



Department
of Health

From the Rt Hon Jeremy Hunt MP
Secretary of State for Health

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TO:

All Chairs in NHS Trusts in England
All Chairs in NHS Foundation Trusts in England
All Chairs of Clinical Commissioning Groups in England

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CC:

Monitor
NHS Trust Development Authority
NHS England
Care Quality Commission

- 8 AUG 2014

Dear Colleague,

You may recall that I wrote to NHS Trusts and NHS Foundation Trusts in March this year to reiterate the vital importance of fostering a culture of openness and transparency in the NHS in which concerns about care can be raised, investigated and acted upon.

I am very grateful for the work that you and all NHS staff have carried out in order to embed an open culture across every single part of the NHS. However, I am also aware that there continues to be real concern amongst staff and members of the public about whether there is more that we can do to strive for the culture of openness and transparency that is so essential for safe care.

As you know, I feel strongly that staff – present and former – should be able to come forward with any concerns that they have regarding patient safety and that is why I have asked Sir Robert Francis QC to undertake an independent review - 'Freedom to Speak Up' – which will provide advice and recommendations to ensure that:

- NHS workers can raise concerns in the public interest with confidence that they will not suffer detriment as a result;
- Appropriate action is taken when concerns are raised by NHS workers; and

- Where NHS whistleblowers are mistreated, those mistreating them will be held to account.

The review will consider independent mediation and appeal mechanisms to resolve disputes on whistleblowing fairly. It will also 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 terms of reference of the review are attached in the Annex to this letter.

I would like to take this opportunity to encourage you to fully support the review by providing evidence and by encouraging your NHS staff to do the same, should they wish to. Next week, you will receive details of a confidential survey which is being conducted on behalf of the Review by researchers at Middlesex University. The survey is for all NHS workers and aims to gather views and perceptions of raising concerns and the barriers to speaking up. The results of the survey will be fed into the Review and I would be grateful if you would take personal responsibility for ensuring that everyone who works in your trust is given the opportunity to respond.

Many cases have already been considered by employment tribunals or courts and the review will not re-open any case or comment upon any judicial findings. However, we believe that it is crucial that we hear the voices of those who say they have suffered detriment in the past and learn lessons for the future. To do this I would like Sir Robert to have access to *all* the information he requires in order to make recommendations. Therefore, my expectation would be that the existence of any confidentiality clauses - for example, in employment contracts or settlement agreements (formally known as 'compromise agreements'), would not be used as a justification to prevent NHS staff from contributing evidence and their experiences to the Review. So far as permitted by law, the Review will respect the confidentiality of information provided to it in confidence.

I know Sir Robert would also like to hear, on a confidential basis, employers' point of view about disputes which have ended up in settlements. I would like organisations to work with him, and where appropriate the relevant existing or former staff, to facilitate this.

Raising legitimate concerns about poor care should be a key part of every NHS worker's role and I know that you will support Sir Robert and the work of the review to achieve this.

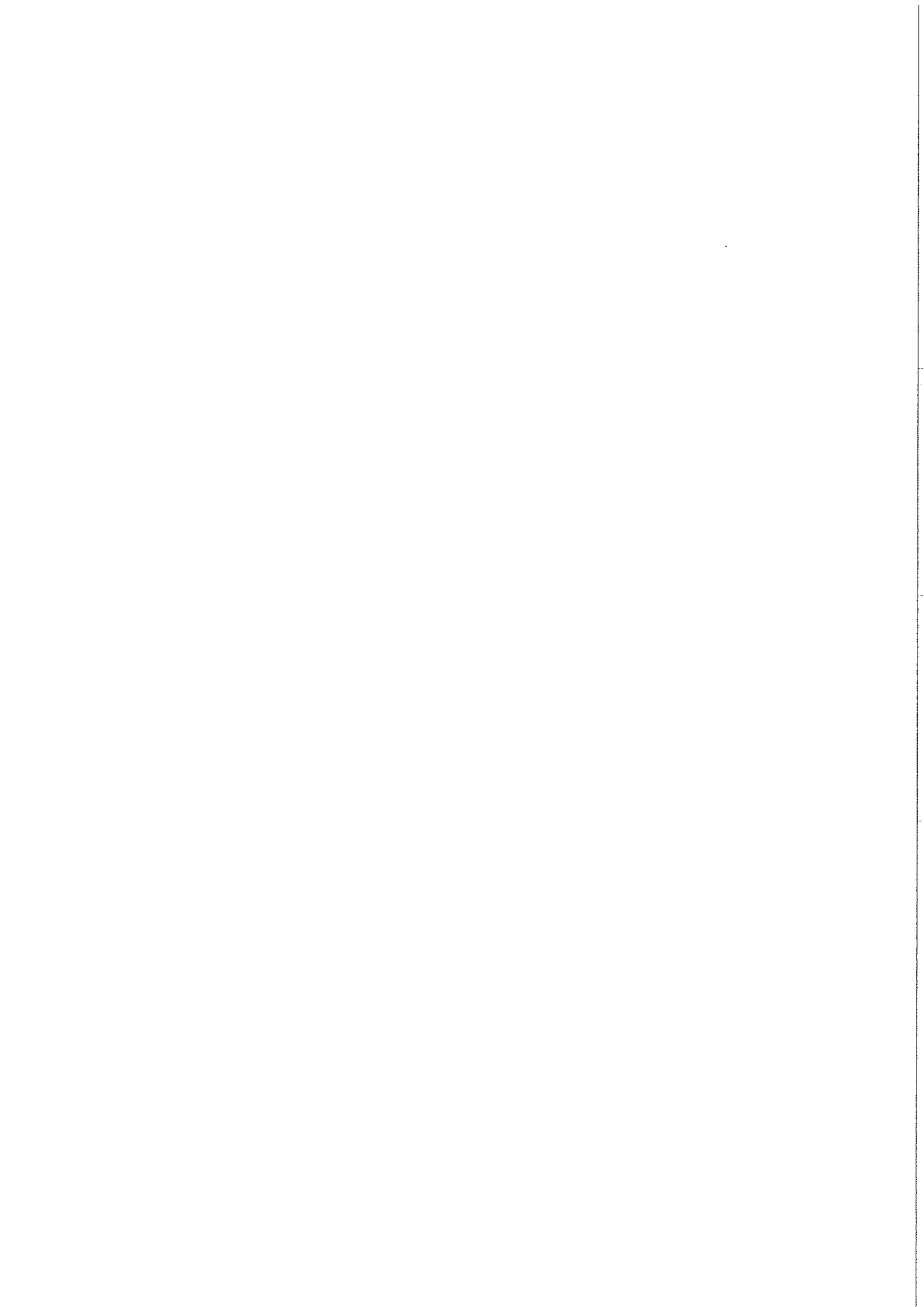


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Many thanks again for all the work that you are doing on this vital matter.

A handwritten signature in black ink, appearing to read 'Jer' with a flourish at the end.

JEREMY HUNT





Department of Health

Annex

Freedom to Speak up: An Independent Review into Creating an Open & Honest Reporting Culture in the NHS

Terms of Reference

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.