

From: National Guardian
Sent: 02 March 2016 15:14
To: 'Minh Alexander'
Subject: RE: Meeting 23.02.2016

Dear Dr Alexander

Subject to the two points in my message below, I confirm that your notes are a broadly accurate representation of the meeting.

The role of the freedom to speak up guardian will be discussed at the event on 14 March you are due to attend.

Yours sincerely

David Bell
Interim Deputy National Guardian

National Guardian
Freedom to Speak Up

From: Minh Alexander [mailto:*****]
Sent: 02 March 2016 12:20
To: Sills, Eileen
Cc: Bell, David
Subject: Meeting 23.02.2016

To Eileen Sills, Chief Nurse Guy's and St. Thomas' NHS Foundation Trust, 2 March 2016

Dear Eileen

Thank you for the reply from David on your behalf regarding the accuracy of my record of our meeting on 23 February.

1) Accuracy of meeting record

I am surprised to hear that you and David consider that it is hard to agree accuracy of the meeting record because neither you nor David took detailed notes during the meeting. The lack of detailed notes should not necessarily be a barrier to recollection. As you are aware, I did take extensive and at points verbatim, notes.

Indeed on a small point of accuracy regarding item 82; David believes that you said in our meeting that it was “not appropriate” for me to ask you about the FOI to your trust and that I should pursue it with the trust. Both my notes, and my recollection, indicate that in fact what you said was that it was not “proper” for you to respond to such a question because of conflict of interest (but you added that you had chased up your FOI department anyway).

On a more general note, surely it is questionable that the National Guardian office is inviting whistleblowers to meetings for the purposes of engagement and information gathering, but has little apparent recollection, or only selective recollection, of the discussions that have taken place. It cannot be a meaningful listening exercise if there is no agreed detail on the matters discussed.

I would be grateful if you would at least confirm that the broad content of my meeting record is accurate, and that to the best of your knowledge, there is nothing in the record that you feel is obviously incorrect.

2) National Guardian’s guidance to trusts about local Guardian posts

Thank you for the indication from David that publication of this guidance has been delayed, probably until next week.

There have been concerns raised about the level to which whistleblowers have contributed to this guidance, and also whether there has been appropriate transparency around the development of the guidance.

Please could you advise how many whistleblowers contributed to the development of the advice, and who else (whether individuals or organisations) has contributed or been asked to contribute to the development of the guidance.

Yours sincerely,

Minh

Dr Minh Alexander

From: National Guardian <***** >

Subject: RE: Meeting 23.02.2016

Date: 2 March 2016 at 10:04:10 GMT

To: Minh Alexander <*****>

Dear Dr Alexander

I am writing on behalf of Dame Eileen to acknowledge your message and notes of the meeting on 23 February.

As we did not record the discussion in the detail you have, it is difficult to comment on the exact details. However, there are two points for clarification.

1. As far as recruitment to the substantive team is concerned, we aim to begin advertising in April.
2. At point 82 in your transcript, what Dame Eileen said was that it was not appropriate to ask her about a freedom of information request to Guy's and Saint Thomas NHS Foundation Trust and that you needed to follow this issue up with the trust directly.

In relation to the question in your message this morning, there has been a delay in publication of the guides. I now expect them to be published next week.

Yours sincerely

David Bell
Interim Deputy National Guardian

National Guardian
Freedom to Speak Up

From: Minh Alexander mailto:*****]
Sent: 24 February 2016 18:03
To: Sills, Eileen
Cc: Bell, David
Subject: Meeting 23.02.2016

To Dame Eileen Sills Chief Nurse Guy's and St. Thomas' NHS Foundation Trust,
24 February 2016

Dear Eileen,

Further to our meeting yesterday, please find attached the record that I said I would prepare of our discussions.

The various correspondence exchanged before our meeting is copied below and also attached.

Yours sincerely,

Minh

Minh Alexander

cc David Bell Interim Deputy National Guardian

NOTES OF MEETING 23.02.2016

BY EMAIL

To Dame Eileen Sills
Chief Nurse Guy's and St. Thomas' NHS Foundation Trust

24 February 2016

Dear Eileen,

Re our meeting 23 February 2016

As indicated, I write with my summary of the factual content of our meeting, and would be glad if you could provide your comments about accuracy.

In brief, further to your invitation to meet and to suggest agenda items, and the prior agreement between us of some specific agenda items, we met for a little over an hour.

David Bell your interim deputy was present when I arrived and remained with us for nearly all of the meeting. May I ask that if we have further meetings, that advance notice is given of any other individuals whom you invite to join us, and for this to be discussed with me.

At our meeting, you indicated that you could not discuss one of the agreed agenda items, an issue of ambiguously written NHS settlement agreements which may actually or in effect prevent whistleblowers from speaking out about experiences of whistleblower reprisal, and whether the NHS should clarify that concerns about whistleblower reprisal should be approached as a form of protected disclosure, which cannot be gagged.

As I have put to you before, the current arrangements allow poor governance and related risks to patient safety to be hidden.

Regarding another agreed agenda item, the issue of lifting gags to assist whistleblowers who are applying to the re-employment scheme, you indicated that whilst it was not possible to give a substantive answer, you would explore this. We also discussed a range of other issues. The broad flow and salient content of our discussion, based on notes which I made throughout the meeting are set out below.

I look forward to hearing from you.
Yours sincerely,

Minh

Dr Minh Alexander

Key to the below:

ES Eileen Sills
MA Minh Alexander
DB David Bell
NG National Guardian

1)ES gave information about developments:

- i) ES started work on NG office 4 January 2016
- ii) ES has appointed an interim team
- iii) David Bell (DB) started last week, acting as ES' interim deputy. Comes from Commissioning Support Unit South East, relevant experience from contributing to the set up of NHSI; HR background.
- iv) The other two interim appointments to the NG office:

- a) Russell Parkinson from DH; is DH lead for global patient safety summit; will lead work on connecting with local guardians
- b) Will Flowers, appointment not yet confirmed; if appointed will lead on communications. ... will be proactive in our communications, tell everybody what the role of the office is, the benefits of the office)
- v) The set up team appointed by CQC finish in March

2) ES: Substantive team posts will be advertised in April, one of the functions of substantive appointees will be leading “casework”

3) MA: How does “casework” differs from “case management” (which both the Freedom to Speak Up Review & CQC say is not part of NG remit)?

4) ES: Not sure why you’re asking about terms.

ES: We will take referrals from individuals who feel they have been disadvantaged. No referrals will be accepted until post-October. Threshold to be agreed. Those individuals will be give a case to review. At the moment can’t say more. All of this subject to finalisation. I’m not going to be railroaded into something and fall foul.

5) MA: I’d like to start with my key question to you – re approaching concerns about whistleblower reprisal as form of protected disclosure, not allowing them to be gagged etc...

6) ES: I’m on learning curve, can’t comment. Would be wrong of me to do so.

7) MA: Disappointed as it was agreed before the meeting that we would discuss this issue (ref email). Hope you can see why I might be disappointed –specifically agreed agenda item not discussed; also meeting with you agreed, but arrive to find David involved with no explanation.

8) ES: [Asked to meet you because]...you’re very active in the whistleblowing community. You have a lot to say. If I try to respond [to your email]...we’re trying to build confidence. I want to put the record straight on some of the stuff on twitter.

9) MA to DB: Have you seen the [pre-meeting} emails?

10) DB: Yes, [but in respect of the question about whether ES would express a view about whether concerns about WB reprisal constitute protected disclosures], NG office is not a prescribed body.

11) MA: A different issue.

12) ES: if NG office finds a whistleblower has not been fairly treated, will makethat public. [At what point do we take referrals?] Do we take referrals when cases are concluded? [Or at an earlier point].

13) MA: Other specific issue from my email – gagged whistleblowers and how this relates to entry to the re-employment scheme – WBs need to be able to defend themselves, disclose experiences of poor HR governance. They may be or may feel gagged by non-disparagement clauses. Would you support gags being lifted to allow WBs the best chance of entry to re-employment scheme?

14) ES: I haven't seen anything yet from Neil Churchill about the employment scheme. NHS England [in charge of that].

15) MA: Your role is also to oversee and possibly criticise how central NHS bodies, eg. NHS England, handle whistleblowing?

16) ES: I don't want to criticise. We [trying to do this] constructively.

17) ES: Other people have said they want to be able to talk about their story [as part of well being and being able to re-integrate into work].

18) MA: That's a separate issue. I am asking about lifting gags and whistleblowers being able to enter the re-employment scheme, not what happens after.

19) ES: What do you mean about gags, example?

20) MA Gags prevalent. Super-gags still used. Both Peter Wyman & Jim Mackeys have used super-gags. [45 and 22 respectively in 5 years]. Can send the data.

21) ES: I don't want the data.

22) ES: Nothing suspicious in relation to me.

23) ES: [continuing on lifting gags for the purpose of the re-employment scheme] I can't give you a view legally. I don't see how, if someone has signed a legal agreement.....

24) MA: Not asking for a legal view. Asking if you agree it should be done, assuming it can be done.

25) ES: I can explore that. [We should] give individuals every opportunity....[I'm being careful about what I say] ...whatever I say to you will get tweeted.

26) MA: Neil Churchill has said to me he thinks it should be doable [lifting gags].

27) ES: Until I've had a conversation with Neil, I will reserve judgment.

28) MA: Struck by the fact that NG office will have "wide discretion" as to which cases it will pick up. How will you ensure this does not result in unfairness & that Equality requirements are met?

29) ES: Will need to be professional and open. ...[criteria will be set & made public] Intend to have very robust governance framework. Involve Experts by Experience, establish Advisory Board, applications will be invited. Live by May.

30) MA: Can I return to the issue of whether NG office is a prescribed body under PIDA. If NG office is a subsection of CQC, and CQC is a prescribed body, why would NG office not also function as a prescribed body?

31) ES: NG office is not a subsection of CQC. NG is hosted by CQC. Some core functions shared with CQC, with SLAs for example on HR & procurement. But operationally independent.

32) MA: But CQC provides funding?

33) ES: Other ALBs provide funding too.

34) MA: David Behan is accountable officer?

35) ES: Some one's got to be.

36) MA: David Behan is your line manager?

37) ES: He doesn't really line manage me. I'm accountable to him [for how the NG office is established].

- 38) MA: If NG office is not a prescribed body, who do people whistleblow to if they are concerned about the NG office itself?
- 39) ES: Can raise with NG Advisory Board.
- 40) MA: That's internal...what about beyond that?
- 41) ES: To be clarified.
- 42) MA: A question that others have asked is whether NG office accept a case if the whistleblower loses confidence in local Guardian. Will NG always pick up such cases?
- 43) ES: Yes, but not necessarily investigate them.
- 44) MA: What will you do for people who are unhappy with their local Guardian?
- 45) ES: We haven't finalised that either. But might include signposting to other organisations. Or I might liaise with trust Chief Executive or other organisations.
- 46) ES: Guidance on local Guardian posts goes to Chief Executives this Friday.
- 47) MA: Do you know how many local Guardians have been appointed?
- 48) ES: Don't know how many local Guardians appointed so far. We want them in post by September.
- 49) MA: What if posts that have already been created don't comply with your criteria?
- 50) ES: We're going to ask them to review. We're asking trusts about [existing] local Guardians.
- 51) MA: Can your guidance to Chief Executives about local guardian posts be shared?
- 52) ES: Publishing next Monday.
- 53) MA: Can the information you get back from trusts about current local Guardians be shared?
- 54) ES: Only asking trusts for names of Guardians.
- 55) MA: Not asking about grade & hours?
- 56) ES: Local guardians will be sent bespoke questionnaire.
- 57) MA: Can the questionnaire be shared?
- 58) ES: Not yet ready. Work on it starts in March when Russell starts. Publish in April. We're not prescribing banding at all. We're asking for demographics. Will be evaluating demographics.
- 59) MA: What do you mean by demographics?
- 60) ES: The post they've come from, banding, ethnicity etc.. The demographics linked to success (for example as indicated by staff survey) will be evaluated.
- 61) MA: Will questionnaire results be shared?
- 62) ES: Some of It will be personal.

63) MA: But at least some elements are appropriate to share, and can be shared if anonymised?

64) **MA [Minh Alexander]:** What do you think of PIDA?

65) **ES [Eileen Sills]:** Put in place to protect people who raise concerns, that's got to be a good thing. It's too early to make a judgment that it works [PIDA]. Don't know how many successful cases there are – we don't see them. They've whistleblown and it's worked. Works in some teams. Can challenge each other.

66) MA: Do you think there should be more research on whistleblowing?

67) ES: Wide... what do you mean?

68) MA: For example, you just said we don't know how many cases are positive. Has NG office got a research budget?

69) ES: No research budget.

70) MA: [Re ES' comments about positive cases] Although you could say that contributors to Freedom To Speak Up were self-selected, it showed mostly negative experiences. 2014 staff survey showed about a quarter of staff not secure to raise concerns, so there is a problem. Are you aware only 3% of ET claims [under PIDA] succeed at hearing?

71) ES: At one end you've got protected disclosures and whistleblowing, then you've got a person on the ward informally raising a concern.

72) MA: What do you mean by whistleblowing?

73) ES: I hope that's not a trick question.

74) MA: Someone on the ward informally raising a concern is technically whistleblowing if it is a qualifying disclosure within PIDA [but acknowledged the practical challenge posed by range between simple raising of concern and situations that have dragged on and escalated]

75) ES: I would slightly disagree. It's about changing culture.....

76) MA: Your CQC blog set out your plans.

77) ES: I haven't done a blog.

78) MA: CQC press material attributed to you.

79) ES appeared unsure which reference was being cited. MA: [Reading from a copy of the press release]by one year, "I will have started to work towards developing a set of common standards for handling staff concerns and to showcase examples of good practice."

[http://www.cqc.org.uk/content/dameeileen-](http://www.cqc.org.uk/content/dameeileen-sills-sets-out-her-priorities-her-first-months-national-guardian)

[sills-sets-out-her-priorities-her-first-months-national-guardian](http://www.cqc.org.uk/content/dameeileen-sills-sets-out-her-priorities-her-first-months-national-guardian)

80) ES: Standards to be in place at one year:

- i) Local Guardian standard for trusts (Acute, MH, Ambulance)
- ii) Ways of Working for NG
- iii) Training standard for local guardians

- iv) Workforce awareness standard on raising concerns
- v) Show casing examples of good practice. Some teams are great at this.

Transparency.

- 81) MA: [Ref transparency] Can you chase your FOI department?
- 82) ES: That's a conflict of interest. Not proper [to respond]. But I have [chased]...
- 83) MA: I think the conflict of interest is inherent in the dual role.
- 84) ES: Other people have said that. [Disagree] ...I won't be dropping any balls
- 85) ES, at least x2 during the meeting: You absolutely have to trust me.
- 86) MA x 2: I don't have to trust you at all.
- 87) ES: I work as a clinician one day week [understand the concerns of staff].
- 88) MA: [What I'm about to say doesn't relate to you personally]... very often those responsible for whistleblower reprisal are the most senior clinicians.
- 89) ES x 2 during the meeting: First time it's ever been done [and associated comments that it needs a chance]
- 90) MA: Not the first time. USA model of OSC has powers but still hasn't done a good job. History is that this sort of body goes stale. [DB noted point about USA model]. I am a sceptic about NG office.
- 91) ES: So long as can say have acted fairly , openly & independently....
- 92) MA: Design of NG office is itself unfair. You won't be investigating whistleblowers' concerns. Cannot handle cases effectively or judge proportionality without this. All reasonable people see that vindication is an integral issue, including parliament, which linked apology & redress to vindication.
- 93) ES: Will highlight any problems with the office in due course.
- 94) MA: Was glad to see you requested review at 6 months.
- 95) ES: Might be a different office in 2 years.
- 96) MA: But lives will be ending in that time. I'm in touch with whistleblowers who are suicidal.
- 97) ES: We'd expect people to contact us for advice.
- 98) MA: Your office won't be able to do a jot for these people [ref remit]
- 99) ES: That's one aspect I'm not happy with, historic cases not included.
- 100) MA: Good to know that.
- 101) ES: [Would you be interested]....in attending further events....
- 102) MA: Expert by Experience stuff?
- 103) ES: Yes

104) MA: Little confidence in the way the NG guardian office established but it's what we have, in principle happy to work constructively on helping it work as best it can. So provisionally "yes", but depends how things pan out.