

Registration Council of Clinical Physiologists Voicing your Concerns (Whistleblowing) Guidance

Introduction

This guidance document sets out the key principles that all RCCP registrants should be aware of and conforming to in relation to speaking up about any concern you may have at work. This guidance should be used to support any relevant statutory and employer Whistleblowing or equivalent policies and guidance including:

- [NHS Improvement and NHS England Whistleblowing Policy](#) - a national integrated whistleblowing policy that helps standardise the way NHS organisations should support staff who raise concerns.
- HR recruitment guidance.
- Local Voicing your Concerns/Freedom to Speak Up or 'Whistleblowing' Policies.
- Employer Code of Conduct and Disciplinary Policies.

Background

Speaking up about any concern you have at work is really important. Concerns are raised daily throughout the healthcare setting, and are heard, addressed and often resolved. Voicing your concerns, or the more somewhat combative term of 'whistleblowing' should be part of the normal routine of any well led organisation and staff should be being able to work in a culture which actively encourages staff to speak up. However, there have been a number of high profile investigations in healthcare over the last 2 decades in particular that have uncovered a culture that does not always encourage staff to speak up. Freedom to speak up should however be seen as an early warning system mechanism that allows malpractice to be addressed **before** a concern results in serious harm.

The term 'whistleblowing' is often used when a staff member draws public attention, or discloses to a person in authority a perceived wrongdoing, misconduct, unethical activity within public, private or third-sector organisations. Corruption, fraud, bullying, health and safety violation and discrimination are common activities highlighted by 'Whistleblowers'. Whistleblowing differs from personal grievances as they must have a **public** rather than private interest. Sometimes it can be difficult to know if a concern classifies as [whistleblowing](#) or not. The NHS Whistleblowing Helpline can help to answer this type of question for the NHS or there is also the charity Public Concern at Work who can provide confidential and free legal advice.

Concerns can be raised at any time about an incident that happened in the past, is happening now, or you believe will happen in the near future.

Whistleblowing in Action

The public value in whistleblowing is being increasingly recognised. The Bristol Royal Infirmary scandal (1990-1995) highlighted the harm that can be caused by overlooking

malpractice in the healthcare where babies tragically died and cardiac surgeons continued to carry out high-risk operations at the expense of children's safety. This continued until Steve Bolsin, a consultant cardiac anaesthetist, 'blew the whistle' in relation to a higher than expected mortality rate in the unit prompting an investigation.

The **Francis** Inquiry report, published on 6 February 2013 examined the causes of the failings in care at Mid Staffordshire NHS Foundation Trust between 2005 and 2009. The report made 290 recommendations, one of which was to recommend whistleblowing training for NHS staff. 'Freedom to Speak Up' Guardians were also introduced to help protect patient safety and the quality of care, improve the experience of workers by ensure there are no barriers to speaking up, fostering a positive culture of speaking up and a providing a platform where raised concerns are used as learning opportunities to improve.

What concerns are considered under 'Whistleblowing'?

In order to make a valid whistleblowing concern, you must have a reasonable belief that it's:

- a genuine concern raised in the wider public interest; and
- true to the best of your knowledge

In the healthcare setting, the following types of concerns may be (list is not exhaustive):

- unsafe patient care
- poor clinical practice
- failure to properly safeguard patients
- a criminal offence, for example fraud
- inadequate administration of medicines
- untrained or poorly trained staff
- unsafe working conditions
- lack of policies
- risk or actual damage to the environment
- a miscarriage of justice
- the organisation is breaking the law, for example does not have the right insurance
- you believe someone is covering up wrongdoing.

Concerns that are not considered as whistleblowing

Personal grievances (for example bullying, harassment, discrimination) are not covered by whistleblowing law, unless your particular case is in the public interest.

Report these under your [employer's grievance policy](#) or contact the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#) for help and advice on resolving a workplace dispute.

Who can Whistleblow?

Whistleblowers can be employees, former employees, trainees or agency workers or other organisations for example:

- an employee, such as a NHS employee
- a trainee, such as a student physiologist

- an agency or locum worker
- a member of a [Limited Liability Partnership](#) (LLP)

The Whistleblowing Process

Whilst they are not a legal requirement, most organisations have a Whistleblowing Policy which should guide you through the process, this can usually be accessed through your human resources department or trade union where applicable. **You must not start investigating the concerns for yourself.**

When reporting a concern, it is recommended that you draw attention to your concern locally, for example by talking to your line manager or a more senior manager in your organisation. However, if you have tried doing so and are not happy with the response and would prefer to speak to someone removed from the situation, you have a number of other options, including Freedom to Speak Up Guardian in all NHS Foundation Trusts introduced in 2016 ([link](#)), NHS England (or equivalent), CQC ([link](#)) and your professional regulator the Registration Council of Clinical Physiologists (RCCP).

You can raise a concern confidentially which usually means that the person you initially report your concern to will know your identity, but they can conceal it. Your identity will not be revealed without your consent, unless the body you report the concern to is legally obliged to divulge it. Reports can be made anonymously, meaning no one knows your identity, however this may hinder or even halt the investigation as investigators will not be able to contact you for further information. Additionally, you will not normally be able to receive any updates on the progress of the investigation if you remain anonymous.

You are legally protected from harassment and bullying following whistleblowing and your employer should take disciplinary action against anyone who victimises you as a result. In the UK, the [Public Interest Disclosure Act 1998](#) is the basis of legal protection of whistleblowers which outlines a number of protections afforded to individuals when they raise a concern. A [helpful guide to PIDA](#) can be found on the Protect (formerly Public Concern at Work) website.

Previously disclosures had to be in the public interest, but new legislation enacted in late June 2013 changed this so that disclosures had to be in 'good faith.'

You can get independent advice if you're not sure you're protected, for example from [Citizens' Advice](#) or [PCAW](#).

Additionally, if you are victimised after whistleblowing, you have the right to bring the matter to an employment tribunal. To receive full whistleblower protection however, you must ensure you follow the appropriate whistleblowing protocol within your organisation.

A confidentiality clause or 'gagging clause' in a settlement agreement is not valid if you're a whistleblower.

Your Professional and ethical responsibility to report concerns (or 'Whistleblow')

Healthcare staff should feel safe to raise concerns and be confident that they will be listened to and concerns will be acted upon. If you are considering raising a concern in the workplace you must therefore ensure to the best of your ability that you:

- Familiarise yourself with your organisation's raising concerns policy (Whistleblowing Policy)

- Understand how to raise a concern
- Find out who you can talk to in your organisation
- Understand when and how to escalate a concern
- Know where you can seek independent advice

If an action is likely to cause harm, healthcare professionals have a duty to report it. Although multiple staff members in the Mid Staffordshire Trust reported poor care across the trust and whilst staff eventually stepped forward to 'blow the whistle', many **did not** out of fear of persecution. All healthcare professionals now however have a duty to report concerns about safety and this is affirmed in the [RCCP Standards of conduct performance and ethics](#) drawing your attention in particular:

- Standard 5 - Respect confidentiality
- Standard 6 – Manage Risk
- Standard 8 – Be open when things go wrong

Please also see [RCCP Duty of Candour Guidance](#) for further information.

Introduction of Whistleblowing Disclosures

In 2017, a new legal duty came into force which required all [prescribed bodies](#) to publish an annual report on the whistleblowing disclosures made to them by workers leading to the health professional regulators publishing their first joint report on whistleblowing disclosures made to them in [September 2018](#) and a further report in [2019](#).

The RCCP are collaborating with the Professional Standards Authority (PSA) Accredited Registers Collaborative to explore if a similar joint reporting scheme can be established for the non-statutory regulated bodies.

Prescribed Person and Primary Care Whistleblowing

On 1 April 2016, NHS England became a '[prescribed person](#)' under the Public Interest Disclosure Order 1999, meaning primary care service staff working at GP surgeries, opticians, pharmacies and dental practices, can raise concerns about inappropriate activity directly.

Staff in [primary care organisations](#) might feel particularly unable, or find it hard, to raise concerns without being identified. This is sometimes due to their size as they are much smaller than a Hospital Trust for example. The management set up and internal relationships and a real risk to employment can prove to be a problem. In some cases the whistleblower might be employed directly by the individual providing the service that is the subject of the concern.

Staff working in primary care organisations can contact:

Telephone: 0300 311 22 33

Email: england.contactus@nhs.net

General Post (including complaints): NHS England, PO Box 16738, Redditch, B97 9PT

British Sign Language (BSL): If you use BSL, you can talk to us via a video call to a BSL interpreter. Visit [NHS England's BSL Service](#).

Further Whistleblowing Education and Training Resources

- Mandatory training in the NHS should always incorporate whistleblowing training.
- Health Education England (HEE) has produced two films designed to help NHS staff to confidentially raise concerns and awareness of the importance of speaking up, helping to build confidence amongst healthcare staff to be able to have the skills and knowledge respond adequately, timely and safely to concerns and are often incorporated into mandatory e-learning [raise and respond to concerns](https://www.hee.nhs.uk/our-work/raising-responding-concerns)
[https://www.hee.nhs.uk/our-work/raising-responding-concerns](https://www.nhsemployers.org/news/2019/11/nhs-whistleblower-support-scheme-launched)
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- The NHS England and NHS Improvement have also recently published [The NHS patient Safety Strategy](#) (July 2019) encouraging a safer culture, safer systems and safer patients. The document is a statement of collective intent to 'improve safety by recognising that to make progress, we must significantly improve the way we learn, treat staff and involve patients'.
- The Professional Standards Authority blog on The Role of regulators in encouraging a 'Speak Up' culture <https://www.professionalstandards.org.uk/news-and-blog/blog/detail/blog/2019/11/06/the-role-of-regulators-in-encouraging-a-speak-up-culture> where Russell Parkinson, Head of Office, National Freedom to Speak Up Guardian for the NHS explains that without positive and supportive organisational cultures and good leaders, staff can 'see it'; they can 'say it', but it might not always get 'sorted'.
- <https://www.speakup.direct/for-employees/>
- <https://www.nhsemployers.org/retention-and-staff-experience/raising-concerns-whistleblowing/information-for-staff>
- <https://www.gov.uk/whistleblowing>
- <https://www.england.nhs.uk/ourwork/whistleblowing/>
- https://improvement.nhs.uk/documents/27/whistleblowing_policy_final.pdf