

From: Minh Alexander <[REDACTED]>
Subject: National Guardian's handling of reported whistleblower detriment and review of Colchester University Hospital NHS Foundation Trust
Date: 23 May 2018 at 06:14:13 BST
To: Simon Pook <[REDACTED]>
Cc: [REDACTED]

BY EMAIL

Simon Pook
Case Review and Governance Manager
National Guardian's Office

23 May 2018

Dear Simon,

National Guardian's handling of reported whistleblower detriment and review of Colchester University Hospital NHS Foundation Trust

Thanks for your email and the information on how detriment is measured.

1. You say that you are reviewing one of the 'highest' detriment trusts - Nottinghamshire Healthcare NHS Foundation Trust.

To be clear, the National Guardian's Office announced that it was reviewing Nottinghamshire Healthcare after I enquired why NGO was not reviewing any of the trusts with high rates of detriment.

The correlation of high reported rates of detriment at Nottinghamshire Healthcare with the other factors which have led to this case review would seem to support the notion that high reported levels of detriment are a useful indicator.

2. Whilst of course agreeing with your point that trusts with low levels of reporting are problematic, I am concerned by the position set out in your email. It seems to me to almost dismiss the significance of whistleblower detriment reported to the Speak Up Guardians.

Whilst recognising that your currently gathered data is unlikely to give the full picture, it would seem unwise not to investigate further when there are high levels of reported detriment.

There are parallels with the role of mortality alerts as illustrated through the Mid Staffs Public Inquiry - alerts do not necessarily prove there is a problem, but it is good practice to trigger review.

3. You state that the NGO only triggers case review when it is specifically asked to do so. This seems unnecessarily restrictive in situations where all the intelligence, from different sources, suggests that there is a significant problem. Perhaps this could be considered in the forthcoming review of the NGO's inclusion/exclusion criteria.

4. On a separate but related point, I was concerned that you advised on the 4 May 2018 that the NGO has no clear timescale for implementing Sir Robert's recommendation from the Freedom To Speak Up Review for trend analysis of NHS whistleblower concerns to pick out patient safety issues that should be shared with NRLS, CQC and others.

This recommendation echoed key recommendations by the Public Accounts Committee in August 2014:

“Departments should collect and apply intelligence on concerns raised by whistleblowers from the full range of arm’s length bodies and other providers involved in their sectors. They should use and analyse the data to identify any systemic issues.”

<https://publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/593/593.pdf>

“Whistleblowing is a crucial source of intelligence to help government identify wrongdoing and risks to public service delivery.”

Statement by Margaret Hodge Chair of Public Accounts Committee 1 August 2014

If the NGO is not looking into high levels of reported whistleblower detriment, and not sifting for patterns relevant to patient safety, it is arguably operating on a basis of partial blindness and not properly fulfilling its ultimate mission of protecting patients.

5. Colchester University Hospital NHS Foundation Trust remains a serious concern.

It is the site of many previous concerns about poor patient safety, bullying and suppression and was one of the 14 Keogh trusts which were outliers on mortality.

Colchester attracted the highest number of cases of reported whistleblower detriment according to the NGO's own data.

It had the second highest number nationally of external whistleblowing reports to CQC over 2015/16 and 2016/17:

<https://minhalexander.com/2017/12/13/two-years-of-national-cqc-whistleblowing-data-on-health-and-social-care-services/>

During the two months in which I have been waiting for a reply from the NGO about whistleblower detriment, there was media coverage of controversial remarks by its CEO:

🏠 > News

Hospital boss bans employees from telling patients trust is short-staffed



Nick Hulme, chief executive of Colchester General Hospital (pictured), banned his employees from telling patients that wards are short-staffed CREDIT: NICK ANSELL/PA

By **Telegraph Reporters**

26 APRIL 2018 • 12:34PM



hospital boss has come under fire for banning his employees from telling patients that wards are short-staffed.

<https://www.telegraph.co.uk/news/2018/04/26/hospital-boss-bans-employees-telling-patients-trust-short-staffed/>

Importantly, Colchester has disclosed via FOIA that only 20% of the staff who were asked to give feedback on their experience of speaking up responded and gave feedback.

The trust also disclosed that the feedback given and passed on to the NGO could be summarised thus:

“General consensus indicated a need to offer better support to those raising concerns.”

You will I hope also be aware that the CEO of Colchester was CEO at Croydon Health Services NHS Trust at the time that Dr Kevin Beatt’s whistleblowing case began to unfold.

If you are not already aware, Dr Beatt has won his case all the way up to the Supreme Court, at great personal cost because of the trust’s unwillingness for years to take responsibility for its unfair treatment of him as a whistleblower.

In all, I now make a specific request that the NGO undertakes a case review of Colchester.

If you have already initiated correspondence with Colchester about case review, which for whatever reason has not proceeded, I would be grateful if you would be open about this.

This is the light of revelations by whistleblowers that the NGO agreed to review Brighton and Sussex but then post-poned, giving the explanation that it wished to give the trust time to improve.

<https://minhalexander.com/2018/05/06/a-study-in-delay-the-national-guardian-brighton-and-sussex-university-hospitals-nhs-trust/>

I note that the NGO has since informed the Health Service Journal that the trust refused to expedite review:

"In a statement to HSJ, Dr Hughes said: "We can confirm that a referral for a case review at BSUH has been accepted. Case reviews carried out by the National Guardian's Office are not inspections and the NGO does not have powers to compel an organisation to collaborate in the process. Therefore, as with all case reviews, I have spoken to the chief executive of BSUH. She has welcomed this case review, but indicated that our originally proposed timings do not fit in with the trust's current programme of improvement.

"We have subsequently sought to expedite the timeframe, but the trust has indicated that it is unable to accommodate this request. Currently, therefore, we are looking to carry out the case review later in the year."

A trust spokesman said: "We absolutely welcome the opportunity for an independent review by the National Guardian's Office as part of our continued organisational improvement.

"BSUH is in a period of substantial change. For the review to be the most meaningful, we have suggested that it is deferred until later in the year when our current improvement programme will be more established. This will give our staff the best opportunity to contribute fully to the review.

"The national guardian has accepted this, and we are looking forward to working productively with them at the appropriate time."

<https://www.hsj.co.uk/brighton-and-sussex-university-hospitals-nhs-trust/trust-holds-up-whistleblower-investigation/7022369.article>

Please let me know if the NGO will review Colchester.

Many thanks,

Minh

Dr Minh Alexander

cc Sir Robert Francis CQC NED and member of National Guardian's
Liaison and Accountability Board
Dr Henrietta Hughes National Freedom To Speak Up Guardian, CQC
Dame Moira Gibb NHS England NED and member of National
Guardian's Liaison and Accountability Board
Sarah Harkness NHS Improvement NED and member of
National Guardian's Liaison and Accountability Board
Prof Ted Baker CQC Chief Inspector of Hospitals
Steve Barclay Minister of State Department of Health and Social
Care

From: "Pook, Simon" <[REDACTED]>
Subject: RE: National Guardian's published data on detriment
Date: 22 May 2018 at 17:25:36 BST
To: "Minh Alexander" <[REDACTED]>
Cc: "Hughes, Henrietta" <[REDACTED]>, "rfrancis@serjeantsinn.com" <[REDACTED]>

Dear Dr. Alexander,

Many thanks for your email and my apologies for the delay in replying to you.

With regards to the blank spaces in the published data, to which you refer, the reason for them is that in each case the trusts concerned did not provide the NGO with data.

In respect of guidance for Guardians recording detriment, in our foundation training for Guardians we give an overview of what conduct might constitute detriment, including situations such as how shifts are allocated to an individual, or the refusal to approve a request for leave, as well as more overt detrimental behaviours. In terms of recording whether a case features detriment we advise Guardians to do this on the basis of the experience as reported to them by individuals i.e. to record the existence of detriment if that is what the worker concerned perceived. In order to help ensure the consistency of reporting, we have issued guidance to all Guardians on recording cases which can be found in the publications section of our webpages: <http://www.cqc.org.uk/national-guardians-office/content/publications>

In respect of selecting cases for a case review, we currently consider those cases that are directly referred to us. When determining which cases we should prioritise we consider a range of available data, in addition to that submitted in the referral, including staff surveys, regulators' reports and updates from Guardians on the speaking up culture in the trust concerned. We would consider reports of detriment at that point – a case that is accepted for review that relates to a trust where high levels of detriment are being reported is likely to be prioritised over other cases. In all cases, we conduct reviews where we have identified from the available information that the greatest possible learning may be elicited, to ensure as many workers as possible may benefit from the process.

I should note that, at this point, we think it would be unsafe to conclude that those trusts which are reporting the most cases of detriment are 'worse' (as you describe) than others. The reporting process is still relatively new and until we have assurance that all trusts really are reporting consistently we will not be able to conclude whether some trusts are simply more disciplined and transparent in their reporting than others. For instance, we think that trusts that are reporting no cases through the Guardian route are, potentially, the ones where there are more barriers to speaking up and a less healthy speaking up culture, and our colleagues in NHS(I) see a lack of reporting as a potential indicator of concern.

With regards to those trusts you have listed, we are currently undertaking a review in one of them (Nottinghamshire Healthcare NHS Foundation Trust).

Regards,

Simon Pook | Case Review & Governance Manager | National Guardian's Office
[REDACTED] 151 Buckingham Palace Road, London SW1W
9SZ

From: Minh Alexander [mailto:[REDACTED]]
Sent: 21 May 2018 16:50
To: Pook, Simon
Cc: Hughes, Henrietta; Robert Francis [REDACTED]
Subject: National Guardian's published data on detriment

Hi Simon,

Is it possible to have an answer to my query from a couple of months ago?
Correspondence copied below.

Many thanks and BW,

Minh

From: "Hughes, Henrietta" <[REDACTED]>
Subject: RE: National Guardian's published data on detriment
Date: 16 April 2018 at 09:11:39 BST
To: Minh Alexander <[REDACTED]>

Dear Minh

Thank you for your email to Simon Pook. The contents of which will be considered and you will receive a response in due course.

Kind regards

Jerina Brown
National Guardian's office

From: Minh Alexander <[REDACTED]>
Subject: National Guardian's published data on detriment
Date: 14 April 2018 at 17:54:19 BST
To: Simon Pook [REDACTED]

Hi Simon,

Could you confirm receipt of my letter below of 25 March?

Many thanks.

BW

Minh

From: Minh Alexander <[REDACTED]>
Subject: National Guardian's published data on detriment
Date: 25 March 2018 at 11:55:33 BST

To: Simon Pook [REDACTED]

Cc:

[REDACTED]

BY EMAIL

Simon Pook
Case Review and Governance Manager
National Guardian's Office
Care Quality Commission

25 March 2018

Dear Simon,

National Guardian's published data on detriment

I wonder if you can help me with some technical details and also some context about how the National Guardian's Office (NGO) chooses cases for review.

1. I have taken a closer look at the data published by the NGO on detriment, and see that there is no complete data for approximately half of trusts from the data published so far on Quarters 1 to 3 of 2017/18:

<https://minhalexander.files.wordpress.com/2018/03/national-guardian-data-detriment-q1-q2-and-q3-of-201718-pub-24-march-2018.xlsx>

In most instances, where there was missing data, the tables published by the NGO

indicated that no data was received from the relevant trust.

However, there are also a number of unexplained blank spaces. Is it possible to clarify the reason for these gaps in the data?

For information, I attach a table which lists the unexplained blank spaces in the NGO's tables on detriment, which all relate to Quarter 1 of 2017/18.

Alder Hey Children's NHS Foundation Trust	Data missing from NGO database
Avon and Wiltshire Mental Health Partnership NHS Foundation Trust	Data missing from NGO database
Birmingham and Solihull Mental Health NHS Foundation Trust	Data missing from NGO database
Bradford Teaching Hospitals NHS Foundation Trust	Data missing from NGO database
Calderdale and Huddersfield NHS Foundation Trust	Data missing from NGO database
Central Manchester University Hospitals NHS Foundation Trust	Data missing from NGO database
Chelsea and Westminster Hospital NHS Foundation Trust	Data missing from NGO database
City Hospitals Sunderland NHS Foundation Trust	Data missing from NGO database
Dudley and Walsall Mental Health Partnership NHS Foundation Trust	Data missing from NGO database
East Kent Hospitals University NHS Foundation Trust	Data missing from NGO database
East Lancashire Hospitals NHS Trust	Data missing from NGO database
Homerton University Hospital NHS Foundation Trust	Data missing from NGO database
Nottingham University Hospitals NHS Trust	Data missing from NGO database
Southern Health NHS Foundation Trust	Data missing from NGO database
Sussex Community NHS Foundation Trust	Data missing from NGO database
The Clatterbridge Cancer Centre NHS Foundation Trust	Data missing from NGO database
The Walton Centre NHS Foundation Trust	Data missing from NGO database
University Hospital Southampton NHS Foundation Trust	Data missing from NGO database
Yeovil District Hospital NHS Foundation Trust	Data missing from NGO database

Also, may I ask what guidance does the NGO give to trust Speak Up Guardians on how to define and record detriment?

I ask because I am interested to know the degree to which the NGO's published data is standardised and whether it provides a valid means of comparison between trusts.

2. Even allowing for the high level of missing data, some trusts do seem to have a noticeably larger number of cases which reportedly feature detriment.

I attach a table of the 'worst' trusts for detriment in cases raised through local Speak Up Guardians.

	Total number of cases featuring detriment in Quarters 1, 2 and 3 of	Q1	Q2	Q3	Overall CQC Rating as of 24.03.2018	
1	NHS TRUST					
2	Colchester Hospital University NHS Foundation Trust	22	14	4	4	Requires Improvement
3	Nottingham University Hospitals NHS Trust	11	No data	1	10	Good
4	York Teaching Hospital NHS Foundation Trust	10	6	2	2	Requires Improvement
5	East London NHS Foundation Trust	9	No data	1	8	Outstanding
6	Portsmouth Hospitals NHS Trust	8	5	3	0	Requires Improvement
7	Northumbria Healthcare NHS Foundation Trust	7	3	0	4	Outstanding
8	South London and Maudsley NHS Foundation Trust	7	No data	1	6	Good
9	The Whittington NHS Trust	7	1	4	2	Good
10	County Durham and Darlington NHS Foundation Trust	6	5	0	1	Requires Improvement
11	Derby Teaching Hospitals NHS Foundation Trust	6	3	1	2	Good
12	East Sussex Healthcare NHS Trust	6	4	1	1	Requires Improvement
13	Oxford University Hospitals NHS Foundation Trust	6	No data	2	4	Good
14	University Hospitals of Morecambe Bay NHS Foundation Trust	6	2	0	4	Good
15	The Mid Yorkshire Hospitals NHS Trust	5	0	1	4	Requires Improvement
16	Berkshire Healthcare NHS Foundation Trust	4	0	2	2	Good
17	East Midlands Ambulance Service NHS Trust	4	No data	3	1	Requires Improvement
18	Ipswich Hospital NHS Trust	4	3	1	0	Good
19	Nottinghamshire Healthcare NHS Foundation Trust	4	1	2	1	Good
20	Plymouth Hospitals NHS Trust	4	2	2	0	Requires Improvement
21	Tameside and Glossop Integrated Care NHS Foundation Trust	4	0	3	1	Good
22	The Royal Wolverhampton NHS Trust	4	3	1	0	Requires Improvement
23	United Lincolnshire Hospitals NHS Trust	4	0	2	2	Inadequate
24	Yorkshire Ambulance Service NHS Trust	4	2	1	1	Good

As you can see, this list includes trusts that are already well known to whistleblowers, some with controversial CEOs.

May I ask why these high reported levels of detriment have not to my knowledge

prompted case review by the NGO?

I am concerned in particular about Colchester, where the Speak Up Guardian has so far registered 22 cases with detriment in less than one year.

As you are doubtless aware, there is a long history of concerns about bullying and whistleblower reprisal at Colchester, and controversy has continued *after* changes in leadership:

<http://www.gazette-news.co.uk/news/14620093>. Tough love for hospital after damning diagnosis/

I copy this to Prof Baker for information as over half of the worst trusts for reported detriment are currently rated 'Good' or even 'Outstanding' (East London NHS Foundation Trust and Northumbria Healthcare NHS Foundation Trust) by the CQC

Many thanks and best wishes,

Minh

Dr Minh Alexander

cc Sir Robert Francis CQC NED and Chair of National Guardian's Liaison and Accountability Board

Dr Henrietta Hughes National Freedom To Speak Up Guardian, CQC

Dame Moira Gibb NHS England NED and member of National Guardian's Liaison and Accountability Board

Kate Moore NHS Improvement General Counsel and member of National Guardian's Liaison and Accountability Board

Prof Ted Baker CQC Chief Inspector of Hospitals

Steve Barclay Minister of State Department of Health and Social Care

