

BY EMAIL

Prerana Issar

NHS Chief People Officer

NHS Improvement/ England

26 August 2020

Dear Prerana,

Kark Fit and Proper Person Review implementation by NHSI & continuing impunity for NHS whistleblower reprisal by very senior managers

I write to enquire about the progress of NHS Improvement's work on implementing the [Kark Review on Fit and Proper Persons test in the NHS](#), and to request related data.

The COVID-19 pandemic has tragically highlighted the enormous risk presented to both staff and patients by poor whistleblowing governance in the NHS, with threats to staff who raised concerns about lack of PPE, hundreds of staff deaths and avoidable in-hospital transmission of COVID-19.

I am sure you are aware that Tom Kark QC and his colleague Jane Russell, whilst stopping short of full NHS managerial regulation, made recommendations from his FPP review which included:

- The power to disbar directors for serious misconduct
- That a central database of directors should be created holding relevant information about qualifications and history
- The FPPT should be extended to all Commissioners and other appropriate Arms-Length Bodies (including NHSI and NHSE)
- All directors (executive, non-executive and interim) should meet specified standards of competence to sit on the board of any health providing organisation. Where necessary, training should be available.

- The creation of a mandatory reference requirement for each Director

You may also recall that the Kark review stressed the vital importance of good whistleblowing governance in the NHS, and the need to track, deter and robustly manage any whistleblower suppression or victimisation. The review recommended:

- Specified standards of competence for sitting on any health organisation board should include understanding of “The importance of learning from whistleblowing and ‘speaking up’”
- The proposed central database on NHS directors should specifically include a record of “Any upheld whistleblowing complaint”
- That Serious Misconduct meriting disbarment should include “Victimisation or knowingly allowing the victimisation of: whistleblowers; those raising concerns with the Freedom to Speak Up Guardian; or those complying with the duty of candour”

The review also recommended that several other types of misconduct, that typically cluster around badly handled whistleblowing cases, should also be classed as Serious Misconduct worthy of disbarment:

- Dishonesty;
- Deliberate bullying;
- Deliberate discrimination, harassment or victimisation;
- Victimisation or knowingly allowing the victimisation of: whistleblowers; those raising concerns with the Freedom to Speak Up Guardian; or those complying with the duty of candour;

- Causing, facilitating, colluding in, or requiring any staff member to fail to comply with the duty of candour including by means of a settlement or confidentiality agreement; • Causing, facilitating or colluding in the reckless mismanagement of an organisation resulting in the compromise of patient safety;
- Falsification, concealment or suppression of records, data or other information which is required to be provided to any other person or organisation;
- Encouraging, facilitating or colluding in the falsification, concealment or suppression of records, data or other information which is required to be provided to any other person or organisation;
- Encouraging, facilitating, or colluding in the provision of false or misleading records, data or other information which is required to be provided to any other person or organisation;

Regarding the point on 'deliberate bullying', it is relevant that Robert Francis advised in his report of the Freedom To Speak Up Review that failure to *modify* bullying behaviour should “always” be a disciplinary matter:

“Failure to modify behaviour or repeated failings of this sort should however always be a matter for disciplinary action.”

http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf

Alas, is clear that NHS directors at all levels, from provider services to regulators, continue to silence and harm whistleblowers with impunity.

I list below a few egregious cases of inadequate accountability, which reflect a continuing lack of commitment by NHSI/E to genuinely tackle highly unsafe culture.

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The NHS continues to employ NHS directors who have been found by Employment Tribunals to have harmed whistleblowers:

1. The current director of Human Resources at Cornwall Partnership NHS Foundation Trust was criticised by an ET for [whistleblower detriment](#) against two staff.

The Care Quality Commission (CQC) [denied this breached regulation 5 FPPR](#) and currently rates the organisation [“Good”](#), including on the “Well Led” domain.

By any common sense standard, it is highly worrying for an NHS organisation to employ an HR director who has harmed whistleblowers.

2. The current Chief Executive and former medical director of University Birmingham Hospitals NHS Foundation Trust was criticised by an ET for misleading the General Medical Council (GMC) when he referred a doctor who had made protected disclosures and for overstating criticism of this doctor. The Employment Appeal Tribunal has dismissed a trust appeal, criticising the fact that the trust appealed.

Yet the CQC and GMC have taken an inordinate length of time in processing several FPPR and FTP referrals, first made almost 2 years ago.

3. A trust director of nursing who was [personally criticised by an ET](#) for harming a whistleblower was later [feted by the CQC](#) and hired as an Improvement Director by NHS Improvement.

NHS Improvement has conceded that the ET judgment was a concern, but merely said the individual had been spoken to and invited to reflect.

She was assigned as NHS Improvement Director to a very troubled NHS trust, Worcestershire Acute Hospitals, which itself has a history of management bullying and whistleblower victimisation.

4. Equally, the CEO of the Royal Wolverhampton NHS Trust was found by independent review by Verita to have harmed a whistleblower, but a related Deloitte governance review commissioned by NHSI reduced concerns to a matter of “personal style” and advised that he should reflect.

Of relevance, another whistleblower case which occurred under his stewardship included a vexatious GMC referral by the trust, an anonymous death threat to the whistleblower and criminal damage to his office with [racist graffiti](#) scrawled referring to the whistleblower’s Black wife.

This second Wolverhampton whistleblower had to challenge a factually inaccurate CQC inspection report which helped to cover the wrong doing about which he raised concerns. [The then CQC Chief Inspector claimed there had been a “typo”.](#)

Lastly, the CQC also concluded [no breach of regulation 5 FPPR](#) with regard to the Wolverhampton CEO.



David Loughton
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Thank you to Dr Henrietta Hughes, NHS National Guardian & Kate Whittaker, Regional Liaison Lead (NG Office, Midlands) for visiting RWT today. A great opportunity to show the progress made by our own Freedom To Speak Up Guardian [@Neely8381](#) in promoting an open & honest culture.



2:37 pm · 25 Oct 2019 · [Twitter Web App](#)

NHSI/E promised in its most recent NHS People Plan to model behaviours to support an effective speaking up culture.

Information request: I would be grateful to be assured of progress. I have not received any updates on the outcome of NHS Improvement's work on implementing

the Kark FPP review. Please advise if the work has concluded, and if not, what the remaining work programme, including timescales. Please could NHSI also share all meeting records of the Kark Reference Group from August 2019 onwards (I already have the 21 August 2019 meeting notes), including any attachments and reports tabled at these meetings.

Ideally, I would also appreciate some indication of how you as Chief People Officer for the NHS will reconcile the pledges in the NHS People Plan with the continued employment of very senior NHS managers who have been found to have harmed whistleblowers.

Whistleblowing Law Reform

Finally for information, Dr Philippa Whitford MP has introduced a new Bill to replace current, unfit UK whistleblowing law. It introduced principles of genuine accountability for individuals who silence and harm whistleblowers and provides for criminal and civil sanctions to deter and manage misconduct. I would be delighted if you, Danny and Chris would care to sign a related petition calling for UK whistleblowing law reform:

This is the link to the Westminster petition:

[Replace UK whistleblowing law, and protect whistleblowers and the public](#)

With best wishes,

Minh

Dr Minh Alexander

NHS whistleblower and former consultant psychiatrist

Cc Danny Mortimer CEO NHS Employers

Chris Hopson CEO NHS Providers

Tom Kark QC

Jane Russell Barrister