

PE1605/O

Public Concern at Work (PCaW) letter of 14 October 2016

Thank you for providing an opportunity for Public Concern at Work (PCaW) to respond to the petition – PE01605 – (Whistleblowing in the NHS – a safer way to report mismanagement and bullying).

We have seen the response of the Scottish Government by way of their letter dated 13 October 2016 and the briefing paper prepared by Kathleen Robson dated 23 June 2016, which provide useful background information for the committee to consider.

About Public Concern at Work

By way of introduction, we are an independent whistleblowing charity. Our aim is to protect society by encouraging workplace whistleblowing. We do this in three ways, advising individuals, supporting organisations and informing public policy.

The charity runs a free legal advice service for workers who have witnessed wrongdoing or malpractice in the workplace but are unsure whether or how to raise their concerns. Since 1993, we have advised over 21,000 whistleblowers. This work in turn informs our support for organisations and the public policy work we undertake. The advice line is at the heart of everything we do at PCaW. It is a free and confidential source of advice for workers who are unsure whether or how to raise a concern about risk, malpractice or wrongdoing. The advice line team advises workers on how to raise their concern in a way which maximises the possibility of the issue being resolved, while minimising the risk of the caller suffering retaliation from their employer. In the last 5 years we have seen a huge increase in demand for our services with a 28% increase in whistleblowing cases since 2011.

We were closely involved in the initial legislative drive for the protection of whistleblowers in the UK and continue to monitor the effectiveness of the law that protects whistleblowers, the Public Interest Disclosure Act 1998 (PIDA). In 2013 and 2014 we successfully lobbied the UK government to amend PIDA, leading to the establishment of vicarious liability for victimisation by co-workers and the creation of a duty on regulators to report anonymised data on whistleblowers.

We are well known to the NHS because our advice line is already promoted to NHS staff by health regulators and health unions through their websites and printed material. It is also promoted to staff across primary care and NHS organisations in England through the Speak Up for a Healthy NHS policy pack published in 2010 and it appears in several thousand policies. This means that we already have a significant presence within the sector for providing specific and tailored advice to individuals working in health and social care.

The Implementing & Reviewing Whistleblowing Arrangements in NHSScotland Partnership Information Network (PIN) policy, published in December 2011 is based on 'Speak up for a Healthy NHS' and we are acknowledged as the authors of those materials in the PIN policy. Speak up for a healthy NHS was developed in conjunction with the Social Partnership Trust and was itself based on our guidance for organisations which is taken up by subscribers to our advice line in all sectors.

PCaW has worked with the Department of Health from 1999 to 2012 and created the original NHS policy pack that accompanied Health Service Circular 1999/198. In 2003, PCaW updated the policy pack and produced *So Long Silence*, a CD-ROM that was distributed to all NHS trusts, including mental health, ambulance and primary care trusts. In 2005 and in response to the Shipman Inquiry, we developed a similar policy pack for general practice, *Whistleblowing for a Healthy Practice*, which was distributed to 40,000 GP practices in England.

As mentioned above, in 2010 we developed new guidance entitled *Speak Up for a Healthy NHS*. This policy pack was written by PCaW to help NHS organisations achieve best practice whistleblowing arrangements and create a culture where staff can speak up safely. It also promotes the support we provide across the NHS.

Between 1999 and 2011, we worked closely with stakeholders in the NHS including UNISON, BMA, RCN, GMC and the NMC to produce guidance and advice aimed at organisations and individuals alike. We have had contact with hundreds of different NHS organisations and have provided a range of support and advice from answering specific questions from practice managers about the policy packs, to briefing national NHS authorities, working with individual trusts on training and communication of their policies, reviewing material on raising concerns for regulators, presenting to regional and national forums on risk management and other issues.

Our experience working with organisations in the health sector and advising whistleblowers puts us in a unique position to offer support to organisations in relation to their whistleblowing arrangements. To help organisations get whistleblowing right we provide training and advice on drafting and effectively communicating their whistleblowing arrangements. We work with organisations from all sectors and our clients include the British Red Cross, Care UK, Home Retail Group, Lloyds Banking Group and the John Lewis Partnership. As part of this work, we suggest that organisations should consider independent advice for their staff and include Public Concern at Work as a vital safety net to their internal reporting systems and processes. When we work with organisations in this way, it is always made clear (and referenced in our terms and conditions) that the advice we provide is subject to legal professional privilege and is aimed at the concerned member of staff. Note it is advice not representation and we do not investigate concerns. Our aim is to help the individual to be a clear messenger and to pass the information to the appropriate person within the organisation, or to take the information outside of the organisation to the appropriate regulatory body (or more widely if necessary). When we advise individuals on raising a concern we are always focussed on doing so in a way that minimises the risk to their personal employment position.

The National Confidential Alert Line and our work with NHSScotland

The National Confidential Alert Line (NCAL) was an initiative set up by the Scottish Government by way of a tender in 2013, on a pilot basis initially. A further contract was awarded in 2014 and this has recently been extended to June 2017. PCaW responded to the tender to provide the service. We are unsure whether the tender documents will be made available to the committee, but would suggest that they should be if the questions posed by the petitioner are to be fully considered. For the

avoidance of doubt, the committee should be aware that the tender expected a service on the following basis¹:

The Scottish Government requires a contractor to provide a confidential alert line service for NHS Scotland staff, which will allow staff to report any concerns they have about patient safety or malpractice in the NHS in Scotland, and, where appropriate, have these concerns passed to an NHS Board or appropriate Regulator on the staff member's behalf. The service will also be required to provide:

- *Information on the outcomes of all cases received (within the restrictions of individual confidentiality);*
- *A package of training measures aimed at educating NHSScotland management and staff on the complex issues and support mechanisms surrounding whistleblowing;*
- *Dedicated advice on protection afforded to whistleblowers through the Public Interest Disclosure Act (PIDA) 1998;*
- *A mechanism to record feedback from users of the service and, where possible, feedback outcomes of cases referred to regulatory bodies back to the caller; and,*
- *A mechanism to inform Health Boards of the number of cases of whistleblowing and bullying and harassment reported through the Alert Line service relating to their areas (where caller consent has been provided).*

In addition, we would refer to the note in the reply from the Scottish Government where the service is explained:

This includes the establishment of NCAL which provides a confidential service should staff have any doubt about whether or how to raise a whistleblowing concern, or worry about doing so. NCAL provides a safe space for staff to discuss their concerns with legally trained advisers who help the caller identify and consider their options. Also, NCAL can, if appropriate, pass cases to the Board or appropriate Regulatory or scrutiny body on behalf of the staff member for further investigation.

The service suggested by the petitioner is substantially different to the one provided in answer to the tender specification and explained above. Our understanding is that the petition is calling for a hotline service (in fact it could almost be described as ombudsman type organisation) that would deal with bullying as well as whistleblowing concerns. The service would direct concerns to the Health Board, and if the Board fails to deal with the concerns, they would then be passed to a yet to be established Independent National Officer. The hotline would also have the power to investigate concerns raised with them. Dealing with any victimisation of the whistleblower would be the responsibility of the Health Boards' designated Whistleblowing Champion.

We would respectfully submit that it is for the Scottish Government to consider whether the service suggested by the petitioner is one they would like to commission. We do not feel it is fair to judge a service commissioned on the basis

¹ 2014 to 12016 tender document

set out above to be ineffective, when it is delivering the requirements set out in the tender documents.

That is not to say that we believe that the challenges outlined by the petitioner do not often materialise in whistleblowing cases in the NHS in Scotland and elsewhere. Our research across all sectors demonstrates that there is much work to do in order to improve the outcomes for whistleblowers in all sectors.

We would also highlight the work we do with NHSScotland in addition to the NCAL to help improve the experience of whistleblowers. In November 2014 and February 2015 we delivered a series of five training sessions for designated officers of each Health Board on whistleblowing best practice. The sessions explored the challenges workers face when raising concerns in the workplace, how to properly and effectively handle concerned employees and promoting key policy messages. We have included a summary of the feedback collated from attendees of the February training sessions at Appendix A. We also delivered further sessions to each of the newly appointed whistleblowing champions for each Health Board in November 2015 which explored the role and key responsibilities of the new post. We liaised closely with the Scottish Government on the content and delivery of the sessions and received feedback that they were well received. We continue to work closely with the Scottish Government and propose recommended work plans for training and communications going forward. In addition, we have been provided with the whistleblowing policies of all NHSScotland Health Boards which means advisers are able to help individual identify the relevant contact, pass concerns on to the Boards on behalf of the caller or seek initial information about how a concern might be handled and to obtain the relevant contact for a caller.

The wider context

It may assist the committee if we highlight some of the recent statistics from our advice line and our recent report, published in August this year – ‘Whistleblowing Time: For Change’². Research into 1,000 calls to our advice line shows that the majority of whistleblowers will raise their concerns internally. Furthermore, they will only raise their concerns once or twice providing a small window of opportunity for the organisation to take action.³

The same research showed that 74% of callers to our advice line who had raised their concerns said they believed nothing was done about the wrongdoing or malpractice.⁴ This is a worrying finding as surveys have shown that a major barrier to people coming forward with concerns is the fear that nothing will be done.⁵ To counteract this finding more must be done to improve internal whistleblowing arrangements; this can be achieved by identifying what is already considered best practice, and encouraging further development of this across the sector.

Our research also suggests that workers often start by trying to raise their concerns openly, with 68% of callers stating this is how they raised their concern. 9% raised a matter confidentially (where their identity was disclosed to those looking into their

² [Whistleblowing: Time for Change, Public Concern at Work, 2016.](#)

³ [P.g. 12 of the Whistleblowing: The Inside Story, 2013.](#)

⁴ [P.g. 29 Ibid.](#)

⁵ PCaW and YouGov survey 2015- <http://www.pcaw.org.uk/latest/blog/new-pcaw-report-and-yougov-survey-into-the-state-of-whistleblowing-in-the-uk>

concern but not known generally) and 2% remained anonymous. In the remaining cases we did not know how the concern was raised.⁶

69% of our callers have already tried to raise their concern internally before they contact us. There has been a small increase in individuals having raised their concern with the regulator before they contact us; this was 5% in 2011, peaked at 9% in 2014 and as of 2015 stands at around 7%.⁷

If our advice is sought before the concern is raised, there are better outcomes for both the way in which the concern is handled and the treatment of the whistleblower. The likelihood of a positive outcome (investigated, admitted, resolved) for the concern doubles and the likelihood of a good personal outcome increases by 26%. However, we are seeing lower numbers of individuals contact us at this crucial early stage. We know from our feedback surveys that 9 out of 10 callers would recommend us but we are also told that many wish they had found out about us earlier. We know we have much to do to increase our profile, but remain constrained by our limited resources.⁸

We conduct an annual feedback survey with individuals who have contacted the advice line, over the past five years:

- 92% of callers to our advice line said the advice was clear and easy to understand.
- 78% said the advice was helpful
- 88% said they would recommend the charity to someone who was unsure whether or how to raise a concern about malpractice.

There is no doubt that getting internal whistleblowing arrangements right can provide an effective early warning system alerting management to a problem before it develops into a scandal. Organisations with good whistleblowing arrangements will demonstrate to stakeholders, regulators and the public that the sector is transparent and open to scrutiny.

We continue to campaign to improve the environment in which we operate and to ensure that the legal and cultural barriers for whistleblowers are reduced if not removed altogether. We are not in a position to insist that any organisation (whether in NHSScotland or elsewhere) deals with a particular issue in the right way and protects the whistleblower in the process – we do not have investigatory powers and we do not litigate. Our service is aimed at improving matters, but the real power in this process lies with employers in the NHS in Scotland, namely with the Health Board, and the regulators that provide the oversight of those boards.

To further illustrate our recent research and campaigning in this area, we would refer the committee to our recent report – ‘Whistleblowing: Time For Change’ – where our advice line is explained further and our research and campaign work is highlighted.⁹

We trust that this short response, read in conjunction with the background research paper and the NHSScotland response provides the committee with sufficient detail about our service to be able to consider the petition.

⁶ [P.g.6-7, Whistleblowing: Time for Change, Public Concern at Work, 2016.](#)

⁷ Ibid

⁸ Ibid

⁹ <http://www.pcaw.co.uk/latest/latest-review>

Yours sincerely,

Cathy James

Chief Executive

Public Concern at Work

Appendix A: NHSScotland Health Board Training Feedback

Feedback forms were received from 28 delegates who were asked to score the course out of 10 (with 10 representing excellent and 1 representing poor). The scoring is summarised below, as is a selection of comments provided.

10/10 – 4 delegates
 9/10 – 11 delegates
 8/10 – 6 delegates
 7/10 – 7 delegates

Suggestions from the delegates included having a session that is specifically designed to ‘train the trainers’ and to include a test understanding at the end of the course.

Comments provided included:

“Full marks for not rigidly following the course format – flexible reaction appreciated. Relevant group of managers really brought the discussions to life.”

“It was a good opportunity to focus on whistleblowers, who are different to other types of complainants. I enjoyed the relaxed informative style. Given lots of food for thought”

“Trainer was aware of the Scottish element. Good mix of presentation, incorporating discussion and groups work. Room cold.”

“Relevant, useful case studies. Useful; some good actions to take forward.”

“Case study – very helpful and prompted good discussion. Good pace and varied enough to keep momentum and interest.”

“Covered a wide range of learning around whistleblowing. Went off agenda a bit, but this was good as lead to more wider (Sic) group discussion which I learned a lot from. A lot of information presented, but broken up well with group discussion.”

“Content was good. The pace was a bit slow at first. Too long on initial group discussions. More time on afternoon sessions.”

“Very informative and useful. Very relaxed and allowed attendees to participate. Overall thoroughly enjoyable and will take away useful information.”

“Good balance. Like the worked examples. Have a sense this needs a higher profile.”

“Very helpful and informative – still need help to know when concern is whistleblowing. Structure was relevant and presentations very clear and engaging. Enjoyed and would encourage others to attend.”