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Health and Sport Committee Comataidh Slàinte is Spòrs

Scottish Public Services Ombudsman (SPSO) (Healthcare Whistleblowing) Order 2019 - Proposed Regulations



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Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/health-committee.aspx>



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Introduction

Parliamentary Procedure

1. These Regulations are subject to an enhanced affirmative procedure where the draft of the first regulations and explanatory document may only be laid after consultation. This procedure is used for statutory instruments that are considered to need a particularly high level of scrutiny. These statutory instruments usually amend or repeal Acts of Parliament.
2. Scottish Ministers are required to have regard to any representations about the proposed draft Regulations that are made to them within the period of 60 days beginning with the date on which the copy of the proposed draft Regulation is laid before the Parliament. The explanatory document must give reasons for the provisions contained in the proposed draft Regulations and provide details of any consultation undertaken, representations received and any changes made to the proposed draft Regulations as a result of those representations.

The Content and Purpose of the Regulations

3. The purpose of the proposed regulations covering the Scottish Public Services Ombudsman (SPSO) (Healthcare Whistleblowing) Order 2019 are primarily to create a new route for whistleblowers in the healthcare sector to bring complaints to the Scottish Public Services Ombudsman (SPSO). The establishment of an independent national whistleblowing officer (INWO) was one of the recommendations of the “Freedom to Speak Up” review conducted by Sir Robert Francis QC.¹
4. Powers to make such an Order are contained in section 14(3)(a) of the Public Services Reform (Scotland) Act 2010 and the Order seeks to amend relevant sections of the Scottish Public Services Ombudsman Act 2002. The amendments provide power to the SPSO to investigate whether a whistleblowers complaint has been handled properly. The Order also confers the role and functions of an Independent National Whistleblowing Officer (INWO) upon the SPSO.
5. The proposed extension of the role and functions of the Ombudsman includes giving the SPSO the powers to:
 - a) Develop a set of standards for NHS services which all NHS organisations would need to follow when they receive and investigate whistleblowing concerns;
 - b) As a final, independent review, investigate the procedure followed by and NHS board and the decision making in relation to the concerns raised by whistleblowers, including whether the outcome reached is one that a body, acting reasonably, could have reached.
 - c) Investigate how an individual has been treated as a result of raising a whistleblowing concern, particularly in relation to any detriment they may have suffered as a result of raising their concern. This is to include the power to

investigate whether the whistleblower has been victimised as a result of raising a concern, including by bullying and harassment or inappropriate application of policies.

d) To enable the sharing of information between the SPSO, Healthcare Improvement Scotland, National Education Services, the Mental Welfare Commission and National Services Scotland, to improve the effectiveness of these bodies' respective scrutiny and investigation functions.

Qualifying Disclosures

6. The Employment Rights Act 1996 (“the 1996 Act”) protects the interests of employees where they make a “qualifying disclosure” to a person prescribed by an order made by the Secretary of State (a “prescribed person”). This gives the individual the right not to be treated unfairly, or dismissed, for having blown the whistle where the worker reasonably believes that the *disclosure* is being made in the public interest and at least one 'relevant failure' is currently happening, took place in the past or is likely to happen in the future.
7. A series of orders prescribing persons have been made by UK statutory instrument and are largely consolidated in the Public Interest Disclosure (Prescribed Persons) Order 2014.
8. A number of Scottish bodies are “prescribed persons” for the purposes of the 1996 Act, including new bodies added over the years including the Accounts Commission for Scotland, the Auditor General for Scotland, the Commissioner for Children and Young People in Scotland and the Scottish Information Commissioner. MSPs are not on the list of “prescribed persons” unlike MPs. This means that a person making a disclosure to an MSP is not making a qualifying disclosure, is not protected.

The Committee consider this position to be anomalous and ask the Scottish Government to make representations to the UK Government to have MSPs added as “prescribed persons”. We would also ask the SPCB to consider how the position MSPs are in can be brought to the attention of all Members.

Background

What is whistleblowing?

9. There is no agreed definition of whistleblowing, indeed there is no definition in the Order an issue we explore later in this report. For the purposes of understanding this report it is helpful to use the proposed definition for the NHS suggested by the Ombudsman in her evidence to us when she referred to her draft standards:


” A whistleblower is a current or former worker for NHS Scotland who formally raises a concern. This includes current (and former) employees, bank and agency workers, contractors, trainees and students, volunteers and non-executive directors.

The concern relates to speaking up, in the public interest, about an NHS service, where an action or lack of action has created, or may create, a risk of harm or wrong-doing, which:

- Has happened, is happening or is likely to happen,
- Affects the public, other staff or the organisation itself,
- Is not (or appears not to be) actively being addressed by other processes, and
- Has been intentionally raised by the person.

Whistleblowing and our Governance inquiry

10. During our inquiry into Governance in the NHS ² we took evidence on whistleblowing. from Sir Robert Francis QC, who conducted the Freedom to Speak Up review into whistleblowing in the NHS in England. He stated in his review “there are disturbing reports of what happens to those who do raise concerns. Yet failure to speak up can cost lives.” ³
11. Whistleblowing and the systems in place for staff to raise concerns are a key aspect of staff governance. Our above inquiry into governance found it essential that individuals feel confident to speak out when they feel they need to raise concerns.
12. The Dignity at Work Survey in 2017 found that over a third of staff felt it was unsafe to speak up. Sir Robert Francis QC, told us “In an ideal world everyone should be able to speak up, be listened to and see action being taken, but unfortunately that is, as we know not the position.” ⁴ He further noted that many witnesses mentioned the importance of having a culture where individuals felt confident and supported to speak out.
13. We heard during our inquiry that NHS boards are expected to have local policies for staff raising concerns. They are also expected to adhere to the Staff Governance Standard, which involves implementing Partnership Information Network (PIN)

- policies such as 'Implementing and Reviewing Whistleblowing Arrangements in NHSScotland.'
14. We also considered a Petition calling for an independent whistleblowing hotline to replace the National Confidential Alert Line (NCAL) ⁵ having the power to investigate individual reports about mismanagement and malpractice without recourse to NHS managers. This would avoid the current situation where calls to the alert line are referred back to the caller's employer.
 15. We noted that the NCAL is predominantly an advice line for staff while the City of Edinburgh Council have a hotline which is a reporting line with a role in investigating a concern. Sir Robert Francis thought that having both models [a reporting line and an investigative line] was a good idea.
 16. The Committee also took evidence about the idea of whistleblowing champions. Following the recommendation of the Freedom to Speak Up review, whistleblowing champions were appointed in each health board in Scotland. The purpose of the Champion is to provide an oversight and assurance role on whistleblowing.
 17. A whistleblowing champion should be someone "who is recognised as independent and impartial, has the authority to speak to anyone within or outside the trust, is expert in all aspects of raising and handling concerns, has the tenacity to ensure safety issues are addressed, and has dedicated time to perform this role". The Scottish Government's view to us at that time was that champions "provide independent assurance at a local level" and the role does "not form any part of whistleblowing policy". ⁶
 18. We heard that one of the keys to encouraging staff to speak out is for individuals to have confidence in how they will be treated. Some of the case studies referred to in the Freedom to Speak Up review, and in the evidence we received, highlighted cases of bullying, harassment and threats against whistleblowers.
 19. In the Freedom to Speak Up review, Sir Robert Francis wrote:
 "Whistleblowers have provided convincing evidence that they raised serious concerns which were not only rejected but were met with a response which focused on disciplinary action against them rather than any effective attempt to address the issue they raised". ⁷
 20. Some of the written evidence received by us during the governance inquiry also detailed examples of alleged mistreatment of staff who had raised concerns. ⁸

SPSO Whistleblowing Standards for the NHS

21. The SPSO has produced, and is currently consulting upon, a set of draft Standards for the NHS which consist of five key elements;
 1. An over-arching set of Whistleblowing Principles;
 2. A definition of 'whistleblower' to meet the expectations set out in the draft Order, alongside more detailed information to clarify how to identify a whistleblowing

concern, and who the Standards apply to, as well as information about how to access the procedure and how staff should be treated;

3. A detailed guide on how whistleblowing concerns should be handled, including stages and timescales;

4. Governance of the whistleblowing procedure, including requirements of NHS Boards and expectations on organisations in relation to reporting, recording and monitoring whistleblowing concerns; and

5. Governance arrangements and expectations for applying the Standards across primary care, in integrated health and social care settings, and for students and volunteers.

Also included are case studies providing good practice examples of how whistleblowing concerns should be handled.

Consideration of the Order by the Committee

22. The draft order was lodged with the Parliament on 30 April 2019 which gave the Committee 60 days, until 28 June 2019, to consider and report. We issued a general call for written views on the following questions allowing only a short period for responses:

- How will the order affect the whistleblowing process?
- Should the Ombudsman fulfil the role of the Independent National Whistleblowing Officer?
- Does the order give the Independent National Whistleblowing Officer adequate powers?
- Is there anything you would add, amend or remove from the order?

15 responses were received.

One oral evidence session was held on 28 May at which the following appeared:

- **Rosemary Agnew**, Scottish Public Services Ombudsman
- **Rhona Atkinson**, Non-Executive Director, Vice Chair and Whistleblowing Champion, NHS Grampian
- **Alison Mitchell**, Non-Executive Board Member and Whistleblowing Champion, NHS Lothian
- **Bob Matheson**, Head of Advice and Advocacy, Protect (the Whistleblowing Charity)

Followed by

- **Jeane Freeman MSP**, Cabinet Secretary for Health and Wellbeing, and **Dr Stephen Lea-Ross** Scottish Government.

We are extremely grateful to all those who took the time and trouble to respond finding their responses immensely helpful to our scrutiny.

SPSO as INWO

23. From the outset of our consideration we have been interested in whether the SPSO was the appropriate home for the INWO. This stemmed from two main factors, compatibility with their existing functions and capacity issues.
24. On the face of it the SPSO as an organisation independent of Government is an obvious candidate to take on the INWO duties. The Cabinet Secretary made this point to us adding the office is well established and respected, carrying considerable influence across the public sector.⁹
25. There are however significant differences between their current functions of investigating service complaints and that of whistleblowing complaints. Complainants and whistleblowers have different rights and different expectations of redress. Complainants are generally seeking a determination and possibly redress because something has happened with the care or health treatment they have received. Whistleblowers are generally witnesses to events that have occurred.
26. Other considerations relate to timeliness and confidentiality requirements.
27. The Whistleblowing charity, Protect, submitted that having the treatment of whistleblowers and the handling of concerns within a single bodies remit was ground breaking in the UK and to be celebrated placing the NHSScotland “within the vanguard globally”.¹⁰
28. The Ombudsman recognised the risk that the focus of whistleblowing could be lost from the overall concern identified and be placed solely on the individual. She indicated they were not looking to absorb whistleblowing complaints within their general workload. Instead they were establishing a special team to handle whistleblowing concerns recognising a number of significant differences exist. She expected a different approach would be required with many, such as those raising patient safety concerns, requiring thorough but speedy action and the feeding back of results.
29. Others equally recognised issues, including the Royal College of Physicians of Edinburgh who indicated concern the potency of the INWO would be lost through absorption into the many other functions undertaken by the SPSO. They were also concerned about confusion over the role of the SPSO by both the public and NHS employees.
30. The RCN, along with others made the point that staff “need to feel they can raise issues safe in the knowledge they will be listened to and their concerns acted on promptly, and where appropriate, confidentially”.¹¹
31. NHS witnesses highlighted benefits through the independence of the proposed INWO and the experience and track record of the SPSO in reaching conclusions adding to future learning.
32. On capacity issues the Ombudsman was candid that the anticipated numbers of complaints anticipated were unclear. The Scottish Government advised existing numbers were “fairly small” without being specific about overall numbers.¹² The

introduction of the INWO with the protections it brings might well increase numbers. The Cabinet Secretary concurred and gave an undertaking that the Scottish Government would meet the costs of whatever resources are required. ¹³

33. We also noted the concern raised by Community Pharmacy Scotland about potential burdens on small businesses arising from the application of the Standards and we urge the SPSO to engage with small businesses affected in this regard. ¹⁴
34. A general issue related to the addition of a further layer of review into a cluttered landscape and we were pleased to note the Draft Whistleblowing Standards prepared by the SPSO contained at Part 3 detailed information covering when to use the new procedure and how other procedures such as individual grievances are addressed.
35. **Overall we are satisfied it is appropriate the INWO should become part of the SPSO. In this way NHS staff can feel safe they will be listened to and their need to feel safe, and to have their concerns acted upon confidentially and timeously can be met. We are also satisfied appropriate funding will be made available to support the role.**

Who is a whistleblower?

36. The Order defines that a ‘whistleblower’ is anyone who is entitled to have their complaint heard under the model complaints handling procedure which is to be established by the SPSO. Therefore, what constitutes whistleblowing is not defined in the Order but will instead be defined by the complaints handling procedure itself. The definition will be developed by the SPSO and located in the Procedure for which they are solely responsible without any level of Parliamentary approval.
37. The draft explanatory note states:

The model Whistleblowing Procedure will include definitions of who may bring a complaint under the procedure (‘the whistleblower’) and in respect of what matters.
38. The note goes on to state that this will allow definitions to evolve over time in line with any amendments to the Public Interest Disclosure Act 1998 or that are considered necessary in the model procedures.
39. We are aware it is not uncommon for primary legislation to allow for further detail in either regulations or guidance. But we sought to understand the thinking behind the Order, a form of secondary procedure, avoiding any definition and any parliamentary scrutiny.
40. We asked witnesses, including the Cabinet Secretary, to provide any examples of comparable legislative where definitions have been provided for in this way. None have been provided with the Ombudsman helpfully confirming subsequent inquiry had not produced any examples.
41. The definition of whistleblowing is absolutely crucial and fundamental to the operation of the Order and we further inquired of witnesses their views on including a non-exhaustive definition within the Order. Dr Lea-Ross for the Scottish Government suggested “we do not put non-exhaustive definitions in legislation because, when it comes to interpreting them, they will be interpreted exhaustively”.
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42. The Cabinet-Secretary however acknowledged there were many examples of legislation including the formulation “shall include but not be confined to” or such similar wording.
43. We are also aware the Order is a form of subordinate legislation, one major use of which is to allow for a more timeous procedure to make changes to legislation than would be required by amending primary legislation.
44. As we indicated earlier there is no agreed definition of whistleblowing. The Ombudsman in their consultation on the Standards includes a definition as set out earlier in this report (at paragraph 9)

- ” A whistleblower is a current or former worker for NHS Scotland who formally raises a concern. This includes current (and former) employees, bank and agency workers, contractors, trainees and students, volunteers and non-executive directors.

The concern relates to speaking up, in the public interest, about an NHS service, where an action or lack of action has created, or may create, a risk of harm or wrong-doing, which:

- Has happened, is happening or is likely to happen;
 - Affects the public, other staff or the organisation itself;
 - Is not (or appears not to be) actively being addressed by other processes and
 - Has been intentionally raised by the person.
45. In follow up correspondence the Ombudsman “questioned the extent to which service providers, patients and others will have confidence in the whistleblowing process if the key definition required to apply Scottish legislation is left entirely to the SPSO.” She further indicated she “considered it a gap in oversight if Parliament does not have the ability to approve or not the key definitions”.¹⁶
46. **We are content with the draft definition being consulted upon by the SPSO and subject to any minor amendments arising from consultation consider that the definition must be included within the Order. We would also be content with additional powers in the Order allowing for the definition to be amended in future by subordinate legislation.**
47. **Given the fundamental role of the definition in circumscribing the ambit of the Order and the absence of any precedence we will have difficulties in supporting the final order without Parliament having this primary scrutiny role.**

Bullying and Harassment Issues - The Sturrock Report

48. Immediately prior to this Order being laid, the report by John Sturrock QC into allegations of bullying and harassment in NHS Highland ¹⁷ was published.
49. We were interested in the extent, if at all, that the new whistleblowing procedures would have addressed what happened in NHS Highland and whether it took account of any lessons learned.
50. This raised issues around the scope and extent of the INWO powers. The SPSO confirmed that in certain circumstances it would be possible for what appear to be individual grievance complaints to become whistleblowing complaints in circumstances where it can be suggested there is a “pervasive culture of bullying” which makes an individual scared to speak up. ¹⁸
51. Similarly if, as a result of raising grievance procedures, an individual felt they were being subjected to bullying and harassment, that could become a whistleblowing complaint. Although the Ombudsman was clear the process will only address the consequences for individuals of bullying and harassment, it was her hope the standards would have a more cultural impact through establishing accountability and addressing systemic issues.
52. NHS Highland is an example of what the Cabinet Secretary described as “a workplace culture that was working poorly” ¹⁹ She described those proposals as one part of the overall position which includes the appointment of whistleblowing champions attached to each Health Board. In addition, work to refresh HR policy was ongoing along with significant leadership development. All of which the Cabinet Secretary described as leading towards “having a positive workplace in our health service where people are able to raise concerns, and feel safe and respected when they do so, [which] will contribute directly to our continuing efforts to improve patient safety.” ²⁰
53. We were interested to hear that NHS Lothian have recently taken steps to address cultural change in this area. Recognising that consideration of whistleblowing concerns should not be simply through a change of process or transaction they have appointed two “speak up” ambassadors supported by an extensive network of individual “speak up” advocates whose role is to encourage and support whistleblowers ensuring they get support throughout any whistleblowing process. We suggest all Boards look at the changes NHS Lothian have introduced in this area.
54. It became clear it was impossible to be certain this Order would have prevented the difficulties in NHS Highland although it is possible it could have mitigated some of them. The lessons from the Sturrock report will take some time to work through Boards and this Order can only assist the process of cultural change.
55. **We agree that only through a range of initiatives and procedures can confidence in procedures be increased and culture and patient safety be improved.**

Sharing information

56. The draft order lists bodies that the INWO will have the power to share information with. At the moment, the SPSO is involved in sharing intelligence information with other scrutiny bodies such as Healthcare Improvement Scotland but they are limited in the extent to which they can do this. The proposals in the draft order would allow the Ombudsman to disclose 'proportionate' information gathered in the course of an investigation to:
- the Common Services Agency for the Scottish Health Service (also known as National Services Scotland),
 - Healthcare Improvement Scotland,
 - NHS Education for Scotland,
 - the Mental Welfare Commission for Scotland
57. This is in addition to bodies already listed in Schedule 5 of the Scottish Public Services Ombudsman (Scotland) Act 2002 (i.e. the Information Commissioner, the Auditor General for Scotland, Scottish Social Services Council, the Care Inspectorate).
58. The submission from the General Pharmaceutical Council suggested value in also sharing information with the health professional regulators. The Ombudsman agreed sharing of information was good but balanced that with concerns around the rights of individuals.
59. **We support proportionate sharing of information to enable wider learning but recognise the need for caution before making any further changes beyond those in the Order. We note the submission from the Care Inspectorate about their absence from the list and consider they should be added. In other areas we encourage Government and SPSO to look at how increased sharing could benefit consumers and providers of services while preserving the protection of individual rights.**

Time limits for receiving a complaint

60. The draft explanatory notes detail that complaints to the SPSO must be made “within 12 months of the day on which the person aggrieved first had notice of the matter to which the complaint relates”. This means that all internal processes must be completed within 12 months to allow the INWO to consider a whistleblowing complaint. The BMA in their submission suggested the limit should be set at 5 years recognising it takes time for people to have the courage to speak up and also for others to be aware of the situation.²¹
61. The SPSO has discretion to accept late complaints if they consider there are special circumstances that make it appropriate to do so.
62. During our inquiry into NHS Governance we heard evidence of whistleblowing investigations taking long periods of time to be resolved. Similarly, the Sturrock review acknowledged serious delays in addressing many of the issues of significant concern to members of NHS Highland staff.
63. We were therefore concerned to understand the impact the time limit could have on individuals wishing or requiring to raise whistleblowing complaints.
64. In terms of the time required to consider a complaint, either at Board level or by the INWO it was clear that no two cases will be the same and it was impossible to put a general time on how long an investigation might take.
65. The Ombudsman explained the flexibility the SPSO has to accept complaints outside the time limit. She gave two examples when the discretion to waive the 12 month limit might apply as being individuals’ specific situations and overwhelming public interest. Thus, if an organisation took a lengthy period to look into a complaint it would not automatically mean that a case is not looked at.
66. The standards and model policy will require boards to deal with matters quickly. The flexibility provided to the INWO will be a useful flexibility available in appropriate cases.
67. **We are content with the proposed time limit for initiating a complaint given that it includes a discretion to accept complaints outwith the time limit.**

Other health related bodies (Social Work)

68. While many health and social care services are now integrated under the Public Bodies (Joint Working)(Scotland) Act 2014, the draft order extends the SPSO's powers only to investigate the handling of whistleblowing in NHS settings.
69. The draft whistleblowing standards being consulted on by the SPSO contain a section with advice to Integration Joint Boards. In this section it states:
- The requirement to have the Standards in place for all NHS services and not for local authority services could lead to disparity between those working for NHS and local authority services. It could also lead to some confusion around which procedure to use, particularly if these services are closely integrated.
70. It then goes on to advise that IJBs should adopt the same approach to handling concerns about local authority services as they do in relation to NHS services but that:
- The only variation would need to be at the review stage, when concerns about different services would need to be signposted as appropriate, to the INWO, the Care Inspectorate or in some cases, Audit Scotland
71. The Care Inspectorate in their submission noted their responsibilities for investigating complaints about regulated social care and wondered whether there was a need for a specific role for them covering whistleblowing for social work. They suggested it was logical such a role should sit with them although recognising the SPSO has oversight of the Care Inspectorate's complaints procedure.²²
72. The Cabinet Secretary acknowledged the gap and suggested it was logical that the responsibilities of the INWO should be extended to the whole of health and social care including social work. She however acknowledged this would require consultation with local authorities before it could be introduced.
73. **We acknowledge the inclusion of some activities undertaken by the IJB's but repeat our concerns expressed in relation to other legislation that differences between health and social care should be minimised. We encourage the early extension of social work whistleblowing complaints to the INWO to investigate, subject to consultation with local authorities.**

Delegated Powers and Law Reform Committee consideration

74. The Delegated Powers and Law Reform Committee (DPLR) considered the draft order on 14 May and had no issues to raise.
75. We recognise the DPLR remit for consideration of instruments relates to conformity with the enabling legislation leaving policy considerations to lead committees. Given this instrument seeks to amend primary legislation in ways not envisaged under the original enactment we would ask the DPLR to consider whether their remit could consider the appropriateness of proposed new “delegated” procedures.

The National Whistleblowing Standards

76. The SPSO has prepared and is consulting upon a set of draft standards which set out how the Independent National Whistleblowing Officer expects all NHS service providers to handle concerns that are raised with them that meet the definition of a whistleblowing concern.
77. The Standards are underpinned by a suite of supporting documents, which provide instructions on how the INWO expects concerns to be handled. Together these documents form a framework for the delivery of the National Whistleblowing Standards.
78. The Standards are applicable across all NHS services. This means they must be accessible to anyone working to deliver an NHS service, whether directly or indirectly, as an employee, a student or a volunteer.
79. We are grateful to the SPSO for providing us with a copy of the draft standards which have assisted us greatly in considering the Order. Without sight of the draft standards it is unlikely we could have reached our level of understanding.
80. **To assist Parliament in considering the final Order we ask the SPSO to have the final version of the Standards available for consideration at the same time as the Order is lodged.**

Annex A - Minutes of Meeting

[13th Meeting, 2019 \(Session 5\) Tuesday 7 May 2019](#)

4. Instruments/documents laid for consultation (in private): The Committee considered and agreed its approach to the following— Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 - Proposed Draft Regulations (SG/2019/66) and Proposed Draft Explanatory Note (SG/2019/67). Scottish Public Services Ombudsman's consultation on the Draft National Whistleblowing Standards.

[15th Meeting, 2019 \(Session 5\) Tuesday 28 May 2019](#)

1. Proposed Draft Order - The Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 (SG/2019/66) and Proposed Explanatory Document (SG/2019/67): The Committee took evidence from—

- Rosemary Agnew, The Scottish Public Services Ombudsman;
- Rhona Atkinson, Non-Executive Director, Vice Chair and Whistleblowing Champion, NHS Grampian;
- Alison Mitchell, Non-Executive Board Member and Whistleblowing Champion, NHS Lothian;
- Bob Matheson, Head of Advice and Advocacy, Protect (the Whistleblowing Charity);

and then from—

- Jeane Freeman, Cabinet Secretary for Health and Sport, and
- Dr Stephen Lea-Ross, Head of Workforce Practice, Scottish Government.

2. Proposed Draft Order - The Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 (SG/2019/66) and Proposed HS/S5/19/15/M Explanatory Document (SG/2019/67) (in private): The Committee considered the evidence heard earlier in the meeting.

Annex B - Evidence

Written evidence

- [HS/S5/19/INWO/1 NHS Grampian](#)
- [HS/S5/19/INWO/2 NHS Lothian](#)
- [HS/S5/19/INWO/3 Scottish Public Services Ombudsman \(SPSO\)](#)
- [HS/S5/19/INWO/4 Royal Pharmaceutical Society in Scotland](#)
- [HS/S5/19/INWO/5 Protect \(formerly Public Concern at Work\)](#)
- [HS/S5/19/INWO/6 General Pharmaceutical Council](#)
- [HS/S5/19/INWO/7 Royal College of Physicians of Edinburgh](#)
- [HS/S5/19/INWO/8 RCN Scotland](#)
- [HS/S5/19/INWO/9 Medical and Dental Defence Union of Scotland \(MDDUS\)](#)
- [HS/S5/19/INWO/10 Audit Scotland](#)
- [HS/S5/19/INWO/11 Healthcare Improvement Scotland](#)
- [HS/S5/19/INWO/12 Community Pharmacy Scotland](#)
- [HS/S5/19/INWO/13 MiP \(Managers in Partnership\)](#)
- [HS/S5/19/INWO/14 BMA Scotland](#)
- [HS/S5/19/INWO/15 Care Inspectorate](#)

Additional written evidence

- [Letter from Rosemary Agnew, Scottish Public Services Ombudsman to Lewis Macdonald MSP, Convener of the Health and Sport Committee - 12 June 2019](#)

Official Reports of Meetings

[Tuesday 28 May 2019](#) - evidence from stakeholders and then from the Scottish Government

- 1 The [Freedom to Speak Up](#) Report was a report into whistleblowing in the NHS in England. It was published in the wake of the Mid Staffordshire Inquiry and the Scottish Government accepted the recommendations for Scotland.
- 2 The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland available [here](#).
- 3 [Sir Robert Francis QC \(2015\). Freedom to speak up: An Independent Review into creating an open and honest reporting culture in the NHS, written submission from the The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland Report.](#)
- 4 [Health and Sport Committee. Official Report 13 June 2017, Col 48 included in the The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland Report.](#)
- 5 The NCAL aims to complement existing whistleblowing policies by providing a safe space to raise concerns about patient safety and malpractice. The NCAL does not investigate concerns but legally trained staff offer support and advice.
- 6 [Submission to Public Petitions Committee 14 October 2016 included in the The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland Report.](#)
- 7 [Sir Robert Francis QC \(2015\). Freedom to speak up: An Independent Review into creating an open and honest reporting culture in the NHS, written submission from the The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland Report.](#)
- 8 [Dr Peter Gordon, Dr Sukhomoy Das, Dorothy McHaffie, Dr Ian Kerr, Rab Wilson, Dr Jane Hamilton. Written submissions, Staff Governance included in the The Governance of the NHS in Scotland - ensuring delivery of the best healthcare for Scotland Report.](#)
- 9 [Health and Sport Committee Report, 28 May 2019, Column 25](#)
- 10 [Protect \(formally Public Concern at Work\) written submission](#)
- 11 [RCN Scotland written submission](#)
- 12 [Health and Sport Committee Report, 28 May 2019, Column 26](#)
- 13 [Health and Sport Committee Report, 28 May 2019, Column 26](#)
- 14 [Community Pharmacy Scotland written submission](#)
- 15 [Health and Sport Committee Report, 28 May 2019, Column 27](#)
- 16 [Letter from Rosemary Agnew, Scottish Public Services Ombudsman to Lewis Macdonald MSP, Convener of the Health and Sport Committee, 12 June 2019](#)
- 17 [Cultural issues related to allegations of bullying and harassment in NHS Highland: independent review report](#)
- 18 [Health and Sport Committee Report, 28 May 2019, Column 11](#)

- 19 [Health and Sport Committee Report, 28 May 2019, Column 29](#)
- 20 [Health and Sport Committee Report, 28 May 2019, Column 36](#)
- 21 [BMA written submission](#)
- 22 [Care Inspectorate written submission](#)

