

Learning Lessons to Improve Our People Practice

1 July 2019

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Agenda Item No: 6.3

Trust Board Report

Meeting Date:	1 st July 2019
Title:	Learning lessons to improve our people practice
Executive Summary:	<p>This paper is a response to the letter of 24 May 2019 from Baroness Dido Harding to NHS Trust Chairs and Chief Executives entitled “Learning lessons to improve our people practices”, to give assurance to the Board around the recommendations made. Whilst this paper identifies satisfactory compliance against the majority of recommendations, there are a number of areas where further improvement could be explored, including:</p> <ul style="list-style-type: none"> Reviewing the plurality of decision making at all stages of the Trust’s formal processes. Ensuring the Trust’s training offer for managers in respect of dealing with employee relations matters is of sufficient quality and quantity. Reviewing the rigour with which decision in relation to suspension are taken to ensure that where possible the least restrictive course of action is taken. Develop robust processes to identify and support staff who experience serious harm whilst undergoing some sort of formal process, whilst considering the Trust’s overall offer to support the health and wellbeing of those involved in formal processes. <p>In view of this, the report sets out a number of actions that will be taken by to further improve ‘people practice’.</p>
Action Requested:	Receive and consider
For the attention of the Board	
Assure	Assurance is given against the majority of the recommendations contained within the guidance.
Advise	The report advises the Board of a number of areas for further consideration in respect of possible improvements as set out in the executive summary.
Alert	N/A
Author + Contact Details:	Julie Shillingford, Head of HR Advisory Tel. 4161
Links to Trust Strategic Objectives	1. Create a culture of compassion, safety and quality 4. Attract, retain and develop our staff, and improve employee engagement

Resource Implications:	None
Report Data Caveats	None
CQC Domains	Safe: patients, staff and the public are protected from abuse and avoidable harm. Caring: staff involve and treat everyone with compassion, kindness, dignity and respect. Well-led: the leadership, management and governance of the organisation make sure it's providing high-quality care that's based around individual needs, that it encourages learning and innovation, and that it promotes an open and fair culture.
Equality and Diversity Impact	Recommendations are applicable to all staff equally. Policies are subject to Equality Impact Assessments, and WRES standards also apply.
Risks: BAF/ TRR	SR1- Workforce - Recruitment and Retention of staff across the Trust and in particular the future pipeline of nursing and medical staff.
Risk: Appetite	N/A
Public or Private:	Public
Other formal bodies involved:	Workforce and Organisational Development Committee
References	Letter dated 24 May 2019 from Baroness Dido Harding, "Learning lessons to improve people practice" and associated guidance document
NHS Constitution:	In determining this matter, the Board should have regard to the Core principles contained in the Constitution of: <ul style="list-style-type: none"> • Equality of treatment and access to services • High standards of excellence and professionalism • Service user preferences • Cross community working • Best Value • Accountability through local influence and scrutiny

Appendices	
1	Letter dated 24 May 2019 from Baroness Dido Harding, Chair, NHS Improvement, to Trust Chairs and Chief Executives, entitled "Learning lessons to improve our people practice" and associated enclosure entitled "Additional guidance relating to the management and oversight of local investigation and disciplinary procedure".

Learning lessons to improve our people practice

1.0 Introduction

Following an independent report into a tragic event involving a staff member at a London NHS Trust, Baroness Harding wrote to Trust Chairs and Chief Executives on 24 May 2019 (see Appendix 1) to set out guidance relating to management and oversight of local investigation and disciplinary procedures.

This report outlines for the Board where the Trust's processes and procedures are already in line with the guidance and will also set out additional next steps in order to further improve our people practices.

2.0 Seven Areas of Guidance

A guidance document, included within the letter sets out seven key sets of 7 key areas of focus. These 7 areas are outlined below, along with the Trust's current position against these areas.

2.1 Adhering to best practice

The Trust's *Disciplinary Policy and Supporting Doctors to Provide Safer Healthcare Policy and Procedure* are in line with current best practice as set out in the ACAS "Code of practice on disciplinary and grievance procedures". For Medical and Dental staff, *Supporting Doctors to Provide Safer Healthcare Policy and Procedure* represents the Trust's implementation of the nationally agreed "Maintaining High Professional Standards in the Modern NHS" (MHPS) and also follows the General Medical Council's (GMC) "Principles of a good investigation". The Medical Director or Deputy Medical Director seek independent advice from the Practitioner Performance Advice Service (PPAS), which was formally known as the National Clinical Assessment Service, and notify the GMC in the event of an investigation being launched.

The Trust ensures that independence and objectivity is maintained at all stages of the processes by appointing investigating officers, case managers and panel members who have had no previous involvement in the matters in question, and by ensuring that companions to interviewees are not witnesses in their own right. Where appropriate, external advice is sought and external panel members are appointed, for example in matters of clinical judgement. Occasionally external investigating officers are also appointed, as appropriate, to ensure objectivity.

2.2 Applying a rigorous decision-making methodology

In the spirit of seeking to resolve matters at the lowest possible level and as close to the issue as possible the Trust's Disciplinary Policy provides for an initial fact-finding to be undertaken to ascertain whether the matter can be dealt with less formally or whether a full investigation is required. This initial fact finding is undertaken by a member of the Human Resources team, away from the service line, providing a level of independence in the decision making process. Similarly, the Trust's *Dispute Resolution in the Workplace Policy* provides for an initial triage to be undertaken to determine whether the matter can be resolved without recourse to a formal investigation.

In cases where an investigation is deemed necessary, a Case Manager is appointed to oversee the investigation and an investigating officer appointed to undertake the investigative work. On conclusion of an investigation the report is reviewed by the Case Manager, with advice from HR, to determine whether there is a case to answer and if so, whether the 'Fair Blame' route may be offered or whether full hearing is required. Again this provides for a level of independence between the officer undertaking the investigation and the individual deciding what steps are to be taken following the investigation.

Should the case proceed to a hearing, a different manager is nominated as Panel Chair and is supported by a different HR team member. In medical staff cases where professional judgement is in question, there is an external panel member in accordance with the requirements of MHPS. Similarly in the event of an appeal, this is heard by a different Appeal Panel Chair and different HR support, neither of whom have had any prior involvement in the process.

2.3 Ensuring people are fully trained and competent to carry out their role

A programme of internal training for managers involved in investigations and hearings is in place. In addition, training, aimed at early resolution, is available in resolution skills and addressing management concerns (covering capability and conduct issues). Training has been developed following policy reviews, to ensure alignment with policy provisions. In addition, for medical managers, external training is provided by PPAS for Case Investigators and Case Managers. This has been a combination of courses commissioned to run at RWT, as well as staff attending the same training being run in other NHS Trusts. The table below outlines a summary of the courses provide and how long they have been in place.

Training Course	Available Since
Investigating officer	June 2016
Fair Blame Meeting/Disciplinary Hearing Chair	May 2016
Addressing management concerns	May 2016
Resolution skills	April 2018
MHPS Case Investigator	October 2014
MHPS Case Manager	October 2014

2.4 Assigning sufficient resources

Appointment of investigating officers and case managers is undertaken by the relevant Divisional manager, using the list of trained staff. An aspect of the case manager's role is to facilitate time for the investigation and report-writing to be undertaken. A member of the HR team is assigned to support each investigating officer and a different HR team member sits on panels at all levels to provide advice and support.

2.5 Decisions relating to the implementation of suspensions/exclusions

Decisions on exclusion of medical or dental staff are taken by the Deputy Medical Director in consultation with the Medical Director and Director of Workforce, in accordance with MHPS. Decisions on suspension for other staff groups are taken by the relevant senior manager in consultation with Directorate managers and HR managers. Every effort is made to avoid suspension/exclusion, including restriction of duties, and suspensions/exclusions are kept under review by the case manager.

2.6 Safeguarding people's health and wellbeing

Employees who are subject to investigations are informed at the outset of the support available via Occupational Health, to whom they may self-refer or a management referral may be made. In cases where an employee appears distressed at the outset, a management referral is made to Occupational Health for advice and support. Employees are informed that access to Occupational Health support is available at any time.

At the outset of any investigation a meeting is held with the subject(s) of the investigation to inform them of the reasons for the investigation and the process to be followed, and this is confirmed in writing, together with the allegations/terms of reference for the process. The Investigating Officer role includes the responsibility for regular communications with the employee throughout the investigation to keep them informed of progress. Where an

employee is suspended, the Case Manager is responsible for keeping the employee informed of progress in the investigation.

2.7 Board-level oversight

Data relating to employee relations case work, including numbers of disciplinary cases median duration of cases, and number and duration of suspensions, is reported twice per year to the Trust's Workforce and Organisational Development Committee, which is chaired by a Non-Executive and attended by Non-Executive colleagues.

3.0 Conclusion

In conclusion, the Board can take significant assurance that many of the recommended actions set out in the guidance document are already in place within the Trust, whilst recognising there are areas where further improvements can be made. Areas identified for further review and potential improvement include:

- Reviewing the plurality of decision making at all stages of the Trust's formal processes.
- Ensuring the Trust's training offer in respect of dealing with employee relations matters is of sufficient quality and quantity.
- Reviewing the rigour with which decision in relation to suspension are taken to ensure that where possible the least restrictive course of action is taken.
- Develop robust processes to identify and support staff who experience serious harm whilst undergoing some sort of formal process, whilst considering the Trust's overall offer to support the health and wellbeing of those involved in formal processes.

4.0 Next Steps

Although the Trust compares satisfactorily against most of the 7 areas, it is clear that there is still more that can be done to improve our 'people practice'. As such, the aim is to progress the following actions:

- Consider any further amendments to the Disciplinary Policy once the NMC's "best practice guidance on local investigations" has been published.
- Review the Trust's position on panel membership in the light of good practice, and identify whether any changes are required.
- Review the current level and scale of training provision and explore options to improve this.
- Develop a toolkit to support decision making in cases where suspension/ exclusion of staff is contemplated.
- In relation to safeguarding people's health and wellbeing the guidance recommends that cases of serious harm are treated as if they represent a never event. In view of this, a process will be developed for dealing with any cases of serious harm to staff involved in an investigation.
- Consider what further action can be taken to support the health and wellbeing of employees involved in investigations as part of the development of the Wellbeing Approach.
- Employee relations case data to be reported twice per year to the Board and in alternate quarters to the WOD Committee.

5.0 Recommendation

It is recommended that Trust board receive assurance against the work previously undertaken in relation to the 7 key areas and support the next steps.

To:
NHS trust and NHS foundation trust chairs and chief executives

24 May 2019

Dear colleagues

Learning lessons to improve our people practices

I am writing to share with you the outcomes of an important piece of work recently undertaken in response to a very tragic event that occurred at a London NHS trust three years ago.

In late 2015, Amin Abdullah was the subject of an investigation and disciplinary procedure. The protracted procedure culminated in Amin's summary dismissal on the grounds of gross misconduct. Tragically, in February 2016 just prior to an arranged appeal hearing, Amin took his own life. This triggered the commissioning of an independent inquiry undertaken by Verita Consulting, the findings of which were reported to the board of the employing Trust and to NHS Improvement in August 2018. The report concluded that, in addition to serious procedural errors having been made, throughout the investigation and disciplinary process Amin was treated very poorly, to the extent that his mental health was severely impacted. Verita's recommendations were accepted by the Trust, in full, and have largely been implemented.

Subsequently, NHS Improvement established a 'task and finish' Advisory Group to consider to what extent the failings identified in Amin's case are either unique to this Trust or more widespread across the NHS, and what learning can be applied. Comprising of multi-professional stakeholders and subject matter experts representing both the NHS and external bodies, together with an advocate for Amin's partner, the Group conducted an independent analysis of both the Verita findings and several historical disciplinary cases, the outcomes of which had attracted criticism in Employment Tribunal proceedings and judgements. HR directors of provider organisations were advised of the Group's activity and invited to share details of any local experiences and/or examples of measures being taken to improve the management of employment issues.

The analysis highlighted several key themes associated with the Verita inquiry which were also common to other historical cases considered. Principal among these were: poor framing of concerns and allegations; inconsistency in the fair and effective

application of local policies and procedures; lack of adherence to best practice guidance; variation in the quality of investigations; shortcomings in the management of conflicts of interest; insufficient consideration and support of the health and wellbeing of individuals; and an over-reliance on the immediate application of formal procedures, rather than consideration of alternative responses to concerns.

The NHS England and NHS Improvement People Committees in Common received a detailed report on the outcomes of the Advisory Group's activities, which included recommendations that aim to ensure the captured learning is used to best effect in informing positive changes across the NHS. The Committees recognised that, sadly, Amin's experiences are far from unique and acknowledged there needs to be greater consistency in the demonstration of an inclusive, compassionate and person-centred approach, underpinned by an overriding concern to safeguard people's health and wellbeing, whatever the circumstances. This view certainly echoed many of the comments we have received from across the NHS during our recent People Plan engagement.

Some of the proposed recommendations will require further discussion with key stakeholders, including regulatory and professional bodies (in particular, I am keen that consideration and assessment of the 'health' of organisational culture, including aspects relating to the management of workplace issues, is given more prominence in the 'well-led' assessment domain). The majority, though, can be immediately received and applied.

Enclosed with this letter is additional guidance relating to the management and oversight of local investigation and disciplinary procedures which has been prepared based on the Advisory Group's re-recommendations. You will recognise the guidance as representing actions characteristic of responsible and caring employers and which reflect our NHS values. I would ask that you, your HR team and your Board review them and assess your current procedures and processes in comparison and, importantly, make adjustments where required to bring your organisation in line with this best practice. I would draw your attention to item 7 of the guidance and ask you to consider how your Board oversees investigations and disciplinary procedures. Further, with respect to any cases currently being considered and all future cases, I would ask you to review the following questions (and, where necessary, take corrective action in response):

- Is there sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action?
- Considering the circumstances, in the eyes of your organisation and others external to it, would the application of a formal procedure represent a proportionate and justifiable response (i.e. have other potential responses and remedies, short of formal intervention, been fully assessed before being discounted)?
- If formal action is being or has been taken, how will appropriate resources be allocated and maintained to ensure it is conducted fairly and efficiently; how are you ensuring that independence and objectivity is maintained at every stage of the process?

- What will be the likely impact on the health and wellbeing of the individual(s) concerned and on their respective teams and services, and what immediate and ongoing direct support will be provided to them? Further, how will you ensure the dignity of the individual(s) is respected at all times and in all communications, and that your duty of care is not compromised in any way, at any stage.
- For any current case that is concluding, where it is possible that a sanction will be applied, are similar questions being considered?

In highlighting these issues, which I know will be important to you and your teams, I would like to thank all those colleagues who directly contributed to and informed the work completed by the Advisory Group. I would particularly like to acknowledge the endeavours of Amin's partner Terry Skitmore and his advocate Narinder Kapur, without whose dedication and sacrifices the Amin Abdullah inquiry and subsequent development work by NHS Improvement would not have taken place.

I know that we are all keen to ensure we treat our people fairly and protect their wellbeing. Implementing the attached guidance consistently well across the NHS will contribute to that goal. It is tragic that we are learning these lessons after Amin's death, but we owe it to him and the others who have suffered in similar circumstances to act now.

Thank you for your attention to these vital issues.

Best wishes



Baroness Dido Harding
Chair, NHS Improvement

Enclosure:

Additional guidance relating to the management and oversight of local investigation and disciplinary procedures

Copies:

Chair, Care Quality Commission
Chair, NHS Providers
Chair, Nursing and Midwifery Council
Chief Executive, NHS Employers

Additional guidance relating to the management and oversight of local investigation and disciplinary procedures

1. Adhering to best practice

a) The development and application of local investigation and disciplinary procedures should be informed and underpinned by the provisions of current best practice, principally that which is detailed in the Acas 'code of practice on disciplinary and grievance procedures' and other non-statutory Acas guidance; the GMC's 'principles of a good investigation'; and the NMC's 'best practice guidance on local investigations' (when published).

b) All measures should be taken to ensure that complete independence and objectivity is maintained at every stage of an investigation and disciplinary procedure, and that identified or perceived conflicts of interest are acknowledged and appropriately mitigated (this may require the sourcing of independent external advice and expertise).

2. Applying a rigorous decision-making methodology

a) Consistent with the application of 'just culture' principles, which recognise that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident, a comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.

b) In all decision-making that relates to the application of sanctions, the principle of plurality should be adopted, such that important decisions which have potentially serious consequences are very well informed, reviewed from multiple perspectives, and never taken by one person alone.

3. Ensuring people are fully trained and competent to carry out their role

Individuals should not be appointed as case managers, case investigators or panel members unless they have received related up to date training and, through such training, are able to demonstrate the aptitude and competencies (in areas such as awareness of relevant aspects of best practice and principles of natural justice, and appreciation of race and cultural considerations) required to undertake these roles.

4. Assigning sufficient resources

Before commencing investigation and disciplinary procedures, appointed case managers, case investigators and other individuals charged with specific responsibilities should be provided with the resources that will fully support the timely and thorough completion of these procedures. Within the overall context of 'resourcing', the extent to which individuals charged with such responsibilities (especially members of disciplinary panels) are truly independent should also be considered.

5. Decisions relating to the implementation of suspensions/exclusions

Any decision to suspend/exclude an individual should not be taken by one person alone, or by anyone who has an identified or perceived conflict of interest. Except where immediate safety or security issues prevail, any decision to suspend/exclude should be a measure of last resort that is proportionate, timebound and only applied when there is full justification for doing so. The continued suspension/exclusion of any individual should be subject to appropriate senior-level oversight and sanction.

6. Safeguarding people's health and wellbeing

a) Concern for the health and welfare of people involved in investigation and disciplinary procedures should be paramount and continually assessed. Appropriate professional occupational health assessments and intervention should be made available to any person who either requests or is identified as requiring such support.

b) A communication plan should be established with people who are the subject of an investigation or disciplinary procedure, with the plan forming part of the associated terms of reference. The underlying principle should be that all communication, in whatever form it takes, is timely; comprehensive; unambiguous; sensitive; and compassionate.

c) Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.

7. Board-level oversight

Mechanisms should be established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Associated data collation and reporting should include, for example: numbers of procedures; reasons for those procedures; adherence to process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees; and lessons learnt.