

PE1495/P



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Mr Andrew Howlett
Assistant Clerk
Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

17 January 2014

Dear Andrew

Petition PE1495 on gagging clauses

The Royal College of Nursing (RCN) is the UK's largest professional association and union for nurses with around 400,000 members, of which around 39,000 are in Scotland. Nurses and health care support workers make up the majority of those working in health services and their contribution is vital to delivery of the Scottish Government's health policy objectives.

RCN Scotland recognises some of the wider issues alluded to by the petitioner regarding the ability of NHS staff to speak out when they have concerns, but is not concerned about settlement agreements and use of confidentiality clauses. We are content with the use of such agreements for the following reasons:

- As the Cabinet Secretary for Health and Wellbeing stated when referring to settlement agreements on 27 February 2013: "Any clause which sought to prevent an individual from raising a protected whistleblowing disclosure would be illegal under the Employment Rights Act and would therefore be unenforceable.";
- The Central Legal Office for NHS Scotland recently reviewed confidentiality clauses and provided updated wording which makes clear the right of employees to make protected disclosures, i.e., whistleblow;
- Settlement agreements protect the interests of employees as well as employers, particularly when no liability has been accepted by either side. Confidentiality clauses are a legitimate way to ensure that both

the individual and the organisation are protected from unwarranted criticism.

However, some of the wider concerns that the petitioner referred to when giving evidence to the Public Petitions Committee resonate with the RCN. These concern culture and whether NHS staff – at all levels and working in all areas – feel able to raise concerns about patient care.

That is why we recently asked the Scottish Government to take on board the views of our members (see attached document outlining key figures from the 2013 RCN Scotland employment survey and the 2013 NHS Scotland staff survey) and take action to change culture and ensure concerns about patient care are more readily raised and addressed.

In particular, we have urged the Scottish Government to ask each of Scotland's health boards to appoint a director as a champion for cultural change to lead work in this area. Each health board should also publicly report bullying and harassment stats (which are now collected under the new staff governance monitoring framework), together with concerns about care that have been raised, regularly. These updates should include actions being taken to address any issues.

Finally we have asked the Scottish Government to investigate ways of collecting real time data on staffing, demand and pressures that can be broken down by ward/community team. This can then be used to identify hotspots that need action to be taken to improve patient care, and would validate nurses' concerns and enable them to feel more confident in the process of raising concerns.

Our requests have been met positively by the Government and we look forward to hearing how they are planning to take these areas of work forward.

I hope you find our response to the petition useful and for further information or to discuss any of the points raised please contact Elinor Jayne on elinor.jayne@rcn.org.uk or 0131 662 6172.

Yours sincerely,

Norman Provan
Associate Director Employment Relations

RCN Employment survey for 2013 for Scotland

Bullying and harassment

- **31% reported having personally experienced bullying or harassment from a team member or manager in the previous 12 months (32% in 2011).**
- 41% reported having personally experienced harassment or violence from a patient/client or their family (38% in 2011).
- The proportion of respondents in NHS hospitals reporting harassment or violence from a patient/client or their family was particularly high (50%).
- **41% of all respondents stated that bullying and harassment is not a problem in their workplace, falling from 55% in 2009 and 43% in 2011.**
- **There has also been a drop in the proportion stating they would feel confident that they would be treated fairly if they reported being bullied or harassed by a colleague (from 50% in 2009 to 44% in 2013).**
- 43% reported they would feel confident that colleagues would be treated fairly if they reported being harassed at work by another member of staff.
- Respondents working for NHS hospitals are the least likely to state they felt confident that they or their colleagues would be treated fairly if they reported being harassed at work by another member of staff.

Employer support in the workplace

- **52% agreed that their manager provided support when needed, (a decrease since 2009: 59%)**
- 50% of respondents in NHS hospitals and 55% of respondents in NHS community settings agreed that their manager provided support when needed - presenting a pessimistic picture of organisational culture in health care.

NHS Scotland Staff Survey 2013

Bullying and harassment

- **13% of registered nurses/midwives reported they had experienced bullying/harassment in the past 12 months from their manager (compared with 11% of all NHS Scotland respondents).**
- Maintenance/Estates staff and Ambulance Vehicle Crew were the most likely to say that they had experienced bullying/harassment from their manager (18%). Doctors in training were the least likely to do so (4%).
- **18% of registered nurses/midwives reported that they had experienced bullying/harassment from other colleagues in the past year (all NHS Scotland: 15%).**
- Ambulance Vehicle Crew were the most likely to say that they had experienced this from other colleagues (23%), whilst the least likely to do so (9%) were from the Other Personal & Social Care staff group.
- 34% of registered nurses/midwives who had experienced bullying/harassment had reported this (all NHS Scotland: 36%).
- Of those who did report it, 37% of registered nurses/midwives were satisfied with the response they received (all NHS Scotland: 37%).
- **The most commonly identified reasons for not reporting the bullying/harassment were because respondents felt that nothing would happen, they feared what would happen if they did report it and/or they had concerns about confidentiality.**

Raising concerns

- **Less than half (48%) of registered nurses/midwives agreed that they felt it was safe to speak up and challenge the way things were done if they had concerns about quality, negligence or wrongdoing by staff (all NHS Scotland: 52%).**
- *'I believe it is safe to speak up and challenge the way things are done if I have concerns about quality, negligence or wrongdoing by staff'* was one of only two statements that showed an improvement in percentage positive response in 2013 for all NHS Scotland staff (from 50% in 2010 to 52% in 2013). However for registered nurses/midwives this decreased from 49% in 2010 to 48% in 2013.

Care of patients/service users as Board's top priority

- 45% of registered nurses/midwives agreed that 'Care of patients / service users is my Board's top priority' a decrease from 54% in 2010 (all NHS Scotland 2010: 63%, 2013: 55%).