

Brief summary notes of telephone Meeting 11.40 to 12.25 5 June 2018 about CQC's approach to whistleblowing

Present

Professor Edward Baker, Chief Inspector of Hospitals, CQC (TB)
Professor Ursula Gallagher, Deputy Chief Inspector of Primary Medical Services (London) CQC (UG)
Dr Minh Alexander (MA)
Naomi Patterson, Head of Governance and Private Office, CQC (NP)
Matt Docherty, Correspondence Secretary, CQC (MD)

UG gave an update on CQC work which started several months ago to: strengthen processes around call centre handing of reported concerns to CQC, looking at overlap of whistleblowing and Safeguarding, adapting to changes in legislation & review of compliance with statutory obligations, and inclusion of whistleblowing into the remit of CQC's Safeguarding Committee (with revision of the committee's TOR in consultation with the National Guardian's Office).

The intention is to identify what is working, assess compliance with good practice, work with whistleblowers on best handling of future concerns & whistleblower experience, arriving at a definition of what good is.

MA asked if there is any work in progress that can be shared yet or interim definition yet of what good looks like – UG advised not quite yet.

MA welcomed the development, emphasised need for genuine co-production, transparency and power sharing in the process. Past issues with similar CQC exercises on whistleblowing governance.

TB emphasised that whistleblowers are vital to CQC's work and that the intention is to get it right.

General discussion followed of practical issues around co-production, and historical tensions. MA view is that tension unlikely to be avoided entirely but a fair & transparent process, over which whistleblowers have reasonable influence over would help. TB & UG agreed inclusivity & openness are guiding principles.

Role of National Guardian's Office briefly discussed. MA commented on weakness of UK whistleblowing law and related enforcement structure compared to other jurisdictions. MA expressed concerns that NGO is

structurally flawed and has no powers. Also, MA has concerns that NGO had no appetite for seeking a better remit for protecting whistleblowers. MA invited TB/CQC to a whistleblower led event at CQC HQ on 19 Oct about the need for law reform. TB accepted subject to NGO confirmation.

Gap in perception between how whistleblowers & CQC see the handling of whistleblowing concerns was discussed, touching on common concerns raised by whistleblowers such as feeling that CQC does not take reprisal seriously enough or do enough to help ensure that concerns are properly addressed. MA shared an example illustrating the range in CQC inspectors' responses to whistleblowing matters.

TB acknowledged that CQC can be fallible, and stressed that the intention is to ensure best practice as whistleblowers are so important to safety. Discussion followed of ways of ensuring better outcomes, MA shared some concerns previously raised about CQC handling of whistleblower confidentiality, and opportunities for improving the depth of CQC outcome data that is currently collected, ending in the following:

- CQC will continue work as planned to define what good looks like when it is handling whistleblowing matters
- This work may include co-production with whistleblowers, according to good practice principles of co-production.
- CQC undertakes to consider what audits it can do, including possibly about how well it is protecting whistleblowers' confidentiality. UG would like to look at the baseline data, to see if this may reveal priority areas for audit & also to provide an anchor by which to judge future improvement. CQC may start some audit work before finalisation of the regulatory standards that are under development, if it looks clear that audit would be useful in some areas. The early audit results could inform the ongoing co-production process. UG envisaged that whistleblower feedback could be formally gathered in future as part of quality assurance.
- CQC will think about how it may inspect settlement agreements especially in regard to secrecy clauses (which forbid disclosure about the existence of settlements) and the impact that may have on speaking up, whether or not they actually have that effect in law.

- TB accepts an invitation to the 19 October event on behalf of CQC, subject to the NGO confirming this. MA will liaise with NGO.
- MA will write up brief notes, to be agreed. MA undertook to provide some bullet points of areas about which whistleblowers are often concerned (see annex below).

ANNEX

Common whistleblower concerns

I think CQC needs to undertake a structured consultation with whistleblowers, but based on stories I have heard and a range of evidence that I have seen, the following are typical concerns which sometimes seem well founded:

1. CQC does not do enough to look into concerns or use the full range of its powers to ensure thorough review of the issues. It seems quick to push individual whistleblowers away, does not give them enough evidence that their concern has been appropriately resolved. Even when there are multiple whistleblowers, CQC may still refuse to use powers of thematic review.
2. CQC accepts the employer's account too easily without sufficient testing.
3. CQC does not take whistleblower reprisal seriously enough as a governance issue, and too often seems to wash its hands of employment issues, although these are inextricably linked to culture and patient care
4. The most serious example of this is the difficulty with FPPR referrals by whistleblowers that have been rejected, even despite damning Employment Tribunal findings about senior managers in some cases. CQC has not triggered investigations in cases where this would seem indicated, and it has not looked at evidence even when informed that such evidence exists.

5. CQC has plenty of soft power to deter reprisal but does not use it enough, and walks away from whistleblowers suffering serious detriment. If as CQC acknowledges it relies on whistleblowers to help uncover some of the most serious risks, it has a particular responsibility to ensure that they are protected.
6. CQC gives some employers favourable ratings on the 'Safe' and "Well Led" domains even if there is evidence that they have harmed whistleblowers and have not put things right. CQC does not hold directors who harm whistleblowers to sufficient account.
7. When CQC fails to uphold whistleblowers' concerns due to lack of thoroughness, or it gives an employer undeserved accolades for its governance, this harms and undermines whistleblowers because it can be viewed as a negative reflection on their credibility. If the whistleblower litigates, a lack of regulatory support can add to their isolation and disadvantage them.