

## 1) CQC FOI RESPONSE 13 SEPTEMBER 2016

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13 September 2016

**Our Ref: CQC IAT 1617 0354**

Dear Ms Linton

Thank you for your correspondence of 26 August 2016 in which you asked for

**"1) Please disclose data collated by CQC on whistleblowing disclosures to CQC by staff of NHS organisations in financial years 2015/2016 and 2016/2017 year to date.**

**Please include data on**

- **Number of disclosures**
- **Nature of disclosures**
- **any grading of disclosure severity**
- **outcomes, such as action taken in response to disclosures by CQC**

**Please disclose the raw data if possible, subject to the appropriate redactions for anonymity.**

**2) Please advise if CQC has conducted an analysis/ analyses of staff whistleblowing disclosures by NHS provider organisation. If so, please disclose the results of this analysis/ analyses.**

**3) Please also disclose any data and reports from any data collation pilots undertaken prior to implementation of the current CQC system of data collation on whistleblowing incidents."**

The Information Rights team has now coordinated a response to your request.

CQC has considered your request in accordance with the Freedom of Information Act 2000 (FOIA).

Our main obligation under the legislation is to confirm whether we do or do not hold the requested information.

In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold recorded information in relation to this matter limited to this extent.

I propose to deal with each of your questions in order.

**"1) Please disclose data collated by CQC on whistleblowing disclosures to CQC by staff of NHS organisations in financial years 2015/2016 and 2016/2017 year to date.**

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- **Number of disclosures**
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**Please disclose the raw data if possible, subject to the appropriate redactions for anonymity."**

In year 2015/6 we had 995 enquiries recorded as whistle blowing.

In year 2016 to date we have 254 enquiries recorded as whistle blowing.

We do not hold data on the nature grading or outcomes of such disclosures

That said, I thought it might be helpful to explain how as an organisation we receive enquiries recorded as whistle blowing

### **Information of concern**

Contact from the people who interact with us (members of the public, professionals, providers, whistle blowers and so forth) is recorded on our Customer Relationship Management (CRM) system. Contact (in the form of e-mail or hard copy correspondence and telephone calls) is recorded in individual enquiries contained within the CRM system.

Enquiries can be recorded under different categories, types and sub types.

Information of concern is currently logged by CQC in three different ways:

- 1 As an information of concern enquiry
- 2 As a safeguarding enquiry
- 3 As a whistleblowing enquiry

We process this information, assessing the action our inspectors need to take, which will always be one or more of the following:

- 1 make a referral to the relevant local authority safeguarding team
- 2 contact with the provider
- 3 discuss any referral with the local safeguarding team
- 4 note for the next planned inspection

We can advise that all contacts from whistle blowers are logged as anonymous on our CRM system. This is regardless of whether the individual has provided their name or any other information that may be used to identify them.

There should be a clear process for staff to be protected within their employment enabling them to raise any issues with their employer.

CQC is however contacted by people who wish to share information about the care services they work in. Where these individuals are raising concerns we classify the individual as a whistle blower.

Any whistleblowing information received by CQC that relates to possible harm or abuse is handled in line with our safeguarding procedures where the above actions may be taken. Not all whistleblowing information directly relates to the quality of care being provided (for example, some issues raised with us can relate to employment law matters).

Concerns raised by people using services, those close to them, and staff working in services provide vital information that helps us to understand the quality of care.

We will gather this information in three main ways:

- Encouraging people and staff to contact us directly through our website and phone line, and providing opportunities to share concerns with inspectors when they visit a service
- Asking national and local partners (for example, the Ombudsmen, the local authority and Healthwatch) to share with us concerns, complaints and whistleblowing information that they hold
- Requesting information about concerns, complaints and whistleblowing from providers themselves

We also look at how providers handle concerns, complaints and whistleblowing in every inspection.

## **Whistleblowing**

Whistle blowing is the term generally used when someone who works for an employer raises a concern externally or outside of their normal management chain. These concerns may be about malpractice, risk (for example about patient safety), wrongdoing or possible illegality, which harms, or creates a risk of harm, to people who use the service, colleagues or the wider public.

A 'whistle blower' may also be someone who has left their job after they have made a disclosure and is raising it again, perhaps because they remain concerned about vulnerable people or wrongdoing and are not confident the management have dealt with it. Or they may also be someone who provides services for, a provider who is registered with CQC.

Examples of a worker who provides services to a registered provider include, but are not limited to, agency staff, visiting community health staff, GPs, independent activities organisers, contractors.

CQC has published information about whistleblowing on our website:

[www.cqc.org.uk/content/report-concern-if-you-are-member-staff](http://www.cqc.org.uk/content/report-concern-if-you-are-member-staff)

There is a "[Quick guide for health and social care staff about whistleblowing](#)" and "[Guidance for providers](#)" which contain additional information about whistleblowing which you may find useful.

All providers of health and adult social care that we regulate must have a clear process for staff to raise any issues with their employer.

CQC is however contacted by people who wish to share information about the care services they work in. Where these individuals are raising concerns they believe are in the public interest and fall into one or more of the six whistleblowing categories (listed below), we classify the individual as a whistle blower.

Any whistleblowing information received by CQC that also relates to an allegation of abuse or neglect is managed through our safeguarding processes and the above actions taken. Not all whistleblowing information directly relates to the quality of care being provided (for example, some issues raised with us may relate to other matters such as employment law).

The following information has been extracted from the Guidance for Employers and Code of Practice which is available on the [Gov.uk](#) website:

[www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers](http://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers)

Whistleblowing is the term used when a worker passes on information concerning wrongdoing. This is often referred to as either "making a disclosure" or "blowing the whistle". The wrongdoing will typically (although not necessarily) be something they have witnessed at work.

To be covered by whistleblowing law, a worker who makes a disclosure must reasonably believe two things. The first is that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistleblowing law.

The second thing that a worker must reasonably believe is that the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the following categories:

- criminal offences (this may include, for example, types of financial impropriety such as fraud)
- failure to comply with an obligation set out in law
- miscarriages of justice
- endangering of someone's health and safety

- damage to the environment
- covering up wrongdoing in the above categories

Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). It provides the right for a worker to take a case to an employment tribunal if they have been victimised at work or they have lost their job because they have 'blown the whistle'.

CQC has joined with other regulators, professional bodies and trade unions to launch the Speaking Up Charter, a commitment to work together to support people who raise concerns in the public interest. Information about this is available on our website here:

[www.cqc.org.uk/content/care-regulators-professional-bodies-and-unions-join-forces-launch-speaking-charter](http://www.cqc.org.uk/content/care-regulators-professional-bodies-and-unions-join-forces-launch-speaking-charter)

### **How we use information**

From listening to your views and experiences of care to analysing data about services, information and evidence play a vital part in our work.

### **What are the main ways we use information?**

We're constantly improving the way we use information and evidence. The most important ways we use information in our work are:

- We gather and analyse information when services register, through continual monitoring and when we inspect them, and we listen to your views and experiences of care.
- We look at data and use it to monitor services continuously. It helps us to make sure the decisions we make are based on sound evidence.
- We make sure the information and data we hold is of high quality and is as complete as possible. We will continue to find ways to make our information and data easily available to people we work with.
- We handle the information we hold carefully, making sure that the privacy, dignity and rights of people who use care services – and others whose information we have access to – are respected and protected.
- We publish our findings to give you clear information, help you make choices and to help services improve.

### **Listening to people who use services**

We listen to and act on your experiences of care in our inspections and throughout our work.

- Our registration and inspection teams include Experts by Experience – people who have personal experience of care.
- We work with local Healthwatch and we look at information we receive from other local groups to make sure we're listening to your views and opinions.
- We encourage you to share your views and experiences of care – both good and bad.
- We use data gathered nationally by other organisations, including:
  - patient survey data
  - information from NHS Choices
  - the NHS Friends and Family Test.
- We form partnerships with charities and other organisations to gather feedback from people who contact them about their experiences of care.

### **Continuous monitoring**

Information we use to monitor services includes:

- Data, which helps us to plan our inspection activity.
- Information about people's experiences of care and the views of their families and carers.
- Information that we collect directly from care providers.

### **Using data to monitor services**

We gather and analyse data about services to help us decide when, where and what to inspect.

We use a set of processes to analyse data about services. We call this intelligent monitoring. It gives our inspectors a picture of areas that may need to be followed up during an inspection. It also helps us to make better use of resources by targeting activity where it's most needed.

We publish the data we use to monitor NHS acute trusts, GP practices and trusts that provide mental health services on our website. We do this so that people can see how we make the decisions that inform our inspection activity.

The data we analyse is about things that indicate whether the care people are receiving is safe, caring, effective, responsive to their needs and well-led. These indicators include things like waiting times, mortality rates and feedback from staff and people who use services. We look at different data in different sectors.

### **Our approach to inspecting and regulating care services**

We have published information about how we inspect and regulate on our website:

[www.cqc.org.uk/content/how-we-inspect-and-regulate-guide-providers](http://www.cqc.org.uk/content/how-we-inspect-and-regulate-guide-providers)

Our inspection teams are formed from a national team of clinical and other experts, including people with experience of receiving care. Intelligent monitoring helps us to decide when, where and what to inspect, including listening better to people's experiences of care and using the best information across the system. Our inspections are in-depth and we inspect in the evenings and at weekends when we know people can experience poorer care.

Our inspectors use professional judgement, supported by objective measures and evidence, to assess services against our five key questions:

- 1 Are they safe?
- 2 Are they effective?
- 3 Are they caring?
- 4 Are they responsive to people's needs
- 5 Are they well-led?

**"2) Please advise if CQC has conducted an analysis/ analyses of staff whistleblowing disclosures by NHS provider organisation. If so, please disclose the results of this analysis/ analyses."**

Currently the CQC has not conducted any analysis of enquiries recorded as whistleblowing.

**"3) Please also disclose any data and reports from any data collation pilots undertaken prior to implementation of the current CQC system of data collation on whistleblowing incidents."**

Enquiries recorded as whistle blowing commenced on 1 June 2011. We have no information regarding piloting the system and therefore no data collation.

### **Feedback**

**CQC will always endeavour to provide the highest quality responses to requests for information and**

seek to provide responses that are as helpful as possible. We would therefore appreciate if you can complete our online feedback form by visiting the following website:

<http://webdataforms.cqc.org.uk/Checkbox/InformationAccessFeedback.aspx>

**Any information you provide will be held securely and only used for the purposes of improving the Information Rights service that CQC provide.**

Yours sincerely

The Information Access Team

Customer & Corporate Services Directorate  
Care Quality Commission  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

The Care Quality Commission is the independent regulator of health and adult social care services in England. [www.cqc.org.uk](http://www.cqc.org.uk). For general enquiries, call the National Customer Service Centre (NCSC) on 03000 616161 or email [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk).

*Statutory requests for information made under access to information legislation such as the Data Protection Act 1998 and the Freedom of Information Act 2000 should be sent to: [information.access@cqc.org.uk](mailto:information.access@cqc.org.uk)*

## **2) FOI CORRESPONDENCE TO CQC 21 SEPTEMBER 2016**

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BY EMAIL

CQC Information Access Team

21st September 2016

Dear Information Access Team,

### **Handling of whistleblowing data by CQC**

Thank you for your reply, copied below.

I asked CQC to disclose raw data (suitably redacted) that CQC holds on whistleblowing disclosures made to CQC over the period 2015/2016 and 2016/2017 year to date. However, CQC has not disclosed the raw data as requested, and has only given total numbers of disclosures.

I also see from information in the public domain that CQC does holds data on the nature and outcome of disclosures, and indeed such data formed the basis of a previous article by the Daily Mirror:

<http://www.mirror.co.uk/news/uk-news/whistleblowing-nhs-staff-complained-hospital-5584699>

However, CQC has stated in its response to me that it holds no data on the nature or outcomes of

disclosures, and CQC's response therefore appears to be incorrect.

Accordingly, please could CQC provide data on the nature and outcome of whistleblowing disclosures that it has received in the form of any raw, spreadsheet data that CQC holds on whistleblowing disclosures the period in question.

In a response to my request for copies of data pilots, CQC has advised me that it has no information about CQC pilots of whistleblowing data handling.

In fact I believe this is incorrect as CQC disclosed last year that it was undertaking a pilot of data collation, including about whistleblowing disclosures made to the CQC. The correspondence about this was tweeted and is in the public domain. I enclose one of the letters that was tweeted. Please disclose the reports/ documents that give the results of this pilot, including any action plan.

For completeness, please also advise if CQC is now collating whistleblowing data for publication as a prescribed body under PIDA, in accordance with the government action plan in response to Public Accounts Committee's recommendations on public sector whistleblowing:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388719/45502\\_Cm\\_8988\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388719/45502_Cm_8988_Accessible.pdf)

If CQC is now collating such data for publication, please advise what data parameters CQC is collating.

Lastly, I note that there has been a steep decline in the number of whistleblowing disclosures made to CQC in the year to date, compared with the previous financial year (254 versus 995) . Please advise if the CQC changed its recording systems and coding of whistleblowing disclosures, and if so when, and whether this accounts for the decline in reported numbers in the current year.

To sum up, I would be grateful if CQC would:

- 1) Please could CQC provide data on the nature and outcome of whistleblowing disclosures that it has received in the form of any raw, spreadsheet data that CQC holds on whistleblowing disclosures that it has received for the period in question.
- 2) Please disclose the reports/ documents that give the results of CQC's data collation pilot, which encompassed whistleblowing disclosures, that CQC said it commenced last year, including any action plan.
- 3) Advise if CQC is collating data on whistleblowing disclosures for publication in line with the Government's action plans for prescribed bodies under PIDA, and if so, the data parameters concerned.
- 4) Advise if the CQC changed its recording systems and coding of whistleblowing disclosures received, and if so when, and whether this accounts for the decline in recorded disclosures in the year to date.

Yours sincerely,

Pam Linton

RGN, RM, MSc Midwifery, NLS Instructor.

Encl: Copy of letter by David Behan 26 August 2015

### 3) CQC FOI CORRESPONDENCE 22 SEPTEMBER 2016

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Dear Ms Linton

Thank you for your email. Upon first reading it would seem that our response was incorrect. I am aware that we do hold information about the nature of whistleblowing, and any outcome so far as any action taken by CQC with regards our regulatory powers. Therefore our response was incorrect and in breach of section 1 of the Freedom of Information Act 2000.

The difficulty for CQC is that the nature of the whistleblowing concern and our actions, are not reportable from our central system. They are recorded as whistleblowing, but the actual correspondence will contain what the concerns are. Therefore, in order to collate this data it would require examination of a large number of whistleblowing enquiries. When handling the request from the Daily Mirror, we advised we were able to look at no more than 200 whistleblowing enquiries with the 18 hour time limit under the Freedom of Information Act 2000. They therefore narrowed the request to the top five Trusts over the period of time to avoid the cost limit.

I attach the responses to Mr Davis requests, to provide you with further advice and assistance about what we can and cannot do.

Under the Internal Review process, it will now require me to issue a formal refusal replacing our original decision. In light of this you could therefore withdraw this part of the Internal Review and consider submitting a more focused request, looking at specific providers, a narrower time period, or the providers with the highest and lowest numbers. I don't feel it is appropriate to make you wait for an internal review response, which will likely still not give you the information, meaning further delay to you if you then decide to submit a refined request. If you could please let me know how you would like to proceed on that point?

In terms of the other issues raised, I will need to look into these further under the Internal Review process for information access requests, and will endeavour to respond to you with the next 20 working days.

I hope this is helpful to you and we shall respond further once we have completed the review.

Kind Regards

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The Care Quality Commission is the independent regulator of all health and adult social care in England. [www.cqc.org.uk](http://www.cqc.org.uk). For general enquiries, call the National Customer Service Centre (NCSC) on 03000 616161 or email [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk).

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