

The mistreatment of NHS staff who raise valid concerns must stop

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Vindictive treatment of person raising concerns*

Introduction

Recent initiatives suggest that there is high level recognition of the serious problem of retaliation against NHS staff who raise concerns in the public interest. These initiatives include the commissioning of the Freedom To Speak Up (FTSU) review¹, statements by successive Secretaries of State^{2,3}, and reference in the recently-published Interim NHS People Plan⁴ to a focus on whistleblowing. The FTSU review report refers to shocking accounts of the way some people have been treated after speaking up in the NHS.

Suppression of concerns exacerbates NHS scandals

Why is this a serious problem?

Most if not all NHS scandals could have been averted or mitigated if staff who knew there were problems had spoken up at an early stage and received a proper response from their employers. These scandals include the appalling care at the Mid-Staffordshire NHS Foundation Trust, Bristol paediatric heart surgery, Baby 'P', Paterson, Savile, Gosport, and the Liverpool Community Health Trust. If it were safe and effective for staff to raise concerns there would be fewer NHS scandals.

Patient safety

What sort of concerns?

Concerns raised in this context typically include attention drawn to matters such as: unsafe working conditions; fraud; inadequate staffing levels; poor or illegal practice, e.g. audit evidence of radiation doses to patients from x-ray procedures higher than national reference levels. Most of the concerns relate to patient safety.

Pattern of retaliation

What sort of mistreatment do whistleblowers suffer?

There is a pattern of retaliation reported by many staff seen as troublemakers after speaking up. Common elements include them being ignored, ridiculed, undermined, isolated and smeared. If they persist in raising concerns they run the risk of disciplinary action engineered against them, followed by suspension and unfair dismissal. Careers wrecked, they are often then effectively blacklisted.

Toxic culture - wasteful, chilling reprisals

Why must mistreatment of whistleblowers stop?

Such reprisals are morally repugnant and symptoms of a toxic culture. Staff are obliged by duty, professional codes of conduct and the NHS Constitution to raise - and if necessary escalate - concerns; clearly they should not be penalised for doing so. Such reprisals are a waste of human and financial resources. They send a chilling warning to others who may be considering speaking up when things are not right.

Reputation placed above patient safety

Why do NHS organisations mistreat staff who speak up?

Shooting the messenger comes down to poor organisational culture, often associated with: top-down command-and-control; denial; defensiveness; groupthink; hubris; bullying; poor receptivity of warnings that all is not well; misconception that identifying problems constitutes negative behaviour rather than opportunity for improvement; cover-ups; organisational change, with **unregulated managers** in new roles in untested hierarchical structures:

- unfamiliar with clinical context, and issues which may be highly complex
- resistant to advice from subject matter experts
- overly keen to provide misleading "assurance" to senior management
- placing flawed perceptions of reputation above patient safety, oblivious to true reputational risks of suppressing valid concerns

How to change culture

What can be done to change the culture to make it safe to speak up?

- At national level **DHSC and NHS leaders should make clear** to NHS organisations & arms length bodies **that mistreatment of whistleblowers will not be tolerated**
- The final full **NHS People Plan** should flesh out the interim plan statement that there should be a focus on whistleblowing and freedom to speak up
- Many feel there should be a **public inquiry** into the mistreatment of whistleblowers
- There should be a robust system of **independent investigation, including peer review**, of cases in which there is evidence of retaliation against staff who have spoken up
- Local organisations who have treated whistleblowers unfairly should **apologise**; thank individuals for speaking up; make meaningful redress; review their actions against their own proclaimed values; reflect; address the concerns raised; deal with the toxic culture
- There should be emphasis on **Truth, Justice and Reconciliation**⁵
- There should be **accountability**, with all who mistreat staff who speak up held to account. Exemplary action should be taken to demonstrate that reprisals against whistleblowers are unacceptable
- There should be **legislative change**. The current legislation which supposedly protects whistleblowers is *weak and limited in its effectiveness*¹. The protection and remedies it provides are largely illusory. It is retrospective and funnels mistreated staff into slow, expensive, adversarial employment tribunals which inhibit conciliation and typically ignore clinical context and validity of the original concerns. The EU recently agreed a new directive setting a minimum standard for whistleblower protection⁶

What has this got to do with UKIO[†]?

There are a number of whistleblowing cases involving multidisciplinary staff in the imaging and oncology workforce (as in other areas of healthcare, employment sectors and countries; retaliation by misguided employers against staff who speak up is a global issue).

Whistleblowers unprotected

Kim Holt (paediatrician, referring to NHS whistleblowers): *When they need protection it just isn't there?*⁷

Legislation weak and ineffective

Peter Duffy: *In my opinion, the Law fails whistleblowers in at least three critical areas. There has never been a more dangerous time for frontline NHS staff to consider speaking up in defence of patients*⁸

Regulator (health services)

CQC (regulator): *We don't have any powers to protect you from action taken against you by your employer*⁹

Parliament

House of Commons Health Committee: *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*¹⁰

Conclusions

Actions, not words!

Effective action must be taken to protect NHS staff who have raised valid concerns in the public interest, and provide those who have suffered serious harm with an apology and practical redress.

Evidence-based

References/Bibliography

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* Extracted from *Freedom To Speak Up Review*¹, p.10

† Original poster presented at UKIO (UK Imaging and Oncology Congress) June 2019