

PE1605/J

NHS Dumfries and Galloway letter of 13 October 2016

Consideration of petition PE1605 (Whistleblowing in the NHS – a safer way to report mismanagement and bullying)

Petition

Calling on the Scottish Parliament's to urge the Scottish Government to establish an independent national whistleblower hotline for NHS staff to replace the current helpline. It would differ in that it would investigate reports about mismanagement and malpractice, often without recourse to NHS managers

Thank you for your letter of 16 September in relation to the above Petition. Please see response on behalf of NHS Dumfries and Galloway below:

Response from NHS Dumfries and Galloway

Definitions

An employee is protected by law if they] report any of the following:

- a criminal offence, eg fraud
- someone's health and safety is in danger
- risk or actual damage to the environment
- a miscarriage of justice
- the company is breaking the law, eg doesn't have the right insurance
- you believe someone is covering up wrongdoing

Personal grievances (eg bullying, harassment, discrimination) are not covered by whistleblowing law, unless [their] particular case is in the public interest.

Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others, and may be something which adversely affects patients, the public, other staff or the organisation itself. A grievance differs from a whistleblowing concern as it is a personal complaint regarding an individual's own employment situation. A whistleblowing concern is where an individual raises information as a witness whereas a grievance is where the individual is a complainant.

(Section 2.1.1; Implementing and reviewing whistleblowing arrangements in NHS Scotland PIN policy, May 2011)

Commentary

NHS Dumfries and Galloway recognises that developing an organisational culture, systems and processes where staff feel safe and have the confidence to raise whistleblowing concerns which are in the public interest, is a crucial aspect of good

governance and risk management, and will support us to deliver safe, effective person centred health and care to the people of Scotland.

The petitioner refers to both bullying and fraud within his petition, as well as to whistleblowing. As highlighted within the definitions above, it is important to recognise the distinction between an issue which should be raised and investigated as whistleblowing, and those matters which are personal grievances eg bullying, harassment and discrimination. These matters should be dealt with within the boundaries of the employment relationship. Within the NHS in Scotland we have developed effective policies in partnership to deal with them, separate to our arrangements in respect of whistleblowing. In NHS Dumfries and Galloway we are satisfied as to the effectiveness of these arrangements, and so do not support any proposals for change which would shift them into the auspices of whistleblowing, unless the matters raised touches on matters which are of public interest.

The role and responsibilities of the Board whistleblowing champions are key – we do not concur with the petitioners view that their role is to ‘protect whistleblowers from retribution’, as this protection is enshrined in law (unless the concern is found to be raised maliciously) and thus is a corporate responsibility to enact, not that of the champions alone. Rather the role of the champions is to contribute to policy development and organisational learning, raise awareness, encourage reporting at both individual and organisational levels, and signpost individuals to the support they need in order to take their concerns forward confidently within the extant systems and processes of the organisation. This is a sensitive and organisation specific role, requiring internal knowledge, recognising that all organisations are structured differently according to service needs, and staff who have concerns need to be able to confidently navigate the Boards policies and procedures in order to take their concerns forward and be supported to maintain their own psychological safety, health and wellbeing.

The petitioner proposes the establishment of an independent hotline to both receive and investigate concerns raised. NHS Dumfries and Galloway would support any changes to the current arrangements which would give staff greater confidence, and enable easier reporting of concerns, as we recognise that this may be a reason (amongst others) why some staff members could choose not to whistleblow. However, we are not certain from the evidence presented that the hotline proposed would realise any material benefit beyond that already offered by the helpline arrangements already in place and consider that this proposition requires a robust evidence based review. We are not confident that the proposal that concerns are investigated independently of the Health Board without managerial oversight would deliver robust, safe findings, as they would be undertaken outwith the organisational context, systems and processes by investigators not necessarily well versed in NHS systems, relationships and partnership working. This could result in misleading or inaccurate conclusions which could have an impact on service delivery to patients, organisational reputation and the organisations legal responsibilities to all of its employees, not just the whistleblower. We remain satisfied that the current suite of PIN policies covering whistleblowing, raising concerns and Dignity at Work are robust, proportionate and fit for purpose, and clearly set out the high standards required by those undertaking investigations across the policy suite. These arrangements do allow for Boards to commission external investigators to

undertake investigations on the Board's behalf (with robust internal HR / managerial oversight) where it is considered appropriate to do so, and we do not see any compelling reason to change from this, given that this flexibility already exists within the system.

The principle underpinning whistleblowing is to prevent harm, and protect patients and service users. The development of a culture and behaviours which promotes safe and effective patient and service user focused practices in a values driven environment must be led from the top of the organisation, and in this regard we support the elements of the petition which encourage Boards and board members (both Health, and the newly established integrated Joint Boards) to champion a culture of openness and transparency through their governance and risk role at the Board table. We have appointed a non executive member of our Board as a Board Whistleblowing Champion here in Dumfries and Galloway to ensure that these values and behaviours are promoted, and perceived, or actual barriers to reporting of concerns are identified and removed. Our ultimate aim should be to eliminate the need for whist blowing within NHS Scotland. This is, however a complex task and it will take time to transform those aspects of culture within NHS Scotland which are believed to get in the way of a Just Culture, with openness and learning at every level across the organisation, and an environment where staff feel confident to raise concerns and have them addressed in the normal course of undertaking their role, as an effective team member.

Yours sincerely

Jeff Ace
Chief Executive