

Briefing for the Public Petitions Committee

Petition Number: [PE1844](#)

Main Petitioner: Jennifer Greenhorn

Subject: Introduce an external regulatory complaints body for NHS boards

Calls on the Parliament to urge the Scottish Government to introduce an external regulatory complaints body to improve complaints procedures within NHS boards.

Introduction

The petition calls for a new body to be created to improve the handling of complaints about NHS services. The background information to the petition specifically criticises the way serious adverse events are dealt with by the NHS, and the lack of an external body to investigate. It calls for an end to 'self-regulation' by the NHS.

Serious adverse events are defined as an event that could have caused, or did result in, serious harm to people or groups of people.

Background

NHS Boards are responsible for the planning and delivery of health services for their area. There are 14 'territorial' boards which cover the different areas of Scotland.

Complaints about NHS services are dealt with by health boards, with possible referral to the [Scottish Public Services Ombudsman](#) (SPSO) if not resolved to the complainant's satisfaction.

Serious adverse events (SAEs) are dealt with by the NHS board in which they happened. This is guided by a [national framework](#) developed by Healthcare Improvement Scotland (HIS).

HIS is the closest NHS Scotland has to a regulatory body in that it has some of the functions that would be expected of a 'regulator' e.g. it sets standards, carries out inspections and has some enforcement powers. However, HIS is also part of the NHS and does not deal with complaints. It also describes itself as an 'improvement body' rather than a regulator, as a large part of its work is sharing evidence and knowledge in order to help health services redesign and continuously improve.

It does have more of a classic regulatory function in relation to independent healthcare services where it requires services to register before they can operate, it then inspects such services, deals with complaints and can take enforcement action.

There are other bodies who perform what might be described as regulatory functions for the NHS. These include the Mental Welfare Commission and the Health and Safety Executive.

Scottish Government Action

There have been previous calls for the creation of a new body to act as an independent regulator for the NHS. However, the Scottish Government asserts that HIS already has many of the powers of a regulator and independence is brought by the involvement of the SPSO if complainants are not happy with how a board has handled their complaint.

There have also been other changes intended to create an open culture in the NHS in order to learn from feedback and when things go wrong. These include the introduction of a [duty of candour](#) and the creation of a [Charter of Patient Rights and Responsibilities](#).

Scottish Parliament Action

In 2018, the Health and Sport Committee reported on its inquiry into the Governance of the NHS in Scotland. As part of this, the Committee considered the role of HIS and made a number of recommendations in relation to the [Regulatory Regime](#) (pg 36-39). The report discusses the evidence heard regarding the creation of an independent regulator and recommended:

“We are concerned a special health board is not perceived by the public as being sufficiently independent to enforce sanctions. Nor do we consider they currently have adequate powers. A central part of this review should therefore be to give consideration to the advantage and disadvantages of making the scrutiny and assurance directorate of HIS a separate entity.”

The [Scottish Government responded](#) by saying HIS is a ‘health body’ and not a special health board. It also did not think a fundamental review was necessary and detailed that it was a deliberate policy decision to put ‘evidence, improvement, scrutiny and public participation’ in the same body. It goes on to state that it recognises the concerns of the Committee around ‘a potential blurring of roles and a perception of “marking their own homework”’ and so the Scottish Government committed to:

- Develop a formal statement of principles by which HIS should operate, underpinned by a revised operating framework.
- Agree a new unified escalation procedure for which HIS is clear about sanctions that are available.

- Review legislation to establish areas where additional powers could be helpful.
- Seek advice from the Scottish Government Legal Department as to whether the broad powers that HIS already has are sufficient for what is proposed in terms of escalation and enforcement.

Complaints handling still rests with NHS boards with recourse to the SPSO if needed.

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3 December 2020

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