

Do No Harm Wales: Submission to the Health Social Care and Sport Committee

Health and Social Care (Quality and Engagement) (Wales) Bill

Introduction

Do No Harm Wales is an independent group of healthcare professionals, including medical, nursing and allied health staff, from North and South Wales who have had extensive personal experience as whistleblowers within NHS Wales. We have come together to advocate for change in whistleblowing practice in NHS Wales because we know how vital it is that staff can speak up when things are going wrong and we want to make things better for the whistleblowers who come after us.

The aim of our group is to promote safe concern raising for NHS staff. Our primary focus is patient safety. We also aim to provide direct support to other whistleblowers in Wales.

We are all painfully aware of the pervasive shortcomings of whistleblowing policy and practice in Wales, and in particular the lack of any response in Wales to the Freedom to Speak Up Report (Francis 3013), in contrast to the significant developments which took place in the rest of the UK. We feel that in Wales we now have an opportunity to learn from the experiences of implementing whistleblower support in England and Scotland and come up with an improved approach which could serve as a model for other countries. Together we have drafted an ideal protocol which we feel provides the elements of a safe and effective whistleblowing approach for Wales (refer to plan below).

Whistleblowing is integral to the quality agenda in healthcare as a form of feedback to services, and an essential element of safeguarding both the public and staff. It is almost certain that this year a number of patients' lives that could have been saved in NHS Wales if staff had felt that they could routinely speak up when things were going wrong. Safe concern raising could also prevent the tremendous waste of staff resources due to bullying and the stress of working in unsafe systems.

The impact of whistleblowing on those of us who do try to speak up is life changing. Most members of our group have been unable to continue working in the NHS, our careers have been ruined and we have suffered long-term health impacts. It is important to recognise that managing staff concerns raising will be an area of challenge for health organisations not least because the concern-raiser/whistleblower is often bringing a problem to the attention of someone who already knows about it and for one reason or another has chosen not to act. Staff who raise concerns and their managers need support to negotiate this territory successfully so that patients get the outcomes they need.

The current system in Wales is not working. It would appear sensible to sit around the table and discuss ways in which we can improve public safety by implementing a well-constructed speak up system that protects those who protect the public. Everyone would benefit.

Although we are advocating root and branch reform of whistleblowing legislation, policy and practice in Wales, at this point we would like to ask the committee to consider opportunities which may be afforded by the current bill to promote changes in whistleblowing practice. We would ask the committee to help us put safe staff concern-raising in its rightful place at the heart of the NHS Wales quality agenda by integrating staff concern raising and whistleblowing into the bill.

We would welcome the opportunity to provide further evidence if required and to submit oral evidence to the committee.

Proposals

Our group considers that staff concern raising/whistleblowing could be integrated into three of the overall aims of the bill.

1. Duty of Quality

The key role of safe staff concern-raising should be explicitly acknowledged at all levels of policy development and decision-making, and organizations should be obliged to consider impacts on whistleblowing/concern-raising in all relevant policy developments.

Staff concern-raising and whistleblowing play a vital role in preventing harm and assuring patient safety, enabling services to operate responsively and effectively, and preventing ongoing waste of staff resources through sickness, underperforming due to stress and staff leaving the NHS.

Consideration should be given to the quality implications of policy and decisioning specifically relating to concern-raising and whistleblowing. (The implications of this, given that current policy and practice is not working, is that all concern-raising/whistleblowing policy should be revised.)

2. Duty of candour

a) The organisational duty of candour should be extended to staff concern raising/whistleblowing

From our own experience Health Boards, in their response to concerns raised by staff and whistleblowing, have put concern about reputational damage at a much higher priority than understanding problems raised, learning from them and actually putting things right. Non-disclosure agreements are very much in use in Welsh Health Boards, huge and costly reports are suppressed, requests through freedom of information legislation are turned down for questionable reasons. Delaying and covering up are very much normal practice, and possibly deliberate strategy, in the organisational response to problems brought to their attention. This disempowers staff and results in failure to improve the quality of services. Organizational transparency in the area of staff concern raising would help to assure employees of fairness

and due process, and act as a driver for Health Boards to respond appropriately when problems come to their attention.

b) The duty of candour should be extended to all individuals working in health and social care settings

All individuals working in the context of health and social care should operate under an individual duty of candour. Where an existing professional duty of candour exists, this should be explicitly acknowledged and failings to uphold a duty of candour should be sanctioned. Individuals should uphold the values of the organization in exercising their duties, and there should be accountability if they fail to do so. Currently individuals can and do mislead, withhold information and dissemble without any comeback. This lack of accountability particularly in managerial posts, leads to frustration and poor staff morale, loss of confidence in the organisation, and contributes to the failure of NHS organizations to change.

(Refer to point 8 in 10 Point Plan below)

3. Citizens voice

a) The rights of NHS staff to voice concerns both as citizen users and employees of health services should be supported and upheld

We would ask the committee to broadly consider the rights of citizen service users who are also members of staff, who are in the position where they need to voice a concern, or ultimately blow the whistle on problems in their workplace in the interests of patient safety.

b) Whistleblowers in NHS Wales should have the support of independent guardians who can ensure that their concerns are voiced effectively and that NHS organizations investigate and act on concerns appropriately

Francis (2015) recognised that staff in this position need extensive support to take concerns forward effectively to achieve positive outcomes. In his report he recommended that all NHS whistleblowers have access Freedom to Speak Up (FTSU) Guardians to perform this function. While this has been implemented in the rest of the UK, to our knowledge there are no Freedom to Speak Guardians operating in NHS Wales. While we regret that there has been generally so little action taken in response to Francis' report in Wales, we do feel that there is now an opportunity to learn from the experience of the rest of the UK and put together an improved response, with fully independent guardians, which could provide a model for other countries.

Do no harm Wales considers that an outside independent agency of Healthcare and Whistle Blowing Investigation (HAWBI) is essential; it would also be the most cost-effective method in that several guardians could serve the entire principality. Guardians must be skilled at healthcare investigation, the principles of confidentiality, and have the power to impose sanctions at any level to any staff involved in whistle blower reprisal or the undermining of the investigatory process.

Appendix

Do No Harm Wales 10 Point Plan

Point 1: Freedom to speak up guardians

Do no harm Wales is aware that the guidance made by Sir Robert Francis following the Mid Staffs crisis suggested that all staff had support of Freedom to Speak Up (FTSU) Guardians. We have been observing the implementation in England. The basic concept is positive, there are patches of good practice, however the guardian scheme as it stands in England is not uniformly considered helpful. The program is distrusted by the majority of whistle blowers and appears to have done little to prevent retribution.

Do no harm Wales suggests that Welsh Government distances itself from the current FTSU guardian scheme run by NHS England. We feel it is very important to get the scheme in Wales right from the beginning, as loss of confidence has undermined the English FTSU system possibly beyond repair. Wales should consider completely renaming the guardian role to avoid any doubt that then Welsh FTSU scheme is different, but most importantly ensure that those in the guardian role are not employed by health boards. Their neutrality and the confidentiality of those wishing to make protected disclosures is absolutely sacrosanct to the process being trusted by healthcare staff.

Do no harm Wales considers that an outside independent agency of Healthcare and Whistle Blowing Investigation (HAWBI) is essential; it would also be the most cost-effective method in that several guardians could serve the entire principality. Guardians must be skilled at healthcare investigation, the principles of confidentiality, and have the power to impose sanctions at any level to any staff involved in whistle blower reprisal or the undermining of the investigatory process.

Point 2: Independent investigation system for all staff and patients involved in NHS investigations

We have noted that retribution against those raising safety concerns almost always results in retaliatory internal investigations of malpractice / misconduct. These can take many years to resolve, lead to chronic sickness in those involved, particularly and understandably affecting mental health. Do No Harm Wales suggests that when whistle blowing has occurred, any internal investigations are conducted by an outside healthcare investigatory body such as the HAWBI system described in point 1. Any staff making false accusations or creating unsafe working environments for whistle blowers must be referred to the police and the appropriate regulator. Welsh government should consider retribution as serious crime, akin to discriminatory hate crime, with additional effects of disregard to public safety. By dealing with this seriously such a deterrent will prevent this from happening to future generations of NHS staff and ultimately protect the public.

Point 3: Change of PIDA law

Many whistleblowers have experience of the Public Interest Disclosure Act (PIDA). PIDA does not protect staff raising concerns as was intended when it was enacted. Also, this law was designed and sanctioned at a UK national level and is not devolved or tailored for Wales and its unique healthcare system. For example, the term “Assembly Member” is not in the list of prescribed persons, hence the Welsh Assembly Government is removed from having staff raise concerns directly with it about the Welsh NHS.

PIDA places no emphasis on investigation of concerns, rather it often leads to employment tribunals and character assassination of those raising concerns. PIDA assumes wrongdoing will be acted on, we can attest that this is mostly not the case.

We would prefer to see a model such as Edna’s law whereby

1. Not acting on concerns is a criminal offence
2. Concerns do not become harassment issues in employment law, rather harassing those raising concerns becomes a criminal case and as such would encourage case law precedent
3. Those raising concerns become protected witnesses.
4. It is a criminal offence to harm those raising concerns.
5. The state investigates the concerns and prosecutes a criminal case rather than leaving it for the whistle blower to pursue a case in employment tribunal.
6. Puts the victims and protection of the public first and protection of the protectors becomes a state responsibility.

Just as the NHS has access to public funds for legal representation, so should those raising safety concerns have access to free tax payer funded legal representation (this would be in accordance with human rights legislation).

Point 4: Bespoke healthcare plans for current whistle blowers

We are aware of whistle blowers experiencing huge amounts of anxiety whilst accessing (especially) hospital-based health care, especially when attending hospitals at health boards where retribution occurred. We are aware of whistle blowers having vital healthcare blocked. We also recognise that healthcare staff could feel vulnerable treating whistle blowers.

We have raised this with the parliamentary whistle blowing APPG who advised whistle blowers to contact their AMs &/or MPs when healthcare detriment is suspected. However, we suggest that a more formal agreement is created such that whistle blowers are routinely treated either in England or at an alternative health board site.

We also feel that this should be monitored to prevent ongoing retribution.

Point 5: A confidential helpline support for NHS staff experiencing bullying

We have not had access to statistics regarding medical staff suicides. We have no doubt that this is a risk both for NHS under pressure but more so for staff experiencing bullying and whistle blowers. Do no harm Wales has attempted to provide some limited support for colleagues in distress - many of whom have been let down by unions and internal systems. However, we strongly feel that this very necessary service should not be left to groups like ours (we have limited resources, no supervision, and are untrained for the complexity of this task). We suggest that supporting ALL NHS staff via a confidential telephone system should be prioritised. We hope that this would lead to improved retention of NHS staff and in theory could be run eventually by a whistle blowing prevention and support unit (as conceptualised above).

Point 6: Training on WB for all staff during training on induction then mandatory refreshers

Do No Harm Wales knows that the system for raising concerns by staff is not universally known within health boards. Raising concerns about poor practices and/or standards should be everybody's business, and part of the natural function of a healthy workplace and its safeguarding system. A clear protocol must be made available to all staff eg on the NHS intranet systems, and this must be updated and shared with an outside body such as the HAWBI system (see point 1).

All NHS staff should have training on speaking up as a mandatory part of their training, on induction upon employment, and mandatory refresher training as is done for instance with H&S, fire, etc.

We also feel that a similar regime of appropriate training should be mandatory for those on prescribed bodies (PIDA) and any other public bodies giving advice to prospective whistleblowers. This training must account for the specific nature of devolved healthcare in Wales.

Point 7: Ongoing governance programmes supervised by independent organisation

Do no harm Wales considers that prevention of the need to whistle blow should be the focus of future work. This would improve patient safety and healthcare cost effectiveness. We suggest that every clinical unit has a system of governance whereby every member of staff in the Welsh NHS has a means of confidentially sharing concerns without fear of retribution or detriment. We suggest that a monthly face to face meeting with recorded minutes is one means of accomplishing this. These minutes should be stored and shared with a monitoring unit such as the HAWBI system we suggested in point 1.

Point 8: Kark report

Welsh NHS whistle blowers contributed to the recent Kark report, and we specifically refer here to the fit and proper persons test and whether NHS managers should be registered and regulated.

We were unanimously concerned to note that the recommendations surrounding this were not automatically accepted by the current health secretary.

Do no harm Wales is aware of the failures of regulation of a healthcare support worker in a Welsh Health Board in recent months being flagged up in a murder investigation.

Accordingly do no harm Wales would welcome registration for every single health care professional within the healthcare industry in Wales. This would allow Wales to address the recycling of staff between Health Boards & Trusts found to be in breach of professional ethics and allow a fairer equity between clinical and non-clinical staff. This would be of benefit in terms of safeguarding. The National Register of Taxi Licence Revocations & Refusals (NR3) is a good demonstration of how such a scheme might work practically.

Do no harm Wales would like to raise the issue of professional registration in terms of devolution, as currently this has not been addressed and puts Welsh healthcare professionals at a disadvantage in terms of whistle blowing.

Point 9: A back to work rehab program for WB

NHSI England have been conducting studies on a whistle blower rehabilitation program following whistle blower retribution. The concept is very important to those who have lost livelihoods and wish to continue working in the NHS. It is also highly advantageous to prevent the loss of highly skilled staff in light of the current NHS staffing crises in Wales.

Do no harm Wales would like to see WG commence an appropriate scheme in Wales; ideally though, it should be possible to prevent the requirement for this to future NHS staff.

Whistle blowers must be protected from retaliation at a much earlier stage to prevent losing skilled staff from the employment pool. This could be achieved by reciprocal post transfers to other health boards or a centralised system of bank staff.

In situations where staff cannot be rehabilitated, a pension system should be created such that those raising concerns never face financial destitution, which is the fate of many currently.

Point 10: Do No Harm Wales is concerned by the lack of research into speaking up about patient safety and bullying within the Welsh NHS.

We would like to see a robust research program as part of a staff retention initiative. We would also suggest that any proposals adopted are well researched and then audited after adoption. We have seen how in England failing to do this produces a complacency that the issue of whistle blowing is “dealt with” on certain levels, whilst there is systematic failure to deliver in practical terms on the aspirations behind the schemes (such as we see with the current PIDA and FTSU guardian system).

References

Francis, R. (2015) Freedom to Speak Up: An independent review into creating an open and honest reporting culture in the NHS

Kark, T. and Russell, J. (2018) A review of the Fit and Proper Persons Test

