



Whistleblowing in Practice

Derby and Derbyshire Local Medical Committee (DDLMC) has accumulated some experience in dealing with GPs who whistleblow in primary care from recent events within our constituency. It has become increasingly clear that although clinicians may have an intuitive feeling that they are possibly protected by law if they whistleblow, the reality is much more complex.

The first difficulty that became clear was the weakness of the legal basis for whistleblowing. The law associated with whistleblowing is the Public Interest Disclosure Act (PIDA) which allows employees to take concerns to certain agencies (eg CCGs or NHSE) if they think there is malpractice severe enough to risk public safety. If the employee then suffers a harm such as failure to get a promotion, they can take their employers to an industrial tribunal to claim compensation. From our experience in Derbyshire, this protection misses the point as the priorities of clinicians are to know that their reputations will remain intact and that the care of patients will improve, rather than to receive a financial settlement. It is telling that the NHSE policy on whistleblowing (Freedom to speak up: Whistleblowing Policy for the NHS) doesn't mention the PIDA specifically and this seems entirely correct to us.

A second difficulty which became apparent is that of defining who needs to be protected. We are told by NHSE that it is very common for one complaint to result in a to and fro of complaint and counter-complaint. From the point of view of the body investigating the evidence, how can you decide who is the whistleblower in need of protection, and who is a whistleblowee? The temptation is to view the first person to make contact as the hero, but this view can break down on closer inspection. We understand the policy is to investigate every complaint with equal seriousness but to use local knowledge of the context to give different weight to different pieces of evidence. Such a nebulous reassurance is hardly comforting to a potential whistleblower, but during DDLMCs recent meetings with NHSE, we couldn't help feeling great sympathy for the agencies trying to look into these difficult situations.

A third difficulty is the lack of realistic advice for clinicians who may feel the need to disclose malpractice. The official line as outlined in the NHSE policy "Freedom to Speak up" is remarkable for the quantity of reassurance it gives potential whistleblowers, but also for the lack of detail about how they may be protected. DDLMC has asked NHSE to include a section about counter-complaints in the policy document, which may at least alert clinicians to one possible unwanted result of a disclosure but we would encourage clinicians with concerns about poor practice to view the policy not necessarily as an account of what really happens, but rather as a reflection of managerial aspiration.

DDLMCs intention is not discourage doctors from raising concerns, but we believe that clinicians are better served by understanding the legal situation and the possibility of counter-complaints. We hope that being forewarned may prevent some of the distress and isolation felt by our constituents in Derbyshire.

Dr North
Derby and Derbyshire Local Medical Committee Member
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