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Submitted to **Providing a 'safe space' in healthcare safety investigations**
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About you

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Executive summary

The case for creating a safe space and the current position

Proposed approach

4 Do you consider that the proposed prohibition on disclosure of investigatory material should apply both to investigations carried out by HSIB, and to investigations conducted by or on behalf of NHS Trusts, NHS Foundation Trusts and other providers of NHS-funded health care?

Please write your response here:
We agree in principle with the adoption of a “safe space” in healthcare safety investigations. This should provide an additional space for rigor, objectivity and reflection to ultimately lead to improvements in patient safety. However we believe “safe space” should only extend to the investigations carried out by the Healthcare Safety Investigation Branch (HSIB), once the Directions under which the HSIB operates have been amended. We understand from the Chief Investigator of the HSIB that they will work to disconnect from NHS Improvement and become fully independent as soon as possible.

The establishment of the HSIB is a positive step forward in dealing with inconsistencies with investigating safety issues. Different forms of investigation exist and are carried out by different agencies addressing different perspectives of the investigation. It is unsurprising, therefore, that we lack a coherent picture of the wider systemic factors leading to failures of care. Fragmentation and inconsistency in investigations limit meaningful understanding of challenges and hinder ability for staff, employers and government to learn from these and to develop a culture that openly learns from mistakes.

Despite this need to tackle fragmentation in the system, we believe that the “safe space” principle should be limited to the investigations carried out by the HSIB, as a high level of neutrality is required to successfully implement this principle. The rationale for the HSIB was to create an independent body that can bring objectivity to investigations. We believe that the HSIB offers one approach to delivering a robust investigatory process. This is a necessary step towards achieving a culture of learning within the health service.

We do not believe the principle of “safe space” should extend to NHS Trusts or other providers of NHS-funded health care where the conflict of interest is obvious. We believe that implementing safe space principles, even in a limited way, would conflict with the existing statutory Duty of Candour. It may also go against other legal tenets such as Freedom of Information and even the NHS Constitution.

We acknowledge concerns articulated by the HSIB Chief Investigator, Keith Conradi, the Expert Advisory Group and other agencies, notably Action against Medical Accidents (AvMA) that the Directions of the HSIB should ensure patients and families are provided with information. We suggest that the directions of the HSIB should be amended so that it is clear that relevant factual information as required by the Duty of Candour should be shared with patients and their families.

The Duty of Candour stipulates that hospital, community and mental health trusts should share all that is known and believed to be true about what went wrong and why, and what the consequences are likely to be. They should explain if anything is still uncertain and must respond honestly to any questions.

While we support the attempt to apply learning from aviation and modelling the HSIB on the Air Accidents Information Branch (AAIB), we should recognise the vast differences in organisational culture that exist to support the safe space principle. Safe staffing is a persistent issue across the NHS and too often financial pressures takes precedence over workforce planning that is based on long term service need. Failure to tackle the significant issue of recruitment and retention of nurses in the long term and a shortage of registered nurses on wards for care to be safe, will no doubt contribute to the numbers of incidents and complaints. There is a danger that this system issue is not adequately scrutinised in a safe space regime and labelled as such, as it would in the aviation industry.

Support is needed for staff going through any type of investigation be it in a safe space or not. Yet the existing system often lacks the ability to uncover useful learning that might assist in preventing similar scenarios in the future. Investigations are often adversarial in nature, so that the registrant is inhibited from reflecting more broadly and participating fully in investigations for fear of damaging their case with the accompanying risk to their career.

As an organisation we represent our members who are investigated by the NMC. Healthcare regulation as provided by the NMC is highly focussed upon the alleged failings of individual practitioners and often does not provide sufficient context about the weaknesses in systems that have contributed to the unsatisfactory outcome under investigation.

A recent example in the press has been the experience of the two nurse volunteers who travelled to Africa to work with Ebola sufferers. On their return, there was a question over whether the temperature of one was properly and honestly recorded by the two nurses. The entire focus of the lengthy and expensive investigations and hearings was on this episode. A focus on the system wide issues would have identified the shambolic situations that the staff were contending with. Much criticism of the systems in place for the safe checking of the volunteers upon their return was also reported in the press, but there has not been any apparent attempt to examine whether the systems in place were adequate.

This would seem to be a missed opportunity for an important investigation into safety that could affect future public health crises. This demonstrates to us that, on this occasion at least, the adversarial process of the NMC did not provide any assistance in providing future guidance about safety. In sharp contrast, a non-adversarial independent process with a safe space for practitioners to explore how matters could have been dealt with differently, could be a powerful support to future safety.

Proposed approach

5 For those investigations undertaken by or on behalf of providers and commissioners of NHS-funded care, should the proposed prohibition on disclosure apply only in relation to investigations into maternity services in the first instance or should it apply to all investigations undertaken by or on behalf of such bodies?

Type your response here:
As stated above we believe that only the investigations carried out by the HSIB should be subject to the principle of “Safe Space”.

Proposed approach

6 Do you have any comments about the type of information that it is proposed will be protected from disclosure during healthcare investigations?

Type your response below:
Agree, but within the context of the HSIB only.

7 Do you agree that the statutory requirement to preserve the confidentiality of investigatory material should be subject to such disclosure as may be required by High Court order?

Type your response here:
Yes, but only within the context of the HSIB.

8 Do you agree with the proposed elements of the test to be applied by the High Court in considering an application for disclosure?

Type your response below:
Agree, but within the context of the HSIB and exceptions for relevant factual information subject to the Duty of Candour for patients and families.

Proposed approach

9 Do you have any views on the proposed exceptions that would apply to the prohibition on disclosure of material obtained during investigations by the HSIB and by or on behalf of providers and commissioners of NHS service?

Type your response here:
We agree with the proposed exceptions, and we feel that an exception should also be made for relevant factual information subject to the Duty of Candour to be provided to patients and families.

10 Do you have any views on where the bar should be set on passing on concerns to other organisations whose functions involve or have a direct impact on patient safety?

Type your response here:
We agree that patient safety is paramount and if there was an immediate risk to patient safety information should be provided to the relevant authorities.

11 Do you consider that the exceptions proposed could undermine the principle of 'safe space' from the point of view of those giving evidence to investigations?

Type your response here:
We agree with the exemptions proposed with an additional exception of provision of relevant factual information to patients and families as required under the Duty of Candour. We do acknowledge that our members may have concerns about use of this information, these concerns must be allayed with provision of transparent and accessible guidance.

12 Do you support the principle of a 'Just Culture' (that would make a distinction between human error and more serious failures) in order that healthcare professionals might come forward more readily to report and learn from their mistakes without fear of punitive action in circumstances that fall short of gross negligence or recklessness?

Type your response here:
We believe that a "Just Culture" is essential and there is a need for greater consistency of language in the NHS around 'blame'. It is necessary in order for Safety Management Systems (SMSs) to be effective. We agree with the five dimensions identified by Vincent et al (2013) of an SMS for health care:

• Past harm: this encompasses both psychological and physical measures
• Reliability: this encompasses measures of behaviour and systems
• Sensitivity to operations: the information and capacity to monitor safety on an hourly or daily basis
• Anticipation and preparedness: the ability to anticipate, and be prepared for, problems
• Integration and learning: the ability to respond to, and improve from, safety information

However our concern is that many healthcare organisations do not exhibit this level of maturity in their approach to safety. Many remain, in Hudson's model of cultural maturity, on the lowest, "pathological" rung (Hudson 2004). Investigations are often handled poorly and can be hampered by simplistic accident models where blame is assigned after the event (Hudson 2014).

13 If you consider that the prohibition on disclosure should be subject to an exception allowing for the disclosure of certain information to patients and their families, what kind of information do you consider should be able to be disclosed in that context? And when would be a sensible, workable point for patients/families to have access to information - eg, should they see a pre-publication draft report for comment?

Type your response here:
Relevant and factual information as required by the Duty of Candour must be made available to patients and families.

Proposed approach

14 Do you see any problems in a requirement that investigatory bodies (such as professional regulators, coroners and the police) must apply to the High Court if they wish to gain access to information obtained during investigations by the HSIB or by or on behalf of providers or commissioners of NHS-funded care?

Type your response here:
We agree within the context of information obtained by the HSIB only, with relevant and factual information as required by the Duty of Candour made available to patients and families.

15 Do you have any concerns about the use of the phrase "safe space" in relation to this policy; and, if so, do you have an alternative preference?

Type your response here:
We feel the term "safe space" is unhelpful due to its different meanings in other contexts and it does not reflect the need for a space to drive reflection, learning and improvement.

Whatever phrase is decided upon, it should have a precise definition that will only be used exclusively for HSIB investigations.

16 Do you see any problems in exempting information obtained during healthcare investigations from access under the Freedom of Information and Data Protection regimes?

Type your response here:
No, not if used exclusively within the context of the HSIB and subject to the exemptions as outlined including access to relevant factual information for patients and families, as required by the Duty of Candour.

We do see conflict of interest with these duties if the safe space principle is extended to investigations by other bodies.

Proposed approach

17 Do you agree that guidance, or an alternative source of support, should be developed?

Type your response here:
Yes accessible and transparent guidance should be developed for professionals, as well as relevant factual information for patients and public, as required by the Duty of Candour.

18 Do you think it would be helpful for NHS staff to be supported by a set of agreed national principles around how they would be treated if involved in a local safety incident investigation; and, if so, do you have any suggestions for the areas that such a set of principles should cover?

Type your response here:
Yes, but most importantly that these are well communicated to senior managers. The principles should be clear on what is meant by a just culture, where and

how staff can get confidential support and must not be ambiguous.

Impact of proposals

19 Do you have any concerns about the impact of any of the proposals on people sharing protected characteristics as listed in the Equality Act 2010?

Type your response here:
We do have concerns if the implementation of safe space is fragmented across multiple agencies and potentially within workplace cultures that lack maturity. Potential impact on people with protected characteristics will be most appropriately identified and managed if the policy is only applied within the scope of the HSIB.

20 Do you have any concerns about the impact of any of the proposals on families? If you envisage negative impacts, please explain.

Type your response here:
We would reiterate the point made earlier about the changes that need to be made to the HSIB Directions to enable them to share relevant factual information with patients and families. This point was made by the Expert Advisory Group and reiterated by the Chief Investigator, Keith Conradi. We also believe that extending safe space principle to all safety investigations would negatively impact on patients and families.