

“FREEDOM TO SPEAK UP”

AN INDEPENDENT REVIEW INTO CREATING AN OPEN & HONEST REPORTING CULTURE IN THE NHS

STATEMENT OF ROLES AND RESPONSIBILITIES

1. INTRODUCTION

- 1.1. “Freedom to Speak Up” (“the Review”) is an independent review into creating an open and honest reporting culture in the National Health Service. The Review, which was commissioned by the Department of Health (DH), will look at what further action is necessary to protect those individual NHS workers who speak out (commonly referred to as whistleblowers). This Statement and its supporting document[s] have been drawn up by the Review in consultation with DH and agreed by both parties. The purpose of the Statement is to ensure that clear roles and responsibilities are in place in order to facilitate the smooth running of the Review.
- 1.2. A ‘Procedures Protocol’ has been produced by the Review. The Procedures Protocol details certain procedures and practices to be followed in the course of the Review’s work and report and are intended to reflect and complement the contents of this Statement.

2. ESTABLISHMENT AND TERMS OF REFERENCE

- 2.1. The Review was announced on 24 June 2014 by the Secretary of State for Health (“the Secretary of State”) as a non-statutory independent review.
- 2.2. The Terms of Reference are:

To provide independent advice and recommendations to the Secretary of State for Health on measures to ensure that NHS workers including those working within mental health services in England can make disclosures about any aspect of the quality of care, malpractice or wrongdoing at work; confident that they will be listened to and that appropriate action will be taken. In addition, they should know they will not suffer detriment as a result and that, if they are mistreated, there are appropriate remedies and those mistreating them will be held to account.

With a view to learning the lessons from historic cases, the Review will engage closely with individual NHS workers who say they have suffered detriment as a result of raising legitimate concerns, as well as with employers, trade unions, professional and system regulators and professional representative bodies.

The Review will consider, in the light of recent policy measures in response to the Public Inquiry into Mid Staffordshire NHS Foundation Trust, what further action is necessary to protect those individual NHS workers who speak out and in doing so make a significant contribution to the open culture that is needed to ensure safe care for patients. We want a culture where 'I need to report this' is foremost in the mind of an NHS worker with concerns and he or she does not hesitate to do so; and, where concerns are reported, they are appropriately acted upon.

As part of this work, the Review will:

- have regard to the role of the Public Interest Disclosure Act 1998 provisions (as amended by subsequent legislation);
- examine the interface between procedures for raising concerns and making disclosures in the public interest;
- consider the merits and practicalities of independent mechanisms to resolve in a fair manner disputes in the NHS in England involving those who have raised concerns; and
- consider policy options, so that where tribunals or courts find in favour of individual NHS workers who have raised concerns,

arrangements are in place to support them in returning to employment in the health system.

The Review will complete its work by the end of November 2014.

Guiding principles

- 2.3. The Review will listen with care and courtesy to those with experience of raising concerns within the NHS. It is in the public interest for the Review to be conducted at all times in a way that ensures:
- The independence of the Chair and his Review team in determining how to undertake the Review in fulfilment of its Terms of Reference;
 - The thorough consideration and analysis of all the material that the Chair determines to be relevant to his Terms of Reference in order to ensure that his Review is complete and effective;
 - That the Review is conducted as economically and expeditiously as possible in order to present its report to the Secretary of State by the end of November 2014;
 - The confidentiality and security of information which is provided to the Review in confidence is maintained as far as permitted by law.
- 2.4. The provisions in this document and its annexes shall be read in accordance with these principles.
- 2.5. In addition, as the sponsoring department, DH will do everything that is reasonable to support the Review financially, having due regard to the Review's agreed budget so as to enable it to fulfil its Terms of Reference in an efficient and expeditious manner and in order to ensure value for public money.

3. RESPONSIBILITIES AND ACCOUNTABILITY

Secretary of State

- 3.1. The Secretary of State is accountable to Parliament for the funding and overall support and assistance provided to the Review. He may designate another DH

Minister to assist him in the discharge of his duties. The Secretary of State's responsibilities include:

- The appointment of the Chair;
- Setting the Review's Terms of Reference;
- Providing staffing, finance and other resources to the Review;
- Reporting to Parliament on matters relating to the Review's investigation and report;
- Responding to requests to DH from the Review;
- Receipt of the Review's report and responding to the Review's findings, if required.

3.2. So far as permitted by law DH will provide to the Review all government papers requested of it which are relevant to the Terms of Reference and the Review will be free to interview key individuals in the civil service, NHS and any others who are willing to be interviewed.

Chair

3.3. The Chair of the Review is Sir Robert Francis QC, having been appointed by the Secretary of State to conduct the independent review on 24 June 2014.

3.4. The Chair's duties include:

- Conducting the Review in an independent and objective manner;
- Providing strategic leadership to the Review;
- Appointing such advisors or other individuals to the Review as he considers necessary to fulfil his Terms of Reference;
- Responsibility for the efficient use of Review resources;

- Ensuring high standards of probity and impartiality, including adhering to the Seven Principles of Public Life; and¹
- Assessing all the material obtained and presenting the Review's findings and recommendations to the Secretary of State in accordance with the Terms of Reference.

3.5. Subject to the principles set out at paragraphs 1 and 2 above, he is responsible and accountable for the proper management of public resources and expenditure on Review business. This accountability will ordinarily be through the Director to the Review to the Principal Accounting Officer of DH.

Principal Accounting Officer of DH

3.6. DH's Principal Accounting Officer is personally accountable to Parliament, and to the Department's ministers, for the stewardship of the Department's funds allocated to them, and the good management of the Department, and for ensuring that the Department meets its obligation to perform its functions within the financial limits set. In this context the Principal Accounting Officer is accountable to Parliament for spending by the Review.

3.7. In particular, acting within the authority of the Minister(s) to whom she is responsible, the Principal Accounting Officer will be assured that:

- The financial and other management controls applied by DH to the Review are appropriate and sufficient to safeguard public funds and for ensuring that the Reviews' compliance with those controls is effectively monitored; and
- The internal controls applied by the Review conform to the requirements of regularity, propriety and good financial management.

Director Generals (DGs) have responsibility delegated to them by the Principle Accounting Officer for the good management of a budget. They are responsible for ensuring an adequate structure is in place to discharge their finance responsibilities which must be exercised within the latest DH efficiency measures guidance and HMT delegations.

¹ The 7 Principles of Public Life, also known as the Nolan Principles, comprise the following: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty, and Leadership.

Sponsor Unit

3.8. The “Professional Standards Division” within DH is the Sponsor Unit (“the Unit”) for the Review. The Unit, in consultation with others as necessary, is the primary source of advice to the Secretary of State on the discharge of his responsibilities in respect of the Review, and the primary point of contact for the Review in dealing with DH on matters concerning funding, the management of public resources, administration issues and requests for information held by DH regarding whistleblowers and whistleblowing policy, procedures and practice. The Sponsor Unit shall advise the Secretary of State on:

- The agreed budget/forecast for the Review;
- Progress being made by the Review;
- Issues that the Review would like brought to the attention of the Secretary of State;
- Information to be provided by DH to the Review; and
- Arrangements for the publication of the Review’s report.

3.9. In support of the Principal Accounting Officer the Sponsor Unit will:

- Monitor the Review’s expenditure and keep abreast of its management plans on a continuing basis through meetings between the Head of the Sponsor Unit and the Review Director, as necessary;
- Address in a timely manner any significant issues/problems raised by the Review concerning its finances or other resources, and escalate as required with DH; and
- Inform the Review of relevant Government policy and procedures relating to governance processes and financial management in a timely manner; advise as appropriate on the interpretation of that policy; and issue specific guidance to the Review as necessary.

3.10. The Sponsor Unit will make itself available at the request and discretion of the Chair to discuss any issues which might arise.

Director to the Review

3.11. DH shall appoint a Director to the Review.

3.12. The Director to the Review will be appointed from the Civil Service and their name will be published on the Review's website.

3.13. The Director to the Review shall ensure that the Review's affairs are conducted with the due probity in line with the requirements of Government Accounting and any subsidiary rules and regulations governing expenditure in DH. Working to the direction of the Chair, the Director has a particular leadership responsibility for:

- Promoting and advising the Chair on the efficient and effective use of staff and other resources and ensuring budget allocations are not overspent..
- Supporting the staff on the Review's Secretariat and ensuring their independence for the purposes of their work on the Review.
- Ensuring that adequate internal management and financial controls are maintained by the Review, including effective measures against fraud and theft, and ensuring that any statutory or administrative requirements for the use of public funds are complied with. That all expenditure is legal and proper and in accordance with the Department's procurement policies and DH and HMT approvals.
- Ensuring that all public funds made available to the Review are used for the purpose intended by Parliament, and that such monies, together with the Review's assets, equipment and staff, are used economically, efficiently and effectively. That expenditure including commitment to spend, follows procedures as set out in the Standing Financial Instructions.
- Monitoring that the Review operates within the limits of its remit and any delegated authority agreed with the Sponsor Unit, and in accordance with any other conditions relating to the use of public funds, and taking corrective or appropriate action in response to likely overspends or adverse financial risks, as necessary. Planned and actual expenditure takes full account of the need to achieve value for money in terms of economy, efficiency and effectiveness.
- Keeping the Sponsor Unit informed of the Review's progress in fulfilling its Terms of Reference and how resources are being used to achieve this.
- Implementing risk management and other relevant financial or management guidance promulgated by the Treasury and/or the Cabinet Office. Systems are in place to enable the provision of financial and other

information – for example: Regular monitoring of Budget performance is carried out and updates provided. In addition, that auditable documentation is available to support in-year and year-end audit processes

- Ensuring that effective personnel management policies are maintained.
- Ensuring that personal data and information is handled in accordance with the Procedures Protocol and as required by law and Government Security Classification Policy.

3.14. The Director to the Review shall, for the purposes of processing personal data in the course of the Review's business, register the Review as a data controller with the Information Commissioner. The Director will be responsible for ensuring that the Review complies with the Data Protection Act 1998, including processing all personal data in accordance with data protection principles.

3.15. The Director to the Review shall consult the DH Sponsor Unit, other relevant divisions within the DH and other sources of financial, procurement or other expertise within Government in order to promote the efficient, effective and expeditious fulfilment of the Review's Terms of Reference.

Review staff

3.16. DH shall appoint staff to assist the Chair and the Director to the Review in the fulfilment of the Review's Terms of Reference.

3.17. The Review staff will be appointed from the Civil Service and their names will be published on the Review's website.

3.18. The Review staff and those engaged to support them shall act in accordance with their wider responsibility to:

- Comply at all times with the rules relating to the use of public funds and to conflicts of interest;
- Ensure that information gained in the course of their public service is not misused and is handled in accordance with any requirement of confidentiality and legal duties under statute and at common law; and
- Comply with Government guidance on the acceptance of gifts and hospitality and on business appointments and obligations under relevant law.

Additional appointees to the Review

- 3.19. The Chair may appoint such advisors or other individuals to the Review as he considers necessary to fulfil his Terms of Reference.
- 3.20. Any terms and conditions of additional appointees to the Review shall be agreed by the Director to the Review.
- 3.21. Additional appointees to the Review shall act under the direction of the Chair in accordance with any terms of appointment.

4. UNDERTAKINGS OF CONFIDENTIALITY

- 4.1. The Director to the Review, the Review staff and additional appointees to the Review shall act in good faith and in the best interests of the Review at all times. They shall observe the independent nature of the Review, and maintain the confidentiality of information they handle for the purposes of the Review, both during the Review period and after the Review's conclusion as if they were still members of an independent Review team. To this end they shall be required to sign undertakings of confidentiality to the Chair.

5. THE MAKING OF A DISCLOSURE TO THE REVIEW

- 5.1. The Review is not a person or body to which a 'protected disclosure' (as defined by section 43A of the Employment Rights Act 1996) may be made. Where a worker makes a disclosure to the Review, which the Chair considers would have the potential to be a 'protected disclosure' if the disclosure had been made to a person or body in accordance with sections 43C to 43H of that Act, the Review will liaise with the worker about where their disclosure should properly be directed.
- 5.2. The Review will only pass such disclosures to the Department of Health (through DH's Correspondence Unit), the relevant employer or an appropriate regulator, and

without the agreement of the worker, if the matter appears to the Chair to be of a serious and urgent nature.

- 5.3. Where a disclosure is passed to the Correspondence Unit, it will process the disclosure as if it had been made directly to it.

6. PLANNING, BUDGET AND AUDIT

- 6.1. The Review shall produce a project plan and indicative budget profile and forecast. The project plan shall include key targets and milestones for the running of the Review and shall be linked to budgeting information so that resources are allocated to achieve specific objectives.

- 6.2. The Review shall operate management information and accounting systems, including mechanisms for approving the commitment of resources (including HM Treasury, where applicable) which enable it to review in a timely and effective manner its performance against the budgets and targets set out in its plan and to report on a regular basis to DH

Funding for legal action

- 6.3. The Review may apply to DH for additional funding to enable it to take legal action should circumstances require this.

Departmental access to the Review

DH shall not have access to records which relate to the material being considered by the Review, nor the analysis or interpretation of that material, the decisions of the Chair, legal advice to the Review, or any other records without the permission of the Chair. However, DH may be given access to the Review's relevant management and personnel records to the extent required to assist the Director to the Review in providing the appropriate level of financial assurance to the DH, and in supporting the duty of care owed to the Review staff.

Register of Interests

- 6.4. The Review shall maintain a written register of interests and provide a copy, and any changes to it, to the Sponsor Unit, as and when required. The Chair, Review staff and others engaged on Review business (including contractors or consultants)

should declare any interest they have in respect of the nature of the Review. Similarly, records should be kept of any financial interest by review staff in any company/consultancy engaged by the Review. A record should also be kept if any Review staff knows any of the parties or any other individuals engaging with the Review in the course of enabling it to fulfil its Terms of Reference.

7. DOCUMENTS HELD BY THE REVIEW & RETENTION OF DOCUMENTS

- 7.1. By virtue of this Statement DH designates the Review as an independent data controller. The Review will register as a data controller with the Information Commissioner's Office.
- 7.2. The Procedures Protocol sets out how the Review intends to deal with documents held by it after the provision of its Report.
- 7.3. For those documents generated by the Review which it considers need to be archived DH will, at the Review's request, provide archival facilities.

Signed on behalf of the Department of Health.....

Dated.....

Signed on behalf of the Review.....

Dated.....