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NHS Governance

Response to call for written views on Staff Governance Standards – whether staff are managed in a fair and effective way.

1. **Does the NHS adequately implement the requirement of Staff Governance Standard re. : ‘Treated fairly and consistently, with dignity and respect’ ?**

From my personal experience of working in one NHS Scotland Board, the answer is an overwhelming, no. Sadly, I am far from alone in the most negative of experiences.

If followed according to the letter of the law, the passing of the NHS Reform [Scotland] Act, with its legislation, which compels all NHS Scotland Health Boards to implement five Staff Governance Standards, would act as a shining example of and role model for, how all public service staff or indeed all employees should and have the right to be treated.

I have no doubt, that across the system there are NHS Health Boards, where the culture of the organisation shapes the commitment to the principles of good staff governance, where staff have positive employment experience, with the universally acknowledged, beneficial knock-on effect for patient safety.

Conversely, a toxic type of culture, passed down from the top, in certain NHS organisations, is an antithesis of the NHS Scotland claim to be, ‘an exemplar employer’; negatively affecting staff morale and in turn impacting on the treatment and safety of patients.

In course of his ‘Speak Up Review’, Sir Robert Francis, was appalled to hear first hand accounts from whistleblowers, a number of whom came from Scotland, of their shocking treatment at the hands of toxic managements, whose sole concern was deflection of any criticism, in defence of organisational reputation and without conscience, at the expense of staff welfare and patient safety.

Stories were heard of honest, totally blameless NHS employees being unfairly victimised, suspended, sacked, vilified and financially ruined, where a form of corrupt management existed.

Thanks to the courage of individuals, still brave enough to risk all by daring to raise concerns, and to media exposures of the worst cases of victimisation or injustices, there is a wider awareness of but at the same time a sense of incredulity, at what goes on behind closed doors of certain NHS organisations

- **Seeking redress out with Health Boards for failures to implement Staff Governance Standards.**
- ‘**Each NHS Board is accountable to Scottish Ministers,** supported by the Scottish Government Health and Social Care Directories.’

In view of the above, Scottish Government website statement, it is totally perplexing to victimised employees, as well as to the public in general, why, if Staff Governance and other policies are underpinned by legislation, rogue Health Boards who merely pay lip-service to the NHS reform [Scotland] Act 2004, are not held accountable for serious abuses of the system or reprisals against those who dare to speak up about patient safety issues or wrongdoing.

All too often, those at the top are largely unreachable.

Approaches for redress, addressed to the Cabinet Secretary for Health or to the Directorate are met with standard responses, often passed on by subordinates; “an employee/employer
disagreement issue”, “a matter for individual Health Boards”, “no locus to intervene”, “you are free to seek legal advice” and advice given to contact the ineffective’ alert line;’, which simply refers those who seek help back to their errant NHS employer, the source of the problem.

1. contd. – ‘treated fairly and consistently’

I am lead to believe, that it is within the powers and duties of a Cabinet Secretary, to ensure that NHS Scotland Health Boards act lawfully in discharging their responsibilities, in keeping with Scottish Government Circulars and their employees’ contracts of employment. [NHS Circular –22 November 2013 and August 2014] “NHS Boards are accountable to Scottish Ministers.” [Scottish Gov. website]

Compliance with the law is not optional and by the Scottish Ministerial Code and signing of the Holyrood Oath, Ministers are required to both comply and uphold the Rule of Law, wherever it applies.

NHS Scotland employees should not have to personally instigate legal action and face financial ruin, as some have done in Scotland, even those who have won their cases.

☐ It would be helpful, if the Committee could seek to clarify the actual legal position, concerning the power of Scottish Ministers to intervene, where NHS legislation is broken.

☐ A statutory responsibility of Chairs and Non-executive members is to hold management to account. My personal experience is of a totally unethical Chair, wilfully deaf and blind when made privy to, fact based evidence of gross misconduct/potential fraud and serious maladministration.

The Commissioner for Ethical Standards, in refusing to investigate fully evidenced allegations of scandalous breaches of ethical standards by that said Chair, [denials, disinformation, barefaced lying] has made a number of confounding and some bizarre statements + other invalid trumped-up excuses, which are in opposition to the Model Code of Conduct, “ Each public body has a Code of Conduct that sets out the standards that Board members must apply in everything they do.”

- “Failure to observe the key principles does not in itself constitute a breach of the Code.”
- “good practice and exemplary behaviour by Board members are advisory rather than prescriptive”
- “I consider the key principle of respect excludes former employees.”
- “not clear to me how responsibility for *this is attributable to ____”
  [*Chair’s failure to hold management to account for gross misconduct & maladministration]

☐ I trust that the above testimony, made from my perspective and through first hand personal acquaintance of many UK whistleblowers, has made plain to the Committee, that regardless of policies being underpinned by law, a wide dichotomy exists between the NHS Staff Governance commitments to employees and the non-action, for whatever reason, of those at the top to challenge and hold to account those leaderships, which fail to act lawfully.

☐ In view of the above points of fact, I wish to draw the Committees attention to Sir Robert’s renewed call, in the latter part of 2016, for NHS managers to be professionally regulated in the same way as doctors, nurses and other seven or so medical related professions.
2.
- Urgent Renewed Call by Sir Robert Francis for Professional Regulation of NHS Managers.

NHS Scotland employees, at all levels, are subject to the same NHS Code of Employee Conduct. Board members, bound by the Model Code of Conduct, are subject to a Fit and Proper Person Test and bound by the key Principles of Public Life: any appointment to an executive or non-executive post, signals, that the individual has been vetted, found without reproach and can be trusted to act ethically, with total integrity, in all matters.

Scottish Executive directive, “standards are not optional”

Doubtless, leaders of high integrity do exist within NHS Scotland but in truth, not all NHS Scotland executive and non-executive leaders, respect the high level of trust placed in them.
As previously indicated, some personal behaviours, displayed behind closed doors, are very far removed from the core values of honesty, fairness and transparency, which they claim to live. By the standards of ordinary upright citizens, such individuals fall very far short of ‘fit and proper’ for positions of power.

The public façade of some, belies duplicity, which rivals, in some cases, the double-dealing of con men, as featured on national television.

Without challenge or any call to account, the perpetrators, remain ‘the untouchables’.

- Sidestepping and ignoring the issue, strongly underlines, Sir Robert’s call for regulation.

Delegates at BMA annual conference in 2015, unequivocally passed a motion in favour, "Any professional body for NHS managers should be statutory and should have the power to censure, suspend and withdraw the ability of managers to work in health or social care organisations.”

It is greatly anomalous, that while doctors and nurses can be disciplined or struck off for incompetence or malpractice, there are no sanctions for executive or non-executive leaders, who wield the power, yet remain totally unaccountable for patient safety failings, cover ups, gross misconduct or other malpractice.

- Frequently in recent times, press headlines have highlighted cases of NHS Scotland governance failures, which more often than not, time after time, lie at the door of the same errant organisations. Although NHS Scotland press releases tend to give the impression that all is well, Scottish Ministers and other MSPs, will be well aware, which NHS Scotland organisations are repeatedly in the hot seat.

“Our failures of leadership are at the heart of almost all the recent NHS scandals.” -David Prince, CBE, Former member Committee Standards in Public Life[CSPL 2009 – 2016] speaking July 2016

Each fresh scandal/exposé adds more weight, for statutory regulation of senior NHS leadership – the rationale for it is compelling.

The Scottish public expects to be assured, that steps are being taken to ensure that executive and non-executive leaders are fit and proper for their role.

Current NHS Scotland policies would be enough if they were adhered to or enforced. Safeguards, which are currently in place are clearly not working.
It is already the case that NHS England, following consultation, has revised Fit and Proper Person Requirement, FPPR, regulation with Care Quality Commission, CQC, having responsibility for monitoring and enforcing it.

- Regardless of whether or not Scottish ministers currently have the legal power to act, I urge, that in the course of this review, Committee members will consider in depth, and put forward firm recommendations for measures to deal with and independently address the reported problem of dysfunctional behaviours in a number of NHS Scotland organisations.

- If Scottish Ministers cannot or will not take action, something needs to be done.
- Effective regulatory action, where none exists at present, should urgently be in put in place, to call to proper account, those responsible for serious breaches of NHS policies and the Model Code of Conduct and if necessary, sanctions to remove them from office, as is now happening in NHS England. The issue needs to be raised in the Scottish parliament.

- In an exclusive article in the ‘Nursing Times’ Sir Robert said, “senior managers should be regulated in the same way as clinicians.” His call for professional regulation of NHS managers, as described by the BMA, is long overdue in NHS Scotland.

- Quotes from an article by Walter Humes, writing in the Scottish Review last year, sum exactly how dysfunctional organisations operate, behind closed doors.
  
  o “I have a long-standing interest in issues of public accountability and am familiar with the various techniques used by bureaucratic organisations to avoid responsibility when things go wrong: these include silence, delay, evasion, buck-passing and attempts to discredit complainants.”

  o “Those who hold high office in public bodies are very adept at defending their own interests. They may claim to support openness and transparency but those principles are not always translated into practice. Bureaucratic Scotland often falls short of the democratic ideals which are said to underpin civic life.”
Urgent Need for Culture of Improvement

- The Committee’s inquiry into NHS Governance and its recommendations will be dependent on the substance of submissions; objective reality, dependent on validation of claims.
- Committee members need be informed and to take account of first-hand disclosure of fact-based examples, relating to major deviations from Staff Governance Standards and contempt for the underpinned law, by the leadership of some NHS Scotland organisations.
- The account of one such organisation, relates to gross misconduct/potential fraud and cover-up; not one isolated ethical blip but true to type, of its defensive, dishonest, collusive culture.

Factual Summary:

- Appointment to NHS specialist teaching post.
- Job requirement = GTC registered teacher + postgrad. qualification [SCQF Master’s accreditation] - annual NHS requirement written proof of ongoing GTC registration.
- Advertised salary = senior/chartered teacher level in education.[same level as post previously held]

Later, NHS pay award questionnaire covertly, grossly dumbed down, after signing off:

- 20.7% of YES answers changed to NOs
- 54% of remaining YESs - critical info. depressed or deleted, including specialist qualification.

Result – pay banding, now less than unpromoted [any] teacher in education - substantial loss of salary, pension rights and several years back pay.

All approaches to senior management for justice – denials, disinformation, blatant lies.

Approach to Chair of Board, request to hold management to account [ fully verifiable written proof of duplicity & maladministration provided]

- Covert changes to signed off official document – match Police Scotland 3 element criteria for fraud.
- FOI evidenced organisations own records of maladministration.
- False claim post graduate qualification was not Master’s level. [alone, guaranteed higher banding]
- Subsequent false claim [when caught out] Master’s level was not required for post

Chair’s only response – was supportive of organisational management – no duplicity.

- Supported false claims re. Master’s level of qualification, which guaranteed higher banding.
- Claimed all organisation’s own FoI data, which confirmed serious maladministration, was inaccurate.
- Provided totally fake information to MSP & MP – letters of disinformation from start to finish.

Later, at mention of press involvement, Chair, in a prepared statement, admitted, for 1st time, changes had been made to the signed document BUT made a jaw-dropping false claim that colleagues had authorised changes so simply procedural error, not to be asked to sign again.

Chair presented with written evidence, emails and letter, totally discrediting his spurious claim:

1. authentic email evidence - proving his deliberate fabrication
2. letter with line-manager’s statement, “it was the document, signed by post-holders which was evaluated.” [ total opposite of his admission of changes ]

On five occasions, when asked to justify the ‘procedural error’ claim, one at complete odds with all the hard, written evidence, the Chair simply totally ignored the direct questions.

The refusal to answer, a Chair’s statutory duty, speaks for itself.

N.B. Refusal to answer reasonable questions or knowingly giving misleading information are two examples of maladministration, quoted in UK Parliamentary Ombudsman’s, 1993 report.
Covert doctoring of an official signed document with the intention of downgrading a pay award is not only NHS employee gross-misconduct but matches the police Scotland 3 element criteria for common law fraud.  

NHS Counter Fraud Policy, requires any such allegation to be referred to the organisation’s nominated officer; again the Chair, guilty of dereliction of duty.

The financial loss caused by any employer’s dishonest and successful attempt to downgrade a pay award is in essence no different to a fraudster compromising a bank account.

N.B. Ministerial Foreword PIN policy [2012, Cab. Sec. for Health, Nicola Sturgeon MSP]  

“Staff Governance [ensuring fair and effective management of staff] has been enshrined in legislation and enjoys equal status with other pillars of governance. PIN policies provide a means of further ensuring sound staff governance policy.”

Evidence abounds, of NHS Scotland staff, bullied, intimidated, disciplined, suspended, silenced and some unjustly sacked, more often than not for raising patient safety issues.

NHS Staff Governance or any legislation without enforcement is meaningless.

Scottish Ministers’ claim, “no locus to intervene”, is in direct conflict with briefing below:  

‘Only Scottish Ministers and the Scottish Courts have the power to enforce a particular action on an NHS Board. Ministers have a general power to direct Boards, as well as the power to intervene in the case of service failures.’ [SPICE, briefing May 2011]

The central message of the above example and the essential question for the Committee to consider and draw to the attention of Scottish Ministers, ‘Can the leadership of any NHS organisations which behaves unethically and blatantly flouts NHS legislation, ever be trusted to act with openness and honesty in any matter; in particular, a statutory Duty of Candour?’

Creating a culture of improvement will only be achieved, when leaderships, who create unethical organisations, are rooted out and held fully to account for their wrongdoing.

Scottish Government Ministers do have that power.