

## Board of Directors (in Public)

### Item 5.5

**Subject:** Learning Lessons to Improve People Practice  
**Date of Meeting:** Tuesday 26<sup>th</sup> November 2019  
**Prepared by:** Sue Hodgkinson, Director of People and Culture  
**Presented by:** Sue Hodgkinson, Director of People and Culture  
**Purpose of Report:** To Note

BAF Ref	Impact on BAF
4	To provide assurance and to highlight the revised risk score rating due to the number of actions the guidance has requested the Trust to implement.

#### 1. Executive Summary

This paper is to advise the Board of Directors about the content of a letter sent to Chief Executives and Chairs on the 24<sup>th</sup> May 2019 from NHS England and NHS Improvement (NHSEI) requesting that Trusts need to learn lessons to improve our people practices. This builds upon other recent NHS Improvement (NHSEI) guidance on developing a more compassionate and just culture.

The paper outlines the considerations for the Trust and the initial delivery plan that has been developed, which the People Committee will monitor and receive assurance on a bi-monthly basis.

#### 2. Background

On the 24<sup>th</sup> May 2019, Baroness Dido Harding, Chair of NHSEI wrote to all Trusts (Appendix A) to share 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 tragic event 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 NHSEI 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. The recommendations were accepted by the Trust, in full, and have largely been implemented.

Subsequently, NHSI established a task and finish advisory group to consider to what extent the failings identified in Amin's case are either unique to that 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.

### **3. Advisory Groups Recommendations**

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-centered approach, underpinned by an overriding concern to safeguard people's health and wellbeing, whatever the circumstances. This view certainly echoed many of the comments that have been received from across the NHS during the recent NHS People Plan engagement (as referenced in the Board Paper 26/11/19).

Some of the proposed recommendations require further discussion with key stakeholders, including regulatory and professional bodies. The correspondence stated that in particular, the need to consider and assess the 'health' of organisational culture, including aspects relating to the management of workplace issues, is given more prominence in the 'well-led' assessment domain. There is an expectation that the majority of the recommendations can be immediately applied and actioned by Trusts.

### **4. Actions for Trust Boards**

The guidance represents the actions characteristic of responsible and caring employers and which reflect our NHS values. The correspondence requests that HR Departments review and assess current procedures and processes in comparison and, importantly, make adjustments where required to bring Trusts in line with this best practice so that Boards can be assured that they meet the guidance. Item 7 of the guidance details that Trusts need to consider how the Board oversees investigations and disciplinary procedures.

The letter requests that with respect to any cases currently being considered and all future cases, Trusts 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?

The letter concludes by stating that in highlighting these issues, there is awareness that Trusts are keen to ensure we treat our people fairly and protect their wellbeing. Implementing the guidance consistently well across the NHS will contribute to that goal. The letter finally stresses that 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.

## **5. Additional Guidance**

Additional guidance relating to the management and oversight of local investigation and disciplinary procedures has been provided to Trusts as follows:

### **5.1. 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 Advisory, Conciliation and Arbitration Service (ACAS) "Code of practice on disciplinary and grievance procedures" and other non-statutory ACAS guidance; the General Medical Council (GMC) "Principles of a good investigation"; and the Nursing & Midwifery Council (NMC) "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).

### **5.2 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.

### **5.3 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.

### **5.4 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.

### **5.5 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, time-bound 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.

### **5.6 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.

### **5.7 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.

## **6. A Fair Experience for All**

In addition to the correspondence in May 2019, on 2<sup>nd</sup> July 2019, Prerana Issar, Chief People Officer, NHS England & NHS Improvement wrote to Directors of HR to share a new guidance document, "A Fair experience for All" which promotes the closing of the ethnicity gap in rates of disciplinary action between black and minority ethnic (BME) and white staff across the healthcare system.

The correspondence states that one of the key aims of the Interim NHS People Plan is to make the NHS the best place to work for all of its workforce and that it is not acceptable that if you come from some backgrounds, you are more likely to enter the formal disciplinary process, stay in it longer and have more career limiting outcomes. The document "A Fair Experience for All" outlines clear steps in these areas for local NHS organisations, as well as national healthcare arm's length bodies such as NHS England and NHS Improvement. This documentation is referenced in the paper received by Board 26/11/19 (Item 3.2).

## **7. A Just Culture**

In 2018, NHSI published information for Trusts to help NHS managers ensure staff members involved in a patient safety incident are treated fairly. The principles of a just culture supports a culture of openness to maximise opportunities to learn from mistakes. The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.

NHS Trusts are now being encouraged to support staff to be open about mistakes to allow valuable lessons to be learnt so the same errors can be prevented from being repeated.

## **8. Methodology - our Journey so far**

The Director of People & Culture and the HR, Learning, Education & Development Team have commenced raising awareness of the actions required in improving our people practices with stakeholders across the Trust. However, a review of current practices and in accordance with the guidance will be required, with specific reference to the Disciplinary, Grievance, Managing Attendance and Bullying & Harassment at Work policies and supporting procedures.

This will include seeking legal advice as to the latest best practice, focus groups and engagement events with managers, staff side and staff, external benchmarking and review of NHS guidance from e.g. NHS Employers and NHSEI. Further engagement with staff who have been through investigations and formal disciplinary process and those managers supporting the process as case managers and investigating officer will need to take place along with obtaining feedback from key stakeholders who have been involved as hearing or appeal chairs.

In addition, a review of our education for leaders and those who are involved in investigations, hearings or appeals is underway, with our legal advisors Weightmans supporting the team in developing an education programme for 2020. It is proposed as part of this education programme that a training and awareness session is provided to the Board of Directors on the process of chairing an Appeal Hearing and the implications for the Board on this guidance in Quarter 4 2020 by Weightmans.

Other recent guidance in relation to the development of a compassionate leadership culture and a Just and Learning Culture will also need to be considered. It is proposed that an education session on these subjects is provided to the Board of Directors in 2020, with a date to be confirmed.

## **9. Delivery Plan**

An initial delivery plan (Appendix B) has been developed to provide assurance that recommendations as detailed in this paper will be implemented. This delivery plan will support assurance to the Board that it has sufficient information for the consideration and assessment of the “health” of organisational culture, including aspects relating to the management of workplace issues. The monitoring of this action plan will be undertaken by the People Committee, with a standing item being included at each meeting.

## **10. Recommendations**

The Board of Directors is asked to note the contents of this paper and the supporting action plan. It is recommended that the People Committee monitors the implementation of the action plan and reports deliverables to the Board of Directors on a bi-monthly basis with bi-annual more detailed update provided to the Board, as part of the Board assurance process.

## Appendix B – Delivery Plan November 2019

<p style="text-align: center;"><b>Learning Lessons to Improve People Practices</b></p> <p style="text-align: center;"><b>Action Plan 2019/20</b></p>					
Objectives to meet recommendations		Status	Expected Completion Date	Action/Comments	HR Lead
1	Update Board Assurance Framework (BAF) Indicator 4 Best NHS Employer to incorporate revised rating assessment as a consequence of the actions required		08/11/19	<ul style="list-style-type: none"> <li>• BAF Updated by Director of People &amp; Culture.</li> <li>• Assessment due for approval at Board of Directors 26/11/19.</li> </ul>	Director of People & Culture
2	Establish Stakeholder Group to feedback into People Delivery Group on a monthly basis		31/12/19	<ul style="list-style-type: none"> <li>• Revised People Governance arrangements in place from December 2019.</li> <li>• Agenda items at People based meetings November 2019 onwards.</li> <li>• Request for stakeholders to be undertaken during November &amp; December 2019.</li> </ul>	Director of People & Culture
3	As part of the external review of HR, Learning, Education & Development services, assessment against the Improving People Practices guidance will be undertaken		31/01/20	<ul style="list-style-type: none"> <li>• Findings to be included within external assessment and final report.</li> </ul>	External Reviewer
4	Review disciplinary, grievance, bullying and harassment at work and managing attendance policies (as well as other relevant policies) against the principles of fairness for all, compassion and a just culture		31/03/20	<ul style="list-style-type: none"> <li>• Focus groups with staff side colleagues, staff and other stakeholders</li> <li>• External benchmarking with other Trusts policies</li> <li>• Alignment to latest best practice/national guidance</li> <li>• Seek legal advice to ensure processes and procedures are in line with e.g. ACAS, the GMC principles of a good investigation and NMC best practice (when published)</li> </ul>	OD Practitioner / Head of HR / Head of Learning, Education & Development / HR Business Partner Team

## Learning Lessons to Improve People Practices

### Action Plan 2019/20

Objectives to meet recommendations		Status	Expected Completion Date	Action/Comments	HR Lead
5	Review education provided to those supporting formal process e.g. investigations/case management, panel members supporting staff to ensure people are fully trained and competent to carry out their role. This should include awareness of best practice and principles of natural justice and an appreciation of race and cultural considerations.		31/01/20	<ul style="list-style-type: none"> <li>Investigation training undertaken 29/10/19. Further sessions may be required.</li> <li>Conduct a training analysis of current skills of managers/clinicians supporting formal processes aligned to the NHS Leadership Academy "Developing compassionate leaders and the conditions for inclusive, future focused leadership," (when published)</li> <li>Core People Management Training in development</li> <li>Identify gaps in capability</li> <li>Develop business case for the commissioning of any additional training required</li> <li>Agree the roll out of a training programme over an agreed period of time</li> </ul>	OD Practitioner / Head of HR / Head of Learning, Education & Development, EDI Lead  Head of HR/Responsible Officer  Legal Advisers / Director of People & Culture
6	Engage with staff side colleagues, staff, managers and clinicians involved in formal processes for lessons learnt to inform how the Trust might improve its people practices in the future		29/02/19	<ul style="list-style-type: none"> <li>Consider Staff and line management survey / engagement process of closed cases in the last 12 months</li> <li>One to one meetings where staff would like to share anonymised feedback about the process (not the specifics of their case)</li> <li>Implement changes to policies and procedures based on feedback and lessons learnt</li> <li>Establish on-going process to ensure continued sharing &amp; learning of feedback to ensure desired cultural changes are realised</li> </ul>	EDI Lead, Director of People & Culture, Head of HR, Head of Education, Learning & Development, OD Practitioner, Clinical & Operational Stakeholder group
7	Develop awareness of Just Culture to wider staff groups		31/03/20	<ul style="list-style-type: none"> <li>Engagement sessions with various staff group including BAME groups, as part of raising concerns/ Freedom to Speak Up</li> <li>Consider the inclusion of Just Culture in incident Investigation - Root Cause Analysis Training and Human Factors Training delivered by patient Safety Team</li> </ul>	OD Practitioner  Clinical & Operational Stakeholder group



## Learning Lessons to Improve People Practices

### Action Plan 2019/20

Objectives to meet recommendations		Status	Expected Completion Date	Action/Comments	HR Lead
8	Reporting of formal cases and timeline to Trust Board. Reports to include data on the number and adherence to procedures, justification for any suspensions/ exclusions, decision making relating to outcomes, impact on patient care and employees and lessons learnt		31/01/20	<ul style="list-style-type: none"> <li>Review the content of the current People Indicators report to open Board and Suspensions/Exclusion and formal case timeline</li> <li>Review and revise current reports provided to stakeholders to include any additional data required to meet national recommendations</li> </ul>	Director of People & Culture
9	Executive oversight of cases to ensure fairness, consistency and appropriateness of sanctions and that a formal procedure is a proportionate and justifiable response		31/01/20	<ul style="list-style-type: none"> <li>Establish Scrutiny panel to review Employee Relations cases with terms of reference to be developed.</li> <li>Undertake regular case management review at Employee Relations Scrutiny Panel</li> <li>Monitoring of cases to ensure a fair experience for all to comply with e.g. the WRES</li> <li>Acknowledgement of any conflicts of interest where alternative resources may be required to ensure independence and objectivity</li> <li>Sourcing of independent external advice and expertise where required</li> </ul>	Director of People & Culture / Responsible Officer/Director of Nursing & Quality/ Medical Director/ Head of HR
10	New case triage process to ensure there is sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action		31/01/20	<ul style="list-style-type: none"> <li>Take legal advice to inform any amendments to policies and procedures</li> <li>Establish a new case triage process before action is taken to invoke formal processes /investigations</li> <li>Formalise an up to 72 hour pause on potential suspensions to ensure most appropriate action is taken</li> </ul>	Head of HR/EDI Lead / Director of People & Culture / Stakeholder Group
11	Consider the application of "Just Culture" principles which recognise that it's not always appropriate to invoke formal management action in response to a concern or incident including the application of a rigorous decision-making methodology		29/02/20	<ul style="list-style-type: none"> <li>Consider the changes required to local governance arrangements for the implementation of any changes to the current decision making processes against the guidance in the NHSI Just Culture Guide</li> <li>Review of process to ensure a fair experience for all and consistency across staff groups</li> </ul>	Medical Director/Director of Nursing/Director of People & Culture
12	Ensure that decisions relating to the implementation of suspensions/ exclusions are a measure of last resort, that is time bound, and only applied where there is full justification for doing so and subject to appropriate level of oversight and sanction		31/01/20	<ul style="list-style-type: none"> <li>Review process and decision tree for suspensions/exclusions including the process for out of office hours to ensure it meets guidance for improving people practices</li> <li>Communicate with and train people on the Trusts process</li> </ul>	Director of People & Culture /Responsible Officer/ Director of Nursing & Quality / Head of HR

## Learning Lessons to Improve People Practices

### Action Plan 2019/20

Objectives to meet recommendations		Status	Expected Completion Date	Action/Comments	HR Lead
13	Monitoring of the health and well-being of staff undergoing formal process to ensure appropriate immediate and on-going direct support		31/01/20	<ul style="list-style-type: none"> <li>Monitoring of Management and Staff referrals</li> <li>Signposting to Occupational Health and Employee Assistance Support</li> <li>Review of support offer</li> <li>Assess resilience support to staff under-going process /peers potentially affected in line with guidance</li> </ul>	Health & Wellbeing leads & Steering Group  Head of HR  OD Practitioner
14	Review of communication (e.g. standard letters) to ensure a duty of care and the dignity of individuals is respected at all times		31/03/20	<ul style="list-style-type: none"> <li>Data collection of standard letters, emails and templates used by the HR Department and line managers</li> <li>Ensure correspondence with staff has a compassionate tone and meetings equality and inclusion best practice</li> </ul>	Head of HR Health & Wellbeing Lead/Equality, Diversity & Inclusion Lead / Stakeholder group
15	Review resources allocated to cases to ensure processes are conducted fairly and efficiently		31/01/20	<ul style="list-style-type: none"> <li>Carry out an analysis of the average time/resources taken to manage a case, (exclude those on hold due to Police enquiries if applicable)</li> <li>Identify cases where insufficient resources have been allocated to ensure a case is concluded in a timely manner</li> <li>Identify the impact on HR capacity and capability to implement the recommendations to improve people practices</li> <li>Escalate where additional/alternative</li> <li>Undertake a review of current cases to determine if any cases could be managed differently in line with new guidance. Escalate to ER Scrutiny panel where needed.</li> </ul>	Director of People & Culture / Head of HR / Business Partner team
16	Review resources to support the delivery of the action plan		30/11/19	<ul style="list-style-type: none"> <li>Additional resource requirement identified to support actions and oversight.</li> <li>Identification of resource underway.</li> </ul>	Director of People & Culture
17	Board assurance and oversight to be provided in relation to local investigations and disciplinary procedures		31/01/20	<ul style="list-style-type: none"> <li>Non-Executive Director Chair of People Committee to be briefed on a quarterly basis with updates on case tracker, themes, timeline and outcomes.</li> </ul>	Director of People & Culture / Head of HR

## Learning Lessons to Improve People Practices

### Action Plan 2019/20

Objectives to meet recommendations		Status	Expected Completion Date	Action/Comments	HR Lead
18	Where a person who is subject to an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as "never event" which is subject to an immediate independent investigation commissioned and received by the Board of Directors		31/12/19	<ul style="list-style-type: none"> <li>Establish a notification process to ensure timely investigation</li> <li>Non-Executive Director appointed to oversee the independent investigation</li> </ul>	Director of People & Culture/Medical Director /Director of Nursing & Quality