

To Sir Robert Francis Non-Executive Director CQC 1 May 2016

Dear Sir Robert,

National Freedom To Speak Up Guardian, Prescribed Person issues and proposed role

I have unfortunately not received any response to my email, below, to David Behan a month ago. I therefore now direct this correspondence to you as the CQC director who CQC advises has been providing support to the developing National Guardian office since Eileen Sill's departure.

1) I would be very grateful for a reply from CQC to the practical questions raised in my email of 3 April below about Prescribed Person functions, not least because CQC has just advertised the National Guardian post again without clear resolution of the practical issues.

2) I would also be glad to know if the fact that CQC's latest position specification for the National Guardian has omitted the following stipulations from the original position specification is because CQC has withdrawn these restrictions from the National Guardian's role:

- a) "this would not be a system of case management"**
- b) "...would not involve investigation"**
- c) "...would not be a means of appeal"**
- d) "Where the National Guardian decides to review a case...they will not consider the content of concerns, or investigations or the outcome of these"**

Please could you advise whether CQC and DH now accept that the National Guardian should review the contents of staff concerns and the quality and outcome of local investigations by employers, that the National Guardian can investigate cases and operate a case management system, and offer a means of appeal against local decisions by employers.

Please also advise whether or not it is now accepted that the National Guardian should have any statutory powers, especially given the National Guardian's Prescribed Person functions.

As I have put to CQC previously, it is important that there is clarity as CQC gave an undertaking that the National Guardian's office would be operational by last month. I understand that disclosures have already been made to the National Guardian's office, but that staff who have made disclosures have not necessarily received a response from the office. NHS staff take great risks in making external disclosures to regulators and other Prescribed Persons. It is known from research evidence that going external increases risk of very serious reprisal and dismissal, and CQC has acknowledged this risk to me in the past. I hope CQC respects the *still* tremendous risks that staff take in making disclosures, by providing clarity on what such staff can expect from the National Guardian's office.

3) I was informed by an individual interested in the National Guardian post that CQC recently advised that it has decided that the next National Guardian will not be allowed to simultaneously hold office in a regulated body, as Eileen Sills did. There was indeed great concern about that

particular inherent conflict. I would be grateful if you could confirm that CQC has decided not to allow such a conflict this time round.

4) Lastly, for a number of reasons, including the untimely departure of Eileen Sills and her deputy and incorrect technical advice provided by both of them, please can CQC advise what due diligence (if any) it took in the last round of appointments to ensure that the appointee had suitable expertise of whistleblowing issues and had ensured good whistleblowing governance in his or her own practice as an NHS leader. There was nothing in the original position specification which required suitable expertise or proven track record of good whistleblowing practice, and there is still no such specific requirement in CQC's latest position specification.

Yours sincerely,

Dr Minh Alexander

cc Public Accounts Committee

Health Committee

Rt Hon Sir Anthony Hooper

Sir Amyas Morse Comptroller and Auditor General NAO

Julie Bailey Cure the NHS

Katherine Murphy Chief Executive Patients Association

Cathy James Chief Executive Public Concern at Work

Peter Wyman CQC Chair