

BOARD PAPER - NHS ENGLAND

Title: Update on Freedom to Speak Up (Whistleblowing in the NHS)

Lead Director:

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Purpose of Paper:

- The purpose of the paper is to update the Board on progress being made to implement Freedom to Speak Up recommendations and in particular NHS England becoming a Prescribed Person under the Employment Rights Act 1996

The Board is invited to:

- Note the report

Update on Freedom to Speak Up (Whistleblowing in the NHS) NHS England Board, January 2016

1 PURPOSE

- 1.1 Sir Robert Francis' review of whistleblowing in the NHS, 'Freedom to Speak Up', was published in February 2015. The Secretary of State approved its recommendations, following a consultation over the summer. A number of recommendations fell to NHS England to deliver and this paper provides a progress report.
- 1.2 In particular, this paper outlines the progress we are making towards NHS England becoming a Prescribed Person, under the Employment Rights Act (1996), with effect from 1 April 2016.

2 BACKGROUND

- 2.1 'Freedom to Speak Up' concluded that the NHS does not consistently listen or act on concerns raised by whistleblowers and that some individuals have suffered appallingly for raising concerns. It set out a number of principles that NHS organisations should adopt in order to ensure that NHS staff are encouraged and supported to share concerns.
- 2.2 In particular, people working in primary care were identified as a vulnerable group, partly because they are employed in smaller organisations and partly because there are fewer external bodies with whom to raise concerns.
- 2.3 To address these concerns, Sir Robert Francis recommended that NHS England become a Prescribed Person. The NHS England Board agreed to this recommendation in July 2015, and requested that our registration be restricted to Primary Medical Services.
- 2.4 NHS England also needs to model the principles in 'Freedom to Speak Up' for our own staff. To strengthen Board scrutiny of this work, Sir Malcolm Grant was appointed Board Champion and Karen Wheeler appointed Freedom to Speak Up Guardian for NHS England staff.

3 NHS ENGLAND BECOMING A 'PRESCRIBED PERSON'

- 3.1 NHS England will become a Prescribed Person with effect from 1 April 2016. This means that we will need to publish an annual report about our engagement with NHS whistleblowers from primary care covering the period 1 April 2016 – 31 March 2017, and annually thereafter.
- 3.2 The regulations governing our reporting requirements have not yet been published by the Department for Business, Innovation and Skills (BIS). However, it is expected that the information to be published will include the number of concerns raised with us, the actions we have taken and the numbers of disclosures referred to other bodies. We

hope to publish this information as part of the annual report we already publish on patient complaints.

- 3.3 Although NHS England is not currently a Prescribed Person, we do receive contact from whistleblowers. These are mostly handled locally and there is no national process for collating the numbers of contacts we are getting. The main challenge in becoming a Prescribed Person will be, therefore, to formalise measures which have previously been undertaken informally.
- 3.4 An Internal Audit has been undertaken to help us assess our readiness to become a Prescribed Person. In addition, a detailed project plan has been drawn up and is now being implemented. As a result, we are confident that we will be able to meet the requirements of the regulations from 1 April 2016.
- 3.5 New policies have been drafted for both NHS England staff wishing to raise a concern and external NHS staff bringing a concern to us. These have been developed with the expert support of Public Concern at Work. These policies will be presented to Audit and Risk Committee for approval.

4 WIDER POLICY WORK

- 4.1 NHS England has taken forward other recommendations from 'Freedom to Speak Up'. Together with Monitor and the Trust Development Authority (TDA), we have published for consultation an integrated policy for raising concerns. We are about to publish guidance on how that policy should be adapted for primary care.
- 4.2 NHS England has also been working with Monitor and the TDA on the design of an Employment Support Scheme for whistleblowers whose performance is sound but who are having difficulty in gaining employment within the NHS. The main challenge is that performance is often disputed between employer and whistleblower. However, we have held very constructive workshops with whistleblowers, employers and regulators and expected to be able to share proposals for an Employment Support Scheme shortly. We anticipate that we will trial a scheme for a limited number of whistleblowers from early in the new financial year.
- 4.3 It is expected that Clinical Commissioning Groups (CCGs) will become Prescribed Persons from 1 April 2017 and steps will need to be taken to facilitate this process efficiently and effectively.
- 4.4 The Board will also wish to note the appointment of a National Freedom to Speak Up Guardian at the Care Quality Commission (CQC). The CQC have consulted on the scope of this role and propose, for reasons of workload, that it initially excludes primary care. However, Dame Eileen Sills will work proactively with the leadership of all of the Arms-Length Bodies and is likely in time to be in a position to review the handling of whistleblowing cases by NHS England.

RISKS

- a) Although full details of regulatory requirements are not yet completely clear and we don't know how many additional cases we might get or how this might increase over the year, there is a project underway to prepare for the expected work. The key change we need to deliver by 1 April is to ensure that anyone in NHS England who is contacted by a whistleblower knows what they need to do to respond or hand over the case and make a formal log on our system. This will require the right leadership support. We are working to deliver a plan to ensure that the organisation will be ready from 1 April to deliver our new responsibilities. This plan is dependent on adequate resourcing, which is currently subject to business plan allocations. The SRO for the project is Steve Verdon and the work is being overseen by the Customer Contact Programme Board.
- b) The wider risk is that policy by itself will not address the behavioural issues that have resulted in safety concerns being ignored and whistleblowers persecuted. Wider cultural change will be needed, including visible leadership from national NHS organisations.

LEGAL/REGULATORY

- a) The role of the Prescribed Person is set out in the Employment Rights Act (1996). Regulations on reporting requirements have not yet been laid. However, last year Prescribed Persons were required to report:
 - i. the number of concerns which have been raised in a 12 month period;
 - ii. the number of concerns that can be reasonably identified as 'whistleblowing';
 - iii. the types of actions which were taken;
 - iv. the numbers of disclosures where no further action was taken;
 - v. the number of concerns that were referred to an alternative body;
 - vi. how information from whistleblowers has impacted on our statutory activities.

RESOURCES REQUIRED

- a) New resources will be required to deliver these new statutory responsibilities. Proposals have been put forward and are being considered as part of the annual planning process.

5 RECOMMENDATION

5.1 The Board is invited to note the progress being made.

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