

## BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST

### TRUST BOARD TO BE HELD ON WEDNESDAY 25 MARCH 2015

#### WHISTLEBLOWING UPDATE

**Strategic or Regulatory Requirement to which the paper reports** – To have a workforce that is innovative, empowered, engaged, fairly rewarded and motivated to deliver the strategic ambitions of the Trust.

#### **ACTION:**

For the Board to note the actions and recommendations from the '*Freedom to Speak up Review*' see **appendix 1**, and to **approve**:

- Plans outlined for reviewing the Trusts whistleblowing processes,
- The proposal that the Company Secretary should take on the role of 'local guardian' for staff to approach in order to raise concerns and to oversee the whistleblowing review process and
- Identification of two Non-Executive Directors as Board level leads.

For the Board to note and discuss the regular Whistleblowing update provided at **appendix 2**.

#### **Report/Executive Summary:**

On 11 February 2015, Sir Robert Francis QC published his final report following the '*Freedom to Speak Up review*' which looked at the raising concerns culture in the NHS. The report makes a number of key recommendations under five overarching themes:

- Culture
- Handling cases
- Measures to support good practice
- Measures for vulnerable groups
- Extending the legal protection

With actions identified for NHS organisations and professional and system regulators to help foster a culture of safety and learning in which all staff feel safe to raise a concern.

Jeremy Hunt, the Health Secretary for England, has agreed that further consultation will be undertaken, where appropriate, to work through how these actions can be implemented. A summary of the key actions and recommendations have been provided in **Appendix 1**.

The Secretary of State has also written to NHS Trusts Chairs to reinforce the importance of staff being able to discuss concerns openly in teams, and for appropriate actions to be taken. He specifically stated that each organisation should act now to appoint a local guardian who has a direct reporting line to the chief executive, who staff can approach to raise concerns. It is proposed that the Company Secretary take on this role for the Trust and to have oversight of the Whistleblowing process on behalf of the Board.

Boards are asked to agree actions in particular to support vulnerable staff groups to raise concerns as the report suggests these groups of staff may not be fully integrated members of a team and may miss out of the same level of induction, training, and communications that permanent members of staff may have. This particularly refers to locums, agency and bank

workers but also to students, volunteers and permanent staff who are required to provide services within the community and within primary care.

Boards should also be aware of any black and minority ethnic (BME) issues and consider whether they need to take action over and above what is recommended in the report. While the evidence gathered as part of the review reflected that the experience of BME groups was broadly the same as other staff, it did highlight that a large number of minority groups felt more vulnerable and excluded, with difficulties quite often being exacerbated by cultural misunderstanding.

A discussion has taken place at the Council of Governors on the '*Freedom to Speak up Review*'. The Council have asked that a more detailed update be taken to the Governors meeting in May 2015 prior to final discussion and sign off at the Board and that a review process be built into the planned approach to demonstrate how the Trust is performing against the actions identified.

### **Next steps**

NHS Employers will be launching a range of new on-line resources as part of their '*Draw the Line*' campaign. The resources they provide are intended to help to facilitate engagement between managers and the board, senior teams, wider management teams and staff about the importance of raising concerns. They also highlight some key considerations for managers when they are dealing with concerns raised by staff, and showcase different approaches undertaken by other NHS organisations.

NHS England, Monitor and the NHS Trust Development Authority (TDA) have been asked to produce a standard policy and procedure which will form the basis of any changes required by employers.

Further consideration will be given to the report and to guidance provided, by the Executive Director of Operations, Company Secretary and Associate Director of HR, working with the Workforce Committee, to review the policies and current processes in place, which include a range of ways in which staff can raise concerns. Proposals for improvements will be reported to the Executive Team prior to further discussion taking place with the Council and the Board in May 2015.

### **Whistleblowing update**

The latest whistleblowing update is provided at **Appendix 2**.

**BOARD DIRECTOR SPONSOR:** Brendan Hayes, Executive Director of Operations

**REPORT AUTHOR:** Deborah Lawrenson, Company Secretary and Head of Legal Services

### **APPENDIX:**

1. Summary of key recommendations and actions for employers
2. Whistleblowing report

**PREVIOUSLY DISCUSSED:** The development of the paper was discussed at the Council of Governors meeting in March 2015

## Appendix 1

### Background - Freedom to Speak Up review

In June 2014 the Secretary of State for Health announced that Sir Robert Francis QC would be leading an independent review into the reporting culture in the NHS.

The review was conducted throughout the summer and sought a wide range of views from across the NHS – including first hand experiences from staff who had raised a concern (and reported that they had suffered some form of detriment as a result of doing so), employers, professional and system regulators, and other professional bodies.

In addition NHS Employers, the NHS Confederation and the Foundation Trust Network (now known as NHS Providers) hosted a round-table meeting on 14 August 2014 with Sir Robert and the Review Team - inviting a number of Chief Executives and Directors from the NHS to give an informed view about some of the complexities employers were often challenged with when staff raised concerns with them.

### Summary of key recommendation and actions for employers

The *Freedom to Speak Up* report recognises that much progress has been made in the NHS since the public inquiry into the failings Mid Staffordshire, and that there is clear evidence that concerns are raised on a daily basis, are listened to, and are addressed and resolved. Steps have been undertaken in a large number of trusts across the country to improve the way in which management responds to concerns. However, the report also provides some pretty hard hitting evidence where this has not been the case. The treatment of staff who raise concerns remains to be an area of concern requiring urgent action system-wide, to ensure that staff feel safe when they raise a concern.

The following are areas which employers are asked to consider when reviewing their local policies and procedures:

- Culture
- Handling cases
- Measures to support good practice
- Measures for vulnerable groups
- Extending the legal protection

#### Culture

In particular, the report emphasises a need for a culture of safety and learning in which all staff feel safe to raise a concern and for these conversations to take place as part of everyday practice, without fear of blame or reprisal.

Sir Robert identified that there remains a disparity between policies and standardisation of procedures and the level of support given to staff.

Out of all the evidence gathered in regard to experiences of staff who had reported concerns, the issue of bullying featured highly. He has identified the need for a system-wide approach when assessing this issue along with honest and direct feedback to staff about the impact of actions and behaviour.

The report recognises some of the excellent leadership in some trusts, which should be harnessed and adopted across organisations. To further improve culture, employers are encouraged to celebrate the benefits for patients and the public when concerns are raised.

Finally, the review heard many examples of reflective practice and how these are invaluable. Despite pressures on the system, Sir Robert stresses the importance of staff having time to explore issues, analyse systems and share good practice.

**Action for employers:** evidence gathered from other sectors where safety is an issue, reflects that a good safety culture needs time and effort to embed – this is most successful in organisations where responsibility and accountability for local policy and procedures for raising concerns sit with the executive team, as opposed to human resources.

Having a champion, or guardian who has lead responsibility for dealing with concerns raised, will be key to ensuring policies and practices are robust and staff are appropriately supported, listened to, and issues are resolved quickly and professionally. This does not necessarily entail a member of the board having this responsibility but can be a nominated manager who has authority and autonomy to report directly to the chief executive on the issue of concerns.

The reports also recommends that organisational boards and senior teams adopt and promote a zero tolerance approach to bullying, and for regulators to consider this as a factor when assessing whether an organisation is well-led.

NHS England, Monitor and the NHS Trust Development Authority (TDA) have been asked to produce a standard policy and procedure which will form the basis of any changes required by employers.

### Handling cases

The report provides clear evidence that in many of the cases presented, much of the pain and expense could have been more easily avoided if concerns had been handled effectively early on. It is important that organisations investigate concerns raised to identify the facts, and appropriate feedback is given to the individual(s) raising the concern. This is critical in building staff confidence in local systems and in encouraging others to speak up.

All organisations should have measures in place which help facilitate informal and formal resolution of concerns raised. Encouraging staff to raise concerns early on, as part of everyday practice will help with some of this e.g. inviting open conversation about what went well and what didn't go so well as part of any staff briefings, 1:1's, team meeting etc will be key to fostering an open and transparent approach to dealing with some of the issues raised.

The report recommends that chief executives, or other designated officer in organisations, should be involved and have responsibility for regularly reviewing all concerns that have been formally recorded, to ensure local procedures are effective, and to identify areas for improvement.

### Measures to support good practice

While creating the right culture and enabling effective reporting and handling of concerns is essential, the report highlights some major gaps in training for all staff so that they understand the importance of raising concerns and how to raise a concern, and for

managers so that they are appropriately equipped and supported to deal with concerns raised with them efficiently and effectively.

In all cases where staff had reported that their experience had been a positive one, they stated that they had received good support from their manager both before and after they had raised concerns with them. The report also highlights the need for organisational and personal accountability when raising and handling concerns, especially in relation to the prevention of bullying or other repercussions that the individual raising the concern may be vulnerable to.

As already alluded to above, the report highlights the benefits of having a champion in the organisation who staff can go to when they have a concern, and who has lead responsibility for ensuring concerns are dealt with appropriately and staff are supported.

Having open and transparent in the way organisations conduct their responsibilities in relation to dealing with concerns, sends an important message to staff and provides opportunity to share learning to improve the quality of services and patient safety.

**Action for employers:** giving staff access to mediation, mentoring, advice and counselling can vastly improve the managers ability to nip any issues in the bud, and ensure that the individual raising a concern can return to their original position, or be supported to find alternative employment in the NHS, where it is mutually agreed with the individual that this is the most appropriate thing to do. A contentious parting of the ways can quite easily result in individuals being disadvantaged when applying for a new role without the full facts being known - which is unfair to the individual, and a waste of valuable skills and resources to the NHS. The correct handling of concerns can vastly reduce time, resources and expense where issues are left unresolved and need to go through an employment tribunal.

**Action for system and professional regulators:** To support poor handling of cases, the report recommends the appointment of an Independent National Officer (INO) by the Care Quality Commission (CQC), Monitor, the NHS TDA and NHS England who will have lead responsibility system-wide to look into cases, advise NHS organisations on appropriate action where they have failed to follow good practice, or advise the relevant system regulator to enforce direct action on that organisation, as appropriate, and act as a national support for Freedom to Speak Up guardians.

The report also identifies a bigger role for system regulators and the need for improved co-ordination in relation to their approach to whistleblowing. In particular, around how they capture information about how organisations handle concerns and in taking the appropriate regulatory action.

In addition the report identifies a greater role for professional regulatory bodies in relation to how they record, investigate and handle fitness to practise concerns raised with them.

### Measures for vulnerable groups

The review found that certain groups of staff were particularly vulnerable when raising concerns because of the nature of their term of employment which means that they are less likely to be a fully integrated member of a team, and they may miss out on the same level of induction, training, and communications that permanent members of staff may have around raising concerns.

**Actions for employers:** the report specifically makes reference to locums, agency and bank workers being more vulnerable but it is essential that employers consider how they engage,

communicate and support all workers in their organisation on issues relating to raising concerns. This includes students, volunteers and permanent staff who are required to provide services within the community and within primary care.

Boards should also be aware of any black and minority ethnic (BME) issues and consider whether they need to take action over and above what is recommended in the Freedom to Speak Up report. While the evidence gathered as part of the review reflected that the experience of BME groups was broadly the same as other staff, it did highlight that a large number of minority groups felt more vulnerable and excluded, with difficulties quite often being exacerbated by cultural misunderstanding.

**Action for system regulators:** the report also makes recommendation for NHS England to work closely with all commissioned primary care services to clarify policies and procedures for staff in line with the principles of the Freedom to Speak Up report, with emphasis on making sure that all staff understand how to raise a concern, who they should raise a concern with, and where they can seek additional advice and support.

### Extending the legal protection

The report highlights that while fostering the right kind of culture in the NHS to enable staff to raise concerns has to be the key priority, legal protections for whistleblowers (in the NHS, and across all other sectors) is not considered to be adequate and should be reviewed.

**Actions across Government:** the report makes recommendation for an across-Government review of current legislation to extend protections individuals who raise concerns against discrimination in the workplace either under the Employment Rights Act 196, or under the Equality Act 2010. It also makes recommendation to further extend the list of prescribed bodies/persons under the Public Interest Disclosure Act (PIDA) to include NHS England, Clinical Commissioning Groups (CCGs) and Local Education and Training Boards (LETBs).

### Next steps

NHS Employers will continue to work closely with the relevant Government Bodies to feed into any consultations and to provide employers with further updates and support to help them meet any new regulatory requirements. Information will be provided on this webpage and communicated through our NHS Workforce Bulletin. Employers will find it useful to refer to the guidance for employers pages on this section of the website - for further signposting to useful information, including the national Whistleblowing Helpline's guidance on raising concerns, the use of confidentiality clauses and settlement agreements; other legislative and policy requirements which will be useful when reviewing local policies and procedures; posters and flyers to aid communication; case studies and shared learning. In addition, NHS Employers will shortly be launching a range of new on-line resources as part of our Draw the Line campaign. Considering the key recommendations outlined in the Freedom to Speak Up report, our resources are intended to help to facilitate engagement between managers and the board, senior teams, wider management teams and staff about the importance of raising concerns. They also highlight some key considerations for manager's when they are dealing with concerns raised by staff, and showcase different approaches undertaken by other NHS organisations.

## Appendix 2 Whistleblowing report

### BIRMINGHAM AND SOLIHULL MENTAL HEALTH NHS FOUNDATION TRUST

#### TRUST BOARD TO BE HELD ON WEDNESDAY 25 MARCH 2015

<b>WHISTLEBLOWING – UPDATE ON CASES</b>					
<b>Strategic or Regulatory Requirement to which the paper reports:</b> Strategic ambition 3: to be a well-led, effective and informed organisation					
<b>ACTION:</b> To note the report contents.					
<b>SUMMARY</b> The following updates on 4 existing cases and reports 2 new cases:					
<b>Date received</b>	<b>Service</b>	<b>Nature of concerns raised</b>	<b>Investigating manager</b>	<b>Planned completion date</b>	<b>Outcome</b>
June 2014	Home Treatment Team	<ul style="list-style-type: none"> <li>• Bullying and Harassment</li> <li>• Attitude and behaviour</li> <li>• Undermining of staff</li> <li>• Negative opinions</li> <li>• Concerns with patient care</li> </ul>	CSM	December 14	Investigation concluded; formal disciplinary hearings scheduled for April 15.
July 2014	Substance Misuse Service	<ul style="list-style-type: none"> <li>• Alleged forged employment references</li> <li>• Personal employee files kept at home</li> <li>• Access to blank prescription pad</li> </ul>	CNM	End December 14	Investigation concluded; a formal disciplinary hearing was scheduled but postponed due to employee absence. The employee is now transferred to CRI who are dealing with the issue under their policies.
December 14	Forensic Services	<ul style="list-style-type: none"> <li>• Completion of private reports (category 2 work) during works time</li> <li>• Clinical practice</li> </ul>	Referral to counter fraud by Director of Resources	Initial outcomes by mid – February 15	A response from Counter Fraud has been received and is now being reviewed by the Director of Resources
December 14	Agency worker (Inpatients services)	<ul style="list-style-type: none"> <li>• Claims for mental health act assessment</li> </ul>	Referred to counter fraud by Director of Resources	Initial outcomes by mid – February 15	Counter Fraud investigation not yet completed

February 15	HTT/CMHT	<ul style="list-style-type: none"> <li>• Service user not being closely monitored</li> <li>• Lack of ownership over who was the responsible clinician between two consultants</li> </ul>	TBC	Initial outcomes end March	Nothing to report at this stage
February 15	CMHT	<ul style="list-style-type: none"> <li>• CMHT Consultant refused to see a patient after concerns were expressed regarding a patients mental state</li> </ul>	TBC	Initial outcomes end March	Nothing to report at this stage

**BOARD DIRECTOR SPONSOR:** Brendan Hayes, Executive Director of Operations/Deputy CEO

**REPORT AUTHOR:** Nicole Powell, Interim Lead Officer - Employee Relations

**APPENDIX:** N/A