



PUBLIC PETITION NO.

PE01495

Name of petitioner

Rab Wilson on behalf of Accountability Scotland

Petition title

The use of 'gagging clauses' in agreements with NHS staff in Scotland

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ban the use of confidentiality, or so called 'gagging', clauses in compromise agreements with NHS staff in Scotland, which may prevent staff speaking freely about matters that affect patient safety and quality of care, as well as employment issues such as workplace bullying.

Action taken to resolve issues of concern before submitting the petition

I have written to and been in meetings with the Scottish Government and informed them of the unacceptability of gagging clauses in compromise agreements in the NHS. Following these talks, the Scottish Government took the decision to put in place a new national whistleblowers alert line in the NHS, announced by First Minister Alex Salmond earlier this year and which became 'live' on 2nd April, 2013. This is a positive result, but there has been no movement on the banning of gagging clauses.

I have corresponded regularly with the Scottish Government seeking to clarify points and issues surrounding this subject. Some progress has been made – but not enough. The Scottish Government stated that individuals often ask for a confidentiality clause to be inserted. When I asked for the figures to back this statement up they could not provide them.

In an answer to a parliamentary question I was made aware that the Scottish Government has already stated that the "use of gagging clauses to stop NHS whistleblowers is being banned in Scotland." I do not believe that this is the case. I have yet to see the legislation that states this.

I arranged for a series of FoI requests to be made to find out what has been happening with compromise agreements over the past five years. The information that I was provided with revealed some astonishing figures that confirm that there have been 697 compromise agreements in the 14 Scottish territorial health boards over the past 5 years. Of these 697 compromise agreements only four people made a protected disclosure.

It is my understanding that the Central Legal Office still inserts a 'standard' confidentiality clause in all compromise agreements (see below). I have raised these matters with the Scottish Government and have made my feelings on this very clear. It is wrong and should be stopped by statute now.

Petition background information

Following my own six year whistleblowing battle with NHS Ayrshire and Arran and my total vindication following the publication of Kevin Dunion's (previous Scottish FOI commissioner) Decision Notice re my case – the most damning report of his seven years in office – I have campaigned tirelessly for more openness and transparency in the NHS. Also, due to my case, Healthcare Improvement Scotland carried out a major inquiry into failures by NHS Ayrshire and Arran and produced an equally if not more damning report than that of Kevin Dunion. These reports and inquiries have led me to campaign persistently asking for the banning of gagging clauses that prevent people from speaking in public about issues that pertain to important matters of patient care and safety.

I became involved with the focus group Accountability Scotland and they have been most supportive and encouraging, suggesting that the way forward with this now is to submit a petition to the Scottish Parliament.

Jeremy Hunt the UK government's current health secretary recently announced a complete ban, henceforth and retrospectively, on Gagging Orders in the NHS in England and Wales. Alex Neil the Scottish health secretary has failed to follow suit and ban gagging orders in Scotland.

Compromise Agreements, which are used by employers and unions to facilitate an employee mutually leaving employment, are acceptable and useful arrangements if used properly. These should not routinely however include automatic use of a gagging clause to prevent the employer speaking freely in an open and democratic society about the reasons they left the NHS. These reasons usually pertain to matters of patient care and other issues that could affect us all e.g. surgical errors, suicides, workplace bullying, neo-natal deaths, etc. Gagging orders are a direct breach of, and in contravention of, the Human Rights Act. The use of gagging orders to stop workers speaking out publicly about such important issues has no place in a free society and a modern open, honest and transparent NHS.

The health secretary has provided me with the current CLO Annex A style revised wording from the NHS Compromise Agreement (May 2013). I believe this to be completely unacceptable. It seems totally loaded to protecting the organisation and not the individual. Reading it is extremely disturbing.

It states that an employee will not be prevented from making a 'protected disclosure' – but they are not encouraged, assisted or advised on how to do so. I asked my union to allow me to make a protected disclosure and they would not allow me to do so, yet my case was one of the most shocking NHS national headline events of recent times. What hope is there for any worker who currently would like to make a protected disclosure?

I did not request for there to be a confidentiality clause inserted in my own compromise agreement (and until only very recently when I had part of my compromise agreement overturned, I was legally gagged from stating in public that I had a compromise agreement) when I left the employment of NHS Ayrshire and Arran via the 'agreed explanation' of early retirement, yet the CLO inserted a confidentiality clause into my compromise agreement. It appeared that I had no say in this matter of a confidentiality clause being inserted.

The default position of compromise agreements should be that there is no 'standard' confidentiality clause inserted into them – as is currently the case. People should be free to speak openly and publicly of their concerns about the NHS if they wish to do so, without fear of recrimination from employers or lawyers if they are speaking the truth. This is surely an inherent right in any democracy.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/gaggingclauses>

Related information for petition

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

NO

How many signatures have you collected so far?

10

Closing date for collecting signatures online

N/A

Comments to stimulate online discussion