

BY EMAIL

Yve Buckland
Interim Chair
University Hospitals Birmingham

11 December 2022

Dear Dame Yve,

Internal UHB communication to all staff and the legitimacy of anonymous whistleblowing and whistleblowing by former employees

1. I would be grateful if you could confirm that the internal communication set out below in the appendix was sent by you and Jonathan Brotherton.

2. May I ask with respect to the sentence:

"Some of this has been the result of non-attributable claims from unknown sources, whilst some has arisen from colleagues who no longer work in the Trust."

if you are aware that:

1. UHB trust policy recognises the validity of anonymous whistleblowing.

<https://minhalexander.files.wordpress.com/2022/12/uhb-raisingconcernspolicy.pdf>

Therefore, there should be no messaging by the UHB board which implies that anonymous whistleblowing is less legitimate.

2. UK whistleblowing law recognises public interest disclosures by former employees about their former employers

This is the relevant case law from the Employment Appeal Tribunal:

"These parties were in that relationship. Since the detriment must occur and be causatively linked to the protected disclosure, it follows that it must come later in time and since the detriment may arise post termination we can see no warrant for limiting the disclosure temporarily to the duration of the employment. Nor do we see any force in Ms Niaz's reference to use of the present tense in section 43 A to C. Those provisions are concerned only with the quality of the disclosures when they are made, not with the temporal point which is raised in the present case."

https://www.bailii.org/uk/cases/UKEAT/2013/0407_12_2501.html

I could find no content in UHB trust whistleblowing policy which reflects this legal precedent.

Rather, I am concerned that the internal communication to UHB staff, below, will have the effect of misleading staff about the legitimacy of post employment disclosures and also it will leave them in ignorance of their rights to whistleblow after any termination of their employment relationship with UHB.

There was in fact also no section in UHB's whistleblowing policy at all on "Who can raise concerns?" as there is in the NHS national template whistleblowing policy:

https://minhalexander.files.wordpress.com/2021/01/nhsi-national-whistleblowing_policy_final.pdf

I therefore ask you to ensure that the UHB whistleblowing policy is amended to make it clear who can whistleblow, and that this includes former UHB employees.

I also ask you to consider the effect of UHB managers either [making public comments](#), or repeating comments, to the effect that UHB whistleblowers' poor experience is not recognised or not typical of the overall organisation.

Such comments are at variance to [existing information about detriment experienced by UHB staff who speak up](#), and they are also premature given that no rigorous investigation has yet taken place.

For those staff who have so far felt unable to raise concerns, such comments may have an additional chilling effect.

I will also write to you under separate cover about an outstanding matter on UHB's FPPR process into David Rosser former UHB CEO, to which the former UHB chair did not reply.

I copy this to the NHS England Head of Whistleblowing to raise a general concern about whether the NHS should do more to ensure that its whistleblowing policies reflect the rights of former employees, including an amendment to the national policy.

With best wishes,

Dr Minh Alexander

Cc

Julian Bion UHB Freedom To Speak Up Guardian
Jonathan Brotherton Interim CEO UHB
Tom Grimes Head of Whistleblowing NHS England

APPENDIX: UHB INTERNAL COMMUNICATION ABOUT BBC NEWSNIGHT INVESTIGATION

"Listening to you - supporting colleagues

Dear colleague

As many people will already be aware, there has been heightened media interest in the Trust over the past week, with a few serious concerns raised. Some of this has been the result of non-attributable claims from unknown sources, whilst some has arisen from colleagues who no longer work in the Trust.

We know that many of our colleagues have found this deeply upsetting and distressing as they do not recognise the claims that are being made and are concerned about the subsequent impact on our teams and on our patients.

As a leadership team we take this very seriously. Over the past few days, we have spoken with over 500 colleagues so far, and we will continue to speak to as many colleagues as possible over the coming days and weeks.

We want to have open and personal conversations with all colleagues so that any questions or concerns can be addressed in-person and in real time, wherever possible. We are committed to continue this for as long as is necessary. It is very clear from what we have heard so far that there is a strength of feeling about recent events not just about the negative media but more broadly around our culture.

Firstly, we must state, and this is without question, we are committed to fully exploring and understanding this further, so that we can start to address the issues that have been highlighted.

Additionally, in partnership with NHS Birmingham and Solihull Integrated Care Board (ICB), a programme of work has been agreed which will take a deeper look at culture and leadership across UHB. This work builds on the work already underway at the Trust and we'll have more details on this in the very near future. We are clear that this will acknowledge that all of you, like the rest of the NHS, are working extremely hard and in challenging circumstances, as we endeavour to deliver the very best for our patients.

We know that people feel a great deal of pride in their work at the Trust, and we absolutely appreciate and recognise how hard and tireless all your efforts are in providing the best possible care and treatment to our patients.

This is clearly evident in the considerable improvements that we have made in our performance recently; only made possible through the determination and tenacity of the brilliant people we have in all corners of the Trust. Such improvements include halving the volume of patients on our cancer backlog over the last 3 months, consistently treating more cancer patients now than we were pre-pandemic, reducing by 65% the handover delays at our EDs of ambulance conveyed patients in the last 3 months and almost entirely treating the backlog of our longest waiting elective patients.

Our key focus now is to continue these improvements and many others that aren't mentioned here in order to provide the high standards of access and care that we all want to deliver, whilst supporting all colleagues and allowing space and time for positive and productive dialogue, as we head into a particularly challenging winter period and a period of industrial action.

We also must make time to ensure we are looking out for each other, to listen to each other, to raise concerns and importantly, have them be heard.

There are many ways that colleagues can raise concerns that they have, in confidence, including through the confidential Speaking Up service, which we would actively encourage anyone who has concerns to do. More information about the Speaking Up service is here: <http://uhbhome/one-trust/ftsug>

We are also happy to hear your concerns directly and in confidence, where you do not want to use the current channels in place. Should you wish to raise your concerns directly, we will thoroughly support you through that.

In closing, we need to do our utmost to support all of you in doing your very best for our patients. For that you have our word.

With our very best wishes

Dame Yve Buckland, Interim Chair

Jonathan Brotherton, Deputy CEO"