

**From:** Minh Alexander <\*\*\*\*\*>  
**Subject:** Access to the NHS employment support scheme for gagged whistleblowers  
**Date:** 4 April 2018 at 14:37:59 BST  
**To:** Dido Harding <\*\*\*\*\*>  
**Cc:** Steve Barclay \*\*\*\*\*, \*\*\*\*\*, Ed Jones \*\*\*\*\*

Dear Dido,

**Access to the NHS employment support scheme for gagged whistleblowers**

Thanks once more for your prompt response to my enquiry and for the copy of the re-worded email to trusts about allowing gagged whistleblowers access to the employment support scheme.

I still do not see how this will help, but I doubt that anything that I say will change the course that it is being taken.

I think we will have to agree to differ on this for the time being. However it is likely that we will need to liaise again about these issues in due course.

On a separate but related matter, it would be helpful if super-gags - clauses which prevent signatories from even disclosing the existence of compromise agreements - could be abolished. Both Sir Robert Francis and the National Freedom To Speak Up Guardian have been critical of such clauses.

It might be useful if NHS Improvement would consider asking Mr Hunt and Mr Barclay to review whether current secrecy arrangements in the NHS are conducive to good patient care.

With best wishes,

Minh

Dr Minh Alexander

**From:** "HARDING, Dido (NHS IMPROVEMENT - T1520)"

<\*\*\*\*\*>

**Subject: RE: Access to the NHS employment support scheme for gagged whistleblowers**

**Date:** 23 March 2018 at 09:49:13 GMT

**To:** Minh Alexander <\*\*\*\*\*>

**Cc: Steve Barclay** <\*\*\*\*\*>, <\*\*\*\*\*>,

Ed Jones <\*\*\*\*\*>

Dear Dr Alexander

Thank you for your email of 14 March 2018. You will have noted that through the Design and Monitoring Group (DMG) papers that you received after you sent you email, the email that was subsequently sent to trusts on this issue was revised from the original version you saw to take account of some of your previous comments. This included updating the wording of the declarations from trusts that you quote in your email. The purpose of the email to HRDs (attached in the format shared with DMG) is to enable individuals to be released from the confidentiality clauses of any settlement agreement for the purposes of any application to the whistleblowing support scheme. The application form for the scheme was circulated with the email so that providers can review the questions asked and documentary evidence required within the Whistleblowing Support Scheme (WSS) application process prior to

providing their answer. We have reviewed the further comments in your email of 14 March and we think that we have acted sufficiently at this stage to enable individuals with confidentiality clauses in their settlement agreements to apply for the scheme where we have received either of the first two responses listed in the attached email and we will be following up any responses from trusts where the third response is given. This is a pilot scheme as you are aware and we will of course take any learning from our actions as necessary.

I note your comments about regulators and CQC in particular, as we do engage with other arms length bodies with regards to the WSS and discuss with them how other aspects of the whistleblowing agenda and their varying responsibilities impact on the WSS.

With reference to your comment about the employer pool, since sending your email I am aware that you have now also had sight of the draft protocol for accessing placements that was shared with and then discussed at the Design and Monitoring Group on 19 March 2018.

I trust this responds to your comments and thank you again for your continued contribution to the development of the scheme.

Best wishes

Dido

**From:** Minh Alexander [[mailto:\\*\\*\\*\\*\\*](mailto:*****)]

**Sent:** 14 March 2018 13:11

**To:** HARDING, Dido (NHS IMPROVEMENT - T1520)

**Cc:** Steve Barclay\*\*\*\*\*;\*\*\*\*\*; Ed

Jones \*\*\*\*\*

**Subject:** Access to the NHS employment support scheme for gagged whistleblowers

Dear Dido,

**Access to the NHS employment support scheme for gagged whistleblowers**

Thank you very much again for your prompt response and attention to this matter.

You touch on the matter of the employer pool, to which I will respond under separate cover, save to say for the moment that a protocol promised by the employment scheme manager has not yet materialised and was not amongst papers circulated for a meeting next week despite this being promised.

I have continuing reservations about the safety of NHS Improvement's (NHSI) assurances to whistleblowers who may be gagged or supergagged, who may wish to apply to the employment support scheme.

NHSI originally proposed to ask trusts to make one of two declarations, neither of which legally covered supergags:

*“1. The trust has no clauses in settlement agreements with former employees which we would enforce, and which would prevent those employees from completing the WSS application process.*

*2. Yes, the trust has clauses in settlement agreements with former employees which we would enforce, and which would prevent those employees from completing the WSS application process.”*

My reading of your latest proposal to:

*“include a further statement for clarity within the email to trusts that says that we are not asking them to disclose details of any individual settlement agreements or clauses”*

is that this does not explain how either party can be released from a supergag.

Notwithstanding, should a form of words be found, they would need to delineate the precise range of information that could be shared. For example, if Whistleblower “A” mounted a robust defence of historic actions against them by the trust, and that was leaked, would the “agreement” preclude the trust from taking legal action against the whistleblower?

You advise that the government has declined to provide a waiver and that NHS Improvement declines to indemnify whistleblowers who may decide to risk breaking their gags, but that NHS Improvement gives assurance that:

*“However, if a trust provided us with assurance that terms would be varied and we were provided with evidence that the trust then reneged on that, then we would of course take that very seriously and support the individual in being able to continue with their application.”*

I do not think that this is a specific or safe enough guarantee.

To give a hypothetical but typical example:

An NHS trust drags a whistleblower through several years of deliberately protracted processes and ramped up conflict. Multiple false allegations are made and corrupt investigations are undertaken which fail to prove the false allegations but still leave a trail of bogus, unjust recommendations on the record. The whistleblower is unable to practice during these long years of conflict. They take legal action against their employer but are forced to settle due to the inequality of arms and ill health. They are unable to work because of what their employer has done and because of blacklisting by the NHS. Their only financial sustenance and security is several hundred thousand pounds compensation from the settlement, which must last for many years before a pension comes, but with the settlement comes a supergag.

I hope you can see from the above vignette why whistleblowers who are gagged need to be properly released from their gags to fully defend themselves in order to access the employment support scheme.

I hope you can also appreciate that if whistleblowers in this sort of position were to apply to the employment support scheme, they would need much more robust and specific assurance from NHSI (and NHS England) about the action they would take if a former employer tried to recover a settlement payment.

However, NHS regulators are not seen as reliable by whistleblowers. A few examples of the reasons for this are provided below.

Regulators have repeatedly failed to protect whistleblowers.

This continues despite Robert Francis' advice three years ago that regulators could do more with their existing powers, and that they should seek changes to regulations if necessary in order to do more.

Regulators have repeatedly failed to properly challenge those who have harmed whistleblowers.

NHSTDA reviewed the ET judgment against Croydon in Dr Kevin Beatt's whistleblowing case, but in doing so it refused to accept evidence from Dr Beatt, who has since been further vindicated by the highest courts:

<https://minhalexander.files.wordpress.com/2018/02/nhstda-letter-re-kevin-beatt-2016-03-31-letter-to-dr-m-alexander.pdf>

Also, as you know, I am still awaiting a substantive response to an enquiry made two years ago to your predecessor body about what action will be taken about the 2014 Employment Tribunal judgment against the NHS in Raj Mattu's case.

Regulators have protected and rewarded those who have harmed whistleblowers:

<https://minhalexander.com/2017/10/10/postscripts-on-paula-nhs-englands-apologia-regulatory-reticence/>

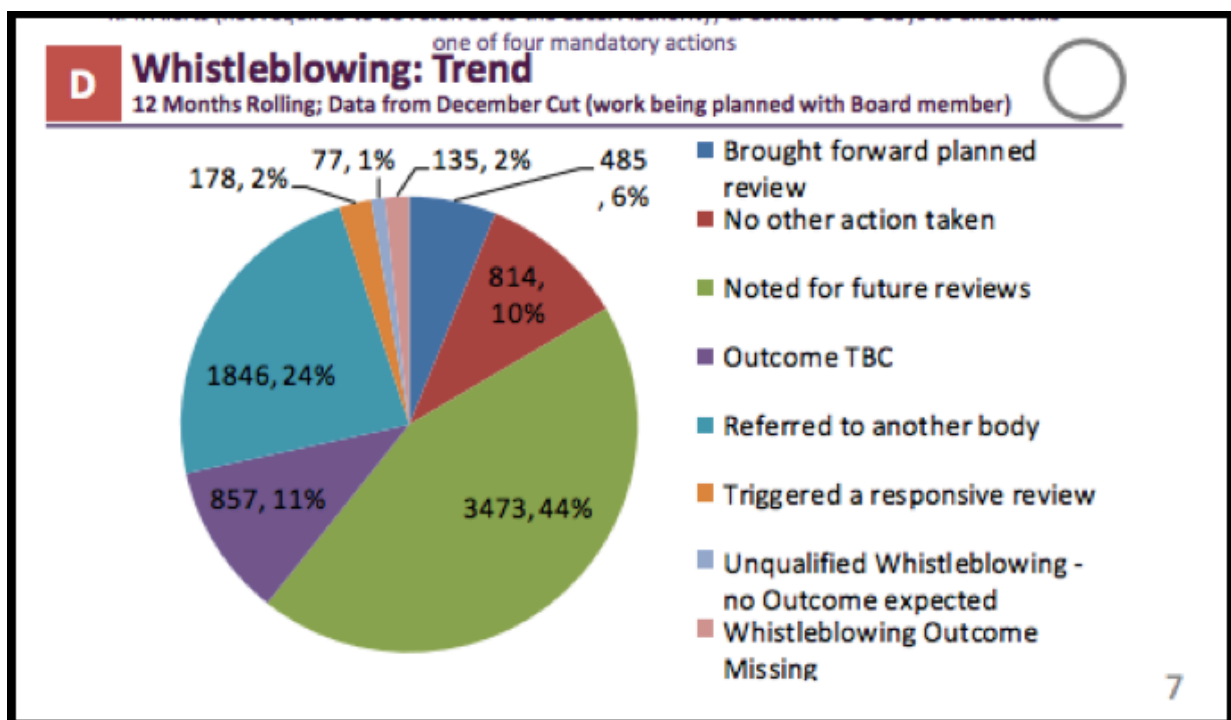
<https://hansard.parliament.uk/Commons/2016-07-13/debates/1DEAEDE8-BA1C-4BF7-A16A-7CFB9831CFB2/CapsticksReportAndNHSWhistleblowing>

Most importantly of all, regulators still do not respond reliably to whistleblowers' safety concerns:

<https://minhalexander.com/2016/12/05/whistleblowers-unheard-by-cqc/>

CQC routinely takes no action on about 50% of all whistleblowing disclosures (no action at all or just filed as information noted for future inspection), even those that are very serious:

**CQC board paper 21 February 2018 – Performance report:**



[http://www.cqc.org.uk/sites/default/files/CM021806-Item-6-Q3-Performance-Report-Appendix\\_0.pdf](http://www.cqc.org.uk/sites/default/files/CM021806-Item-6-Q3-Performance-Report-Appendix_0.pdf)

Examples of CQC not taking any action on very serious disclosures are



evident in this FOI data from the CQC, on its handling of whistleblowing disclosures about the very troubled North Cumbria University Hospitals NHS Trust:

<https://minhalexander.files.wordpress.com/2017/12/north-cumbria-foi-20161019-final-information-for-disclosure-cqc-iat-1617-0427.xlsx>

CQC has breached whistleblowers' confidentiality but flatly refuses to audit its practice in this area:

<https://minhalexander.com/2017/09/16/newsflash-cqc-denies-denial/>

CQC was discovered to be complicit in recent reprisal against a whistleblower, and an Employment Tribunal's findings of fact confirm this. However, CQC maintains it did nothing wrong:

<https://minhalexander.com/2018/01/25/uk-whistleblowing-law-is-an-ass-helen-rochester-v-ingham-house-ltd-and-the-complicit-cqc/>

I too can personally attest to the unreliability of regulators because CQC failed to act on some of my serious disclosures. CQC left me in the lurch after initially taking measures to protect me and assuring me that it would continue to do so. As a small cherry on the cake, the Chief Executive of CQC approached me at a conference last week, making me most uncomfortable in the way in which he did so and he unthinkingly breached my confidence.

So as you can see, there is an issue of trust between whistleblowers and NHS regulators.

I do appreciate that these issues pre-date your arrival and I acknowledge that you have been very responsive to my enquiries. I bring these issues to your attention to illustrate why whistleblowers would not be reassured by NHSI's current position.

Is it possible for more to be done?

I would be grateful for a copy of NHSI's revised wording of the questions to trusts about releasing whistleblowers from gags for the purposes of the employment support scheme.

With best wishes,

Minh

Minh Alexander

cc Jeremy Hunt  
Steve Barclay

**From:** "HARDING, Dido (NHS IMPROVEMENT - T1520)"

<\*\*\*\*\*>

**Subject: RE: NHS whistleblower employment scheme - provision for gagged whistleblowers**

**Date:** 8 March 2018 at 09:45:41 GMT

**To:** Minh Alexander <\*\*\*\*\*>

**Cc: Steve Barclay** <\*\*\*\*\*> ,

<\*\*\*\*\*> , Ed Jones <\*\*\*\*\*>

Dear Minh

Thank you for your email dated 22 February and I am sorry for the delay in the response to you.

There have been discussions with our legal advisers and with Department of Health and Social Care regarding the feasibility of a blanket waiver of the confidentiality clauses in settlement agreements that you refer to. The conclusion is that given the number of trusts, the variety of settlement agreements and the variety of clauses (many of which for the reasons you have highlighted we cannot even be aware of) and situations, a blanket waiver that binds all parties after the event and according to the particular circumstances of each case is not something that we believe can be delivered.

We have therefore concluded that an alternative and more viable option is to seek confirmation from each trust as to whether they have any clauses in settlement agreements with former employees which would prevent those employees from completing the Whistleblowing Support Scheme application process and, if so, to ask them to confirm that they are willing to vary those provisions to enable the employees to participate. As you are aware we have asked the Design and Monitoring Group for comment on this prior to distribution of the email to all trusts, this draft letter has since been further amended to reflect the wording in this paragraph.

On the basis of your concern that “Legally, trusts that have entered into *mutual* super-gags, cannot even reveal the existence of such settlement agreements” we will include a further statement for clarity within the

email to trusts that says that we are not asking them to disclose details of any individual settlement agreements or clauses within them and as such we do not believe we are asking them to divulge information that would breach any settlement agreement terms.

It would also not be feasible for NHS Improvement to seek to provide indemnity for applicants to the scheme against any further action by their former employers, for many of the same reasons as why a waiver is not practicable. Indeed, this should not be necessary if the terms of the settlement agreement are varied as set out above. However, if a trust provided us with assurance that terms would be varied and we were provided with evidence that the trust then reneged on that, then we would of course take that very seriously and support the individual in being able to continue with their application.

With regards to your concerns in relation to a “pool” of employers, NHS Improvement and NHS England jointly held three workshops at the end of 2017 where employers were invited to discuss the pilot scheme proposals and consider how employers could commit to support participants on the scheme. A range of support options were discussed and employers, both at the event and subsequently, signed up to support some or all of the options. This included offers of work placements. Initially, during the pilot phase, this “pool” of placements is being created with trusts within the participants’ catchment areas and in the relevant functions and pay bands. The employer vetting checklist you refer to is in development for testing as part of the pilot scheme and to which I know you have helpfully contributed your ideas.

This will be shared with the Design and Monitoring Group in advance of

the next meeting and tested prior to confirmation of any placements. We are not looking at this stage for employers to offer placements unless we know they are in the appropriate geographical location and relevant function/profession and banding for our current pilot scheme participants. We will obviously be expanding this when the main scheme begins and the time is right for finding further placements for participants on the main scheme, in accordance with their locations and functions.

I trust this responds to your comments and I thank you for your continued contribution to the development of the scheme.

Your sincerely

Dido

**Dido Harding| Chair**

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**From:** Minh Alexander [[mailto:\\*\\*\\*\\*\\*](mailto:*****)]

**Sent:** 22 February 2018 09:40

**To:** HARDING, Dido (NHS IMPROVEMENT - T1520)

**Cc:** **Steve Barclay** \*\*\*\*\*; \*\*\*\*\*; Ed Jones \*\*\*\*\*

**Subject:** NHS whistleblower employment scheme - provision for gagged whistleblowers

BY EMAIL

Dido Harding

Chair of NHS Improvement

22 February 2018

Dear Dido,

**NHS whistleblower employment scheme - provision for gagged whistleblowers**

Thank you for your prompt response of 10 February 2018 to mine of 5 February 2018 on this issue, both copied below.

At a Design and Monitoring Group (DMG) of the Employment Support Scheme (ESS) on 19 February, NHS Improvement (NHSI) informed whistleblowers that its letter to trusts about gags was to be circulated the next day. I asked to see the letter and was advised that a copy would be shared after circulation. On 21 February NHSI decided to share a draft copy of the letter with the DMG and to invite comments.

I do appreciate the effort made to further accommodate the needs of gagged whistleblowers, and acknowledge that this matter predates your arrival, but NHSI's draft letter does not appear to present a clear solution.

NHSI's draft letter asks trusts to declare whether they have clauses in settlements that might prevent whistleblowers from applying to the ESS. Legally, trusts that have entered into *mutual* super-gags, cannot even reveal the existence of such settlement agreements.

Super-gags are usually mutual. Indeed, NHS Employers' *current guidance* includes as standard, the use of a mutual super-gag in its [template settlement agreement](#):

["1.2 The Employer shall use its reasonable endeavours to ensure that its directors, officers, agents and employees shall not divulge the fact of, negotiation, nature and/or terms of the Agreement except to its](#)

*professional advisers in connection with the conclusion of this Agreement or where required by any competent authority or Court of Law or HM Revenue & Customs or as otherwise required by law.”*

I am also concerned that NHSI’s draft letter to trusts lacks clarity and presents unfeasible risks to whatever meagre financial security, dependent on strict compliance with gags, is left to whistleblowers. Perhaps an opinion from senior Treasury lawyers may assist.

Notwithstanding, NHSI’s letter to trusts will not substantively move the situation forward. The NHSI ESS manager informed whistleblowers that NHSI was implementing the above workaround as it would “take too long” to implement a government waiver. However, I see no option but a government waiver because of the tight legal seals on super-gagged NHS whistleblowers. If a government waiver had been sought when I first raised it, with NHS England, in January 2017, and subsequently with NHSI in February 2017, we might not be in the position we are now.

I wonder if NHSI could:

1. Seek a government waiver to release trusts and whistleblowers who are gagged and super-gagged. As both the Secretary of State and Minister of State have been vociferous past critics of gags in the



NHS, I would hope that the Department of Health and Social Care would look on this favourably.

2013 letter from Jeremy Hunt [exhorting NHS trusts to check secrecy clauses in settlement agreements, with respect to learning the lessons from MidStaffs](#)

2013 report of the Public Accounts Committee, of which Mr Steven Barclay was a member, on [on Confidentiality Clauses and Special Severance Payments](#)

Article by Mr Steven Barclay from his constituency website:  
[Uncovering £4m of secret NHS Payoffs to gag potential whistleblowers](#)

2. For those gagged whistleblowers willing to take the risk of applying to the ESS on the strength of assurances obtained from employers by NHSI, indemnify them against any further action by their former employers including any attempt to recover settlement payments.

Regarding the continuing lack of an employer pool to offer trial employment to sacked whistleblowers, as recommended by Robert Francis, please see my [letter to NHS Improvement about the current state of play](#).

A properly established, safe pool of employers is a key and urgent need. Whilst NHSI says it has been making ad hoc arrangements for some of the seven whistleblowers taking part in the pilot phase (and I am aware that at least two of these people have so far had no offers of trial employment from NHSI), this is not a good basis for safe re-entry. NHSI itself accepts the principle that employers must be properly vetted, as the last thing that whistleblowers need is to be mistreated all over again. As you will see from my above letter to NHSI, not even a draft checklist for vetting employers has been produced yet, so it is hard to understand how exactly NHSI has vetted trusts that have been approached as part of the pilot phase of the ESS. I hope that NHSI can commit to a clear action plan for establishing an employer pool, with timescales for key tasks, as requested.

With best wishes,

Minh

Cc

Jeremy Hunt Secretary of State for Health

Steven Barclay Minister of State for Health and Social Care

NHS IMPROVEMENT'S DRAFT LETTER TO TRUSTS ABOUT GAGS  
AND THE NHS WHISTLEBLOWER EMPLOYMENT SUPPORT  
SCHEME:

*"To Directors of HR/Workforce in NHS trusts and NHS foundation trusts*

*You will be aware that we are piloting an whistleblowing support scheme (WSS) for former NHS staff who have raised concerns and are trying to get back into NHS employment, as recommended in Sir Robert Francis's Freedom to Speak up review. For further detail on the WSS please see attached briefing pack and the link to our webpage at <https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowers-support-scheme/>.*

*We are advised that some former NHS staff who want to apply for the scheme believe they cannot do so as a result of clause(s) in their*

*settlement agreements. This appears to be preventing access to the scheme for some relevant former NHS staff. We would therefore like you to advise us as to whether you have any clauses in settlement agreements with former employees which you would enforce, and which would prevent those employees from completing the WSS application process. Assuming not, this will then enable us to communicate that your trust would not take action against any former employees for divulging necessary information to complete an application for the scheme. The scheme application form is attached so that you can review the questions asked and documentary evidence required within the application process.*

*Please use one of the following sentences for your email **response to***

***NHSl.wbss@improvement.nhs.net by Friday 23 March***

*1. The trust has no clauses in settlement agreements with former employees which we would enforce, and which would prevent those employees from completing the WSS application process.*

*2. Yes, the trust has clauses in settlement agreements with former employees which we would enforce, and which would prevent those employees from completing the WSS application process.*

*Any queries should be directed to Wendy Webster WSS Manager  
at [NHSI.wbss@improvement.nhs.net](mailto:NHSI.wbss@improvement.nhs.net) in the first instance.*

*Separately, if you have not already committed your support to the  
scheme (see slide 6 of the attached briefing pack) I would encourage  
you to do so by contacting Wendy Webster at the email address above.*

*Best wishes*

*Maria*

*Maria Robson | Head of Trust Resourcing"*

**From:** "HARDING, Dido (NHS IMPROVEMENT - T1520)"

<\*\*\*\*\*>

**Subject:** Re: NHS whistleblower employment scheme - provision  
for gagged whistleblowers

**Date:** 10 February 2018 at 13:55:09 GMT

**To:** Minh Alexander <\*\*\*\*\*>

Dear Dr Alexander

Thank you for your email of 5 February 2018 and I note your comments and concerns. The issue of “gagging clauses” is under discussion between the Whistleblowing Support Scheme lead, Maria Robson and NHS Improvement’s legal advisers and as I shared in a recent meeting, consideration is being given as to how we can ensure that all whistleblowers can access the Whistleblowing Support Scheme.

We are hoping to be able to obtain confirmation from NHS trusts and foundation trusts as to whether they have any clauses in settlement agreements with former employees which would prevent those employees from completing the Whistleblowing Support Scheme application process. We intend to attach the scheme application form so that organisations can fully consider the questions asked and documentary evidence required within the application process. Where organisations confirm that there are clauses in settlement agreements that would prevent their former staff from applying for the scheme, we will then be in a position to follow up this issue with individual trusts and suggest proposed work arounds that ensure full access to the scheme by individuals. These work arounds could include for example, a written assurance that referencing the settlement agreement when completing the application form will not lead to any action by the trust against the individual.

Assuming the current internal conversations are satisfactorily concluded,

we anticipate contacting trusts before the end of the month with responses required before the end of March 2018 to give organisations a realistic opportunity to check their records and consider their responses (with their own legal advisors if necessary) before replying. I understand you are a member of the Whistleblowing Support Scheme group, and Wendy Webster has advised that this will be a subject of discussion at the next meeting.

With regards to your concern regarding “a pool of NHS employers,” I understand that there have been discussions at the monthly Design and Monitoring Group meetings, outlining the three employer events during which NHS employers were invited to and did make commitments to support the scheme. The events were very well attended which not only raised the profile of the pilot schemes developed by NHS Improvement and NHS England but also encouraged employers to consider what support they could give to participants on the schemes including access to libraries, training, placements etc. Trusts within the locality of current pilot participants have been contacted directly to consider and offer opportunities within their organisations as part of the pilot scheme. The commitments already made by other trusts will be further explored as part of the development of the main scheme.

NHS Improvement and NHS England continue to work and engage with other organisations such as the National Guardians office, NHS

Employers and the Care Quality Commission to address and resolve some of the barriers for whistleblowers resuming their careers.

We welcome and value your continued input and that of other whistleblowers to help us learn from the pilot scheme and develop a successful main scheme.

Many thanks and Best Wishes

Dido

**From:** Minh Alexander <\*\*\*\*\*>

**Date:** Monday, 5 February 2018 at 12:33

**To:** "HARDING, Dido (NHS IMPROVEMENT - T1520)"

<\*\*\*\*\*>

**Subject:** NHS whistleblower employment scheme - provision for gagged whistleblowers

BY EMAIL

Dido Harding

Chair of NHS Improvement



5 February 2018

Dear Ms Harding,

**NHS whistleblower employment scheme - provision for gagged whistleblowers**

I write to ask if you could kindly advise on NHS Improvement's arrangements and plans regarding this important matter.

Gagging of staff with secrecy and non-disparagement clauses remains a widespread problem in the NHS, and many whistleblowers are forced into accepting compromise agreements as the only option available for total avoiding financial ruin.

Some trusts such as Mersey Care NHS Foundation Trust, Imperial College Healthcare NHS Trust, East Lancashire NHS Trust and Liverpool Community Health NHS Trust have revealed via FOI that they have super-gagged hundreds of staff through clauses in compromise agreements which forbid signatories from revealing the very existence of the compromise agreements. [Mersey Care NHS Foundation Trust alone accounted for 443 super-gags over a five year period.](#)

Robert Francis recommended in his report of the Freedom To Speak Up Review that the Care Quality Commission should monitor NHS employers' use of compromise agreements, but [the CQC has shown great reluctance and there is no evidence that it has done so.](#)

Indeed, NHS Employers publishes a template for compromise agreements which include such super-gags.

NHS whistleblowers who are super-gagged may not talk about the contents of their compromise agreements or the existence of agreements. They may also be subject to clauses preventing them from contacting their former employer about employment matters.

This makes it impossible for super-gagged whistleblowers to access the NHS whistleblower employment scheme.

Both NHS England and NHS Improvement were warned about this long ago but failed to address this issue. This has compounded already very serious delay in establishing the scheme, despite the scheme being recommended as an 'urgent' measure by Robert Francis in February 2015. \*

It is clear that neither body truly understands the issues or is willing to seek a much-needed government waiver. This lack of understanding has

been evidenced by the fact these bodies have floundered and given very foolish, unfeasible advice when challenged about their lack of proper preparation.

I understand that you recently advised in a meeting that NHS Improvement believes it may be approaching some sort of legal fix.

I would be grateful if you could you give more information about NHS Improvement's work in progress, who is leading it and what the timescale is for resolution.

For completeness I should also let you know that there is still no sign of

*“of a ‘pool’ of NHS employers prepared to offer trial employment to persons being supported through the scheme”*

as originally recommended by Robert Francis. This is despite repeated enquiries and corresponding assurances that NHS England and NHS Improvement were working to establish a pool. The most recent response from NHS England appeared dismissive of the need for a properly established, structured and fair system.

NHS England minimised the failure to establish a pool to date on the basis that as so few whistleblowers had applied, that it was possible to

make ad hoc approaches to employers. This is not good equal opportunities practice, [and serious concerns have already been raised about the scheme's adherence to equal opportunities principles.](#)

NHS Improvement has not so far commented in response to the most recent queries about the failure to establish an employer pool.

Many thanks,

Dr Minh Alexander

**\*Robert Francis' urgent February 2015 recommendation for the establishment of a scheme to support whistleblowers back into employment, page 153 of the Freedom To Speak Up Review report:**

**"7.3.8**

*Beyond that, I believe that there is an urgent need for an employment support scheme for NHS staff and former staff who are having difficulty finding employment in the NHS who can demonstrate that this is related to having made protected disclosures and that there are no outstanding issues of justifiable and significant concern relating to their performance.*

*This should be devised and run jointly by NHS England, the NHS Trust Development Authority and Monitor. As a minimum, it should provide:*

- remedial training or work experience for registered healthcare professionals who have been away from the workplace for long periods of time*
- advice and assistance in relation to applications for appropriate employment in the NHS*
- the development of a ‘pool’ of NHS employers prepared to offer trial employment to persons being supported through the scheme*
- guidance to employers to encourage them to consider a history of having raised concerns as a positive characteristic in a potential employee.”*

\*\*\*\*\*

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