

PE1495/I

NHS Dumfries and Galloway Response to the public petition on 'gagging' clauses

Thank you for the opportunity to contribute to the parliamentary committee debate in respect of the public petition PE 1495 in relation to 'gagging' clauses in agreements with NHS Staff in Scotland as detailed below;

Calling on the Scottish Parliament to urge the Scottish Government to ban the use of confidentiality, or so called 'gagging', clauses in compromise agreements with NHS staff in Scotland, which may prevent staff speaking freely about matters that affect patient safety and quality of care, as well as employment issues such as workplace bullying.

We note that the Scottish Parliament's Public Petitions Committee considered the above new petition for the first time at its meeting on 26 November 2013. At that meeting, the Committee agreed to write to NHS boards to seek their views on the issues raised during the discussions. This letter is our response to that request, and in particular to the following questions asked;

- What are your views on what the petition seeks and the discussions that took place at the meeting on 26 November?
- What management training do you have in place to ensure that all staff are enabled and encouraged to raise matters that may affect patient safety and quality of care, as well as employment issues such as workplace bullying?

NHS Dumfries and Galloway views on the petition and discussions

NHS Dumfries and Galloway fully supports a culture that enables staff to raise matters that may affect patient safety and quality of care, as well as workplace issues such as workplace bullying, and does not seek to impede any current or past employee from raising such concerns through the use of 'gagging clauses'. We consider that our policy and practice in this area are appropriately informed and directed by existing national legislation, Scottish Government guidance, and the Staff Governance Standards, and we do not consider that further legislation in this area would be of benefit to either the organisation, or the individuals we employ who may wish to raise such concerns.

We note and welcome that the petitioner acknowledges that there are instances where it is entirely appropriate to reach a mutual agreement in respect of a 'confidentiality' clause being contained within a settlement agreement to protect the personal data and information of the individual as well as for the organisation. We would support that such agreements should not hinder the individual from making a protected disclosure, and we concur with the detailed guidance provided to the Minister in the SPICe briefing in this regard. In particular we always seek to ensure locally that staff understand the

need to take independent legal (or accredited TU) advice prior to signing any agreement, in order that they are fully aware of the implications of the agreement terms and their appropriateness to the issues pertaining to the individuals employment.

Training and other approaches to enable and encourage staff to raise issues

Management and leadership training is valuable in this area, but is not the sole way in which a culture of openness and candour is created, that encourages all staff to raise concerns they have, either about patient safety and care, or about their own treatment within the workplace.

Improvement work in this area is directed via both our Patient Safety and Patient Experience programmes, as well as through the Boards Staff Governance Action Plan. All three of these strategic programmes have Executive leadership and are accountable at Board level for the delivery of the planned outcomes within each programme.

We have undertaken a wide range of training and development initiatives in the past three years to enable and encourage staff to raise issues about either patient safety and care, or about their own treatment including;

- incorporation of key patient safety and care, messages into induction training management training in relevant policies (eg B&H policy, employee conduct policy),
- Conducting difficult Conversations
- mediation skills
- employee performance and appraisal skills
- Nurse management development programmes including the Excellence in Care programme
- a range of patient safety and experience training initiatives.

We have also provided targeted OD and improvement interventions to specific teams to support them with change and improvement within their areas, of which a key part is the facilitation of safe dialogue to identify shortfalls in patient and / or staff experience and support to change and improve at both team and individual level. Leadership walk rounds are also conducted weekly within the organisation as part of our patient safety programme. These walkrounds are an opportunity for leaders in the organisation to encourage staff to share patient safety and care concerns and to gain support for changes that they wish to make to improve the quality of care they provide.

In addition to training the Board supports the development of an open culture through communications, including extensive advertising of the whistleblowing helpline across the organisation since its introduction last year, and through partnership working with Trades Unions via the Boards Area Partnership Forum. In Autumn 2013 the Area Partnership Forum and Area Clinical Forum worked collaboratively to deliver a conference for managers, staff and staff side on the Francis report, with a focus on the cultural and behavioural

lessons for staff across the organisation. The Board of NHS Dumfries and Galloway has also undertaken workshop events to debate similar issues, provide assurances that patient safety and care is a key Board priority, and test the policies, systems and processes in place that enable the organisation to hear and learn from the experiences of patients, carers and staff .

The organisation explicitly promotes a 'zero tolerance' approach to bullying and harassment via its 'Respect' code of positive behaviour which is issued to all new staff, and which also highlights the importance of raising concerns in the interests of both patient and staff health and welfare.