

BY EMAIL

Sir David Behan
Chief Executive
Care Quality Commission

5 May 2017

Dear Sir David,

Continuing concerns about the National Freedom To Speak Up Guardian's procedures

Thank you for your attached letter of 20 April 2017.

Thank you also for conceding that the National Freedom To Speak Up Guardian will intervene in individual whistleblower cases after all, by challenging employers to look again at mishandled cases and to correct bad practice, as per this recommendation by Sir Robert Francis:

"...challenge or invite others to look into cases which did not appear to have been handled in line with good practice or where it appeared that a person raising a concern had experienced detriment as a result of raising the concern."¹

However, I remain very concerned about the National Guardian's procedures, which have now been finalised and published.² There are still many questions. I highlight two issues:

Issue 1

There is a claim in the National Guardian's published procedures that the so-called twenty 'Francis principles' are all evidence based:

"Those principles, actions and examples of good practice establish an authoritative and evidence-based set of standards that state how NHS trusts should support their staff to raise concerns and how they should respond to them"²

This is not correct as the core proposal to establish Freedom to Speak Up Guardians was based on a model that had not been evaluated at the time of the Freedom to Speak Up Review, and the relevant staff survey metrics that existed were not impressive.³

The trust that provided the key example of purported good practice cited by the Freedom To Speak Up Review report has in fact been found to have ignored staff's serious patient safety concerns^{4,5}, attracting a related CQC warning and rating of 'Inadequate' on the well led domain⁶ and it has failed to meet its legal obligations under the Freedom of Information Act as regards these governance failures.

Moreover, the NHS latest staff survey results for trusts that have had prototype Guardians for several years are mediocre. ⁷ There is so far no robust evidence that Speak Up Guardians add much value.

The National Guardian herself acknowledged to me a few months ago that there was no evidence base for the Freedom To Speak Up Guardian model, and her task was to gather evidence base and evaluate the model. ⁸

Therefore, I am a little surprised to see her office claiming in its just published case review procedures that all the 'Francis Principles' are evidence based.

I ask that this misleading claim is removed from what is an CQC official publication.

Issue 2

A key persisting issue is that the National Guardian has retained a provision in her case review procedures that is highly prejudicial to whistleblowers. This was pointed out to you during the CQC consultation on these procedures. ⁹

That is, the stipulation that National Guardian will not review whistleblowers' cases unless employers have already responded, and their response is inappropriate:

"Therefore cases should only be considered for possible review where there is clear evidence received in the referral that the NHS body has already responded to a concern and has failed to do so appropriately." ²

Anyone who knows anything about whistleblowing will be aware that a typical employer strategy for suppressing whistleblowers is to simply ignore them.

The whistleblowing charity Public Concern at Work concluded from a 2013 review of its helpline data:

"The vast majority of whistleblowers say they have received no response from management and their concern is ignored at point of contact." ¹⁰

Public Concern at Work noted:

"...60% of those who called our advice line did not report a response from management (either positive or negative)" ¹⁰

The Public Accounts Committee noted three years ago:

"...institutional silence is a common reaction to whistleblowers" ¹¹

If the National Guardian's latest proposals are to be literally interpreted, employers who simply ignore whistleblowers will easily escape scrutiny by the National Guardian.

Clearly this is would be a nonsensical and serious governance failure.

I hope that this is not the intention, but I would be grateful if you, Mr Simon Stevens and Mr Jim Mackey could explicitly clarify this.

If CQC, NHS England and NHS Improvement do not intend that employers should have impunity for ignoring whistleblowers, as currently implied by the National Guardian's published procedures, please advise what further steps you intend to take to rectify the situation.

Yours sincerely,

Dr Minh Alexander

Cc

Health Committee

Public Accounts Committee

Public Administration and Constitutional Affairs Committee

Simon Stevens chief executive NHS England

Jim Mackey chief executive NHS Improvement

Helen Buckingham Director of Corporate Affairs NHSI, member of National Guardian's Accountability and Liaison Committee

Moira Gibb NED NHS England, member of National Guardian's Accountability and Liaison Committee

Sir Robert Francis CQC NED, Chair of National Guardian's Accountability and Liaison Committee

Dr Henrietta Hughes National Freedom to Speak Up Guardian, CQC

Sir David Norgrove UK Statistics Authority

REFERENCES

¹ Report by Sir Robert Francis of the Freedom to Speak Up Review, 11 February 2015
<http://webarchive.nationalarchives.gov.uk/20150218150343/http://freedomtospeakup.org.uk/the-report/>

² National Guardian's case review process for NHS Trusts and Foundation Trusts. 28 April 2017

http://www.cqc.org.uk/sites/default/files/20170428_ngo_case_review_process_0.pdf

³ Critique of Francis' model of trust appointed Guardians, from evidence June 2015 submitted to the Department of Health consultation on implementation of the Freedom To Speak Up Review

<https://minhalexander.com/2016/09/24/critique-of-francis-model-of-trust-appointed-guardians/>

⁴ Leaked NHS report reveals dying patients left alone and in pain. Staff at breaking point. Stoke Sentinel 2 April 2015

<http://www.stokesentinel.co.uk/exclusive-leaked-nhs-report-reveals-dying/story-26274491-detail/story.html>

⁵ Leaked NHS dossier: Nurses log concerns over care. 2 April 2015

<http://www.stokesentinel.co.uk/nhs/story-26274522-detail/story.html>

⁶ Country's biggest Health and Social Care Trust 'requires improvement'. National Health Executive magazine. 13 May 2016

<http://www.nationalhealthexecutive.com/Health-Care-News/countrys-biggest-health-and-social-care-trust-rated-requires-improvement>

⁷ 25 best and 25 worst NHS trusts for speaking up. Allegedly. Minh Alexander 22 March 2017

<https://minhalexander.com/2017/03/22/25-best-and-25-worst-nhs-trusts-for-speaking-up-allegedly/>

⁸ Agreed records of a meeting with the National Guardian on 2 February 2017

*"MA You know there's no evidence for any of this (the SUGs)?
HH That's the challenge, building an evidence base"*

<https://minhalexander.files.wordpress.com/2017/02/hh-meeting-records-23-01-2017-and-2-02-2017.pdf>

⁹ Letter to David Behan, Simon Stevens and Jim Mackey, 20 February 2017

<https://minhalexander.com/2017/02/20/national-guardian-letter-from-wonderland/>

"5. The National Guardian proposes:

"Paragraph 76 of the executive summary states that the purpose of a case review should be to 'review the handling of concerns where there is reason to believe that there has been failure to follow good practice ...'

Therefore cases should only be considered for possible review where there is clear evidence received in the referral that the NHS provider has already responded to a concern and has failed to do so appropriately. Where the referral contains little or no such information the case should not be considered for possible case review.”

This is an unfair threshold, because one of the most common institutional responses to whistleblowers, as noted by parliament [4](#), is silence. Whistleblowers may simply be ignored by employers.

Such institutional silence and passive aggressiveness is clearly and widely accepted as a form of whistleblowing governance failure.

It is inconceivable that the National Guardian propose to reject referrals if an employer has not responded, when this is in fact a core failure.

The National Guardian must withdraw this inappropriate and unfair hurdle.”

¹⁰ Whistleblowing – the Inside Story. Public Concern at Work. May 2013
<http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

¹¹ Whistleblowing. Report by Public Accounts Committee July 2014

<https://www.publications.parliament.uk/pa/cm201415/cmselect/cmpublic/593/593.pdf>