

PE1832/A

Scottish Government response of 2 November 2020

The petitioner is *Calling on the Scottish Parliament to urge the Scottish Government to request that the UK Government repeal the Public Information Disclosure Act 1998 (PIDA). PIDA is reserved legislation.*

The protection of whistleblowers is vital. A number of measures have been introduced within Scotland in line with the principles of the Public Information Disclosure Act 1998.

INWO

To enhance protection for whistleblowers, the Scottish Government is introducing the new role of the Independent National Whistleblowing Officer (INWO). Recent legislation has enabled the Scottish Public Services Ombudsman ([SPSO](#)) the powers to undertake the role of (INWO). The SPSO is independent from both the Scottish Government and health boards, with a duty to act impartially. The INWO will be live from 1 April 2021.

The INWO role is the first of its kind in the UK. It aims to ensure everyone delivering NHS services in Scotland is able to speak up to raise concerns in a protected way without personal detriment. In addition to supporting appropriate adherence to PIDA legislation, it will provide a mechanism for external review of how a Health Board, primary care or independent provider has handled a whistleblowing case. The INWO will also have a unique national leadership role, providing direction, support and guidance to the relevant bodies with the focus on continuous improvement, early resolution, recording and reporting.

Whistleblowing Standards

The National Whistleblowing Standards set out how the Independent National Whistleblowing Officer (INWO) expects all NHS service providers to handle concerns that meet the definition of a 'whistleblowing concern'. The Standards explicitly state that: 'People who raise a concern must not be victimised or suffer detrimental treatment as a result of raising a concern. This includes bullying and harassment, inappropriate use of policies, breaking the terms of their contract, financial loss and reputational or professional damage'. The Whistleblowing Standards will be implemented on 1 April 2021.

Non-Executive Whistleblowing Champions

These roles have been introduced to offer a new approach to scrutiny ensuring: that boards comply with the new whistleblowing standards; there is organisational support and training for staff and managers; and that sound governance arrangements are in place. Non-Executive Whistleblowing Champions have a direct escalation route to the health secretary.

Advice Line

A confidential advice line is available for anyone who works for NHSScotland to discuss a whistleblowing concern. This was established along with a number of other measures in NHSScotland, in response to the Robert Francis Freedom to Speak up Review. With effect from 1 November 2020 this service will be provided by the SPSO

to help ensure the independent provision of accurate, consistent advice that will include the route to raise concerns before the INWO implementation date of 1 April 2021.

Health Improvement Scotland

Concerns can also be raised with Health Improvement Scotland (HIS). HIS has a duty to respond to potential concerns raised by NHS staff about patient safety/quality of care within NHS boards.

Healing Process

The independent review of cultural issues in NHS Highland by John Sturrock, QC has informed a number of actions by NHS Highland to affect change to staff including the Healing Process and an independent Speak Up Service. NHSScotland Boards have also given full consideration to the report recommendations to inform local improvements.

EU and reserved legislation

The [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law](#), came into force on 16 December 2019. The stated purpose of the Directive is "*to enhance the enforcement of EU law and policies in specific areas by laying down common minimum standards providing for a high level of protection of persons reporting on breaches*". Whilst the UK has abstained from the Council's vote on implementation of the Directive, as a departing state, the EU had already identified the UK as one of the Member States having a comprehensive law in place in the form of the Public Interest Disclosure Act 1998 ("PIDA 1998").

Whilst PIDA applies to *'workers'* the *EU Directive* widens the pool of individuals qualifying for protection to include shareholders, volunteers, contractors and suppliers, non-executive directors and the self-employed. Current NHSScotland Whistleblowing Policy advises Boards consider extending the protection to all who work for or with the Board, including volunteers and the self-employed.

Wider context

There are three draft bills seeking reform of the whistleblowing law PIDA. All include the ask for a form of independent body/national officer (which the INWO provides):

- Protect's draft Bill: <https://protect-advice.org.uk/campaign-for-a-new-whistleblowing-bill/>
- Baroness Kramer's APPG (All Party Parliamentary Group for Whistleblowing) Office for the Whistleblower Bill,: <https://services.parliament.uk/Bills/2019-21/officeofthewhistleblower.html>
- Dr Whitford MP's Public Interest Disclosure (Protection) Bill,: <https://services.parliament.uk/Bills/2019-21/publicinterestdisclosureprotection.html>

Conclusion

We are confident that NHSScotland's whistleblowing measures build on and go further than current PIDA legislation and address the requirements outlined in this petition. We continue to apply Staff Governance principles and work in partnerships with stakeholders, including the SPSO and HIS, to ensure that these measures are effective and that staff do not suffer detriment when they raise a concern.