NHS Highland Healing Process

Independent Review Panel Report on Organisational Learning

Report 5: May 2022

1. Background

1.1 John Sturrock, QC, was commissioned in November 2018 by the then Cabinet Secretary for Health and Sport to undertake a fully independent review into the allegations of a bullying culture at NHS Highland (NHSH) following the revelations made by hospital consultants and GPs who released a statement to The Herald newspaper on 24 September that year.

1.2 The purpose of the Sturrock Review was to:

- Create a safe space for individual and / or collective concerns to be raised and discussed confidentially with an independent and impartial party.
- Understand what, if any, cultural issues have led to any bullying, or harassment, and a culture where such allegations apparently cannot be raised and responded to locally.
- Identify proposals and recommendations for ways forward which help to ensure the culture within NHSH in the future is open and transparent and perceived by all concerned in this way.

1.3 Sturrock interviewed 292 people of the original 340 who came forward to share their experiences and to offer views about how NHSH could be improved for the future. The review findings, published in April 2019, largely corroborated the

issues raised by the whistleblowers and had specific proposals for change in relation to leadership; support for individual employees at all levels of the organisation who experienced inappropriate behaviour and who have suffered distress, harm and other loss; training, management and human resources.

2. The Healing Process

2.1 The Healing Process was created as a response to the Sturrock Review. In a unique and novel approach, The Healing Process is based on a set of "Healing Principles" which were agreed in co-production between the executive team of NHSH and staff side representatives, involving Trade Union representatives and others, including the original whistleblowers group.

2.2 The Independent Review Panel, which is completely independent of NHSH, was the final stage of the Healing Process. A comprehensive guidance framework advised the IRP what to have regard to in all of its actions: to deal with each case with kindness, compassion, empathy, equity, fairness and accountability, taking into account the interests of the applicant, and all those who could be affected (but who the IRP may not hear from) including those who may be or be perceived to be witnesses, bystanders, other affected employees/ex-employees, victims, individuals accused of wrongdoing or other failures, the community as a whole and NHSH. The IRP was not a traditional tribunal. Our task was to listen to the individual's experiences as relayed to us by the individual and to try as best we could – within the Guidance Framework – to provide recommendations to help the individual and NHSH heal.

2.3 The IRP comprised five members, including those with significant senior NHS executive experience: a former Medical Director; two former Directors of Human Resources, one of these individuals having had lived experience of a bullying culture within the NHS in England; a former Trade Union leader and an experienced practising employment law solicitor. This brought a breadth of experience which was invaluable for the work of the IRP.

2.4 The remit of the IRP covered a period up to 31 December 2019. Inevitably the IRP was faced with narratives that went beyond that date and which, in many cases, were continuing. As a result, the IRP was obliged to discount consideration of those experiences in any recommendations but, nevertheless,

was provided with testimony that the change in culture since the publication of the Sturrock Review has not yet permeated all levels of the organisation.

2.5 The Healing Process was made available as an additional avenue separate from the traditional investigative or adversarial processes, which are normally available to support individuals who raise issues in relation to their NHS employment. This had many benefits, including ease of access for individuals, an open and helpful forum, and an aim of healing the individual affected rather than apportioning blame.

2.6 The IRP had the power to make a recommendation for one or more of the following in each case:

i) an apology;
ii) organisational learning;
iii) assessment for provision of psychological therapies;
iv) consideration for: Re-engagement or Re-employment or Re-deployment;
v) financial payment;
vi) referral to an internal process; or
vii) no further action by NHSH.

2.7 The IRP focused on listening and understanding the experience and circumstances from the participant's perspective and was tasked with finding the resolution that was most likely to aid healing for the individual and the organisation. All recommendations were made in accordance with The Healing Process Guidance Framework.

3. The IRP Process

3.1 The IRP sat from August 2020 until March 2022 and heard 276 participants in total. The key themes and issues learned from these hearings were captured in four organisational learning reports submitted to NHSH Board. These reports were considered at open meetings of the NHSH Board and influenced the action plan which had been developed following the publication of the Sturrock Review.

3.2 This report provides an overview of that learning and focuses on the observations from the IRP of what will be most beneficial for NHSH to continue to work on to improve the organisational culture.

3.3 The report may also provide lessons for other organisations interested in improving their culture and for the Scottish Government given their role in managing the NHS in Scotland. While not the sole reason for the bullying and harassment experienced by participants, the IRP did hear testimony that senior executives in NHSH were put under significant pressure by Scottish Government to ensure they were reporting positive results and the achievement of targets irrespective of the reality on the ground. This added significant pressure on these individuals and contributed to the general culture of pressure, which in many cases led to bullying.

4.0 Key Themes and Recommendations for Action

4.1 **Governance:** The IRP heard from participants that many managers still do not appear to understand their governance responsibilities and accountability to the executive team and ultimately the Board of NHSH for what they do. This is a key issue which should be addressed urgently in the Cultural Improvement Programme. Knowledge and understanding of the pillars of governance – finance, clinical and staff – should be set out clearly in managers' job descriptions and form an element of review at annual appraisal.

4.2 **Whistleblowing:** During the course of the hearings, the IRP was often told about the challenges staff encountered when trying to raise either patient safety issues or more general staff concerns with their manager.

- Staff felt they became "the problem" rather than them highlighting an issue or problem. They were often subjected to counter complaints from the manager they raised their concern to and what felt like vindictive investigations themselves as a counterattack from management. Consequently, many staff stopped raising safety and other concerns by keeping their heads down to protect themselves. We know from many NHS inquiries that this is an unhelpful short-term approach and often leads to escalating safety and staffing issues. This still appears to be an issue for some services in NHSH and requires urgent attention.
- The system of confidential contacts should be neutral and objective in listening to staff concerns and signposting to the most appropriate manager(s) who can deal with the issue with support from HR staff where necessary if staff do not feel that they can raise such concerns with their immediate line manager.
- The role of the Whistleblowing Champion was commented on by participants. The IRP was made aware that the NHSH Whistleblowing Champion is currently an appointment shared with NHS Grampian. Under current guidance from the Scottish Government, these Champions are not

permitted to meet directly with the staff who are raising concerns with them confidentially or to investigate what they are told. This leaves many staff feeling they are still not being listened to and places organisations at risk if there is still a fear of speaking up. Sir Robert Francis, QC, covered this well in his report of February 2015. Whist it was written specifically for the NHS in England the recommendations are equally applicable here in Scotland and NHS Scotland Boards have appointed Freedom to Speak Up Guardians. What is not clear is how these roles interact and how they report through the Staff Governance committees on what they are told. The IRP heard from participants about concerns not being listened to often going beyond the end of December 2019.

- The IRP considered that it would be a useful exercise to triangulate across the issues raised with Whistleblowing Champions, the Freedom to Speak up Guardians and Employee Directors, together with concerns raised with the Independent National Whistleblowing Officer, a role which sits with the Scottish Public Services Ombudsman, to see what common themes have emerged and importantly how concerns were dealt with and resolved to the satisfaction of the staff who did take steps to speak up about concerns. This could be carried out by Scottish Government or one of the national bodies external to health boards.

4.3 **Mitigating the bullying culture:** The IRP recommends that in continuing the Cultural Improvement Programme, the Board focuses on consistent application of the values and behaviours, which promote positive relationships across the organisation. This should be accompanied by management training to encourage early intervention and informal resolution of issues when poor behaviour is identified or flagged up by staff to enable resolution of issues before formal policies or procedures are set in motion. The IRP has noticed that the Cultural Improvement Programme is not immediately visible on the external NHSH website. This may be readily available on the NHSH intranet. If not, there would be value in developing a specific area on the website to increase this visibility.

4.4 **Recruitment, training and development:** The difficulties of attracting suitably qualified and experienced staff are national but these are exacerbated by the geographical location of, particularly, the remote areas of the Board. This would suggest that reinstatement of an incentive scheme should be explored with Scottish Government.

- Candidates who fail to meet the predetermined level of competence must never be appointed no matter how desperate the need. If there is an urgent need to cover a post and there are no candidates who meet all the essential criteria but there is a candidate very close to the line, then a period of 6 months could be allowed for that individual to undergo further training to enable them to meet the levels of competence required. This should then be verified objectively before offering the individual the permanent post.
- There should be continuing training and development of managers across the organisation with a particular emphasis on enabling them to deal with issues quickly by utilising informal processes wherever possible to prevent them escalating unnecessarily into formal processes.

4.5 **On-boarding:** Whilst NHSH will have an induction process in place, checking how new employees are settling in is an important aspect of on-boarding. It can establish if any further training or coaching is needed, and if the employee has any concerns. Allocating a 'buddy' or mentor for a period of time is also useful as they can provide a friendly face new employees can talk with about working in the organisation.

4.6 **Improving organisational processes and procedures:** The IRP heard that improvements have been made to organisational processes and procedures, particularly the issue of suspension of staff. However, we also heard that other processes and procedures are still taking considerable time and there does not yet appear to be an automatic approach to ensure there is early intervention to deal with issues promptly and informally. We urge that training to enable this approach is developed at all levels of management and can recommend tools which would assist with this, e.g. the TRIM and STRAW approaches referenced in

our fourth Report would be ideal to support this and in addition have the knock-on benefit of managers having the tools to support employees appropriately throughout the process. Time and time again the IRP heard of the damage done to individuals when processes were drawn out. The Trade Unions also have an important role in making NHSH process work efficiently and effectively, which is explored further in Section 5.

4.7 **Developing clear metrics for assessing and reporting on progress in addressing the issues that the whistleblowers raised:** The IRP is aware of the work the senior team is undertaking in the Cultural Improvement Programme. The IRP heard from participants that many meetings are held, action plans are developed, and issues then reported as having been satisfactorily addressed, i.e., that are marked green on reports. We also heard that this reported success may not yet be felt on the ground. Participants commented that this feels like a tick box exercise rather than being a real listening opportunity for the Executive Team, particularly as there are senior managers still in post from the previous regime, which led to the Sturrock Inquiry. The IRP understands that what we heard has also been borne out by the results of the second Cultural Survey, which has been recently completed. Value would be gained in further developing staff and management resilience. This should recognise the inevitable pressures in the system which have been exacerbated by the coronavirus pandemic.

4.8 **Work to address the small communities issues:** Continuing improvement work should take into account the challenges of geography and remoteness highlighted by participants. Our organisational learning reports highlighted issues of nepotism; managers appointing staff without due HR process or favouring friends and relations over the best candidate for posts; and an inability to deal with issues in an objective and informal way. We also heard testimony of unwelcoming behaviour of the local population to people coming from outside the area to live and work in rural communities; and the difficulty of separating work from an employee's personal life in these small communities where work

issues seem to become everyone's business. These issues have resulted in the loss of many trained staff from an area where recruitment and retention of staff is always challenging. Staff should be given support to help prepare for new team members joining their team from outside the health board area and have someone to turn to for further support if issues arise.

4.9 **Resolving the outstanding issues in Argyll and Bute:** There are some very specific issues which have still to be addressed in the full integration of Argyll and Bute into the NHSH Board systems and processes. These include the governance and oversight which the NHSH Board has for the work of the Integration Joint Board for Argyll and Bute; and the small communities issues addressed above. More recently the IRP has been made aware of clinical safety issues which have been raised with local managers, but which appear then to have led to targeting and scapegoating of the individuals raising these concerns. This requires urgent senior management attention, particularly by the Medical and Nurse Directors, as this behaviour places the organisation at risk of clinical incidents.

4.10 **A lack of conviction on the part of participants that there is a wholehearted commitment to a change in culture throughout the organisation:** There is a need for regular checking in and genuine listening to staff to sense check the feelings on the ground and how staff view progress in tackling the issues corroborated in the Sturrock Review. There are a range of tools available to organisations to measure success.

- While there are performance assessment processes in place for executive directors, both clinicians and managers, which incorporate recognition of the values and behaviours promoted by NHS Scotland, to be effective there should be robust 360-degree assessment as part of every senior manager's performance assessment at the intervals recommended nationally. If poor behaviour is called out in any element of their work then this requires to be addressed.

- On a wider organisational scale an in-depth comprehensive analysis report on the current organisational culture would give the Board some informed intelligence to target employee development for divisions, departments and teams. Metrics could be used if this is repeated annually to track progress and manage risks as they arise.
- On a smaller team and individual scale (especially in the divisional areas that are coming out as having more challenges) an in-depth assessment around behaviours would be helpful. This assessment would then be used to enable targeted training that is needed so teams have a full understanding of their dynamics, strengths, potential conflicts and development needs. This enables the team and individuals to understand the impact of how their own behavioural traits impact and as a result how they can better interact with the overall team.
- The IRP is aware of a significant body of research work, some highlighted in the Sturrock Report, and some published more recently, which could inform the Cultural Improvement Programme or spur specific activities to build organisational and personal resilience. The IRP has highlighted some specific examples in the Appendix to this Report, which will add to those referenced by Sturrock.

4.11 **Recognition of the impact of mental health conditions on employees and their ability to deal with difficult work situations:** NHS employers have a duty of care under the Staff Governance standards to protect the mental health and wellbeing of staff whilst they are at work. Many boards have developed staff mental health and wellbeing policies to ensure staff have a range of options and know who to turn to for support with mental health issues. The IRP recommends that NHSH reviews its existing policy to ensure it is in line with best practice.

4.12 **Recognition of the issues experienced by employees going through the menopause:** For employers, the menopause is a health and wellbeing concern for staff and needs to be handled sensitively. The IRP heard from many

individuals that there was no recognition of the impact of the menopause on their ability to function effectively at work. Individuals experienced a range of physical and mental health symptoms around the time of the menopause, which are well documented in research literature. Whilst the menopause is not a specific protected characteristic under the Equality Act 2010, if an employee or worker is put at a disadvantage and treated less favourably because of their menopause symptoms, this could be discrimination if related to a protected characteristic, for example: age and/or sex. There are several ways in which staff can be supported to deal with these issues at work. ACAS and other organisations have resources which could be used to develop an appropriate policy to support staff with these issues.

5. The role and expectations of trades unions and professional organisation representatives

5.1 Devolution of the NHS to the Scottish Government in 1999 was accompanied by the establishment of partnership working across NHS Scotland between representatives of the Government, NHS Management and the NHS Trade Unions and Professional Organisations. Each NHS Board was required to set up a Staff Governance Committee, with representatives from local management and staff sides, and the Chairperson of the Staff Side was appointed as a Non-Executive Director (Employee Director) of the Board.

5.2. A wide range of supporting policies and procedures were subsequently put into place, on a partnership basis, to ensure that the interests of NHS staff were taken into account when consideration was given to maintaining and raising the standards and quality of patient care in Scotland. The development of Partnership Information (PIN) Policies was the vehicle for providing consistency of treatment of staff across NHS Scotland, while allowing scope for local variations to be agreed by management and staff.

5. 3. The obligation on management was to inform their decisions with the views of staff who were crucial to providing quality health services. The obligation on trade unions and professional organisations was to communicate with staff and to feedback management's response. Both sides should be committed to the avoidance of adversarial behaviours and precipitate, or retaliatory, action as well as to exchanging views and reaching decisions in an open and transparent manner.

5.4 The IRP heard from many participants that partnership in NHS Highland was either not working or not effective, that there was a lack of leadership across the Staff Side and a failure to pick up what was going wrong on the ground. The Panel is therefore recommending that both staff and management should seek to improve the current system by ensuring the following improvements:

- That the Employee Director has sufficient time and resources and support to represent all staff employed by NHS Highland;

- That the Employee Director focuses on providing leadership to the whole of the Staff Side by relinquishing responsibility to represent their own Trade Union or Professional Organisation members;
- That there is a process of continuing and adequate feedback between management and staff representatives on the benefits and risks of all NHS Board and Committee decisions;
- That the Board provide joint training to staff and management representatives on the behaviours, expectations and commitments of partnership working;
- That the Staff Side carry out an audit of all Trade Union and Professional Organisation representatives as the first stage of ensuring that there are sufficient local representatives in all areas of the Health Board to provide advice, assistance and representation;
- That management and Staff Side immediately review ways of substantially reducing the amount of time spent on grievances, complaints and disciplinary matters;
- That management and Staff Side develop a system of 360-degree accountability with a view to exploring ways of improving both the availability and quality of services to patients; and
- That Trade Union and Professional Organisation representatives are allowed free access to counselling and support services so that they can cope with the pressures of handling individual and collective issues.

6. Conclusion

6.1 Whilst all members of the IRP wish the harmful circumstances leading to the Sturrock Review had not occurred, it has been our privilege to meet all of the participants who requested a meeting with the IRP.

6.2 The IRP's Healing Process journey is now concluded. For many of those we met it is not so easy to find closure. Whilst recognising the IRP may not have been able to meet everyone's expectations, we hope the recommendations we made for participants have been beneficial.

6.3 We also hope that the recommendations made in this and our preceding four organisational learning reports are helpful to NHSH and those who work for it. The IRP hope there is never again the need for a Sturrock Review and that The Healing Process will always be unique.

6.4 The baton the IRP has held for the last 18 months or so is now firmly back in the hands of NHSH. Much work has already been done to improve the culture within NHSH but more is required.

6.5 For the sake of everyone who works in NHSH and those who rely on its healthcare, please learn the lessons from the past and work every day to create a positive and welcoming culture within NHSH. That would be the most appropriate response for the whistleblowers and others who endured so much to bring us to this point.

May 2022

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