

## **Case Review Feedback**

The following is summary of the ideas and suggestions sent to the National Guardian's Office regarding the case review process to be undertaken by the NGO later in 2017.

Specifically, the Office asked for ideas regarding what the criteria should be to determine which cases could be capable of selection for review.

The Office has received a wide variety of suggestions and these have been set out below in themes they covered.

The NGO is in the process of reviewing all the ideas and suggestions received and will take them into account when drawing up the final case review process. Once this is complete we will publish on this website how the process will work.

### Who can refer?

The responses we received said that cases should be taken from:

- Freedom to Speak Up Guardians
- NHS staff who have reported concerns and are currently employed or those employed in the last 5 years
- NHS Trusts
- Former staff
- Whistle blowers who have not been able to resolve the matter with support from a Freedom to Speak Up Guardian
- Whistle blowers who are unhappy with how their case has been handled by a NHS trust
- Anyone

### Over what time frame will cases be reviewed?

The responses we received said cases, including historic cases, should be considered over the following period:

- No time limit
- Going back 2 years
- Going back 4 years
- Going back 30 years

### What should the specific referral criteria be to select cases?

The responses we received said cases should be considered for review where:

### **Absence of outcome**

- A Whistle blowing case is not resolved
- A matter has been raised with a Freedom to Speak Up Guardian, but they have not been able to resolve it
- A Whistle blower is still raising concerns

### **Inappropriate response to concerns**

- A Whistle blowing concern has not been taken seriously
- A Whistle blowing concern has not been investigated appropriately
- A Whistle blowing investigation has not resulted in any action
- A Whistle blowing is unhappy that their concerns have not been acted upon

### **Specific criteria**

- A case meets the legal criteria for making a protected disclosure under the Public Interest Disclosure Act 1998
- There are multiple issues/clusters of concerns reported
- The matter has already been escalated 3 or 4 times
- The trust in question is an outlier for Workforce Race Equality Standard or staff survey data
- The concerns raised have happened before
- The case fulfils national criteria
- Cases meet criteria similar to those used by ombudsmen
- Concerns have been vindicated
- Staff surveys and other intelligence indicates the need
- Trusts spend large sums of money defending indefensible cases
- There is evidence of fraud
- Cases are won at Employment Tribunals
- Reviewing a case will generate learning

### **Evidence of Harm**

- There is evidence of harm to patients and/or staff
- There is evidence of intentional harm
- There is loss of life
- There is evidence of detrimental treatment
- A whistle blower suffers detriment for raising a concern
- There are patient safety concerns
- A staff member or patient has not been fairly treated

### **Poor treatment of a Whistle blower**

- The raising of a concern led to staff exclusion or dismissal

- A whistle blower suffers detriment for raising a concern
- Where a whistle blower has been harassed and not treated as an asset

### **Public Interest**

- It is in the public interest to do so
- Where the public have called for a case review

### **Confidentiality**

- The case involves confidentiality issues/super gags

### General points

We also received some general points about the case review process and the work of the National Guardian's Office:

- The public should be made aware of the process
- Reviews should be formative, not punitive
- Expert advice should be available during the case review process e.g. expert clinical analysis of evidence
- The National Guardian's Office potentially will have insufficient powers to deal with disputed facts in many cases and will eventually need to investigate matters rather than review them
- The National Guardian's Office should have statutory powers to remedy poor whistle blowing governance
- National level case reviews should have a priority over local ones
- A group, including former whistle blowers, should have responsibility for selecting cases to review
- The National Guardian's Office should not be the body that conducts reviews
- The National Guardian's Office should publish the review methodology and criteria
- The National Guardian's Office should triangulate data to determine what cases to review

### Questions to consider

- What will be the review methodology?
- What sources of evidence will be used when cases are reviewed?
- How will reviews deal with disputed facts?
- Why is the target to review only 20 cases when there are 240 NHS trusts?