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Mr Tony Brown LLM
HM Senior Coroner
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Dear Mr Brown,

I write in response to your Regulation 28 Report dated 4th April 2019 ('the Report'), following the inquest touching upon the death of Lesley Armstrong.

In the Report you state that:-

- (1) in your opinion there is a risk that future deaths will occur unless action is taken;
- (2) Akari Care (Mrs Armstrong's employer) could not properly inform Mrs Armstrong of the status of their investigation because they were not formally told when the police investigation had been discontinued and;
- (3) it is not clear that any practical steps have been taken to improve communication with the Local Safeguarding Adults Board (LSAB) or Akari Care, who needed to know when the police investigation were complete.

I understand, therefore, you consider there is a risk of future deaths to employees specifically in the care environment, who are under investigation by the police, where employers and other supervisory agencies are not notified directly by the police as to when the police investigation is concluded. I do not understand your opinion to extend to employers generally, where their employees are the subject of a criminal investigation.

Risk of Future Deaths

Unfortunately there is always a risk that an individual who is subject to a criminal investigation may harm themselves. The risk of self-harm must necessarily be determined on a case by case basis, having considered the circumstances of that particular individual via a process of risk assessment. The inquest heard evidence

as to the risk assessment process. An assessment is undertaken both in respect of suspects who have been arrested, and those who attend for interview voluntarily. In addition, If, post risk assessment, further information is brought to the attention of a police officer or member of police staff suggesting a risk of self-harm to the individual, then that information will be considered and the risk assessment revisited.

In relation to Mrs Armstrong, no evidence was heard at the Inquest that Northumbria Police officers or staff knew or ought to have known that Mrs Armstrong would take her own life or otherwise injure herself. Whilst there was evidence that Mrs Armstrong was experiencing mental health difficulties during the investigation, this information was not passed to Northumbria Police.

Clearly a police investigation and any disciplinary investigation/process are stressful for the subject but unfortunately I cannot agree with the suggestion in the Regulation 28 Report that Northumbria Police should have informed Akari Care that the investigation was at an end. It is of course accepted that Mrs Armstrong should have been informed promptly and this was not done due to individual errors.

Appropriateness of Information Sharing

In stating that Northumbria Police should not have informed Akari Care about the status of the investigation it is important to highlight the purpose of information sharing between the police, LSAB and the employer.

Sharing of criminal conviction data, or of information relating to allegations of criminal conduct, is subject to the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (the Act). Such information is defined as "special category data" (analogous to sensitive personal data under the earlier Data Protection Act 1998). The legislation restricts the sharing of such information save in clearly defined circumstances.

The purpose of information sharing between agencies, particularly in the care context, is to safeguard care users. It is this purpose which potentially enables disclosure of information relating to allegations of criminal conduct to be disclosed to an employer. The purpose of such information sharing is not to enable the employer to keep its employee updated as to the progress of the criminal investigation against that employee. Disclosure for that reason would be unlawful, unless the employee provided his or her consent and if the employee provided such consent, there would of course be no need to notify the employer. If the employee requires an update as to progress then it is clearly most appropriate that contact should be sought directly with the police, or via the employee's legal representative.

Northumbria Police is regularly contacted by employers seeking information regarding criminal investigations relating to their employees. The Disclosure and Barring Service Update Service provides a statutory system, in the care context, to enable employers to obtain such information. Such disclosure requests are necessarily considered on a case by case basis. Any automatic disclosure of

conviction information to employers, irrespective of the circumstances, would be unlawful.

Requests by employers for disclosure of information require consideration of the full circumstances. For example:-

- What is the nature of the alleged criminal conduct?
- How does it impact upon the employer's business and do they have a legitimate reason for receiving the information?
- Is the alleged criminal conduct relevant to the employee's work?
- What is the strength of the allegations facing the employee?
- What will the employer do with any information received?
- May the employer themselves be potentially subject to prosecution, and would disclosure potentially prejudice such future proceedings?

Multi-Agency Meetings occur frequently and are attended by representatives from the LSAB, police, social services, and other invited parties. The purpose and scope of such meetings may relate to broad matters of policy, issues of general concern across a region or area, or a specific case relating to a place (e.g. a school or care home) or an individual. Employers would not usually be invited to attend such meetings. Again, the purpose of such meetings is to safeguard clients, not to safeguard the welfare of individuals subject to criminal investigation. Requiring agencies, in such multi-agency meetings, to also concentrate upon the welfare of suspects, would detract from the statutory responsibilities imposed upon the agencies involved and would lead to confusion. As you rightly state in your Report, it is the employer which owes a duty of care to its employee.

For the above reasons, I consider that information regarding the conclusion of a police investigation ought usually to be communicated directly to the suspect or their legal representative by the investigating officer, and not through any third party. It is the investigating officer who is usually best able to assess when and how such information should be communicated to the suspect and, if appropriate, any other interested parties. It is not appropriate that such updates should be given to employers routinely. Decisions to disclose information to employers can necessarily only be made on a case by case basis. Provision of information to employers as a "fail safe" mechanism, on the assumption that they will update the employee, cannot be appropriate and will be unlawful in the absence of the employee's consent.

As the evidence given at the Inquest made clear, there already exists a system reminding investigating officers of the need to promptly inform suspects of the outcome of a police investigation. Whilst the Inquest heard evidence that since Mrs Armstrong death further training and guidance has been delivered (instigated by a national review of voluntary attender processes led by the College of Policing), the existing procedure was fit for purpose. The officers knew that Mrs Armstrong required an update but, due to individual errors which were explained at the Inquest, this unfortunately did not occur. As you are aware, the officers were dealt with appropriately under Force conduct procedures for their errors.

Had Mrs Armstrong received notification that no further action was to be taken in relation to the criminal investigation, then she still would have remained suspended

from work whilst the regulatory and internal investigations of the local authority and her employer continued.

You can be assured that Northumbria Police take our responsibilities to communicate with suspects very seriously. The evidence heard at the Inquest from Superintendent Steven Heatley established that we adapt and improve our procedures where appropriate. However, although careful thought has been given to the matters raised in the Report, particularly given the tragic circumstances of Mrs Armstrong's death, for the reasons set out above it is not deemed necessary to take further action over and above the actions already taken and of which you are aware.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.A solid black rectangular redaction box covering the name of the signatory. A small, faint letter 'A' is visible to the left of the box.