



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

UNISON Scotland's Submission to the Scottish Government Consultation on proposals for the introduction of the role of an Independent National (Whistleblowing) Officer (INO)

February 2016

Introduction

UNISON is Scotland's largest trade union representing over 150,000 members working in the public sector. We represent over 60,000 health staff as well as social workers, social care staff, who are part of adult health and social care workforce.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government on their consultation.

Question 1: What should the role of the Independent National (Whistleblowing) Officer (INO) be?

Option 2 - To consider complaints about the application of the whistleblowing process, including examination on the decision making and outcome of the whistleblowing complaint.

Please explain your answer.

UNISON Scotland prefers option 2. If the Scottish Government is fully committed to meeting the challenges identified within the 'Freedom to Speak Up Review' and some of the more high profile instances of service failure in Scotland, the INO must have the confidence of staff and the public. Option 1 would not provide this.

It is our experience that NHS Boards are skilled and adept at following procedures and that any disagreement or concern is more likely to be related to the reasonableness of the conclusion. The INO should have the power to examine the decision making of how an employer has handled a complaint, both in the way they have followed procedure and of the merits of the complaint.

Option 2 by its construct is more in keeping with the roles and functions of an 'ombudsman', we believe that if there is a need for an INO, then the post/function should be in keeping with that of a fully empowered ombudsman.

Question 2: Do you agree with the principles and process for raising concerns with the INO?

Yes

Please explain your answer.

UNISON Scotland believes that it's important that the INO is accessible to staff who may have concerns which they feel have not been considered fairly by their NHS Board or if they believe that the public/patients are still at risk.

We also acknowledge that the principles and process are critical if we are to avoid duplication, inappropriate referrals and frustration/disappointment amongst staff who make reports.

We believe that the principles and process outlined in the consultation document are appropriate in the circumstances, but that they should be the subject of a review.

Question 2a: Do you feel that there should be any additional principles or changes to the process for raising concerns with the INO?

No

Question 2b: Do you agree with the proposed INO whistleblowing complaint criteria?

Yes, with qualifications

Please explain your answer.

UNISON accepts that in the majority of cases, a whistleblower must complete the internal processes before a report can be made to the INO. We are however concerned if the scope of protection provided by the INO is to be widened beyond the NHS in Scotland, that some care providers' staff might be reluctant to use internal whistleblowing mechanisms for fear of adverse reaction.

On that basis, we believe that the INO should have the ability to investigate exceptional cases where a complaint is made to them, which has not been completed locally/internally to the employer. We would suggest that exceptional might include instances where the complaint relates to serious abuse, serious mismanagement or involve senior managers in the organisation.

Whilst UNISON is broadly supportive of the proposed whistleblowing complaints' criteria, we are concerned that the need to provide a statement may present an access issue for some staff.

We would suggest that the INO should develop a standard pro forma and allow for appropriate third party representation which would assist accessibility.

Question 2c: Do you feel there should be any additional complaint criteria?

No

Question 3: Do you agree that consideration should be given to the INO having prescribed powers?

Yes

Please explain your answer.

If the role of INO is to have credibility and the ability to make a real difference then it must have real powers.

It is therefore essential that the INO must be able to make recommendations and to ensure that they are implemented.

Question 3a: If yes, what do you think these powers should be?

To compel a public body to provide evidence.

To enforce recommendations, if required.

Both of the above.

Do you have views on any other powers you think the INO should have?

Yes

Please explain your answer.

The powers of the INO must extend beyond the definition of 'public body' and include any person/s or organisation working or delivering services in the Health and Social Care sector.

The powers must be sufficient to circumvent the existing weakness in the Freedom of Information Act which does not extend to private and voluntary care sector provider organisations and individuals.

Question 4: Where should the INO role be hosted?

Option 2 - Scottish Public Services Ombudsman (SPSO)

UNISON Scotland believes that the INO would be best hosted in the SPSO (option 2).

Do you feel there are alternative options for where the INO could be hosted, and if so where?

No

Please explain your answer.

We think that option 2 would be most cost effective in terms of resources/duplication and existing powers that would be required by the INO (ability to compel production of information and documents).

Further we believe that hosting in the SPSO will ensure that the public and staff have confidence that the INO is not only independent of the NHS/commissioning body, but also independent of the Scottish Government.

Question 5: Do you think employees of adult health and social care services, who are not employed by NHSScotland, should have access to the INO?

Yes

Please explain your answer.

Our NHS is changing and will continue to change over the next decade as funding is squeezed and we strive to deliver care in new and innovative ways.

IJB's, commissioning and mixed economies of care must fall within the responsibility of the INO if we are to ensure that every citizen and every member of staff who provides care is to have the confidence that they can whistleblow safely.

To exclude these organisations/bodies limits our ability to protect whistleblowers and the public.

UNISON is concerned that by focussing solely on employees the consultation potentially ignores a significant group of people who may be directly involved in care and or service delivery.

Whilst we note that the ERA has been extended to include statutory protection for student nurses and midwives who whistleblow, the Scottish Government needs to consider how students and trainees across the NHS (including IJBs etc) can be protected by the INO.

It is further necessary to consider how/if the protections should extend to include volunteers and employees of self directed care clients, particularly if the arguments to extend the scope beyond traditional NHS boundaries are favoured.

Question 5a; If yes, which IJB services should be covered?

Please explain your answer.

UNISON believes that all services which fall directly within the scope and responsibility of the IJB should be covered.

Question 5b: If yes to Q5, do you have a view on how the employees who could have access to the INO could be defined?

We would suggest that the definition simply be all staff/workers/students or trainees who work in the NHS or in services commissioned by the NHS (either in whole or as a partner agency) would have access to the INO.

Question 6: What do you feel would be an appropriate title for the INO in Scotland?

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Question 6a: What do you feel would be an appropriate title for the INO in Scotland if the role also covered staff not employed by NHSScotland who deliver health and social care services in Scotland?

See above

Question 7: Do you have any other comments to make on the proposals for the introduction of the role of INO.

No

**Mike Kirby
Scottish Secretary
UNISON Scotland
Unison House
14 West Campbell Street
Glasgow G2 6RX**

For further information please contact

Dave Watson
d.watson@unison.co.uk

Matt McLaughlin
m.mclaughlin@unison.co.uk

Diane Anderson
diane.anderson@unison.co.uk



The Scottish
Government
Riaghaltas na h-Alba

Proposal for the introduction of the role of an Independent National (Whistleblowing) Officer (INO)

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

UNISON

Title Mr Ms Mrs x Miss Dr Please tick as appropriate

Surname

Anderson

Forename

Diane

2. Postal Address

UNISON House

14 West Campbell Street

Glasgow

Postcode G21 3UE

Phone 01413422842

Email

diane.anderson@unison.co.uk

3. Permissions - I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick as appropriate	<input checked="" type="checkbox"/>

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes