This consultation asks for comments on how NHS boards adhere to the key principles of good corporate governance as outlined by the UK Code of Corporate Governance. I am not a health professional but the following comments are informed by research I am conducting into whistleblowing and speak up arrangements. This research includes a review of the relevant provisions in the UK Corporate Governance Code, the proposed revisions to the Code, and a review of whistleblowing and speak up arrangements in a variety of contexts and countries, including within the NHS and the corporate sector.

NHS issues

Serious concerns were uncovered by the public inquiry into the Mid Staffordshire NHS Foundation Trust, conducted by Sir Robert Francis QC. These related to a culture of bullying, a culture of fear and a lack of transparency. The resulting report, *Freedom to Speak Up*, outlined suggestions designed to foster a more open and honest reporting culture in the NHS. The recommendations included a new statutory duty of candour, regulatory changes, the banning of so-called ‘gagging clauses’, transparency about complaints and new staff appointments to oversee changes. Whilst the Francis recommendations were widely welcomed and some changes have been implemented, cultural change takes time and the literature I have reviewed suggests that changes are being made but that concerns remain that the culture within the NHS is still not sufficiently conducive to effective speaking up and that progress has been slow in getting whistleblowing champions into place.

One concern relates to understanding of the process to be followed in order to raise a concern. In both the health sector and wider academic literature, a key issue is that although processes are often in place to permit staff to raise complaints, these are often not widely understood and people do not always know where to seek advice. I believe that human resources departments have a role to play here in publicising processes, providing a point of contact, directing people towards appropriate support and providing training in speak up arrangements. Some of this...
is currently provided but the academic literature in this field suggests that the current arrangements are not always as effective as they should be.

Another concern is that some issues that are raised fail to progress because of a lack of evidence. This is a feature of cases that fail under whistleblowing legislation but the issue also relates to cases that are not raised under legal provisions. Many employees, whether in the health sector or elsewhere, are more concerned with getting on with their job than with securing a trail of evidence. Although burdensome, staff need to be made aware of the importance of retaining copies of documentation.

The effectiveness of the UK Code of Corporate Governance
The UK Corporate Governance Code contains provisions setting out responsibilities for reviewing the arrangements by which staff may, in confidence, raise concerns about possible improprieties. Within a corporate context, the proposals that are the subject of current consultation would shift responsibility to the board of directors rather than leaving them with the audit committee. The principle of locating responsibility at the highest level within an organisation sends a strong message about the importance of the arrangements and more effectively sets the tone from the top. This applies in the NHS as much as in the corporate sector.

The current consultation on the Corporate Governance Code also suggests that the board should be charged with establishing a method for gathering the views of the workforce and that the board should review this to ensure that arrangements are in place for investigation and follow-up action. The research that I have undertaken shows that although arrangements may exist in organisations to deal with investigation and follow-up, they may not always be used, or may not be used effectively. For example, not everyone receives training in speaking up, how to deal with ethical matters reported to them or effective listening. It is important, therefore, that the body responsible for speak up arrangements should also periodically review the effectiveness of the arrangements that are in place and report publicly on the outcome of their periodic review.
The current consultation on the Corporate Governance Code also proposes that arrangements refer to the ‘workforce’ rather than to the ‘staff of the company’ as the former suggests employed staff whereas references to the workforce can include extended workforces, such as self-employed and outsourced workers, thus better reflecting modern working practices. A similar provision is necessary in organisations such as the NHS to ensure that all who work there, whatever their employment status, know about and have access to effective speak up arrangements.

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