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Dear Douglas

I am writing with some comments in connection with your project on the White Paper – protocols for investigations and referrals to regulatory bodies. Thank you for allowing me extra time to reply. I will not attempt to answer all of the questions, but just those where we feel we have particular concerns or experience/insight to offer from the patients'/public perspective.

We would very much welcome the adoption of common protocols for investigation of concerns about health professionals fitness to practise both locally and by employers and by the regulators themselves.

Regarding investigation by employers, the biggest weaknesses we perceive are:

- a) The conflict of interest which arises for employers. Employers are sometimes very defensive because of the implications for the reputation of the organisation, and sometimes out of loyalty to their employees (or local contractors such as GP's, Dentists etc.)
- b) There is a lack of independence in local investigations which adds to the difficulty in them being objective and reaching sound conclusions. We very much welcome existing guidance and the thrust of the current discussions in the Tackling Concerns Locally group which advocate an independent element in investigations.
- c) The emphasis of existing complaints procedures is explicitly on resolution of complaints and not on apportioning blame or about discipline. This results in a contradiction in terms when complainants who think their complaint warrants disciplinary action, or action on the professional's fitness to practise, but they are told they have to use the organisation's complaints procedure rather than have their concerns investigated by regulators themselves.

- d) There is often a lack of transparency when disciplinary investigations or a referral to a regulatory body are being conducted. The complainant is often not informed what is happening in this regard, if anything, and what the outcome is. The guidance to the NHS complaints procedure in Scotland is worth looking at because this is quite clear about keeping complainants informed as far as possible about these issues. We do not have enough evidence to comment as to whether this guidance is implemented in practice in Scotland.
- e) The above factors tend to result in a lack of public confidence in local procedures for dealing with more serious complaints, and a desire on the part of the complainant to have their concerns dealt with independently by a regulator. There is a growing tendency for regulators to refer concerns brought to them to employers for local investigation rather than investigating them themselves. We believe that if this is to be sustainable/credible, reform of the local complaints procedures is needed to explicitly provide for the investigation of complaints which may signify the need for disciplinary procedures and/or referral to regulators.

The above issues have significant implications for the questions you pose in 2(iii) and 2(iv). We believe that regulators should exercise extreme caution in deciding that concerns brought to them should be referred to an employer for investigation. Clearly, there will be circumstances where this is appropriate. For example, if the concerns do not relate to a potential fitness to practise issue. Also, it is only right and proper that a regulator, as part of its own screening or investigation, seeks further information from an employer. However, we believe that the criterion for a regulator conducting its own investigation into concerns rather than referring to an employer should be:

Would the allegation, if proven, represent a significant departure from the relevant professional code of practice which might result in a warning, undertakings, restriction of practice or removal from the register?

We believe that the same question could act as the criterion for employers (or PCT's etc) referring a professional to the appropriate regulator.

I hope this is helpful and look forward to the ongoing discussions.

Yours sincerely

Peter Walsh

Peter Walsh
Chief Executive