



BEYOND LIMITS

Beyond the limits of conventional support

Just Culture and Fair Blame Policy

January 2024
Review: January 2025

This policy clarifies our approach to promoting a culture of
fairness, openness, and a commitment to learning.

INTRODUCTION

This policy is fundamentally aligned to safeguarding individuals. It is about promoting a strong safety culture where colleagues can -and will- report any concerns in a psychologically safe environment.

A psychologically safe environment is one that actively promotes a culture where colleagues have confidence and belief that they won't suffer any detriment (i.e. humiliated, targeted, etc.) for speaking up with ideas, questions, concerns, or mistakes.

A psychologically safe environment is one that nurtures a working culture that is free from ego and fear of retribution. The promotion of a "just culture" and a commitment to fair blame is most effective when built upon the foundations of a psychologically safe environment.

For the avoidance of doubt, this policy does not replace or diminish the conditions of our disciplinary and capability procedures. However, it does underscore the need to promote a supportive environment where it is acknowledged that mistakes are made, but equally that colleagues engage with remedial action and learning to ensure that such mistakes are not repeated.

RELEVANT REGULATORY REQUIREMENT

REGULATION 13: SAFEGUARDING SERVICE USERS FROM ABUSE & IMPROPER TREATMENT

The intention of this regulation is to safeguard people who use services from suffering any form of abuse or improper treatment while receiving care and treatment.

Improper treatment includes discrimination or unlawful restraint, which includes inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005.

To meet the requirements of this regulation, providers must have a zero-tolerance approach to abuse, unlawful discrimination, and restraint. This includes:

- **Neglect**
- **Subjecting people to degrading treatment**
- **Unnecessary or disproportionate restraint**
- **Deprivation of liberty.**

IMPORTANT

CQC can prosecute for a breach of some parts of this regulation (13(1) to 13(4)) if a failure to meet those parts results in avoidable harm to a person using the service or if a person using the service is exposed to significant risk of harm.

THE REGULATION

- 1) People supported must be protected from abuse and improper treatment in accordance with this regulation.
- 2) Systems and processes must be established and operated effectively to prevent abuse of people supported.
- 3) Systems and processes must be established and operated effectively to investigate, immediately upon becoming aware of, any allegation or evidence of such abuse.
- 4) Care or treatment for people supported must not be provided in a way that:
 - a) Includes discrimination against a person on the grounds of any protected characteristic (as defined in section 4 of the Equality Act 2010)
 - b) Includes acts intended to control or restrain a person that are not necessary to prevent, or not a proportionate response to, a risk of harm posed to the person or another individual if the person was not subject to control or restraint,
 - c) Is degrading for the person, or
 - d) Significantly disregards the needs of the person for care or treatment.
- 5) A person supported must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority.
- 6) For the purposes of this regulation — 'abuse' means —
 - a) Any behaviour towards a person that is an offence under the Sexual Offences Act 2003(a),
 - b) Ill-treatment (whether of a physical or psychological nature) of a person supported,
 - c) Theft, misuse or misappropriation of money or property belonging to a person supported, or
 - d) Neglect of a person supported.
- 7) For the purposes of this regulation, a person controls or restrains a supported person if that person:
 - a) Uses, or threatens to use, force to secure the doing of an act which the person support resists, or

- b) Restricts the service user's liberty of movement, whether or not the service user resists, including by use of physical, mechanical, or chemical means.

PSYCHOLOGICALLY SAFE ENVIRONMENTS

WHAT IS PSYCHOLOGICAL SAFETY AT WORK?

The *Center for Creative Leadership* defines psychological safety as a 'belief that you won't be punished or humiliated for speaking up with ideas, questions, concerns, or mistakes'.

In particular it is a 'shared belief held by members of a team that others on the team will not embarrass, reject, or punish them for speaking up'.

WHY IS THIS IMPORTANT TO BEYOND LIMITS?

The US Agency for Healthcare Research and Quality (Patient Safety Network (2022) provides a helpful introduction that clarifies the reasons for promoting a psychologically safe working environment:

The term psychological safety is defined as an individual's "sense of being able to show and employ oneself without fear of negative consequences to self-image, status or career" (Grailey KE, Murray E, Reader T, et al.) and at the group level as "a shared belief that the team is safe for interpersonal risk taking." (Edmondson A.).

The term embodies individual confidence in the belief that speaking up will not result in embarrassment, rejection, criticism, or punishment from others.

Psychological safety can enhance employee voice and organisational commitment and have a positive impact on the clinical environment for healthcare providers and their patients and overall patient safety. For example, a healthcare worker who feels enabled to voice concerns about controversial topics or safety issues may stimulate group learning that, in turn, lowers the chance of future medical errors, thereby increasing patient safety.

It is clear from the above that psychological safety can promote and inform a safe culture, with each area supporting the other. Furthermore, Beyond Limits believe that in nurturing a culture of psychological safety we enhance our commitment to maintaining a just culture that embraces fair blame as an imperative of safer organisational practice.

JUST CULTURE AND FAIR BLAME

The NHS promote a just culture to ‘treat staff involved in a patient safety incident in a consistent, constructive and fair way’.

Supporting colleagues to be open about mistakes allows valuable lessons to be learnt so the same errors can be prevented from being repeated.

It is recognised that a culture of blame is one that promotes poor practice. Colleagues who feel unsafe or insecure are far less likely to raise concerns and speak up for the fear of retribution and other negative consequences.

This is way Beyond Limits actively seek to promote a just culture that encourage a safe working environment through the promotion of psychological safety and fair blame.

IMPORTANT

Colleagues must note that the implementation of this policy does not replace or diminish the conditions of our disciplinary and capability procedures, and crucially it must not be used ‘as a routine or integral part of a patient safety investigation or enquiry’. The NHS are clear that this is because:

‘the aim of those investigations is system learning and improvement. As a result, decisions on avoidability blame, or the management of individual staff are excluded from safety investigations to limit the adverse effect this can have on opportunities for system learning and improvement.’

WHAT IS A JUST CULTURE

The NHS defines a just culture using Prof. Sir Norman Williams’ Review into Gross Negligence Manslaughter in Healthcare (June 2018). The report clarifies that:

‘A just culture considers wider systemic issues where things go wrong, enabling professionals and those operating the system to learn without fear of retribution’. The report goes on to say “...generally in a just culture inadvertent human error, freely admitted, is not normally subject to sanction to encourage reporting of safety issues. In a just culture investigators principally attempt to understand why failings occurred and how

the system led to sub-optimal behaviours. However, a just culture also holds people appropriately to account where there is evidence of gross negligence or deliberate acts.’

The above is very important. Colleagues should know that inadvertent human error, freely admitted, is recognised as such and is dependent upon the positive and purposeful engagement of all colleagues involved. The emphasis is upon understanding what happened, capturing learning, and preventing further errors. However, colleagues must be aware that a just culture will not compromise or inhibit established processes where there is evidence of gross misconduct, or deliberate acts of inappropriate practice or sabotage.

The principles and approaches that are integral to embedding a just culture into practice do not replace the associated conditions of any patient safety or safeguarding investigation.

The NHS have produced a helpful guide to support management decision making discussions about whether a colleague involved in a safety incident requires specific individual support or direct intervention to ensure the safety of individuals.

The NHS Just Culture Guide:

1. Asks a series of questions that help clarify whether there is truly something specific about an individual that needs support or management versus whether the issue is wider, in which case singling out the individual is often unfair and counterproductive.
2. Helps reduce the role of unconscious bias when making decisions and will help ensure all individuals are consistently treated fairly no matter what their staff group, profession or background.

Colleagues can access full guidance online by clicking or tapping [HERE](#)

In adopting and promoting a just culture senior colleagues must note that the Just Culture Guide:

- Is not a replacement for an investigation of a safety incident involving a person we support. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- Can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- Does not replace HR advice and should be used in conjunction with our disciplinary and capability policies and procedures, as well as the conditions required by our safeguarding policy (as appropriate to the circumstances). In all cases, the safety of individuals remains paramount and we must comply with local safeguarding arrangements.

- Can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident, they must be considered separately.

Crucially, the NHS have clarified that:

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, people we support and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made.

The guide comprises a series of questions with YES or NO responses that will help to determine a recommended course of action. The questions relate to:

- ONE: Deliberate Harm Test
- TWO: Health Test
- THREE: Foresight Test
- FOUR: Substitution Test
- FIVE: Mitigating Circumstances

For the avoidance of doubt, Beyond Limits understand that the actions of colleagues or a colleague involved in an incident should not automatically be examined using the Just Culture Guide. However, we recognise that ‘the guide can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member’. (A Just Culture Guide).

FAIR BLAME

Fair blame is intrinsically linked to a just culture. The promotion of a fair blame approach bolsters the impact of a just culture. It promotes a more reflective approach to learning from incidents and supports colleagues to be effective, involved and actively engaged in maintaining a safe environment for individuals, parents and carers, colleagues, and other relevant stakeholders.

Colleagues should be aware that the impetus behind “being fair” is to support a just and learning culture that benefits individuals and colleagues. Fair blame aims to create an environment to better support colleagues when things go wrong and to encourage learning from incidents. However, there

are key challenges that must be overcome:

- **Fear:** The substantial fear of being inappropriately blamed following an incident, the effect of future employment and what peers will think risks preventing staff from sharing and learning.
- **Equity and Fairness:** Research reveals that there is inequity and discrimination at an individual level and disproportionate disciplinary action is experienced by black, Asian and minority ethnic staff, with women making twice as many claims as men.
- **Bullying and Harassment:** Sadly compound the understandable stress when things go wrong, leading to burnout and a loss of productivity.

Therefore, taking full account of the identified challenges, Beyond Limits will actively promote a just culture that aims to:

- Eliminate any sense of fear that could inhibit the need to speak up and challenge poor practice. We aim to consistently promote a culture of fairness, openness and learning that is both empowering and firmly based upon the principle of embracing continuous improvement.
- Ensure equality and fairness throughout the organisation that is devoid of prejudice.
- Further enhance our position and policy that bullying and harassment is never acceptable and will not be tolerated.

COLLECTIVE RESPONSIBILITIES OF ALL COLLEAGUES

Ultimately, Beyond Limits believe that in nurturing a culture of psychological safety we will enhance our commitment to maintaining a just culture that embraces fair blame as an imperative of safer organisational practice.

All colleagues have an active role to play in securing and maintaining a just culture. Honesty, openness, accountability for one's own actions, and transparency are key to the success of embedding a just culture. The following responsibilities aim to help colleagues understand the role they must play in promoting a just culture that is built upon the principles of a psychologically safe environment that is devoid of unfair blame and bias.

Beyond Limits aim to ensure that all colleagues:

- Know that the right organisational culture is crucial to safety. A just culture that embraces the principles of fair blame promotes a strong safety culture. A strong safety culture means that

- risks aren't overlooked, ignored, or hidden – and colleagues can report concerns openly and honestly, confident that they won't be blamed. In this type of culture, it's accepted that all
- incidents – positive, negative, and wholly avoidable – provide opportunities to learn and improve. We will promote a psychologically safe culture where colleagues have confidence and belief that they won't suffer any detriment for speaking up with ideas, questions, concerns, or mistakes. As such, a psychologically safe culture is one of the key foundations of a just culture.
- Have an important role to play in securing a just culture, regardless of their role, function, and responsibilities within the organisation. Beyond Limits expect all colleagues to conduct themselves in a way that promotes a just culture and to play their part in engaging in a more reflective approach to learning from incidents. This means employing the principles of fair blame to create a supportive environment when things go wrong and to encourage learning from incidents.
- Have the confidence and assurance required to be open about mistakes, thereby allowing for valuable lessons to be learnt so the same errors can be prevented from being repeated. Beyond Limits expect that colleagues will speak up when they have concerns and will ensure they will suffer no detriment in doing so.
- Will know that inadvertent human error, freely admitted, will be recognised as such, although this is dependent upon the positive and purposeful engagement of all colleagues involved in a psychologically safe environment.
- Must be aware that a just culture will not compromise or inhibit established processes where there is evidence of gross negligence, gross misconduct, or deliberate acts of inappropriate practice or sabotage.
- Know that the use of NHS Just Culture Guide will not replace HR advice. It will be used in conjunction with our disciplinary and capability policies and procedures where appropriate, as well as the conditions required by our safeguarding policy if relevant.
- Understand that the safety of individuals remains paramount, and we must comply with local safeguarding arrangements as highlighted in our safeguarding policy. In circumstances where harm or abuse is suspected, disclosed, or alleged the conditions of our safeguarding policy will be followed without compromise and the relevant authorities will be notified.

If any colleagues have any concerns or having read the policy they require further clarification, they must speak with a senior colleague who will be happy to provide further clarity

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Company Number: 07998863

