



BRIEFING PAPER

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NHS whistleblowing procedure in England

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Summary

This briefing sets out the current rights and procedures for NHS staff in England to raise concerns about safety, malpractice or wrongdoing at work (popularly known as “whistleblowing”). It also refers to guidance on where wider disclosure of concerns may be appropriate, including raising concerns with the Care Quality Commission. Serious failures in care such as those at Stafford Hospital (part of the Mid-Staffordshire NHS Foundation Trust) and at Winterbourne View private hospital have focussed attention on whistleblowing policies and the need to ensure that staff feel able to raise concerns (and that reported concerns are acted on).

Employment law and policy (of which whistleblowing law and policy is a part), and health law and policy, are devolved matters in Northern Ireland. In Scotland and Wales employment law is not devolved, but health law is. Decisions about implementation of whistleblowing policies in the NHS in each part of the United Kingdom are therefore a matter for each of the devolved governments.

This briefing also provides an overview of statutory protections for staff but further information on this, and the issue of ‘gagging clauses’ in compromise agreements, can be found in the Library briefing, [Whistleblowing and gagging clauses: the Public Interest Disclosure Act 1998](#) (SN00248). NHS complaints procedures for patients and the public are covered in the Library briefing, [NHS complaints procedures in England](#) (CBP07168). The Details of other organisations that can provide advice to NHS employees who want to raise concerns, and links to some of the relevant guidance and professional standards for the various healthcare professions and for NHS managers, can be found at the end of this note.

Update: In June 2014 the Secretary of State for Health, Jeremy Hunt, announced that he had asked Sir Robert Francis QC to lead a public inquiry to look at how staff can be supported to raise their concerns to make sure people receive safe care. Sir Robert’s report, [Freedom to Speak Up](#), was published on 11 February 2015. The report and the Government initial response are available [here](#). On 16 July 2015 the Government published, [Learning not blaming](#), which set out how it would meet the Francis recommendations, to:

1. Put in place Freedom to Speak Up Guardians in each Trust.
2. Ensure that every local NHS provider provides training in raising and listening to concerns.
3. Review the Professional Codes of doctors, nurses and midwives and ensure that the right incentives are in place to encourage people to report openly.

1. Current NHS whistleblowing policy and guidance

What is whistleblowing?

Whistleblowing is the popular term applied to a situation where an employee raises concerns about safety, malpractice or wrongdoing at work. In the context of the NHS, the term refers to NHS staff raising concerns about issues which may affect patients, the public, other staff or the organisation. The NHS Constitution includes an expectation that NHS staff will raise concerns as early as possible and a pledge that NHS employers will support all staff in raising concerns, responding to and where necessary investigating the concerns raised.¹

There are a number of ways in which NHS staff can raise concerns but it is generally considered best practice, where appropriate, to first raise a concern within the organisation (directly with a line manager, or staff member designated in the employers policy for raising concerns). If serious concerns are not addressed satisfactorily then the issue could be escalated to the Chief Executive of the organisation. Issues around wider disclosure, to other bodies including the Care Quality Commission, are covered in section 5 of this briefing. Disclosure of concerns to MPs and the media should generally only be undertaken following professional advice.

If a NHS employee is unsure whether, or how, to raise a concern, information and guidance for NHS staff is available from the national whistleblowing helpline, provided by the Royal Mencap Society, on **08000 724 725**; advice can also be sought via email at enquiries@wbhelpline.org.uk. The service provides free, confidential advice for NHS staff and can be used to assist individuals to identify how best to raise their concern, and for advise on their rights. Healthcare professionals could also seek advice from a professional body (such as the relevant regulator for their profession or the BMA in the case of doctors); advice on whistleblowing is also provided by the charity Public Concern at Work.

The Department recently commissioned the Whistleblowing Helpline to update whistleblowing guidance for the NHS. This revised guidance [*Raising Concerns at Work—Whistleblowing Guidance for workers and employers in Health and Social Care*](#) was published on 17 March 2014.

[*The Handbook to the NHS Constitution*](#) sets out that all NHS staff should have "protection from detriment in employment and the right

¹ Section 4 of the current [*NHS Constitution*](#) (updated in July 2015) sets out information on whistleblowing procedures. The Constitution was first published in January 2009 following recommendations in Lord Darzi's report [*High Quality Care for All*](#) (2008). Under the *Health Act 2009* all providers and commissioners of NHS care have a statutory duty to have regard to the *NHS Constitution* in all their decisions and actions.

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not to be unfairly dismissed for 'whistleblowing' or reporting wrongdoing in the workplace".²

The *Public Interest Disclosure Act 1998* (PIDA), was introduced to provide protection to employees raising concerns, where they do so in accordance with the provisions of the Act. NHS bodies are responsible for establishing whistleblowing policies within the framework of the PIDA and the Department has made it clear that every NHS trust must have in place local policies and procedures that comply with the Act.

² [The Handbook to the NHS Constitution](#) (July 2015), page 113

2. Recent developments

On 24 June 2014 Jeremy Hunt announced that he had asked Sir Robert Francis QC to lead a public inquiry to look at how staff can be supported to raise their concerns to make sure people receive safe care. The report of Sir Robert's review into whistleblowing in the NHS, [Freedom to speak up](#), was published on 11 February 2015. The Government accepted in principle all of Sir Robert's 20 recommendations, including proposed new legislation, to protect whistleblowers who are applying for NHS jobs from discrimination by prospective employers.³ The Government consulted on a number of measures including:

- a new National Whistleblowing Guardian to protect those who speak up
- practical help through Monitor, the Trust Development Authority and NHS England to help whistleblowers find alternative employment
- a local whistleblowing guardian in every NHS organisation - reporting directly to the chief executive
- training for staff on how to raise concerns and protect others who do so

On 16 July 2015 the Government published, [Learning not blaming](#), which set out more detail on how it would meet the Francis recommendations. In particular, the Government a new "Independent National Whistleblowing Officer", hosted by the Care Quality Commission, will be in place by December 2015.

- "Freedom to Speak Up Guardians" will be appointed in all NHS Trusts, to build up capability and capacity locally, at the frontline of service provision, following guidance published by the Independent National Officer.

Sir Robert's report also called for training on raising and hearing concerns in every local NHS provider organisation. The Government announced that the relevant national bodies will work on a package that would include the following content:

- the inclusion of content on raising concerns in induction training for all staff;
- the inclusion of good practice regarding the raising of concerns for healthcare professionals as part of their professional codes, followed up through continuing professional development;
- the regular use of "reflective practice", through for example team meetings or [Schwartz rounds](#), to review particular examples when concerns have been raised or not raised and how this might be improved in future;

³ Further information on the Government response to the Francis whistleblowing review, including the Health Secretary's statement to Parliament, can be found [here](#).

The Health Select Committee report on raising concerns

In January 2015, the Health Select Committee published a report on [Complaints and Raising Concerns](#). The Committee stated that “the treatment of whistleblowers remains a stain on the reputation of the NHS” and undermined the willingness of others to come forward. The Committee recommended that individuals who have suffered harm as a result of raising concerns, where their actions are proven to have been vindicated, should be identified and receive an apology and practical redress.⁵

⁴ [Publication of Learning Not Blaming and Review of NHS Leadership: Written statement - HCWS113, 16 July 2015](#)

⁵ Health Select Committee, [Complaints and Raising concerns](#), HC 350 2014-15, 21 January 2015

3. The response to failures at Mid Staffordshire NHS Foundation Trust

On 9 June 2010 the then Secretary of State for Health, Andrew Lansley, announced that Sir Robert Francis QC would lead a second, public, inquiry relating to the serious failures in care at Mid-Staffordshire Foundation Trust, to examine the role of the commissioning, supervisory and regulatory bodies. As part of this announcement he said that further work would be undertaken to improve procedures for NHS staff who wished to raise concerns. These new measures included:

- Issuing guidance to NHS organisations that all their contracts of employment should cover staff whistleblowing rights and changes were made to the NHS staff terms and conditions of service handbook for those on Agenda for Change contracts. A circular to NHS organisations informing them of these changes was published on 13 September 2010 with immediate effect. Further information about these changes is available on the NHS employers website.⁶
- Issuing guidance to the NHS on supporting and taking action on concerns raised by staff. This new guidance, [Speak up for a Healthy NHS](#), was developed through the Social Partnership Forum (SPF) and published on 25 June 2010.⁷
- A full public consultation on possible changes to the NHS Constitution to make clear the rights and responsibilities of NHS staff and their employers in respect of whistleblowing.

In October 2010 the Department of Health issued a consultation document on a number of amendments to the NHS Constitution, to make clear the rights and responsibilities of NHS staff and their employers in respect of whistleblowing.⁸ The consultation closed in January 2011, and the Department's response, endorsed the proposed changes.⁹ As a result, in March 2012 a new edition of the NHS Constitution was published including the following changes:

- an expectation that staff should raise concerns at the earliest opportunity;
- a pledge that NHS organisations should support staff when raising concerns; and
- clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrongdoing without suffering any detriment.

⁶ Circular (AfC) 4/2010, [NHS Employers website](#).

⁷ [Speak up for a Healthy NHS - revised Whistleblowing guidance](#) (July 2010).

⁸ The then Secretary of State for Health Andrew Lansley announced this consultation in a Written Ministerial Statement available here ([HC Deb 12 October 2010 c10WS](#)); a copy of the consultation paper can be downloaded [here](#).

⁹ Department of Health, [The NHS Constitution and Whistleblowing – consultation report](#) (October 2010)

Further guidance is provided in the current edition of the [Handbook to the NHS Constitution](#) (July 2015).

The “Speaking Up” charter, launched on 15 October 2012, outlines a commitment by the NHS Employers organisation, regulators, professional regulatory bodies, health unions and professional associations to work together to support staff when raising a safety concern or issue at work. A full list of the organisations who have pledged their support of the charter, and further detail of the principles of the charter, is provided on the NHS Employers [website](#).¹⁰ It is the first such charter to provide a commitment by national level organisations to work together to tackle the barriers which prevent staff from reporting concerns about safety or other issues early on.

The Government’s response to the Francis Report

On 6 February 2013 the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, led by Sir Robert Francis QC, was published.¹¹ This inquiry was specifically established to examine why serious failures in care at Mid-Staffordshire NHS Foundation Trust before 2009 were not acted on sooner by the various responsible organisations (it followed a number of earlier inquiries into events at the Trust).¹² The Francis Report made 290 recommendations designed to create “a common patient centred culture across the NHS”.¹³ Key themes included the need for greater openness, transparency and candour throughout the system.

Following an earlier initial response to the report¹⁴, on 19 November 2013 the Department of Health published [Hard Truths, the Journey to Putting Patients First](#), setting out its detailed response to each of the Francis recommendations, and the actions the Government had already taken.¹⁵ The response set out the measures taken to enable staff to freely raise concerns:

2.15 Many of the measures set out in this response are designed to ensure that the NHS is a genuinely open and transparent culture, a culture that will make whistleblowing far less necessary than at present. There will always, however, be a need to ensure that staff who have concerns are able to raise them. We therefore made it clear in *Patients First and Foremost* that NHS staff should feel free and able to raise their real concerns about patient care,

¹⁰ [NHS Employers website](#).

¹¹ [Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry](#) (Francis Report), 6 February 2013

¹² Further background can be found in Library Standard Note [The Francis Report \(Report of the Mid-Staffordshire NHS Foundation Trust public inquiry\) and the Government’s response](#), SN06690.

¹³ The Mid Staffordshire NHS Foundation Trust Public Inquiry, [Publication of the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry](#), press release, 6 February 2013, p1

¹⁴ Department of Health, [Patients First and Foremost: the Initial Government Response to the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry](#) (26 March 2013).

¹⁵ DH response to the Francis Report, [Hard Truths, the Journey to Putting Patients First](#), Cm 8754-I (19 November 2013)

and that the era of gagging staff must come to an end. The Government has acted to ensure this becomes a reality by:

Extending to all healthcare professionals the protections of the Public Interest Disclosure Act 1998 (which inserted Part 4A into the Employment Rights Act 1996) by the Enterprise and Regulatory Reform Act, which received Royal Assent in April 2013;

Giving the new Chief Inspector of Hospitals an important role in ensuring hospital inspections are not just seen as a 'tick box' exercise by judging whether the culture of the organisation actively promotes the benefits of openness and transparency;

Enabling staff to whistle blow to health and care professional regulatory bodies as of 1st October 2013;

Backing the Whistleblowing Helpline's refresh of the 'Speak up for healthy NHS' guidance, as recommended in its Bridge the Gap campaign report of July 2013.

2.16 The Government has also acted on compromise agreements, updating guidance in March 2013 to make clear that where a compromise agreement is used it must include an explicit clause making clear that nothing within the agreement prevents an individual from making a protected disclosure under the Public Interest Disclosure Act. The National Audit Office has now recommended other Government Departments adopt this policy. It examined a number of agreements and found no evidence of gagging clauses in any of the health-related cases they reviewed. This shows that the system has operated, and continues to operate, effective controls in this area. However, organisations still need to be vigilant to ensure staff do not feel constrained by agreements, which is why NHS Employers launched guidance in April 2013 suggesting some model confidentiality clauses and model wording for the explicit clause now required in NHS compromise agreements.¹⁶

On 5 March 2014 the Secretary of State for Health, Jeremy Hunt, wrote to Chairs in NHS trusts and foundation trusts in England to reiterate the importance of fostering a culture of openness and transparency in the NHS.

Also in response to the Francis recommendations, the Government included measures in the *Care Act 2014* to introduce a 'duty of candour' for health and social care providers. The Act requires the Secretary of State to introduce regulations making the provision of certain information a condition of registration with the Care Quality Commission; this is intended to make providers more open with patients about care failings. Further information can be found in the Department of Health's response to the Francis Report, [Hard Truths, the Journey to Putting Patients First](#)¹⁷ and the [Library Research Paper on the Care Bill](#) (RP 13/71).¹⁸

¹⁶ *Ibid.* p64

¹⁷ DH response to the Francis Report, [Hard Truths, the Journey to Putting Patients First](#), Cm 8754-I (19 November 2013)

¹⁸ [Commons Library Research Paper on the Care Bill \[HL\]](#) (RP 13/71) 11 December 2013

4. Protection of whistleblowers under the Public Interest Disclosure Act 1998

The *Public Interest Disclosure Act 1998* (PIDA), which amended the *Employment Rights Act 1996*, provides protection for individuals who suffer a detriment by any act or any deliberate failure to act by their employer for raising a genuine concern, whether it be a risk to patients, financial malpractice, or other wrongdoing. The Act's tiered disclosure regime is intended to promote internal and regulatory disclosures, and encourage workplace accountability and self-regulation. The protection afforded to a whistleblower depends on the circumstances of the case and individuals should obtain their own legal advice (free and confidential advice is available from the national whistleblowing helpline provided by the Royal Mencap Society on **08000 724 725**, advice can also be sought via email at enquiries@wbhelpline.org.uk).¹⁹

The *Handbook to the NHS Constitution* explains that, under PIDA, workers who act honestly and reasonably are given automatic protection for raising a matter internally. In the NHS an internal disclosure can be escalated to a number of levels, ultimately to Ministers at the Department of Health. Legal protection is also available to individuals who make disclosures to prescribed regulators (such as the Care Quality Commission). PIDA covers all temporary workers including temporary agency staff, persons on training courses and self-employed staff who are working for and supervised by the NHS. It does not cover volunteers, but the Department of Health regards it as good practice for NHS organisations to include volunteers within the scope of their whistleblowing policies. The *Handbook to the NHS Constitution* includes the following advice:

The Employment Rights Act 1996 also makes it clear that any clause in a contract or agreement that purports to prevent an individual from raising a "protected disclosure" is void.

Where an individual is subjected to reprisals by their organisation for raising a concern or is dismissed in breach of the Employment Rights Act 1996, they can bring a claim for compensation in an Employment Tribunal.²⁰

Section 43B(1) of the *Employment Rights Act 1996* (as amended by s.1 of the PIDA) sets out what constitutes a "qualifying disclosure" and is therefore protected under the Act. In particular, it is important to note that the Act's protections only apply to "information" which falls into one of the listed categories. In discussing *Geduld v Cavendish Munro Professional Risks Management Ltd* [2010] ICR 325, *Tolley's*

¹⁹ PCaW also provides a guide to PIDA on their [website](#).

²⁰ [Handbook to the NHS Constitution](#) (July 2015), page 113

Employment Law Handbook provides a good example of what's meant by information, using healthcare as an illustration:

...The [Employment Appeal Tribunal] held that there was a distinction between communicating "information" (which is protected) and making an "allegation" which does not convey facts...which is not protected...The distinction is well illustrated by an example given in Mrs Justice Slade's judgment in relation to the state of a hospital. To say "health and safety requirements are not being complied with" is an unprotected allegation. To say "the wards of the hospital have not been cleaned for two weeks and sharps were left lying around" is conveying "information" and is protected.²¹

As noted earlier, the *Enterprise and Regulatory Reform Act 2013*, which received Royal Assent in April 2013, amended the PIDA. Further information on the changes to the Act, and about the use of 'gagging clauses' in compromise agreements, can be found in the Library briefing [*Whistleblowing and gagging clauses: the Public Interest Disclosure Act 1998*](#) (SN00248).

²¹ *Tolley's Employment Law Handbook 2012* (p130)

5. Other organisations that can help

If a NHS employee is unsure whether, or how, to raise a concern, information and guidance for NHS staff is available from the national whistleblowing helpline, provided by the Royal Mencap Society on **08000 724 725**, advice can also be sought via email at enquiries@wbhelpline.org.uk. The service provides free, confidential advice for NHS staff and can be used to assist individuals to identify how best to raise their concern, and for advise on their rights under the [Public Interest Disclosure Act 1998](#). Healthcare professionals could also seek advice from a professional association (such as the BMA in the case of doctors) or the relevant regulatory body.

The following bodies provide additional guidance:

- The [British Medical Association \(BMA\)](#) provides specific guidance for secondary care doctors, medical students, and doctors who work in the armed forces. Others, such as GPs or private practice doctors, can also contact the BMA for advice and guidance.
- The [General Medical Council \(GMC\)](#) has published guidance for doctors on raising and acting on concerns.
- The [Nursing and Midwifery Council \(NMC\)](#) provides guidance and toolkits for nursing and midwifery staff.
- The [Health and Care Professions Council \(HCPC\)](#) provides guidance for health care professionals on raising and escalating concerns in the workplace.
- [NHS Employers](#) provides guidance for NHS organisations on how to promote a workplace climate in which staff feel able to raise concerns.
- The [Professional Standards Authority](#) (formerly the Commission for Healthcare Regulatory Excellence) has recently developed new standards for senior NHS managers that include a duty to raise concerns in the event of harmful behaviour or misconduct by others.

As mentioned earlier in the note, the Social Partnership Forum has produced a guide to support NHS organisations to promote best practice when devising, implementing and auditing their whistleblowing policies and procedures. The guide, [Speak up for a Healthy NHS](#) (June 2010) has been written by Public Concern at Work in consultation with NHS Employers, Trade Unions and the Department of Health. The Government is backing the Whistleblowing Helpline's refresh of this guidance. Advice is also provided by the independent whistleblowing charity [Public Concern at Work](#).

Care Quality Commission

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. Providers of regulated healthcare activities are required by law to be registered with the CQC, and assessed against a set of 16 safety and quality requirements. The CQC does not have a role in investigating individual concerns about NHS

services but the CQC is using staff surveys and the whistleblowing concerns it receives as part of the data in its new intelligent monitoring system. This data will guide the CQC about which hospitals to inspect. Since September 2013 the CQC's new inspection system includes discussions with hospitals about how they deal with whistleblowers.

The CQC has published guidance for NHS staff about whistleblowing and how to raise concerns with the CQC if they do not feel able to report their concerns internally.²² They have also produced a document explaining to providers of services why they should have a whistleblowing policy and the benefits of encouraging workers to raise concerns.²³

Health and care professional regulatory bodies

The Department of Health's response to the Francis Report, *Hard Truths, the Journey to Putting Patients First*,²⁴ states that from 1 October 2013 staff will be able to whistleblow to health and care professional regulatory bodies. Furthermore if NHS staff concerns relate to an individual healthcare professional's conduct and fitness to practice then these could also be raised with the appropriate regulatory body. A list of the bodies that currently regulate healthcare professionals in England is provided below, together with details of the professions they regulate:

- [General Chiropractic Council](#) (GCC): the GCC regulates chiropractors.
- [General Dental Council](#) (GDC): the GDC regulates dentists, dental therapists, dental hygienists, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists.
- [General Medical Council](#) (GMC): the GMC regulates doctors.
- [General Optical Council](#) (GOC): the GOC regulates opticians.
- [General Osteopathic Council](#) (GOsC): the GOsC regulates osteopaths.
- [Health and Care Professions Council](#) (HCPC): the HCPC currently regulates arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, social workers in England and speech and language therapists.
- [Nursing and Midwifery Council](#) (NMC): the NMC regulates nurses, midwives and specialist community public health nurses.
- The [General Pharmaceutical Council](#) (GPC): the GPC regulates pharmacists and pharmacy technicians.

²² CQC, [Raising a concern with CQC: A quick guide for health and care staff about whistleblowing](#)

²³ CQC, [Whistleblowing: Guidance for providers](#), November 2013

²⁴ DH response to the Francis Report, *Hard Truths, the Journey to Putting Patients First*, Cm 8754-I (19 November 2013)

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