

Raising concerns in the NHS

Hugh Wilkins

Introduction

HCPC registrants must report and follow up any concerns they may have about patient safety, and if necessary escalate them¹. The GMC, GDC and NMC have similar requirements. The NHS Constitution commits the NHS to encourage and support all staff to raise concerns about safety, malpractice or wrongdoing at work². Many if not all NHS trusts profess to encourage staff to speak up if they have concerns. Yet the public inquiry at the former Mid Staffordshire NHS Foundation Trust found that staff did not speak up about the appalling patient treatment which they witnessed, or if they did their concerns were ignored or ineffective³.

Mounting evidence shows that Mid Staffs was not an isolated incident in this respect. There have been other scandals where the standard of care fell far below acceptable levels, resulting in the avoidable deaths of many patients and ill-treatment of whistleblowers^{4,5,6,7,8,9}.

Staff who have raised legitimate concerns have found themselves subject to retaliation by their employers, including disciplinary action, dismissal, loss of career and unofficial blacklisting from future employment in the NHS. The extent of disquiet at such reprisals led the Secretary of State for Health to invite Robert Francis to review the way that NHS organisations deal with concerns raised by staff. The aim of the review was to provide advice and recommendations to ensure that NHS staff feel safe to raise concerns.

House of Commons Health Committee

Extracts from *Complaints and Raising Concerns*¹²: “It is clearly unacceptable if any employee in public service suffers detriment for having raised a concern in good faith ... The treatment of whistleblowers is a stain on the reputation of the NHS ... We recommend that there should be a programme to identify whistleblowers who have suffered serious harm and whose actions are proven to have been vindicated, and provide them with an apology and practical redress.”

Freedom to speak up: raising concerns (whistleblowing) policy for the NHS

NHS Improvement and NHS England have produced a ‘standard integrated policy’ aimed at improving the experience of whistleblowing in the NHS¹³. They expect it to be adopted by all NHS organisations in England as a minimum standard “to help to normalise the raising of concerns for the benefit of all patients”. Staff raising concerns may not consider themselves as whistleblowers, they are after all simply doing their job, but should take care to follow their employer’s whistleblowing policy nonetheless.

Whistleblowing Helpline

This telephone helpline is a source of free advice for the NHS and Social Care. It defines whistleblowing as the act of reporting concerns about malpractice, wrongdoing or fraud. (Another definition is raising concerns in the public interest.) It has produced a useful publication: *Raising concerns at work: whistleblowing guidance for workers and employers ...*¹⁴.

Public Concern at Work (PCAW)

PCAW is a charity which aims to protect society by encouraging workplace whistleblowing. They advise individuals with whistleblowing dilemmas at work, support organisations with their whistleblowing arrangements, inform public policy and seek legislative change.

Conclusion

Evidence shows that staff cannot be sure it is safe to raise concerns in the NHS.

Freedom to Speak Up Review¹⁰

The *Freedom to Speak Up* report confirmed that “there is a serious issue within the NHS”. Francis heard “shocking accounts of the way some people have been treated when they have been brave enough to speak up. He concluded that “there is a culture within many parts of the NHS which deters staff from raising serious and sensitive concerns and which not infrequently has negative consequences for those brave enough to raise them”.

Two particular factors stood out: fear of repercussions that speaking up would have for an individual and their career; and the futility of raising a concern because nothing would be done about it.

Five themes emerged from the evidence, the need for: culture change; improved handling of cases; measures to support good practice; particular measures for vulnerable groups and extending the legal protection. Grouped within these themes the review report recommends 20 principles and 35 actions to make it safe for people to speak up, and provide redress if injustice occurs.

Learning not blaming¹¹

The ministerial foreword to this publication reads “The shocking evidence amassed by Sir Robert Francis QC in his *Freedom to Speak Up* Review details the price paid by far too many NHS staff who spoke up with concerns about the quality of care. Those who should have listened to those concerns – and acted on them – responded instead with evasiveness and hostility”.

The introduction notes that “Following the publication of the *Public Inquiry into the Mid Staffordshire NHS Foundation Trust*, there was a widespread recognition that the NHS needed to radically improve the way it responded to concerns from staff and the public. A defensive culture more concerned with reputation than with either the truth, or with treating those raising concerns well and fairly, had grown up over several years.”

Culture change can be a lengthy process and implementation of the review recommendations is ongoing. One development is creation of the National Guardian post and network of Freedom to Speak Up Guardians in every NHS organisation. The National Guardian is expected “to act as a key leader in a national renewal and reinvigoration of an open and learning NHS culture”.

The Law

The *Freedom to Speak Up* Review notes that “the legal and policy framework surrounding whistleblowing is not easy to understand and has many layers”. Many feel that it urgently needs amendment.

The legislation which theoretically provides protection for whistleblowers is contained in the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 (PIDA). Where a worker makes a protected disclosure, he/she has a right not to be subjected to any detriment by his/her employer for making that disclosure. For a number of reasons this legislation is limited in its effectiveness¹⁰.

Campaigning Organisations

Patients First is a network of health professionals and supporters who work to protect whistleblowers and create an NHS where they are no longer needed. There are other organisations and individuals who are active campaigners in this field, but all have very few financial resources compared with NHS trusts, who have spent many millions of pounds defending the indefensible¹⁵.

References

1. Health and Care Professions Council (2016). *Standards of conduct, performance and ethics*
2. *The NHS Constitution for England* (27 July 2015)
3. Francis R (2013). *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*
4. Kennedy I (2001). *BRI Inquiry Final Report. Learning from Bristol – the report of the public inquiry into children’s heart surgery 1984-95*
5. Dr Foster / Department of Health (2001). *Hospital death rates after heart bypass surgery or treatment for stroke or broken hips*
6. Mazars (2015). *Independent review of deaths of people with a Learning Disability or Mental Health problem*
7. Capsticks (2016). *Quality, safety and management assurance review at Liverpool Community Health NHS Trust*
8. Butler P (2011). *Great Ormond Street hospital issues apology to Baby P whistleblower*. The Guardian 14 Jun 2011
9. Hammond P and Bousefield (2011). *Shoot the messenger: how NHS whistleblowers are silenced and sacked*. [http://www.drphilhammond.com/blog/2011/11/28/private-eye/...](http://www.drphilhammond.com/blog/2011/11/28/private-eye/)
10. Francis R (2015). *Freedom to Speak Up – a review of whistleblowing in the NHS*
11. Department of Health (2015). *Learning not blaming: the government response to the Freedom to Speak Up consultation* (and two other reports with similar themes)
12. House of Commons Health Committee. *Complaints and Raising Concerns*, 2014-15 4th report, chapter 5 Treatment of staff raising concerns
13. NHS Improvement and NHS England: *Freedom to speak up: raising concerns (whistleblowing) policy for the NHS*. April 2016
14. Whistleblowing Helpline (tel: 0800 0724 725). *Raising concerns at work: whistleblowing guidance for workers and employers in health and social care*
15. Molly A. *Whistleblowing cardiologist Raj Mattu wins unfair dismissal case*. The Independent 18 April 2014