PPR Response to

Department of Health's Consultation on

HSC Whistleblowing Framework & Model Policy

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Recommendations

Recommendation # 1

In addition to introducing the proposed Duty of Candour, the Department of Health must also address the serious issues surrounding the lack of oversight and accountability in mental health services, including in relation to the lack of monitoring data.

Recommendation # 2

Given the negative connotations associated with the term ‘Whistleblower’, we suggest consideration be given to replacing this term with the term ‘reporter’ as used in other countries. Other possible options include ‘Truth Teller’ or ‘Ethics Protector’.

Recommendation # 3

The draft policy needs to be significantly amended to include full details of how all non-contractual staff, including agency workers and bank workers, volunteers, patients and members of the public will be supported and protected to raise an issue of public concern.

Recommendation # 4

We recommend that in line with the development of one Regional Mental Health Service , a standard whistleblowing policy is adopted across all relevant organisations.

Recommendation # 5

The Framework and Model Policy needs to provide greater clarity as to the criteria used to decide whether an issue falls under Whistleblowing, Complaints or Safeguarding. It should provide some examples to help with understanding and to foster greater transparency around all of these processes.

Recommendation # 6

The language used in the policy document must be clear, unambiguous and precise at all times.

Recommendation #7

The policy needs to spell out that an employer cannot demote, suspend, threaten, harass directly or indirectly, or in any other manner discriminate against a Whistleblower in the terms and conditions of their employment for coming forward. This protection must be in relation to the person's manager/s but also their co-workers and across all levels of the organisation's structures.

Recommendation # 8

We recommend that a nominated person is appointed to give updates in relation to investigations, even if there is no progress, at specified, regular intervals.

Recommendation # 9

The Department of Health should engage with Trade Unions to explore how their role can be enhanced and resourced to enable them to effectively support members who wish to raise a concern in the public interest.

Recommendation # 10

We recommend that a fully independent body act as the regulator to oversee the operation of this policy. This body should not have any connections with health organisations. Its role should include the monitoring and inspection of health organisations' compliance with the policy. Responsibilities should include the collection and monitoring of data and the publication of regular reports.

Recommendation # 11

We recommend that the whistleblowing arrangements be reviewed on an annual basis.

Recommendation # 12

We recommend that, in keeping with the spirit of openness and transparency which this Policy is committed to supporting, as much data as possible about the operation of the policy is shared in the public domain.

Introductory comments

Thank you for the opportunity to respond to the consultation on the HSC Whistleblowing framework and model policy.

We are pleased that the Department of Health plans to introduce a new Whistleblowing Framework and Model Policy, in response to recommendations arising from the RQIA Review of the Operation of Health and Social Care Whistleblowing Arrangements.

As stated in the consultation document, raising a concern in the public interest is an important part of patient safety and improving the quality of services in healthcare.

Support and protection for Whistleblowers is a vital component of a health service that is based on values of working together, excellence, openness, transparency and compassion.

While our comments below are directly informed by our campaigning work in relation to mental health services, they apply equally across all aspects of the health service and HSC organisations.

Regrettably, as it stands, we do not believe that this framework and model policy is fit for purpose. We say this for a number of reasons, which will be discussed in more detail below, but our main concerns are as follows:

A. The failure to acknowledge the culture of HSC organisations
B. The lack of clarity and detail
C. The lack of meaningful protection for whistle blowers
D. The lack of independence
E. The lack of robust monitoring processes

A) Failure to acknowledge the culture of HSC organisations

This draft policy is presented without any recognition of the existing culture within HSC organisations, and how that culture is likely to militate against the successful adoption and implementation of the new framework and policy.

The reality is that a hierarchical, defensive culture dominates within HSC organisations. It should be noted that this culture emanates from and is supported by senior management, impacting negatively on both service users, members of the public and front-line staff alike. It manifests in a lack of honesty, openness, transparency and ultimately, accountability within health organisations.

Our evidence for this statement comes first and foremost from the many families who have fought to secure accountability from the Department of Health, the Health and Social Care Trusts and the various health bodies, in relation to their failings around care of their loved ones.

The United Nations Special Rapporteur has also highlighted how this culture is particularly entrenched in mental health services, where, at the clinical level, deep power asymmetries exist. The Special Rapporteur has noted how

'Such power imbalances reinforce paternalism and patriarchal approaches, which dominate the relationship between psychiatric professionals and users of mental health services. That asymmetry disempowers users and undermines their right to make decisions about their health, creating an environment where human rights violations can and do occur'

In recent years there have been numerous high profile reports and investigations into health care failings, including the Hyponatremia Inquiry, the Muckamore Abbey inquiry, and the neurology scandal,.

Mental health activists have shared their own battles to secure truth and accountability from health bodies. They have found existing accountability mechanisms, including complaints and Serious Adverse Incident Reviews, to be deeply flawed. They report experiencing a lack of respect, a denial of dignity, a lack of openness, transparency and candour within these processes.

Patients First is a network of health professionals and their supporters campaigning for an open and just culture where every member of health service staff who raises a concern will be supported and safe. They have documented numerous cases where healthcare Whistleblowers have come up against a powerful culture of denial and cover-up by their organisations' management.

A common thread running through all of these has been the culture of defensiveness and cover-up by the organisations concerned.

This culture extends far beyond health alone and is found across all government departments. Just two recent, high-profile whistleblowing cases, that of a senior vet within the Department of Agriculture who was hounded out of her job for revealing potential fraud

and animal suffering, and two PSNI officers , who spoke out about serious allegations of misconduct and negligence, underline how deeply ingrained the culture of secrecy and cover-up is within all aspects of government here.

This proposed policy cannot simply be overlaid onto a dominant culture of secrecy and protection of the status quo at all costs and then expect staff and others to use it, with full confidence that they will be protected.

It is hoped that the proposed statutory Duty of Candour on all Health Organisations, being brought forward by the Department of Health, following on from the Inquiry into Hyponatraemia Related Deaths (IHRD), will help to foster and develop a culture of honesty, openness, transparency and accountability within the healthcare sector.

In efforts to develop trust and confidence in policies, language matters. We acknowledge the attempt in the draft policy to re-frame whistleblowing as Raising A Concern in the Public Interest. We agree with this description of the action involved. However, we think a better term is needed to refer to the person who engages in this course of this action.

The origins of the term 'whistleblowing' date back to the early 1800s and the use of whistles by English 'Peelers' to alert the public to a suspected crime being committed. A dictionary search for synonyms comes up with 'betrayer, blabbermouth, canary, double-crosser, fink, sneak or informant. The last term on that list, informant, or the slang word 'tout', has very particular connotations in this society, which bring added concerns for anyone considering raising an issue of public concern.

Unless the issues outlined above are candidly acknowledged and a commitment made to address them, it is difficult to see how the proposed Whistleblowing Policy will secure the confidence and trust of staff, volunteers and members of the public, as is intended.

The following recommendations are made in response to the issues relating to the failure to acknowledge the culture of HSC organisations.

Recommendation # 1

In addition to the introduction of the proposed Duty of Candour, the Department of Health must also address the serious issues surrounding the lack of oversight of mental health services and the lack of monitoring data.

Recommendation # 2

We suggest consideration be given to the term 'reporter' as used in other countries, or truth teller or ethics protector.

B) Lack of Clarity and Detail

The consultation policy states that the Framework and Model Policy will apply to employees, agency workers, contractors, bank workers, volunteers and even a member of the public.

We support the scope being inclusive, particularly given that in areas of care such as mental health, up to 50% of the staff can be made up of agency workers. In addition, patients and family members often experience or witness matters of concern in relation to the conduct of staff and/or treatment of patients. They need to be supported and protected in coming forward to report their concerns.

The policy is entirely silent however on how, in practice, this Framework and Model Policy will cover agency workers, contractors, bank workers, volunteers and members of the public. The limited legal protection provided for employees against detrimental treatment or victimisation is not afforded to the other listed groups of people.

Families whose loved ones are in-patients in mental health units have told us that they feel too vulnerable to their loved ones or themselves experiencing detriment or victimisation if they raised an issue of public concern '*not when they have your loved one in their hands*'.

The cover letter accompanying the draft policy states that all HSC organisations are required to adopt the Model Policy, but that they may tailor it to take account of their individual organisation's policies and procedures. This raises concerns around uniformity of approach and equal protection for Whistleblowers across all HSC organisations, particularly given that the Mental Health Strategy contains a commitment to develop one regional mental health service.

Greater clarity is required in relation to the distinction made between complaints, raising a concern and safeguarding issues. The draft policy acknowledges that personal concerns can have wider implications in terms of others/the public and can potentially engage more than one of the above policies.

Individual complaints often relate to wider issues of public concern. Similarly, with individual safeguarding concerns, these are often not isolated incidents but part of a wider, systemic problem.

Individuals with previous experience of making complaints and raising safeguarding issues have reported that it was not make clear to them which policy the issues they raised were being dealt with under.

The language used throughout the draft policy is vague and loose, rather than the precise, clear language expected and required in a policy of this nature. Examples include :

*'While we cannot always guarantee that we will respond to all matters in the way you might wish, **we will strive** to handle the matter fairly, impartially and thoroughly'*. (emphasis added; page 26)

'... *if the matters raised are serious in nature we will carry out* ***a proportionate investigation*** *– using someone* ***suitably independent and trained*** *– and we will reach a conclusion within* ***a reasonable timescale*** (which we will notify you of). (emphasis added; page 32)

'*We will advise you,* ***where possible****, and those identified as the subject of a concern, of the process, what will be investigated and what will not, those who will be involved, the roles they will play and the anticipated timescales'*. (emphasis added, page 32)

'*In the event that an investigation is required,* ***we will endeavour*** *to provide a response within 12 weeks of the concern being received*' (emphasis added, page 33).

A Whistleblower in a health organisation, who shared her experience with PPR, highlighted a lack of clarity in relation to the stages of the process, the time-frame and overall communication. She characterised the entire process as *'willy-nilly'*.

The following recommendations are made in response to the issues relating to the lack of clarity and detail, as outlined above.

Recommendation # 3

The draft policy needs to be significantly amended to include full details of how all non-contractual staff, including agency workers and bank workers, volunteers, patients and members of the public will be supported and protected to raise an issue of public concern.

Recommendation # 4

We recommend that in line with the development of one Regional Mental Health Service , a standard whistleblowing policy is adopted across all relevant organisations.

Recommendation # 5

The Framework and Model Policy should provide greater clarity as to the criteria used to decide which policy an issue falls under and should provide some examples to help with understanding and to foster greater transparency around all of these processes.

Recommendation # 6

The language used in the policy document must be clear, unambiguous and precise at all times.

C) Lack of meaningful protection for Whistleblowers

The policy details the legal protection available to employees who experience detriment or victimisation following on from raising a concern in the public interest. Employees have the right to take a case to an Industrial Tribunal. While this legal protection is vital for employees, it should be acknowledged that this in itself is an adversarial, time-bound and extremely stressful process for an individual to have to engage in. It may involve the person being called to give evidence in court and be cross-examined. As such, the Whistleblower continues to carry an enormous burden, beyond the act of raising a concern.

Aside from this legal protection, the policy lacks detail regarding what anti-retaliatory measures must be taken by employers to protect Whistleblowers from experiencing detriment or victimisation, or indeed, from being put under investigation themselves, which often happens in whistleblowing cases.

The Whistleblower previously referred to, shared her experience of being victimised, comparing the experience to being '*in an abusive relationship'* and described the serious toll such victimisation took on her mental health and well-being. She described how such victimisation often happened in subtle and *slekit* ways, making it difficult to evidence or have it addressed.

The policy states that Whistleblowers will be kept informed of the progress and outcomes of an investigation. However, it lacks details as to how this will happen in practice. It states that in the event of an investigation being required, the organisation '*will endeavour*' to provide a response within 12 weeks of the concern being raised and that updates will be provided by week 6 and again by week 10. Three months is too long a time for an individual to wait for a formal response.

We know these investigations can drag on for months and years even, with those concerned left totally in the dark and without support. This can be distressing for both the Whistleblowers and the person or team under investigation, which negates this being a safe experience.

The policy doesn't specify how updates and responses will be provided. Compared with the detailed breakdown of stages and timeframes contained in standard Disciplinary Procedures for organisations, the investigation process arising from a reported concern, lacks the necessary detail.

The following recommendations are made in response to the issues relating to the lack of meaningful protection for Whistleblowers, outlined above.

Recommendation #7

The policy needs to spell out that an employer cannot demote, suspend, threaten, harass directly or indirectly, or in any other manner discriminate against a Whistleblower in the terms and conditions of their employment for coming forward. This protection must be in relation to the person's manager/s but also their co-workers.

Recommendation # 8

We recommend that a nominated person is appointed to give updates in relation to investigations, even if there is no progress, at specified, regular intervals.

D) The lack of independence

Serious concerns exist around the independence of the proposed process.

The draft policy sets out how local Whistleblowing policies will be implemented. It recommends that within each organisation, an appropriate senior manager should be appointed to ensure implementation of the policy. It also recommends that each HSC organisation should consider appointing an appropriate number of advisors/advocates to signpost and provide support. Finally, the Board as a whole is tasked with maintaining oversight, with each HSC organisation appointing a non-Executive Director to have specific responsibility for oversight.

All of these identified roles are internal to the health organisation itself, and as such lack independence. Given the widespread evidence of a prevailing culture of cover-up and the lack of accountability within health organisations, as well as the potential for conflict of interests, it is difficult to see how individuals could be expected to have confidence and trust in this process.

The draft policy acknowledges that Whistleblowers may not feel that they can raise a concern with the organisation they work for. It sets out an option for Whistleblowers to raise their concern with a number of organisations, listed in the legislation and known as prescribed persons. These prescribed persons are a mix of government departments, registration bodies, regulatory or oversight bodies, for example, the General Medical Council and the Health and Care Professions Council.

Families campaigning for accountability around the failings of mental health services have also experienced the failure of some of these bodies to hold the health services and the Department of Health to account. As a result, they do not have confidence in the independence of such bodies.

The draft policy references the role that Trade Unions can play in supporting individuals wishing to raise a concern. This is welcomed, as workers trust their Trade Unions to act on their behalf and in their best interests, independent of the health organisations.

The following recommendation is made in response to the issue of lack of independence, as outlined above.

Recommendation # 9

The Department of Health should engage with Trade Unions to explore how their role can be enhanced and resourced to enable them to effectively support members who wish to raise a concern in the public interest.

E) Lack of robust monitoring and audit processes

The proposals for reporting and monitoring do not appear to be sufficiently robust or transparent. They include the maintenance of individual casefiles, a central file of all formal concerns raised, in a readily accessible format, an analysis of concerns raised shared with senior management and the organisation's audit committee and a suggestion that organisations report on the effectiveness of their arrangements in their annual report.

Crucially, reference is made to a requirement on organisations to demonstrate to regulators that these arrangements are working. Who is the regulator? Will the implementation of whistleblowing policies be independently monitored and regulated?

It is also proposed that organisations review their raising concerns arrangements a minimum of every three years through formal governance arrangements. We believe that this time frame is too long to be an effective audit tool.

Organisations are expected to capture and document the views and experiences of staff and trade unions. Is there a mechanism to collect detailed feedback(anonymised if necessary) from individual Whistleblowers of their experience of the process? The draft policy refers to collecting data on the nature and number of concerns raised and refers to staff surveys, exit interviews, claims brought under the order, but none of these data collection mechanisms will access detailed information on the experience of the individual.

Civil society organisations also need information to be able to monitor the effectiveness of the policy. They need to be at able to access the information contained in the central register of anonymized data on concerns raised on how they were responded to.

The following recommendations are made in response to the issues relating to the lack of a robust monitoring and audit process, as outlined above.

Recommendation # 10

We recommend that a fully independent body act as the regulator to oversee the operation of this policy in practice. This body should not have any connections with health organisations. Its role should include the monitoring and inspection of health organisations' compliance with the policy. Responsibilities should include the collection and monitoring of data and the publication of regular reports.

Recommendation # 11

We recommend that the whistleblowing arrangements be reviewed on an annual basis, more particularly as this is a new policy.

Recommendation # 12

We recommend that, in keeping with the spirit of openness and transparency which this Policy is committed to supporting, as much data as possible about the operation of the policy is shared in the public domain.