-----Original Message-----
From: VOLLER, Vicky (NHS RESOLUTION) <REDACTED
To: Minh Alexander <REDACTED>
Sent: Mon, 5 Dec 2022 9:58
Subject: RE: Introduction of safeguards against medical managers supplying NCAS with false referral information

Dear Minh

I hope you are well. I've now had the opportunity to discuss with my colleague.

Re the request to add a specific question about whether the referred practitioner has made public interest disclosures – we will add this.

We have also considered whether a practitioner could send us the referral form back directly. Our current position is that referral to Advice for an intervention or assessment takes place as part of an employment relationship and a practitioner may not complete or return the form in a timely manner. However, I do recognise your concern relates to potential extreme scenarios and we will continue to consider whether the process on this could be improved.

Best, Vicky

Vicky Voller
Director of Advice and Appeals
0207 811 2675 / 0207 811 2629 (PA – Sandra Middlehurst)
0207 811 2600 (Advice Line)

Insights: Research and analysis from Practitioner Performance Advice

-----Original Message-----
From: minh alexander <REDACRED >
To: VOLLER, Vicky (NHS RESOLUTION) <REDACTED>
Sent: Fri, 2 Dec 2022 8:59
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information

Hi Vicky,

Thanks again for introducing new safeguards to protect referred doctors from dishonesty and abuse by rogue employers.

Are you in a position to let me know yet what PPA/NHSR's position on the issues I raised below on 10 November?

If you haven't seen it, Tristan's case was featured by Newsnight last night, with an indication that staff are generally intimidated by the trust's senior management:

The BBC said they heard the same story time and again from UHB staff, of improper threats of disciplinary action if staff raised concerns.

I do believe there needs to be the firmest procedural safeguards possible, to cater for the most dysfunctional employers, such as UHB.

BW

Minh

-----Original Message-----
From: Minh Alexander <REDACTED>
To: VOLLER, Vicky (NHS RESOLUTION) <REDACTED >
CC: VERNON, Helen (NHS RESOLUTION) <REDACTED >; WELLARD, Julie (NHS RESOLUTION) <REDACTED>; Chief Executive [GMC] <REDACTED>
Sent: Thu, 10 Nov 2022 13:43
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information

Many thanks Vicky,

And thanks for the attached Form A

It is a positive step forward now that referrers have to actively affirm

- that they have taken reasonable steps to ensure both accuracy and fairness

- that no relevant information has been omitted, that the referral is being made in good faith

- that the employer has checked that the doctor's health will bear a referral

- that documents have been shared with the referred practitioner.

and that the referrer must declare whether or not the referred practitioner has raised patient safety concerns.

I have questions about two issues:

1/ Whistleblowing can relate to matters other than patient safety.

(For example, fraud, improper conflicts of interest, legal breaches).

Could PPA consider asking an additional and specific question about whether the referred practitioner has made public interest disclosures?

2/ Form B, which is completed by the referred practitioner, submitted to PPA by the employer

Is this necessary?

I worry that it would be intimidating to an employee that any information they give which may counter the employer's narrative, will be scrutinised and filtered by their employer.

Also, for the worst employers, there is a potential risk that an employer could tamper with Form B.

Alternatively, a very poor employer might answer falsely tick the box that states:

"I also confirm that I have given the practitioner an opportunity to complete Part B ***but they have not done so."***

I acknowledge that these are extreme scenarios, but as you may recall, the GMC had to discipline a medical director who claimed incorrectly that a whistleblower whom he referred had not made public interest disclosures.

Is there any reason why a referred practitioner should not be allowed to submit Form B directly to PPA?

Lastly, could you kindly let me have a copy of Form B?

Many thanks again.

With best wishes,

Minh

Dr Minh Alexander

From: "VOLLER, Vicky (NHS RESOLUTION)" <REDACTED>
Subject: RE: Introduction of safeguards against medical managers supplying NCAS with false referral information

Date: 10 November 2022 at 11:31:00 GMT
To: Minh Alexander <REDACTED>
Cc: VERNON, Helen (NHS RESOLUTION) <REDACTED>, "WELLARD, Julia (NHS RESOLUTION)" <REDACTED>

Dear Minh,

As assured, we have now amended the referral form to our Intervention Consideration Group. The previous referral form required the referrer to make a declaration that: 'I confirm that the case is accurately summarised in Part A of this form and that no relevant information has been omitted.'

This has now been amended to:

- I have taken reasonable steps to ensure that the information in this referral is accurate and fair, that the case is accurately summarised in Part A of this form and that no relevant information has been omitted.' and
- I make this referral in good faith, based on all the information that is available to me at the time of making the referral.

In addition to these statements, Part B of the referral form provides the practitioner the opportunity to review and highlight any omissions or errors in the referral, and provide their own information, e.g. about the context of their work or the referral. I have attached the form as requested.

I hope that this addresses your concerns.

Best, Vicky

Vicky Voller
Director of Advice and Appeals
0207 811 2675 / 0207 811 2629 (PA – Sandra Middlehurst)
0207 811 2600 (Advice Line)

Insights: Research and analysis from Practitioner Performance Advice

From: Minh Alexander <REDACTED>
Sent: 05 November 2022 10:53
To: VOLLER, Vicky (NHS RESOLUTION) <REDACTED>
Cc: VERNON, Helen (NHS RESOLUTON), WELLARD, Julia (NHS RESOLUTION) <REDACTED>, Chief Executive [GMC]
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information

Dear Vicky

Following our last exchange of correspondence in May this year, may I ask if PPA/ NHS Resolution are ready yet to share the outcome of the planned work on introducing a statement of truth for referring Medical Directors and other senior medical managers, and possibly other improvements?

This was to discourage dishonest and defamatory management referrals against doctors, for improper purposes, such as to intimidate and silence whistleblowers.

I am afraid I continue to hear from harmed, referred doctors who have concerns about PPA accepting and repeating false employer narratives.

In your email of 20 May 2022 you advised that:

"In our referral documentation the practitioner has space to write about the referral from their perspective and this currently provides an opportunity for practitioners to record if they consider themselves to be a whistleblower."

May I possibly have a copy of this documentation and the PPA policy and the PPA procedural documents which govern the handling of this referral documentation?

Best wishes,

Minh

Dr Minh Alexander

-----Original Message-----
From: VOLLER, Vicky (NHS RESOLUTION) <REDACTED>
To: minh alexander <REDACTED >
CC: Helen Vernon <REDACTED>; Chief Executive [GMC] <REDACTED>; WELLARD, Julia (NHS RESOLUTION) <REDACTED>
Sent: Tue, 24 May 2022 20:09
Subject: RE: Introduction of safeguards against medical managers supplying NCAS with false referral information

Dear Minh

Many thanks for your response. Very happy to share with you the outcome of the work – we are anticipating completing this by Autumn 2022. We very much recognise the significance of the impact of a request for advice on a practitioner and our new strategy, and current programmes of work including resources to support exclusion, our lived experience research and the review of our assessment consideration group, seeks to ensure the balance between protecting patient safety and safeguarding the dignity and wellbeing of a practitioner.

Best, Vicky

Vicky Voller
Director of Advice and Appeals
0207 811 2675 / 0207 811 2629 (PA – Sandra Middlehurst)
0207 811 2600 (Advice Line)

Insights: Research and analysis from Practitioner Performance Advice

From: Minh Alexander <REDACTED>
Sent: 20 May 2022 13:39
To: VOLLER, Vicky (NHS RESOLUTION) <REDACTED>
Cc: Helen Vernon <REACTED>; Chief Executive [GMC] <REDACTED> WELLARD, Julia (NHS RESOLUTION) <REDACTED>
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information

My apologies Vicky

I meant to add

1. Can you advise of the timescales for your planned work

2. Can you kindly let me know of the outcome of the work

Thanks

Minh

Cc Helen Vernon
Charlie Massey

From: Minh Alexander <REDACTED>
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information
Date: 20 May 2022 at 13:29:59 BST
To: Vicky Voller <REDACTED>
Cc: Helen Vernon <REDACTE >, Chief Executive [GMC]<REDACTED>,

Dear Vicky,

Introduction of safeguards against medical managers supplying NCAS with false referral information

Thank you for your response today, below.

I reply now on the issue of NCAS safeguards to protect whistleblowers.

I will respond on the other issues under separate cover.

Many thanks for agreeing to consider how to introduce a statement of truth for referrers.

I ask that NCAS also requests that referrers make a declaration about referred practitioners' status as a whistleblower. It is not enough to asked referred practitioners to refer, as you seem to suggest. The point is that referring organisations must be made to take responsibility for how they treat whistleblowers, in full knowledge of any referred practitioner's status as a whistleblower. Therefore, I think it is important that NCAS asks referring managers to declare whether a referred practitioner is a whistleblower, as the GMC does.

I would be very keen to see these changes made.

The effects of malicious allegations, suspensions and disciplinary action can cause serious personal injury to blameless whistleblowers. I have only today looked at yet another medical whistleblowing case where a previously competent and highly trained professional was made seriously ill by proven whistleblower reprisal. For a while, this doctor found themselves even unable to write a simple email. They were so unwell and lost so much confidence, that they had to ask their spouse to check any emails that they wrote. In that case, the doctor was not suspended, but faced multiple gross, fabricated allegations. You can imagine how a vexatious suspension could have added to the impact of such a case.

As NHS Resolution oversees the NHS' compensation for work related accidents and injuries etc, I hope that the risk of contributing to extremely serious personal injury by inadvertently legitimising abusive employer referrals to NCAS is treated with the seriousness that is required, and is very robustly managed in future.

For completeness, please find now published Tribunal reasons in the case of Mr Tristan Reuser for a costs award against his former trust. This details the Tribunal's criticisms of the trust's misconduct and dishonesty during Tribunal proceedings in not disclosing relevant evidence and also specifically, the Tribunal's comments about a misleading referral to NCAS. This is what whistleblowers are up against, and it is why strong safeguards are required:

https://minhalexander.files.wordpress.com/2022/05/et-reasons-for-decision-to-award-costs-against-university-hospitals-birmingham-nhs-foundation-trust-1.pdf

Many thanks again,

Minh

Dr Minh Alexander

Cc Helen Vernon CEO NHS Resolution
Charlie Massey CEO GMC

From: "VOLLER, Vicky (NHS RESOLUTION)" <REDACTED >
Subject: FW: Introduction of safeguards against medical managers supplying NCAS with false referral information
Date: 20 May 2022 at 11:10:04 BST
To: Minh Alexander <REDACTED>

Dear Dr Alexander

Many thanks for your correspondence to NHS Resolution dated 27 March and 17 April.

Turning to the first and the query about declarations from managers (including medical managers) who request advice and interventions (including assessments) from Practitioner Performance Advice. You will be aware that we already ask at the point of an initial contact with Advice whether the practitioner is a whistleblower or has made public interest disclosures and are able to offer advice within the context of that. We would anticipate this would be considered routinely throughout the lifetime of a case.

We are currently reviewing our approach to cases which go to the Assessment Consideration Group which determines whether or not a case is suitable for a behavioural or clinical performance assessment or professional support and remediation plan (and is being extended to consider team reviews and assisted mediations). This is equivalent to the type of decision making forum where the GMC have implemented Hooper's recommendations as part of the fitness to practice referrals. We will be considering with stakeholders (including practitioners) how we can incorporate a statement of truth regarding their referral and whether we need to do something in addition to our current practice to consider whether or not the practitioner has made public interest disclosures. In our referral documentation the practitioner has space to write about the referral from their perspective and this currently provides an opportunity for practitioners to record if they consider themselves to be a whistleblower.

Moving to the second query re irregular use of buttonhole needling on AV grafts for haemodialysis - I'm afraid that NHS Resolution is unable to express a general view on the liability issues arising from this matter. This is because every claim we receive is different and requires input from relevant clinical experts before a conclusion can be reached. Off-licence use of medication or procedures is not necessarily negligent, although equally it may be. We have not heard the Trust's side of the argument. You will appreciate that NHS Resolution is not a regulator and we do not have the power to force any trust to cease using a particular procedure – that is not our role. As an alternative you might wish to refer this

matter to the Care Quality Commission or alternatively, from a clinical perspective, the Royal College of Surgeons.

Best, Vicky

Vicky Voller
Director of Advice and Appeals
0207 811 2675 / 0207 811 2629 (PA – Sandra Middlehurst)
0207 811 2600 (Advice Line)

Insights: Research and analysis from Practitioner Performance Advice

From: Minh Alexander <REDACTED >
Subject: Introduction of safeguards against medical managers supplying NCAS with false referral information
Date: 27 March 2022 at 15:14:23 BST
To: Helen Vernon <REDACTED>
Cc: Chief Executive [GMC] <REDACTED>

Dear Helen,

Introduction of NCAS safeguards against medical managers supplying NCAS with false referral information

I write to raise two serious examples of NHS employers harming whistleblowers by means of supplying misleading information to NCAS to justify exclusion.

There are many more examples.

The NHS was supposed to have carried out NAO recommendations from 2003 to introduce safeguards for all staff against arbitrary and wasteful suspension and disciplinary action:

https://minhalexander.com/2017/10/21/waste-industry-the-nhs-disciplinary-process-dr-john-bestley/

To my knowledge it has never done so,

Case of Dr Jasna Macanovic

Dr Jasna Macanovic was found by the Employment Tribunal to have been unfairly dismissed and to have been subjected to other detriments for whistleblowing by her trust, Portsmouth Hospitals University NHS Trust.

The ET noted that NCAS gave her employer advice which made provision for the fact that Dr Macanovic had made public interest disclosures.

For example:

"The issue is, as you are aware, complicated by Dr 19339 whistle blowing status and it will be important to document carefully the preliminary information which has been received so that this is available for future scrutiny if required. Potentially it may be necessary for the Trust to be able to demonstrate that Dr 19339 is not being victimised for having raised concerns. I advised that to avoid any allegations of bias, it may also be useful for the role of Case Manager, to be delegated so that the person making any decision about how to proceed is free of any real or perceived conflict of interest. Likewise the Case Investigator should be suitably senior, experienced and independent."

https://minhalexander.files.wordpress.com/2022/03/jasna-macanovic-et-judgnent-dr_j_macanovic_v_portsmouth_nhs_hospitals_trust_-_1400232.2018_-_amended_judgment.pdf

It is good that NCAS recognised that the trust had an obligation to demonstrate fair treatment of a whistleblower.

NCAS could perhaps have been firmer about the actual duty to protect a whistleblower. Instead it jarringly referred to Dr Macanovic's whistleblowing as a “complication” (it was in fact the central issue) and NCAS' emphasis was only on *demonstrating* protection rather than a positive statement about the trust's duty to protect.

Notwithstanding, the trust did not follow NCAS' advice to handle the matter as impartially as possible.

The Employment Tribunal also noted that the trust made this claim to NCAS:

"There appeared to be an absolute breakdown in trust between Dr 19339 and the rest of the department and the result of this led you to be concerned for the health of all in the department."

This was clearly factually inaccurate, very unfair and harmful to Dr Macanovic. This was because the ET noted that a "substantial" number of Dr Macanovic's colleagues shared her concerns and supported her and even appealed to the chief executive to prevent her unfair dismissal, thus risking reprisal against themselves.

However, the trust's false claim that Dr Macanovic was an isolated, problem doctor who severely damaged her department's wellbeing would have manufactured a case for exclusion.

Case of Mr Tristan Reuser

In another recent whistleblowing case in the Employment Tribunal, that of Mr Tristan Reuser, University Hospitals Birmingham NHS Foundation Trust the employing NHS trust was seriously criticised for misleading NCAS with information, supplied by the deputy medical director, that was damaging to Mr Reuser.

Moreover, University Hospitals Birmingham NHS Foundation Trust withheld its correspondence both from Mr Reuser during the original process of exclusion and then later from the Employment Tribunal, adding to its impropriety.

The ET judge noted:

"..It appears that Dr Ryder gave NCAS seriously misleading and inaccurate information as identified earlier in my findings. This further supports my view on apparent bias and/or incompetence at a senior management level."

https://minhalexander.files.wordpress.com/2018/12/Tristan-Reuser-v-HEFT-ET-Judgment-Mr_T_Reuser_v_University_Hospitals_Birmingham_NHS_Foundation_Trust_-_1303554_2017_-_Full.pdf

Request

It seems to me that unscrupulous employers continue to misuse MPHS and NCAS to harm whistleblowers.

The pattern is that they typically supply NCAS with false and misleading information in order to manufacture the advice that they seek from NCAS, as a governance fig leaf, to justify excluding unwanted whistleblowers.

I appreciate NCAS is an advisory body and not an enforcement agency.

However, I wonder if it could do more to deter medical managers who abuse the MHPS process to unjustly harm staff, whether or not they are whistleblowers.

Would NCAS consider introducing a procedure by which managers, who are GMC registered doctors, who refer other doctors to NCAS must make:

1) A declaration about whether or not the referred doctor has made public interest disclosures

2) A statement of truth regarding their referral

as is currently required under GMC procedures, following the review by Sir Anthony Hooper in 2015?

It is not that I expect NCAS to take enforcement action outwith its remit, but that introducing such written undertakings formalise the process of referral.

Such undertakings would increase jeopardy for any medical managers seeking to abuse MHPS to treat staff unfairly.

The written undertakings, if falsely given, could be taken into consideration by the GMC if any issues of whistleblower reprisal by medical managers are referred to the GMC as matters of impaired Fitness To Practice.

I look forward to hearing from you.

With best wishes,

Minh

Dr Minh Alexander

CC Charlie Massey CEO General Medical Council