

## LETTER TO CQC 19 OCTOBER 2015: INSPECTION METHODOLOGY ON WHISTLEBLOWING

To David Behan, Chief Executive Care Quality Commission, 19 October 2015

Dear Mr Behan,

### **CQC assessment of regulated organisations' whistleblowing governance**

We write about specific actions that CQC could include in its inspection process to ensure that whistleblowers are fairly treated.

As you will be aware, in his report of the Freedom To Speak Up Review, Sir Robert Francis concluded that regulators could do more to protect whistleblowers.

*"I believe there is scope for the systems regulators to play a bigger role. In particular I think they should pay more attention to the record of an NHS organisation in respect of how it handles concerns, and take regulatory action where that record is poor"*

*Report of Freedom to Speak Up Review 11 February 2015*

Reprisal against whistleblowers is a core governance issue. We believe CQC should inspect organisations' whistleblowing governance systematically, consistently and in detail.

CQC's currently published guidance for its inspectors on assessing whistleblowing governance appears very limited to us and it does not set out what inspectors should actually do when they are inspecting:

[http://www.cqc.org.uk/sites/default/files/documents/rp\\_poc1c1b2b3b4b\\_100997\\_20110815\\_v1\\_supporting\\_notes.pdf](http://www.cqc.org.uk/sites/default/files/documents/rp_poc1c1b2b3b4b_100997_20110815_v1_supporting_notes.pdf)

It seems to us that this lack of robust inspection guidance could easily lead to variability and to important issues being overlooked. The lack of auditable standards in the current notes for inspectors also means that CQC cannot robustly audit its performance.

We understand that CQC's position is that it will not investigate individual cases but that in theory, it can review governance issues on a thematic basis. There is clearly a whole spectrum of actions that CQC can take to thematically review issues. However, it is our experience that CQC is very quick to retreat behind its "non-investigation" policy, and to take little action, even where it has been informed of multiple whistleblowers in an organisation.

Moreover, our experience is that CQC often draws on anecdotal data from staff

randomly interviewed on the day of inspection, and that CQC sometimes seems to give this more weight than structured national staff survey data or the feedback of whistleblowers who have been severely victimised.

We feel the following are important parameters that CQC should routinely examine and report upon when conducting inspections, especially with reference to the “well-led” domain:

- Data from interviewing whistleblowers about their experience, both in terms of the resolution of their concerns and the personal impact of whistleblowing.
- Data on suspension and disciplinary action against staff who have raised concerns.
- Data on dismissal of staff after raising concerns and data on cases where providers have been found to have unfairly dismissed staff who raised concerns.
- Data on referral to professional regulators of staff who raise concerns, and data on cases where providers have referred staff to professional regulators but no allegations are upheld.
- Data on employment claims against providers
- Data from examining compromise agreements for signs of indirect gagging, such as non-disparagement clauses or clauses that prevent staff from disclosing the existence of compromise agreements.
- Data from CQC’s inspection of providers’ local records on whistle blowing events and staff experience, whether such records adhere to good practice guidance, and whether Trusts can evidence learning from whistleblowing events, either singly or on an aggregate basis. (Early responses to FOI enquiries suggest that many Trusts have inadequate whistleblowing governance, but CQC has to our knowledge largely not reported this).
- Data from the national NHS staff survey

CQC has acknowledged the general importance of specialist expertise in conducting its inspections. We believe that in keeping with this, assessment of whistleblowing governance is undertaken by inspectors with defined, specialist skills.

We believe that as a matter of policy, no organisations should receive an overall “good” rating from CQC unless it demonstrates good whistleblowing governance. This is needed to send a clear message to organisations that CQC prioritises the fair treatment of whistleblowers.

Please let us have your response on these proposals and whether you are willing to ensure that there is greater whistleblowing expertise in inspection teams. Please also let us know if you are willing to issue more effective guidance to CQC inspectors, which contains auditable inspection standards by which CQC can be transparently held to account.

We would be grateful if you would reply directly to all signatories.

Yours sincerely,

Minh Alexander  
Fiona Bell  
Sharmila Chowdhury  
David Drew  
Narinder Kapur  
Gary Walker  
Maha Yassaie

cc Health Committee

Sir Rober Francis QC

Professor Louis Appleby CQC NED and Chair of Regulatory Governance Committee

National Audit Office