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Dear Sir Robert,

Freedom to Speak Up Review – Evidence from the Care Quality Commission

Thank you for the opportunity to provide evidence to this review. In particular we welcome that Sir Robert Francis QC is leading this work, given the knowledge and learning gained from chairing the Independent Inquiry into the care provided by the Mid Staffordshire NHS Foundation Trust, and subsequently the Mid Staffordshire NHS Foundation Trust Public Inquiry. We believe that this review can make an important contribution to improving how staff who raise concerns about NHS services are treated and that the information they provide is used more effectively to improve the safety and quality of care that people receive and experience.

We believe the issues that need to be tackled around getting staff and people using services to speak up about the quality of the care they experience are challenges that are shared across the health and social care system by the different national and local organisations that seek to improve quality of care. It is therefore not just an issue for CQC but it is one where we believe we can make an important contribution.

The Care Quality Commission (CQC) is the regulator of health and adult social care in England. Also it is a Prescribed Body under PIDA, meaning that employees of health and social care organisations can make protected disclosures to CQC where they have concerns about their employing organisation.

Although your review focusses on the NHS, we believe strongly that these issues need to be addressed at the same time in adult social care services. We know from our inspections that these issues often show up frequently as important findings when we inspect adult social care services and need to be addressed.

We thought it would be useful to set out some of the changes we are making to the way we inspect providers of health and social care services, highlighting the importance of people who use services and staff who work in services being able to raise concerns about the safety and quality of care. We believe that every complaint and concern raised by staff or people using services is an opportunity to improve as they provide vital information to help CQC to understand the quality of care.

These changes in CQC's approach build on the learning from the Francis Public Inquiry, the Clwyd/Hart Review of Complaints, Winterbourne View, Health Select Committee reviews and other examinations of failures in care. CQC believes that to address these recommendations there needs to be a fundamental shift in the way that we handle concerns, complaints and whistleblowing. We have provided below a description of what we are doing and would be happy to provide more details if this would be helpful to the review.

In order to develop our programme of work we have reached outside of CQC to draw in expertise from those who have experienced the complaints system and being a "whistleblower", as well as working with external organisations with insights into people's experiences of care. This has included employing James Titcombe as our National Safety Advisor to advise on the development of our new approach to inspecting how providers handle complaints from people using services, working with the Patients Association to learn from and build on their good practice standards. Also we have worked with Dr Kim Holt, herself a "whistleblower" and campaigner for staff rights through Patients First, in developing proposals to test how providers manage staff concerns about safety and the quality of care. We have been testing these proposals with groups of people who have experienced the complaints system and "whistleblowers". We have set up a whistleblower panel to help us to develop our methodology. This panel, consisting of a group of people who have contacted CQC to share their concerns, have met twice and the purpose is to use their experiences to help us to develop our methods for assessing how well provider organisations are supporting and responding to members of staff raising concerns. We held a workshop with a group of people who have made complaints against NHS and other services to learn from their experience.

We have a number of historic whistleblowing cases that are referred to CQC. They usually do not present safety and quality issues that we have to immediately address, especially if they are a number of years old. However they do present a series of challenges for CQC. The individual may come to CQC with a hope that we can help resolve their case or hold the provider to account for its actions in this case. Whilst each case provides learning for us about the problems that can occur, and how we need to design our new methods of inspection in order to detect similar problems and take effective action, we do not have the remit to resolve the individual case. Some of the cases are complex and there are whistleblowing and human resource/employment issues intertwined. People can ask for anonymity but it is difficult to investigate issues of quality and safety and preserve anonymity. There can be a poor understanding of what protection under PIDA (the Public Interest Disclosure Act) actually means to them and what in practice can be done to protect individuals like them. For the individual this can leave them with the sense that for people like them they have no one that they can turn to who will fight their corner. For CQC and its staff it can leave us feeling relatively helpless in these circumstances in terms of being able to protect and promote the interests of people using services.

We believe that we are on a journey towards improvement. However, whilst we have been making changes over the last 12 months as part of a broader work programme across CQC, we still have much to do over the next 12 months and beyond, and some of the work described is still work-in-progress. Some of the

broader agenda requires partnership working with other national and local organisations (e.g. the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman, Healthwatch England, Monitor, The Trust Development Authority), such as agreement on what good practice looks like.

As we begin to consistently hold providers to a higher standard of encouraging and responding to concerns, complaints and whistleblowing we must hold ourselves to the same standard. Work to improve our own processes and make listening and responding with compassion and clarity a core competence of CQC staff is also underway. We have recruited a customer experience expert, who has experience in both the public and private sectors, who will be joining us in September to take this work forward over the next year.

As we are still learning and improving, we would be keen to contribute further to this review whenever there are opportunities and learn from the evidence it gathers, its conclusions and recommendations.

How we are changing our inspections

We believe that the strongest lever that CQC has to improve the performance of providers on concerns, complaints and whistleblowing is through the methods we use to inspect providers.

Before a new style inspection takes place we gather information on concerns, complaints and whistleblowing in the following ways:

- Encouraging users and staff to contact us directly through our website and phone line, and communicating these concerns to inspectors when they decide where and when to inspect a service
- Asking national and local partners (for example, the Parliamentary and Health Service Ombudsman, the Local Authority and Healthwatch) to share with us concerns, complaints and whistleblowing information they hold
- Analysing national data sources such as the NHS staff survey (e.g. would you feel safe raising your concerns? Confident my organisation takes action?) and the Social Care Information Centre complaints data
- Analysing responses from public website such as NHS Choices and Patient Opinion where people record their experiences of care
- Requesting information about concerns, complaints and whistleblowing from providers themselves – we are currently working to include a self-assessment questionnaire for hospitals

During our new style inspections we draw on different sources of evidence to understand how well providers encourage, listen to, respond and learn from concerns:

- We hold listening events with the public at the start of an inspection to hear experiences of good and poor care.

- We discuss with users and families throughout the inspection their experiences of care. These discussions can often be led by Experts by Experience on the inspection team, people who have recently had experience of similar care in another provider.
- We encourage members of staff to raise any concerns with our inspectors. For example, on hospital inspections we hold focus groups with junior doctors, run by a junior doctor who is on our inspection team, to encourage them to share any concerns which we need to follow up. Other staff forums are conducted by a peer on the inspection team and are held with senior doctors, junior nurses and care assistants, senior nurses and administrative staff. We offer to speak to people who have contacted us to raise concerns directly one-to-one or at 'drop-in' sessions on a confidential basis. Also we provide comments cards that people can complete and send to the inspection team providing their views about services.
- Other evidence sources may include reviewing provider complaints and whistleblowing policies, indicators such as a complaints backlog and reviewing case notes from investigations.

We are proposing to further strengthen these approaches over the next six months by:

- From October on large inspection teams, we will have a designated lead for complaints and staff concerns. While staff are encouraged to raise concerns with any member of the inspection team, having a designated lead will help ensure that information is brought together to form an overall view of how well-led and responsive a provider is.
- From October every new style inspection of providers registered with CQC will ask a set of questions on concerns and complaints and judge the answers against explicit characteristics of good practice that will consider (the questions are still being finally agreed within CQC so the exact wording may change):
 - As part of judging the responsiveness of services we will ask – how are people's concerns and complaints listened and responded to and used to improve care?
 - Do people who use the service know how to make a complaint or raise concerns, are they encouraged to do so, and are they confident to speak up?
 - How easy is the system to use? Are people treated compassionately and given the help and support they need to make a complaint?
 - Are complaints handled effectively and confidentially, with regular updates and a formal record?
 - Is the outcome explained appropriately to the individual? Is there openness, transparency about how complaints and concerns are dealt with?

- How are lessons learned, shared with others and is action taken as a result of investigations when things go wrong?
 - As part of assessing how well-led a service is we will ask – how does the provider engage, seek and act on feedback from people who use the service, the public and staff?
 - Is the value of staff raising concerns recognised by both leaders and staff? Is appropriate action taken as a result of concerns raised?
- We are starting to design a set of training and support for inspection team members and other CQC staff that is likely to include issues such as understanding the legal framework, facilitating staff forums, how to manage sensitivities in handling concerns such as confidentiality, use of inspection guidance and tool kits, identifying good and poor practice.
- In terms of complaints handling we plan in hospitals and other care sectors to carry out an audit of a randomly selected (by CQC) sample of closed files to understand if these have been handled in a way that matches the good practice we expect to see.
- We are currently carrying out a quick probe on complaints, concerns and whistleblowing across all sectors to get an idea of how well health and adult social care providers are doing on these issues. Professor Sir Mike Richards will be publishing a report later in the year, which will highlight what we have found through these inspections, identifying themes across all sectors including examples of good practices.
- Inspection reports will include a sub-heading on *Learning from Complaints and Concerns*. If staff raised concerns this can be mentioned in many parts of the inspection report but specific issues about poor response to concerns will be mentioned under the *Culture* subhead within the section on *Well-Led*.
- In terms of enforcement and bringing about improvement there is a fundamental standard 16 that relates to complaint handling. Fundamental standard 17 relates to good governance and includes the requirement to seek and act on feedback from relevant persons such as staff. Breaches of these regulations are not a prosecutable offence but can lead to CQC taking regulatory action against a provider's registration or inspectors making recommendations for improvement.

CQC activity on staff concerns and whistleblowing

We thought it would be useful to also provide this review with information on CQC's activities on staff concerns and whistleblowing.

During 2013/14 9,495 people contacted CQC to raise concerns about their employers or their workplace. This year in the period between 1 April 2014 and 8 September 2014 4,114 people have contacted CQC. These contacts are logged by a team within our National Customer Services Centre and are tracked to ensure

they are responded to by the relevant inspector in a timely manner. The table below provides details of how they have been resolved:

Answering of enquiries by people who contacted CQC to raise concerns about their employers or their workplace

Year	2013	2014
Brought forward planned review	793	494
No other action taken	1,250	511
No outcome recorded	3,154	1
Noted for future reviews	2,557	1,231
Outcome not recorded in reportable format	112	73
Referred to another body	789	413
Triggered a responsive review	639	279
WB not yet complete	201	1,112
Grand Total	9,495	4,114

Note: No outcome recorded. It is likely that this occurred because the process of recording this information in CQC's CRM information system was not a mandatory requirement. This does not mean that the information was not acted upon appropriately by inspectors. Changes have been made to this process and as of 14 February 2014 no whistleblowing enquiry will be able to be closed without an outcome being recorded against it. All whistleblowing referrals are discussed between inspectors and their line managers at regular meetings.

In term of language used, we are aware from our engagement that people do not like the terms 'complaints' and whistleblowing' as they appear a negative way of describing when people make the effort to provide feedback and raise concerns in order to avoid others having to repeat their experience of poor care. This negative tone can act as a barrier to others speaking up. Also terms such as "whistleblower" and "complaint" can be used by different parties to mean different things adding to confusion people feel when trying to navigate their way through the processes. We are planning to standardise CQC's use of terms such as these through training and guidance to inspectors over the next 12 months.

Finally, we would like to emphasise that the first responsibility for dealing with staff concerns has to be with providers. Any proposed changes that introduced further tiers or organisations into the system should avoid undermining the responsibility of providers. Resolving the issues around concerns is ultimately about creating better employee relationships and openness, building on existing good practices.

We hope this information is useful to your review and we would be keen to become involved in other activities where we could contribute.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Behan'. The signature is fluid and cursive, with a large initial 'D'.

David Behan
Chief Executive
Care Quality Commission