixed on the proposed bar on historic cases with most in agreement but supporting an element of discretion, depending on circumstances.

A minority of those who responded considered that the INO should have more explicit powers to investigate cases at an earlier stage in exceptional circumstances, prior to the local investigation being completed. More flexibility was also called for in relation to involvement of the INO in individual employment matters in some instances. More guidance was requested on what “exceptional circumstances” should constitute.

Most of those who provided a view agreed with the proposed INO whistleblowing complaint criteria which were perceived as clear, fair and sensible but could be strengthened by the provision of examples.

A shared concern amongst several respondents was that undue emphasis was placed in the proposals on the whistleblower having to prove their case for INO involvement.

Prescribed powers of the INO

Most respondents agreed that consideration should be given to the INO having prescribed powers as without these they considered that the INO's effectiveness would be curtailed. A common view was that prescribed powers would provide the INO with credibility and would generate respect. A minority view was

that sufficient powers already exist, for example the Partnership Information Network (PIN) Policy for NHSScotland.

Most of those providing a view agreed that the INO should have powers both to compel a public body to provide evidence and to enforce recommendations, as one of these without the other would be illogical. A minority view was that the INO should not have enforcement powers as existing legislation and accountability mechanisms should suffice.

A range of potential additional powers were suggested including to compel all NHSScotland bodies to put in place recommendations if these are generalisable to all; being able to refer issues to other regulators as appropriate; and levying fines and other sanctions against employers.

Options for hosting the INO role

Most of those expressing a clear preference considered that the INO should be hosted within the Scottish Public Service Ombudsman (SPSO); a minority of respondents favoured hosting the INO within the Healthcare Improvement Scotland (HIS). Respondents were against creating the INO as a new public body largely on grounds of cost.

The main reason for recommending the SPSO as the host was its independence from health and social care bodies and its impression of impartiality. The SPSO was also viewed as straddling the entire public sector including both health and social care sectors.

Those in favour of hosting the INO within HIS argued that the HIS and the INO roles were aligned in scrutiny functions with HIS already handling whistleblowing complaints. HIS was perceived as already well known to NHS staff.

Health and social care integration

Most respondents who provided a view agreed that employees of adult health and social care services, who are not employed by NHSScotland, should have access to the INO. The main arguments in favour were that this makes sense in terms of reflecting the joint working which will result from the Public Bodies (Joint Working) (Scotland) Act 2014; and that this would provide parity and

consistency across staff working in these different disciplines.

The main argument against expanding access to the INO for employees of adult health and social care services was that the Integration Joint Board (IJB) does not employ staff, with staff remaining under their previous employer who will have organisational whistleblowing arrangements and protocol already in place.

Questions were raised over expanding access to the INO to independent sector organisations who provide commissioned services; students and trainees across the services within the IJBs; employees of children's health and social care services; and volunteers within these services.

INO title

A general view was that the INO title should reflect the INO purpose and be readily understood. The title most frequently recommended for the INO was "Independent National Whistleblowing Officer for NHSScotland". Another potential title which was commonly proposed was, "NHSScotland's Whistleblowing Ombudsman".

There were differences of opinion over whether "whistleblowing" should feature in the title, with some respondents perceiving this to have negative connotations whilst others considered it brought clarity of purpose. Some respondents recommended that the word "independent" feature in the title.

A common view was that a reference to "health and social care" should be inserted into the INO title should the role encompass staff not employed by NHSScotland who deliver health and social care services in Scotland.

Further comments and themes

A few main themes emerged within additional comments made by respondents.

Respondents considered that for the INO to be effective and credible, the Scottish Government and relevant Boards needed to display clear support for and commitment to the role.

Calls were made for further clarity over roles and relationships including the links between the INO and the non-executive whistleblowing

champions; the relationship with existing whistleblowing initiatives; and with existing professional regulators.

Some respondents recommended that terminology be refreshed to ensure the INO is presented in a positive light, for example, by replacing reference to “complaints” with “concerns”. Others proposed that a formal review process be established to support the introduction of the INO role.

How to access background or source data

The responses to this consultation are available via the Scottish Government consultation hub <https://consult.scotland.gov.uk/>



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ISBN: 978-1-78652-301-3 (web only)

Published by the Scottish Government, June 2016