FOR HEALTHCARE LEADERS
HSJ

We need better sanctions for those who fail

By Narinder Kapur, Christian Harkensee, Terry Skitmore | 9 December 2020

Better sanctions guidance, redress for victims of "kangaroo courts" and proper training for managers are essential if disciplinary procedures are to be reformed, argue Narinder Kapur, Christian Harkensee and Terry Skitmore.

The 2 December letter to NHS trusts from the NHS chief people officer, asking them to reform their disciplinary procedures, and to follow the example shown by Imperial College Healthcare Trust, is a major step forward in a mission to bring fairness, compassion and a scientific approach to certain HR policies. We outline the next steps that need to be taken for this mission to be fully accomplished.

Narinder Kapur

2 December 2020 will probably go down in history as the day that a country, the United Kingdom, first approved a vaccine for covid-19. Amongst those who will receive it as a priority will be frontline staff who have made heroic efforts during the pandemic.

It is widely acknowledged that BME NHS staff are to be counted amongst such heroes, and that they have been disproportionately affected by covid-19. It seems the virus was unfair in who it targeted and made to suffer.

2 December 2020 will, in the eyes of some, also be a day to remember in the NHS. It is the day that Prerana Issar, the NHS chief people officer, herself BME in origin, recognised that there is another

deadly virus in the NHS, a virus made up of spikes of bias, incompetence and lack of compassion, and that it is all too frequently BME NHS staff who are targeted and suffer the most when they experience this virus.

Reconfigure disciplinary policies

Prerana Issar urged trusts to reform their disciplinary procedures, and to follow the excellent example set by Imperial College Healthcare Trust. She has given a timetable for when she expects tangible changes to be made, she has asked for new policies to be transparent and publicly available, and she has indicated a possible role for the Care Quality Commission to ensure compliance.

Christian Harkensee

Is this then "mission accomplished"? We would agree that this is a landmark moment for bringing fairness, compassion and a scientific approach to certain HR procedures, but that further steps need to be taken.

First, the principles enshrined in the new disciplinary procedures should extend to capability procedures. Too often, a capability route is taken unfairly when a member of staff is regarded by some as being unsafe. The same key principles of plurality, independence and expertise should apply to investigations and decisions about capability.

Second, a proper set of sanctions guidance needs to be drawn up, so that there are proper alternatives to deal with wrongdoing or lack of capability. At present, for most disciplinary and capability procedures that go to a trust hearing, the choice is dismiss or do not dismiss. Surely, this cannot reflect reality and cannot do justice to the range of unsatisfactory behaviours?

In many cases, NHS staff have been exemplary in their work settings, have been cherished by their patients, but have been dismissed by trusts using a legal loophole called "some other substantial reason"

A sanctions guidance policy could, for example, spell out in detail ranges of unsatisfactory behaviours that are matched to a range of corrective measures. The latter may include – retraining, a requirement to attend and pass certain courses, loss of one month's/three months' salary, some form of community/voluntary work, a three-warnings system (oral, written and final), etc. Dismissal destroys lives of NHS staff and also their families, and should be the very last option.

Third, we need to learn lessons from, and provide practical redress to, victims of what is now at last acknowledged to have been grossly unfair disciplinary procedures, often akin to "kangaroo courts". In

many cases, NHS staff have been exemplary in their work settings, have been cherished by their patients, but have been dismissed by trusts using a legal loophole called “some other substantial reason”. It is a national scandal that over an eight-year period there have been 10,000 such dismissals of NHS staff.

There should as a matter of urgency be an independent inquiry into these dismissals, lessons should be learned, and practical redress offered to staff who have suffered. The Department of Health and Social Care has at last recognised, in the case of the infected bloods scandal, that injustice has been done and compensation needs to be paid. Why does this not also apply to NHS staff who have suffered terribly in “kangaroo courts”?

There were numerous previous cases of unfairness and injustice, many of them repeatedly highlighted by judges in employment tribunals or repeatedly raised by NHS sacked whistleblowers.

Fourth, regulatory bodies should be obliged to draw up detailed guidance, as requested by the NHS people officer in November 2019, for registrants who take on management roles, especially where they involve disciplinary or capability proceedings. Professional bodies likewise should look at training requirements and a system of ongoing appraisal to ensure that members who take on management roles are properly trained in issues such as conscious and unconscious bias, the science of proper investigations, the psychology of compassion, how to deal with moral dilemmas in workplace settings, and how to maintain these competencies.

Fifth, lessons need to be learned about listening and responding to concerns. Why did it take a nurse burning himself to death outside Kensington Palace in 2016 for the NHS to wake up to deep-seated flaws in its management procedures? There were numerous previous cases of unfairness and injustice, many of them repeatedly highlighted by judges in employment tribunals or repeatedly raised by NHS sacked whistleblowers. Why were they not listened to? There were clearly failures at the highest levels in realising that major failings existed in the NHS and had to be put right.

Finally, it took years of campaigning for two of us (Terry Skitmore, Narinder Kapur) to persuade the relevant authorities to commission an independent investigation into the suicide of nurse Amin Abdullah. This included paying for a specially produced coffin, with Amin’s photo on the lid, and handing this in at the Department of Health headquarters in Whitehall.

This should never have had to happen. There is already detailed guidance for independent investigations to be commissioned when major patient adverse events occur. Similar guidance needs as a matter of urgency to be drawn up so that there is automatic and obligatory commissioning of independent investigations when major adverse events occur involving NHS staff.

Study after study has shown that patient wellbeing is closely linked to staff wellbeing. It is in the interests of patient care, and the precious resources of the NHS, that we get staff wellbeing right, and that unfairness is stamped out. We cannot allow further tragedies like that of nurse Amin Abdullah to occur, and the greatest honour to his memory is for NHS leaders, in trusts and elsewhere, to admit to mistakes, learn lessons, give support to those who have suffered, apologise where appropriate, and take the steps we have outlined above.