

Public Concern at Work

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Rt Hon Alan Milburn MP
Secretary of State
Department of Health
Richmond House
79 Whitehall
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28 August 2001

A handwritten signature in black ink that reads "Dear Alan,".

Learning from Bristol

I am writing to draw your attention to a pressing problem we have with the Kennedy Report's approach to whistleblowing in the NHS.

The Report maintains that Dr Bolsin would not have been protected by the Public Interest Disclosure Act, had it been in force. It reaches this view even though it makes no criticism of Dr Bolsin and expressly accepts both that his conduct was understandable and that he was right to persist in raising his concerns. From what we gather the conclusion was based on erroneous legal advice and, accordingly my Chairman has raised the matter with the Attorney-General as the effects of this serious mistake go beyond the NHS.

Building on this error, the Kennedy Report fails to mention the Circular you initiated on Whistleblowing in the NHS (HSC 1999/198). Accordingly it was unable to take account of one of the significant lessons that was being learned from Bristol across the NHS while the Inquiry was sitting. From our experience of helping health care staff with genuine concerns and of working with Trusts and Authorities on implementing the Circular we think it virtually impossible that concerns such as Dr Bolsin's would today be ignored or wished away as they were at Bristol. Following your own initiatives there has been a keen recognition of the need to focus on the message rather than the messenger, both at Trust level and higher up within the Service. Finally when implementing the Circular there have been examples of best practice which we hope the Government will recognise and build on in as it responds to the Report.

While there is much that is good in the Kennedy Report, we also have strong reservations about the recommendation to give immunity to people who report themselves within 48 hours of a sentinel event. Applying this to the tragedy at Bristol, its effect seems to be that provided Mr Wisheart was promptly reporting his own botched operations, he would have immunity from any disciplinary action. The consequence would be that neither the Trust nor the GMC could take any action against such a surgeon, even when it was satisfied that he posed an unacceptable risk to patient safety. We do not see how such a recommendation can be thought of as desirable.

As we advise individuals and managers across the NHS week in week out on how to raise or handle serious concerns, the Report's view that there is no effective whistleblowing

Making whistleblowing work

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protection in the NHS places us in a difficult position. Accordingly we have asked your officials for clarification whether the Government accepts the Report's analysis and view of whistleblowing protection in the NHS and I enclose the paper we sent to Marcia Fry on these points.

We would be grateful if you could ask your officials to give us an early reply as on Monday 17th September our Council will be considering whether in the light of the Report we should change the advice we give NHS staff who contact us with their concerns.

I am writing in similar terms to Nigel Crisp.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Guy Dehn'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Guy Dehn