

21 Ways to skin a whistleblower

21 Ways to Skin a Whistleblower

Andrew Bousfield Private Eye 9 December 2011

21 Ways to Skin a Whistleblower - #1

Inflict sanctions on the whistleblower that are too subtle for the legal protection to operate, e.g. cuts in secretarial help and other budgets, blocking appointment to committees, “briefing against” informally

21 Ways to Skin a Whistleblower - #2

Gather dirt on the whistleblower and inflict reprisals for actual or invented misdemeanours as the “official” reason for action taken against them. Trusts can either trawl the whistleblower’s case load for errors (we’ve all made some) or just fabricate problems to discredit them.¹ Allegations of mental illness are particularly common, and occasionally self-fulfilling as the whistleblower buckles under the stress.

21 Ways to Skin a Whistleblower - #3

Repeatedly ignore, deny or pretend to address the concerns in the hope whistleblowers will just give up. In Mid Staffs staff were wrongly blamed for not whistleblowing. In fact, there is evidence that hundreds of concerns were raised over a period of some years.ⁱ The problem was they were neither heard nor acted on.

ⁱ House of Commons Health Committee, Transcript of Uncorrected Evidence, 3 June 2009. At <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhealth/uc151-vi/uc15102.htm> Accessed 29 December 2010.

21 Ways to Skin a Whistleblower - #4

Take or threaten reprisals against colleagues who have supported the whistleblower. Conveniently difficult to prove but another powerful means of intimidation to isolate the whistleblower.

21 Ways to Skin a Whistleblower - #5

Blackmail. Illegal but difficult to prevent, detect and punish. There is one report of blackmail used against a whistleblower.ⁱⁱ

ii S. Boggan, 'It was like a gangster movie – they were trying to blackmail me,' The Times, 28 August 2010.

21 Ways to Skin a Whistleblower - #6

Threaten the whistleblower. All sorts of unpleasant threats are used against NHS whistleblowers, from you'll never work again to you'll never walk again.

21 Ways to Skin a Whistleblower - #7

Use counter-smears to redesignate genuine whistleblowing as an employment conflict. It can then be claimed that concerns raised are not genuine and that protected disclosure and the PIDA do not apply.

21 Ways to Skin a Whistleblower - #8

Exploit the lack of a professional code of conduct for managers. Doctors and nurses are bound by their professional bodies to raise concerns about patient safety, and whistleblowers are often accused of not raising concerns appropriately or soon enough, even when they have been bullied and threatened. However, managers can deny concerns and victimize whistleblowers with impunity, secure in the knowledge that the worst that will happen to them is that they may have to move onto another job. In contrast, whistleblowers are often seen as tarnished goods with poor references who often cannot find work elsewhere in the NHS.

21 Ways to Skin a Whistleblower - #9

Once the NHS managers have turned it into an “employment” conflict, they can apply to the Treasury for a large sum of money to pay off the doctor. Then pay off and gag the whistleblower using public money. The use of “compromise agreements” is widespread in the NHS, whereby whistleblowers ‘agree’ (under huge duress) to leave their jobs, in return for payment, and the signing of a gagging clause that prevents them telling their concerns to anyone outside their family.iii Gagging clauses are in clear contravention of Department of Health policy, but these agreements are still widely used, and are approved by the Treasury. Some proposed agreements require the whistleblower to sign a written statement to the effect that all of the concerns had been addressed, even if they clearly haven’t. This clever fraud contaminates the whistleblower and makes him or her part of the problem.

21 Ways to Skin a Whistleblower - #10

Instruct a libel lawyer to threaten any whistleblower and media outlet if concerns that could affect the business or reputation of the Trust are about to go public. This tactic has resulted in many stories being pulled and concerns buried within the Trust walls.

21 Ways to Skin a Whistleblower - #11

Use public money for weak research and lame management accountancy to refute the claims of the whistleblower or other unwelcome data such as high mortality rates.

21 Ways to Skin a Whistleblower - #12

Cosy up to the coroner to avoid unwelcome scrutiny of unexpected deaths.

21 Ways to Skin a Whistleblower - #13

Rely on the cowardice and apathy of the Department of Health. When the whistleblower approaches the DH asking for support, the department usually refuses to intervene, stating that the matter is an employment dispute and therefore a matter between employer and employee. Secretaries of State consistently refuse to meet whistleblowers citing this lame and self-protective excuse.

21 Ways to Skin a Whistleblower - #14

When you've gathered enough dirt and consulted enough lawyers, sack or suspend the whistleblower and, for good measure, publically humiliate him or her by getting security to march him or her out of the building.

21 Ways to Skin a Whistleblower - #15

Make vexatious complaints to a professional regulatory body such as the General Medical Council or the Healthcare Professions Council. It can be very difficult to prove that this is petty revenge for blowing the whistle. The GMC's Duties of a Doctor is so vague as to allow vexatious complainants to concoct hundreds of complaints and the GMC – with its limited resources and leisurely time frame– takes years to wade through. This is extremely stressful for the whistleblower and his/her family.

21 Ways to Skin a Whistleblower - #16

Throw public money at the Employment Tribunal, knowing the system is biased against the whistleblower. Trade unions such as the BMA rarely arrange prompt or adequate legal support for their members, who are usually tribunal novices, whereas NHS Trusts are “frequent flyers” who have the resources to instruct expensive lawyers. The cost of paying compensation to an employee who wins at a tribunal may be viewed as “worth it” if a troublemaker has been removed. The employee may be saddled with crippling legal bills even if he/she ‘wins’

21 Ways to Skin a Whistleblower - #17

If the Trust loses the Employment Tribunal – or indeed any legal ruling - it can keep appealing, using public money, until the whistleblower is bankrupt.

21 Ways to Skin a Whistleblower - #18

Arrange an 'in house' investigation. Protected disclosures under PIDA are usually anything but, because they are not independently investigated. Often there is just a sham internal investigation instigated by the Trust's own managers who are clearly not impartial and may be implicated by the 'protected' disclosures.

21 Ways to Skin a Whistleblower - #19

If the press and public insist on an external investigation, the Trust can still organize and pay for it, recruit the panel, agree the terms of reference, hold the inquiry in secret and control how much – if any- of the report reaches the public domain.

21 Ways to Skin a Whistleblower - #20

Don't fear Public Inquiries. They're increasingly pointless and very expensive exercises in grief management that seldom change anything. And they occur so long after the damage has been done, when many of those in the dock have moved on.

21 Ways to Skin a Whistleblower - #21

Peddle the illusion that the Public Interest Disclosure Act offers adequate protection for whistleblowers. It doesn't. Criminal sanctions should be enforced against individuals and NHS bodies for the victimization of whistleblowers and the corporate manslaughter of patients who are harmed or who die as a result of the failure to act on the whistleblowers concerns.

21 Ways to Skin a Whistleblower - #22

Russell Dunkeld (4 April 2012)

Hold a grievance hearing. Admit and apologise for the Trust failures. This puts the whistleblower off-guard, thinking (s)he has won. Ask the whistleblower to allow time to explore the possibility of a less-stressful work area, or other tempting alternative. If the whistleblower agrees, do not take the search seriously. You have won. By accepting your offer, the whistleblower will be deemed to have “accepted the former breaches” and “continued the terms of employment”, at the very moment that (s)he imagined that (s)he was agreeing to change the terms of employment. A Tribunal cannot now hear complaint concerning those former breaches.