

From: REDACTED

Subject: The importance of the Kark review to good whistleblowing governance in the NHS

Date: 21 June 2023 at 03:16:21 BST

To: REDACTED

BY EMAIL

Rachael Maskell and Health and Social Care Committee
21 June 2023

Dear Ms Maskell and colleagues,

The importance of the Kark review to good whistleblowing governance in the NHS

Regarding the Committee's hearing yesterday, I write to thank you for acknowledging that the Freedom To Speak Up project has failed to deliver.

That is a significant shift forwards.

It was clear to many whistleblowers from the outset eight years ago that the model would not deliver, because of many flaws.

Crucial flaws included:

1. Leaving control of investigations into whistleblowers' concerns solely in the hands of employers.

Francis explicitly designed the model so that neither local trust Freedom to Speak Up Guardians nor the National Guardian would investigate whistleblowers' concerns. He restricted the role of the National Guardian to reviewing the process by which concerns were handled, and not the concerns themselves.

2. Creating a core and unworkable conflict of interest by requiring Guardians employed by NHS trusts to stand up to their senior managers
3. Giving the National Guardian no powers.

The model was further weakened and diluted at the implementation stage by CQC, NHS England, NHS Improvement and the former National Guardian.

They:

- a) Operated the model to exclude any support for individual whistleblowers with redress, despite Francis' report stipulating that the National Guardian should help facilitate redress for harmed whistleblowers
- b) Introduced arbitrary barriers to case review by the National Guardian. For example, the National Guardian began telling harmed whistleblowers that her Office would not touch their cases until their Employment Tribunals had concluded, which in reality meant the whistleblowers and their patients were kicked into the long grass for years. In one notorious case, the National Guardian gave a favoured trust time to improve before she reviewed – this was Sussex – now downgraded by the CQC and the subject of a police investigation into concerns that may amount to gross negligence manslaughter.

Whistleblowers such as myself tried to whistleblow to Robert Francis about the harm caused by his model and its poor implementation, but he was dismissive and sometimes even disparaging, as revealed by Subject Access Request.

The Committee today asked the Secretary of State to consider a central whistleblowing mechanism for NHS whistleblowers.

I welcome the interest in whistleblower welfare but believe this is will not be safe for NHS whistleblowers.

To some extent, it has been trialled through the National Guardian's Office, albeit without powers of investigation. It has not been successful, and it has sometimes even proved abusive to whistleblowers. Please see:

[The National Guardian's Office finally apologises for a breach of whistleblower confidentiality but fails to demonstrate sufficient learning](#)

I am aware that some parties who are not whistleblowers but who have lately taken an interest, have suggested a central NHS whistleblowing mechanism.

I have strongly counselled against this, as suppression in the NHS originates from the top, as per the Mid Staffs public inquiry evidence:

["...that's a big pressure and has been on managers in the NHS almost since its creation. Don't do anything to embarrass the Minister."](#)

Given the political management of the NHS, centralising whistleblowing would not bring independence and would only concentrate the problems of suppression and bullying.

To give just a few immediate and topical examples of poor culture by central, oversight bodies in the NHS:

- a) Both NHS England and the Care Quality Commission have recently been found guilty by the Employment Tribunal of victimising their own whistleblowers (Mr Shyam Kumar and Ms Cox)
- b) NHS England yesterday refused to admit that its investigation into North East Ambulance Service deaths cover up scandal is compromised by its appointment of Marianne Griffiths, [under whose tenure whistleblowers tried to raise concerns about rising deaths at Sussex.](#)

Email 20 June 2023 from NHS England:

"In brief, NHS England is content with Dame Marianne Griffiths' suitability to lead this review and expect it to conclude soon."

- c) NHS England employed Mark Cubbon as Chief Delivery Officer after he failed to protect a fully vindicated and blameless whistleblower, Dr Jasna Macanovic, when he was an NHS trust CEO.

During Mr Cubbon's tenure as Chief Delivery Officer at NHS England, his team signed off a curious pro bono piece of work by the so-called Good Governance Institute. Information in the public domain suggests that this was work on Integrated Care Systems and had input from Mason Fitzgerald, a former NHS director who was sacked after a false CV claim. NHS England refuses to confirm or deny whether it employed Mason Fitzgerald after he was sacked by an NHS trust.

- d) The Healthcare Safety Investigation Branch, hosted by NHS England, has recently been exposed as a bullying employer with many whistleblowers contacting the media and a recently broadcast, in depth investigation by Channel 4. [\(a\) NHS England covered up the failures at HSIB and suppressed relevant reports.](#) (b) Even when NHS England reluctantly released the reports under FOI, it still redacted crucial sections to hide the fact that HSIB [a\) senior managers had threatened HSIB staff with job losses if they did not churn out safety reports quickly enough](#) – a most unsafe thing to do.

It took five years for HSIB to be fully unmasked.

I hope Committee can imagine the harm that another badly run central NHS whistleblowing agency can do in a similar time span.

The National Guardian's Office has already contributed to serious harm. Mr Shyam Kumar surgeon and Dr Jasna Macanovic are two solidly proven example of NHS whistleblowers who the ET found were expressly unfairly dismissed for protected disclosures. They were both were rejected and failed by the National Guardian's Office. We do not need this pattern to be replicated by the NHS through a new body.

As evidence of government's unreliability and lack of good faith, please note that [the 2015 recommendations by Committee](#) to the government to seek out and provide redress to harmed NHS whistleblowers in terms of "an apology and practical redress" never materialised. Another NHS whistleblowing body overseen by the government would simply be another bear trap.

In the longer term, any central whistleblowing agency needs to be outside of the line management of the government for real independence and under parliament's direct supervision. It should be an agency for all whistleblowers, and it should be very carefully guarded against capture and corruption. It should be run entirely on public interest principles and not for profiteering by bounty hunters and compliance industry players. There needs to be full reform of UK whistleblowing law underpinning it all.

I would be extremely grateful if instead of a new NHS whistleblowing body, the Committee could firstly concentrate its focus on implementation of the [Kark review](#) on unfit NHS managers, as an achievable short-term goal. Meaningful sanctions for those who cover up and endanger patients will have more positive impact than a whistleblowing agency controlled by the unfit.

I have copied the Committee into further correspondence with the Secretary of State about gross delay in implementing the Kark review recommendations.

With best wishes,

Dr Minh Alexander
NHS whistleblower and retired consultant psychiatrist

Cc Public Accounts Committee