

# The Healing Process

## An alternative to litigation UKRI Policy Support Funds - The Healing Process

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Following revelations made by GPs, hospital managers, other healthcare workers and hospital consultants John Sturrock KC, was commissioned in November 2018 by the Scottish Government to undertake an independent review into the allegations of a bullying culture at NHS Highland (NHS). The review findings, published in April 2019, largely corroborated the issues raised by the whistle-blowers and included specific proposals for change.

The Healing Process was created as a response to the Sturrock Review and was designed to assist current and ex-employees of NHS who had experienced bullying. The Healing Process was made available as an additional avenue separate from the investigative or adversarial processes normally available to staff who raise issues in relation to their NHS employment.

There were 272 participants in this process, and it is thought that all participants will be contacted to complete an online questionnaire with also a representative sample of circa 90 people who would be interviewed to qualify the effectiveness of the process so that this can be rolled out to other NHS organisations.

The Principal Investigator (Dr Jonathan Lord) will be assisted by Tracy Boylin who was contracted by the Scottish Government to work with Stakeholders and be a key part of the Healing Process and will provide relevant background material in terms of the guidelines and working principles as well as access to the participants.

A report based on the findings will then be prepared and presented by the Principal Investigator and Tracy Boylin to NHS Highland and the Scottish Government.

The intention will be to consider if any parts of The Healing Process are worth adopting by other NHS organisations as well as the Scottish Government and its agencies. The Sturrock Review has forced NHS organisations to address bullying in the workplace, the results of this investigation will therefore be to influence NHS and Governmental policy further.

Specifically, the impact of the Healing Process will be used to inform scrutiny and debate for future legislation. It will also be used to support Members' work in committees, in debates, in Cross-Party or All-Party Parliamentary Groups, in support of constituents, when tabling questions to the Scottish government, or to help prepare for meetings or public speeches.

The healing process aims to reduce workplace conflict and improve whistleblowing processes which could be used as a template for employers to adopt into their employment relations practices as well as within government policy and legislation around employment law.

## **BACKGROUND TO THE HEALING PROCESS INITIATIVE**

### **1 Introduction**

**The sole aim of Part IVA of the Employment Rights Act (ERA) 1996 is to protect UK workers who disclose information about alleged wrongdoing in specified circumstances. Employers are not obliged to investigate these allegations let alone deal with any proven wrongdoing, Workers who suffer detrimental treatment by way of dismissal or action short of it can take a claim to an employment tribunal (ET) but adjudication may be both a difficult and ineffective mechanism for resolving whistleblowing disputes.**

## The Establishment of the Healing Process

Following revelations made by GPs, hospital managers, other healthcare workers and hospital consultants John Sturrock, KC, was commissioned in November 2018 by the Scottish Government to undertake an independent review into the allegations of a bullying culture at NHS Highland (NHS).

The review findings, published in April 2019, largely corroborated the issues raised by the whistleblowers and included 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.

The Healing Process was created as a response to the Sturrock Review and was designed to assist current and ex-employees of NHS who had experienced bullying. It was based on a set of “Healing Principles” agreed by the executive team of NHS, trade union representatives and others, including whistleblowers. The Healing Process was made available as an additional avenue separate from the investigative or adversarial processes normally available to staff who raise issues in relation to their NHS employment. This was intended to provide several benefits, including ease of access for individuals and an open and helpful forum. Crucially, the aim was to heal the person affected rather than apportioning blame.

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## The Initial Meeting

Anyone accessing the Healing Process had to participate in a 1:1 session. This was held with an experienced trained practitioner who had no connection with NHS Highland and was supplied by CMP Resolutions. The session was intended to fulfil the following purposes:

- a) To allow for discussion about the Healing Process overall, how it works and the different outcomes/pathways that can be used;
- b) An opportunity to ask questions and explore possible outcomes with a trained, independent professional;
- c) To provide an opportunity for individuals to talk in confidence about their experiences and to have those documented if desired;
- d) Support for individuals to prepare a statement that can be used throughout the Process; ensuring that individuals do not have to continually repeat their experiences;
- e) Allow individuals to register their intention to pursue any one or more pathways while protecting their confidentiality during the discussions at this stage.

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## How the Independent Review Panel Functioned

All those entering the Healing Process could request at their 1:1 session that their case progress to the final stage which was an Independent Review Panel (IRP). A comprehensive guidance framework advised the IRP 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, 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 NHS”. The IRP’s task was to listen to the individual’s experiences and try to provide recommendations which would help that person and NHS heal.

The Healing Process was voluntary and was open both to individuals who were able and those who were unable /or willing to pursue a claim via the courts or a tribunal. Apart from the expense and stress of litigation, some would have had no valid claim to pursue and many would have been time- barred. More generally, it was envisaged that offering such a healing process would make legal claims less likely. Indeed, the Healing Process differs fundamentally from legal and employment procedures in that it was one-sided i.e. only took account of the facts supplied by the participant. While this ensured that participants felt listened to and the focus was on healing, it also meant that the IRP could not determine fault or blame. Nevertheless, those accused of wrongdoing might feel aggrieved that they did not have the opportunity to give their views so it was vital that any employee who felt adversely affected by the Healing Process was able to access support.

The IRP had the power to make one or more of the following recommendations:

- (i) Apology.
- (ii) Organisational learning;
- (iii) Assessment for provision of psychological therapies;
- (iv) Consideration of re-engagement or re-employment or re-deployment
- (v) Financial payment.
- (vi) Referral to another internal process.
- (vii) No further action by NHSH.

In its recommendations the IRP was to be guided by the individual's preferred outcomes but was not precluded from suggesting other outcomes for the participant to consider. However, the IRP could not make a recommendation for an outcome if the participant indicated that

they did not wish that to be considered. There was no right of appeal against a decision of the IRP.

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## The Outcomes of the IRP Process

The IRP heard cases from August 2020 until 29th March 2022 with testimony being provided by current and former colleagues of NHS Highland. The key themes and issues that arose from these hearings were captured in five Organisational Learning Reports submitted to NHSH Board. Since this paper focuses on the impact of the Healing Process on the participating employees and ex-employees we do not attempt to discuss all of the cultural matters raised by the IRP. However, a couple of salient points are worth highlighting. In their first Report (November 2020) the IRP stated that there was a general fear of raising complaints as this was thought to be career limiting and that the leadership and HR were both perceived to be supportive of the organisation's poor culture rather than of individuals raising concerns.

Five months later, after hearing over 90 individuals, the IRP wrote that, “we cannot understate the impact the culture within NHSH (often described to us as toxic) has had on individuals, many of whom have been left with post-traumatic stress disorder, severe anxiety disorders, depressive illness, and in some cases suicidal ideation”

At the closing date there were 340 applications. However, some were ineligible and others chose not to proceed so 272 people progressed to a panel hearing. Of these 272 participants, 58% were current employees and 42% were ex-employees (42%).

## 6 Conclusion

Employment Tribunal litigants often do not fully appreciate the time, cost and stress involved in bringing or defending a claim. However, an additional feature in whistleblowing cases is that a determination of legal rights alone may not be sufficient. For example, in addition to judicial vindication, the worker may be seeking an acknowledgement by the employer that wrongdoing was taking place and that steps should be taken to deal with it. In such circumstances, even if a claim for compensation succeeds, the worker may feel that the tribunal process has not provided a satisfactory solution. It may well be that if whistleblowers have access to an alternative resolution mechanism that can deliver their desired outcome, many actual and potential claimants will prefer that process to fighting their case at tribunal. Indeed, an outstanding feature of the Healing Process is that it delivered remedies that were simply not available at an ET: apologies, redeployment and psychological therapies. Additionally, the healing of participants was supported by financial payments and NHSH benefited from the extensive recommendations made for organisational learning.

Most employers will not have the resources to establish a healing process and many workers will not be able to afford to go to tribunal. It is therefore suggested that when disputes arise employers should consider whether mediation would be preferable to adjudication. Equally, workers should bear in mind that they may be seeking remedies that an ET cannot deliver, for example, an apology or reference and a commitment to behave differently in the future. As indicated elsewhere, mediation offers several advantages in whistleblowing cases. An important one is that it might result in an employer taking measures that could secure a return to work. For example, in the light of the worker's disclosures, the employer might be prepared to rectify any wrongdoing, review work practices, move the discloser away from any person about whom wrongdoing was alleged, and take steps to minimise the risk of the whistleblower suffering retaliation. Mediation might also be relevant when the employer is anxious to avoid publicity but the worker is unwilling to settle without their allegations of wrongdoing being investigated. In addition to the cost of a hearing, mediation might save the claimant from having to experience the stresses of the adversarial process and calling witnesses to a public hearing to give evidence that might damage their employment prospects. From the employers' perspective, particularly the NHS, this could potentially reduce legal costs spent on such cases. In 2021 ACAS estimated legal fees cost UK employers £264 million a year with £225 million in compensation being awarded against employers each year.



More positively, mediation provides opportunities for participants to vent their feelings as well as express their opinions and allows those they are in conflict with to understand and empathise with their actions. An opportunity for catharsis may be especially important in whistleblowing cases where the worker may have experienced shock and outrage at the employer's response to the concerns raised. Indeed, workers might be aiming for understanding and reconciliation rather than retribution and compensation. It is an important feature of mediation that it has the potential to create an environment in which forgiveness can be explicitly considered. Forgiveness is important since it is associated with numerous benefits, including improved social relationships and psychological well-being as well as enhanced work outcomes. For the NHS, in reality this means greater patient safety.

