

Board of Directors' Meeting 10 June 2021

Agenda item	134/21			
Report	Review of our Disciplinary Process			
Executive Lead	Workforce Director			
	Link to strategic pillar:		Link to CQC domain:	
	Our patients and community		Safe	√
	Our people	√	Effective	
	Our service delivery		Caring	√
	Our partners		Responsive	
	Our governance	√	Well Led	√
	Report recommendations:		Link to BAF / risk:	
	For assurance	√	BAF1, BAF4	
	For decision / approval		Link to risk register:	
	For review / discussion		970, 1083, 1930, 2027, 2065	
	For noting			
	For information			
	For consent			
Presented to:	Operational Workforce Committee 24th May 2021			
Dependent upon (if applicable):	Engagement within Divisions and Corporate functions			
Executive summary:	This report provides an update on the Trust’s response to the letters from Baroness Dido Harding (Chair of NHS Improvement) in 2019 and Prerana Issar (NHS Chief People Officer) in 2020. This report outlines for the Trust Board where the Trust’s processes and procedures are already in line with the guidance and also sets out additional steps in order to further improve the management of our disciplinary processes.			
Appendices	Appendix 1: Letter from Dido Harding, May 2019 Appendix 2: Letter from Prerana Issar, December 2020			

1.0 Introduction

- 1.1 In 2019, Baroness Dido Harding (Chair of NHS Improvement) wrote to all NHS Trusts (Appendix 1) to share the story of Amin Abdullah, an NHS employee who tragically took his own life after being dismissed from his job at Imperial College Hospital Trust (ICHT). The letter issues 7 pieces of guidance (see page 8-9) relating to the management and oversight of disciplinary investigations and procedures for NHS Trusts.
- 1.2 The Trust accepted this guidance in 2019 and made improvements to the Disciplinary Policy and process (see section 2).
- 1.3 In December 2020 a further letter was issued by Prerana Issar (NHS Chief People Officer) asking NHS Trusts to review the new and improved Disciplinary Policy from ICHT and review again their own procedures to ensure best practice (Appendix 2).
- 1.4 This paper summarises the current position within the Trust, describes the improvements already made and identifies further improvements that are taking place.

2.0 Workforce Review of Processes

- 2.1 A number of changes have been made over the past 18 months to further improve our process. The following section sets out the recommended guidance from Baroness Harding and our supporting evidence of the Trust's compliance.

Adhering to best practice

- 2.2 The Trusts policies and processes comply with the ACAS code of practice, the GMC guide titled 'Principles of a Good Investigation' and the NMC's best practice guidance on local investigations.

Applying a rigorous decision making methodology

- 2.3 Decision making documents are used (linked to the NHSI Just Culture Guide) that guide and document decision making when commissioning an investigation, suspending/excluding an employee and deciding on the outcome of a disciplinary hearing
- 2.4 External investigators, advisers and panel members are used when appropriate to ensure independence and objectivity
- 2.5 A minimum of 2 people are involved in making key decisions, usually a senior manager and experienced workforce representative. Where appropriate, additional decision makers are found to add specialist knowledge of differing backgrounds/opinions to the discussion. Decision-making groups are common across the Trust to support well-informed actions.
- 2.6 Clear informal process and template documents are available for handling matters that do not require formal disciplinary action

- 2.7 A documented escalation process is embedded to ensure any risks are managed appropriately. From April 2021, we have introduced a new activity reporting method that incorporates a process for escalation.
- 2.8 Template letters have been improved to highlight the employee's right to request an alternative Investigating Officer, Commissioning Manager or member of a disciplinary panel if they feel there is a conflict of interest.
- 2.9 Regular case review meetings are held to review, challenge and support progress, decision-making and next steps.

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

- 2.10 It is mandatory that all Investigating Officers receive training and sometimes appoint external investigators where matters are particularly complex, high profile or require a quick conclusion.
- 2.11 A suite of training materials (including videos and podcasts) and template documents also assist Investigating Officers.
- 2.12 Annual on-site Mock Employment Tribunal sessions are held which receive excellent feedback
- 2.13 The Workforce Team receive regular legal training to ensure continued personal development such as Maintaining High Performance Standards for Doctors and Dentists process (MHPS).

Assigning sufficient resources

- 2.14 Divisional managers are supported to ensure the allocation of sufficient resources to allow investigations to conclude is done in a timely manner

Decisions relating to the implementation of suspensions/exclusions

- 2.15 Alternatives are always explored to avoid full suspension/exclusion wherever possible. Suspensions/exclusion must always be authorised by an Executive Director.
- 2.16 Improved support to staff who are suspended/excluded has now included psychological support, encouraging CPD and a 'buddy' allocated to maintain contact at the Trust.

Safeguarding people's health and wellbeing

- 2.17 The Trust have introduced an Employee Assistance Programme. This makes external advice and support (including counselling) more easily accessible for all staff.
- 2.18 Regular case reviews take place of open cases to encourage progress and resolution.

- 2.19 Staff being investigated receive regular updates on progress and an agreed communications plan is included in the commissioning paperwork so that, from the outset, everyone is clear on how employees will be kept updated and supported during an investigation.
- 2.20 Staff receive a FAQ booklet so they understand the process and know who to contact for advice or support. These also include wellbeing agencies the employee can access.
- 2.21 Where physical or mental health affects an employee's ability to take part in a disciplinary process, reasonable adjustments are made to support them to take part or, if necessary, delay the investigation to enable them to take part.
- 2.22 Staff are made aware of their right to be accompanied at formal meetings and more detail on the role of the companion is provided so employees can choose the most appropriate person for them. Where appropriate, we extend this right to allow them to be accompanied by a family member or relative for emotional support.
- 2.23 The Resolving Bullying and Harassment Policy provided emphasis on resolving matters informally where appropriate.

Board level oversight

- 2.24 Investigations and outcomes are reported to Workforce Committee Monthly and Trust Board Quarterly.

3.0 Next Steps

- 3.1 There are a number of additional improvements identified that the Trust must now push forward. These include:
- 3.2 Providing Investigating Officer training to all leaders and managers band 3-9
- 3.3 Providing training for Commissioning Managers band 7-9
- 3.4 Measuring the changes and impact.
- 3.5 Creating a step in the process to review potential conflicts of interest earlier and provide some guidance to help identify conflicts.
- 3.6 Changing our suspension information into an FAQ's format to make it easier for employees to understand
- 3.7 Providing clarity in all cases about who has responsibility for health and wellbeing of staff involved in a disciplinary process
- 3.8 Improving the regular updates staff receive during an investigation. The update should provide a meaningful update on progress and give an estimated timescale for completion. It should ideally be delivered face to face or via telephone rather than through a letter alone.
- 3.9 Engage our cultural ambassadors in decisions making where appropriate

- 3.10 Develop a process for dealing with any cases of serious harm to staff involved in an investigation (in relation to the guidance regarding safeguarding people's health and wellbeing and treating such cases as a never event).
- 3.13 The senior Workforce structure is currently being updated and the new structure will provide enhanced governance and oversight of disciplinary processes through Workforce Business Partners working closely with senior leaders in Divisions and corporate areas.
- 3.14 We are also reviewing the Disciplinary Policy with guidance and input from an experienced external HR professional within the NHS. This brings new ideas and fresh eyes to our processes to ensure they comply with the guidance issued by Dido Harding and Prerana Issar.

4.0 Conclusion

- 4.1 These Board is asked to support the steps taken and the ongoing work planned, progress will be reported to the Board by the end of the calendar year.
- 4.2 This report provides assurance that the Trust is broadly compliant with the recommendations of Baroness Harding in 2019 and is taking further steps to improve disciplinary processes for our staff.
- 4.2 We will continue to seek opportunities to improve our processes and regularly review our employee experience.

Interim Workforce Director
May 2021



Chief Executive and Chair's Office

Wellington House
133-155 Waterloo Road
London SE1 8UG

Tel: 020 3747 0000

To:

NHS trusts and NHS foundation trusts chairs and chief executives

23 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

NHS England and NHS Improvement



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-commendations. 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.

Appendix 2

Classification: Official



Publication approval reference: PAR293

Prerana Issar

NHS England and NHS Improvement
Skipton House 80 London Road
London SE1 6LH

01 December 2020

To:

- NHS trust CEOs, HR directors, workforce directors
- NHS foundation trust CEOs, HR directors, workforce directors

Dear Colleagues,

Re: Sharing good practice to improve our people practices

I hope you are doing well in these challenging times.

In May 2019 we shared with you an important piece of work in response to a tragic event that occurred at Imperial College Healthcare NHS Trust (ICHT) four years ago. Sadly, Amin Abdullah, a nurse who at the time was the subject of an investigation and disciplinary procedure, tragically took his own life. Details of the investigation, conducted by an appointed advisory group, together with the reasons for its commission, are provided in the enclosed letter (enclosure 1).

The advisory group made a series of recommendations, many of which were used as the basis for the provision of additional guidance to provider organisations (also at the enclosure). In addition, in November 2019, I wrote to healthcare professionals and regulatory bodies, encouraging review and examination of any guidance and standards provided to members and registrants to address the issues highlighted to support compassionate leadership and improvement across the healthcare system (enclosure 2).

Since Amin's passing, ICHT has worked collaboratively with Amin's partner

Terry Skitmore and his advocate Narinder Kapur, alongside other stakeholders, to create a revised policy for handling staff related concerns or complaints. I am writing to share this with you as an example of good people practice, albeit arising from such tragic circumstances (enclosure 3).

The shared learning from Amin's experience has demonstrated the need for us to work continuously and collaboratively, to ensure that our people practices are inclusive, compassionate and person-centred, with an overriding objective as to the safety and wellbeing of our people. These values are central to our recently published [People Plan](#) and [People Promise](#).

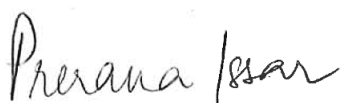
Our collective goal is to ensure we enable a fair and compassionate culture in our NHS. I urge you to honestly reflect on your organisation's disciplinary procedures, review the recommendations we issued in May 2019 and the attached example of good practice, and consider what has worked well and what could be further improved.

Where action is required, I urge NHS organisations to commit to tangible and timely action to review on a yearly basis and by the end of this financial year, all disciplinary procedures against the recommendations and that these are formally discussed/minuted at a **Public Board** or equivalent. We will continue work with the CQC to embed the learning from these reviews to form part of the formal oversight framework. I would also like to suggest your policy is made available on your organisation's public website by the end of the financial year.

As we prepare for the second wave of COVID-19, our staff should feel supported in every sense, including demonstrating a sensitive and compassionate approach to colleagues throughout the disciplinary procedure and process.

Many thanks for everything you are doing to provide services during this challenging time.

Best wishes,

A handwritten signature in black ink, appearing to read 'Prerana Issar'.

Prerana Issar

NHS Chief People Officer

Enclosure (enclosures below were included with Prerana's letter but are not included with this Board report)

1. Learning lessons to improve our people practices – Letter to all NHS trust and NHS foundation trust chairs and chief executives, 24 May 2019.
2. Guidance and standards for registrants in relation to local investigations and disciplinary procedures - Letter from Prerana Issar to healthcare professional and regulatory bodies, 04 November 2019.
3. Imperial College Healthcare NHS Trust - Disciplinary Policy and Procedure, July 2020.