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NHS Governance

We have seen (mainly due to my own case) the implementation of a National Whistleblowers Alert Line in Scotland. I flagged up some serious reservations about the alert line that have been ignored (adoption of ISO 9001 Quality Management System) and reports I am getting as to the effectiveness of the alert line are far from encouraging. This alert line is run by the organisation Public Concern at Work (PCaW). Here’s how it works;

Imagine a telephone conversation;

‘Mrs Hen here, that bad Mr Fox has been killing all my chicks!!’

PCaW – ‘Certainly Mrs Hen – I suggest you take up the matter with Mr Fox!!’

Fantastic!!

Whistleblowers are directed by PCaW to take the matter up with their employer!? Crazy or what!?

Following on from the setting up of the PCaW confidential alert line we had the recent travesty of the appointment of whistleblowing champions at each of the territorial Scottish health boards. Sir Robert Francis in his ‘Freedom to Speak Up Review’, following the Mid-Staffs inquiry, stated that these appointments should be seen ‘by all’ as independent, fair and impartial – that they should not be adjuncts to existing posts. Shona Robison drove a horse and carriage through these recommendations. The appointments were neither independent, fair or impartial; HB’s were instructed by Paul Gray (DGHSC) to appoint existing non-exec HB directors into these posts – on top of their existing duties. In these new roles as WB champions they will not investigate WB’s individual cases!? This is a national disgrace!

Basic principles should be that people who have challenged patient care issues should not be subject to threats of intimidation, attempts to turn their concerns into an ‘employment issue’ and forced to sign confidentiality agreements. We have no idea following the National Audit Office exercise just how many of these agreements exist and we have asked for a retrospective lifting. This has NOT been granted. Patients First, the NHS Whistleblowers group, are now currently seeking an inquiry/ truth commission into this whole business. We are not going to stand for this sort of atrocious corporate bullying any longer!

Those who leave their employment in such circumstances become sort of ghosts; pariahs to be shunned by their former colleagues who are wary of being seen or socialising with a ‘whistleblower’. There is growing evidence that they are actively blacklisted by health employers. Colleagues are left in the dark as to what happened to such people as their stories are buried by the employers. Whistleblowers should be celebrated and allowed to tell their complete stories in filmed interviews that are then posted on NHS Board websites
– then, and only then’ will we perhaps begin to see some real ‘transparency, openness and honesty’ in our NHS!

Whilst confidentiality clauses remain a normal part of such severance agreements employees will remain vulnerable. Unions have been complicit in these agreements being made. Pretty much all of the unions are involved in what seems tantamount to a ‘cover up’ re the use of confidentiality clauses, and because unions are not subject to FOI we cannot find out the extent of this.

Generally staff who refuse to sign have ongoing torment and their working lives become unbearable, but those who do sign them (when at a loss as to what any alternative might be) are often left fighting legal battles in a David & Goliath situation. They are also tormented by the injustice and that their concerns about patient safety have been buried. It is a ‘No win’ situation for workers.

**Boards should be focussing on the patient safety matters not the individual who raised them.**

These gagging clauses should be outlawed since they most certainly result in the concealment of genuine clinical concerns. Use of confidentiality clauses are common in employment practice and used in corporate situations. However, in health they permit patient safety matters to be buried and we have a number of examples where this was tried, and supported by unions; e.g. Dr Kim Holt Baby P whistleblower offered £120,000 for silence; Jennie Feccitt nurse from NHS Manchester, attempted gag; Gary Walker ex CEO of United Lincolnshire Hospitals Trust, paid £500,000 and forced to sign a gag where hugely important patient safety issues could not be discussed publicly. **There needs to be a complete ban on the use of confidentiality clauses. They are an insult and an embarrassment to any free society. They belong to the Russia of Stalin, or Hitler’s Nazi Germany.**

These types of event in fact breach new duty of candour rules for professionals to raise concerns/whistle blow (as articulated by GMC, GNC, NMC etc) as it is now effectively illegal NOT to raise concerns. So why are these barriers to truth still being used on a weekly basis by the Central Legal Office?

These gagging orders also help to disguise and cover up financial implications of the cost of wrong doing and mismanagement by Health Boards, who are actually public organisations spending tax payers’ money and to whom they should be accountable and so lets those managers involved off the hook (as they did at NHS Ayrshire and Arran). No-one at NHS A&A has been held accountable for the biggest scandal in the NHS in Scotland of the last decade. I have reported senior directors to the GMC and the NMC for gross misconduct – these organisations say the directors have ‘no case to answer’? how can that possibly be? Ignorance is no defence in law; If you were there and not aware of it, then you were incompetent. If you were there and aware of it, without asking tough questions or taking action to resolve the matter, then you were negligent. Either way, these people are guilty of
gargantuan corporate failings. Yet no punishment or disciplinary proceedings were meted out?

NHS whistleblowers must be protected or there will be more deaths. It is crucial that health service managers face up to mistakes and learn lessons from them.

Too many hospital trusts and local authorities fail to learn lessons and acknowledge mistakes; so repetition is inevitable. In Mid Staffs, the "silence from doctors and nurses", with few honourable exceptions, ensured that the desperate attempts to cut costs to become a foundation trust had fatal consequences. These are avoidable tragedies. Hospitals and social services inevitably make mistakes. Good organisations want to know about such mistakes and learn from them.

There is a failure to protect whistleblowers. It is not surprising that the RCN reports that 84% of nurses worry that they'd be victimised if they reported concerns about patient safety, something the planned extension of the qualifying period for employment protection will make worse.

Yet there is also hope. Despite the immense obstacles, brave souls do raise concerns, often risking their careers. There is a powerful case for the Mid Staffs inquiry to recommend strengthened statutory protection for whistleblowers and serious penalties for those who victimise them. Will governments endorse such recommendations though?

Health and social care organisations should be open learning organisations where those raising concerns are praised, not ignored or punished. All of us, individually and collectively, have a duty to ensure there are enough staff, treated fairly, and encouraged to raise concerns. Nothing less will do.

What are the invidious ‘mechanics’ of how such CA/gagging orders come to be applied? Here is a good explanation by Roger Kline, again from the Health Service Journal. It is only possible to make sense of what happens to whistleblowers in the NHS by scrutinising a typical (not universal but very common) pattern of responses to whistleblowing which goes like this;

1. Member of staff raises concern

2. Member of staff often finds she/he meets disapproval generally from manager but sometimes from colleagues

3. If member of staff persists in knowing what is going to happen to address concern, a subtle process of undermining, marginalisation, withdrawal of facilities, access to training and petty bullying starts, much of it hard to pin down but none of it present before complaint raised

4. If member still persists, her/his own conduct or practice suddenly becomes an issue leading to anything from informal warnings to full scale suspension and disciplinary action. A
classic example is in an appendix to Robert Francis' report.

5. The member of staff is isolated and if suspended is forbidden to talk about the issue with other staff.

6. The issue then becomes not the original concern raised but responding to the treatment or disciplinary action.

7. At an appropriate moment a suggestion is made to a trade union official that the best way forward is for the member of staff to leave in return for which all disciplinary action will be dropped in return for a compromise agreement.

8. By this time the member of staff is under immense stress and the trade union official is worried about large legal costs and can't see a future for the member in that employer anyway.

9. A deal is often then done. Member can't wait to leave under immense stress and at least with some sort of financial parachute to bridge the gap between losing job and getting something else - often outside NHS altogether because there is no credible reference.

10. The deal makes no reference to PIDA or safety or public interest disclosure because the member of staff is so demoralised, disillusioned, possibly ill, and terrified of financial catastrophe that they have learnt the lesson they have been taught. Don't raise difficult concerns or you will pay a heavy price here.

11. By no means all employers are like this but many are. The CA is only the tip of the story. Dig deeper and a rich vein of denial by employers is to be found.

12. Even after they have left, and even though lawyers will say such deals are unlawful, one look at the attempts to rubbish Gary Walker shows what happens if you are too prominent in outing your story in the media.

13. There is a cost to patients, a cost to the member of staff, a cost to the NHS which loses a good member of staff, a cost in redundancy pay which should not be necessary and often a cost to the pension scheme which pays out for early retirement as a soft option.

14. Once gone, most staff want to move on and who can blame them. Their careers are ruined.

I know people who can and are willing to testify how such evil machinations by NHS boards have ruined their lives and careers...

Signed

Rab Wilson NHS Whistleblower