

Whistleblowing

Advice for BMA members working in NHS secondary care about raising concerns in the workplace

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Doctors working in secondary care in the NHS face many, sometimes conflicting, challenges on a daily basis. This is part of daily working life but in some circumstances you may find you have serious concerns about what is happening around you and feel that patient care may be under threat. A 2009 BMA survey of NHS hospital doctors in England and Wales showed that many doctors do report concerns of this nature but it also revealed worrying trends in doctors' experiences of doing so, such as fear for career prospects, low awareness of official whistleblowing policies in the workplace and confidence in the outcomes of such processes.

This guidance provides the information you need if you have concerns about your workplace that you wish to raise. This guidance is for all doctors working in secondary care within the NHS across the UK from the moment you leave university to the day you retire, irrespective of grade and experience. Separate guidance is available from the BMA for medical students. Those in General Practice, private practice or the Armed Forces are encouraged to contact the BMA for advice and guidance.

What is whistleblowing?

The term "whistleblowing" is the popular term applied to a situation where an employee, former employee or member of an organisation raises concerns to people who have the power and presumed willingness to take corrective action. Throughout this document, we will talk about "raising concerns" rather than "whistleblowing" because the latter has come to denote a sudden, drastic or last resort act. Concerns should not be left to reach a critical point, particularly when patient safety may be at risk. All employers should have a formal policy for raising concerns, which will usually be known as the whistleblowing policy, and you should familiarise yourself with this at an early stage when tackling a concern you have.

Raising concerns about significant risks to patients can be a serious and significant step for anyone to take. The Public Interest Disclosure Act 1998 gives statutory protection to employees who disclose information reasonably and responsibly in the public interest and who are victimised or even dismissed as a result.

Raising concerns: the principles

- Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. You should be watchful for illegal or unethical conduct and report anything of that nature that you become aware of.
- Any matter raised should be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the worker who raised the issue.
- No one should be victimised for raising a concern. This means that your continued employment and opportunities for future promotion or training should not be prejudiced because you have raised a legitimate concern.
- If you are victimised after having made a disclosure under the Public Interest Disclosure Act 1998 you can bring a claim at an employment tribunal. Your employer should treat any acts of victimisation as a disciplinary offence.
- An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, you should not agree to remain silent. You should report the matter following the steps outlined in this guidance document.
- If you make a false allegation it may be a disciplinary offence.

Types of concern

Issues you might have concerns about include:

- Systemic failings that result in patient safety being endangered, e.g. poorly organised emergency response systems, or inadequate/broken equipment
- Poor quality of care
- Malpractice
- Welfare of subjects in clinical trials
- Acts of violence, discrimination or bullying towards patients
- Acts of fraud
- Health and safety violations – blocked fire exits, dangerous structures, etc.
- Doctors or other staff being mistreated by patients
- Inappropriate relationships between patients and doctors
- Illness that may affect a doctor's ability to practise in a safe manner
- Substance and alcohol misuse affecting ability to work
- Negligence
- Fraud or corruption

It can be hard to know whether a situation should be raised as a concern. You should be guided by this question: if you let the situation carry on is it likely to result in harm to others? If in doubt, you should always err on the side of raising the concern with your manager/immediate superior, and you should do it as soon as you can. Raising a concern is different from a personal complaint/grievance. This means that there is no burden on you, as the person raising the concern, to establish all the facts and provide all the necessary evidence.

A recent BMA survey revealed that almost three quarters of respondents reported experiencing important concerns in their place of work, so you should not feel alone or isolated in having such concerns.

Concerns about training

Concerns about training may well be bound up with patient care issues, and complaining about training may sometimes lead to raising concerns about patient care. Issues with training may be a cause for concern for both trainees and trainers, and PMETB and postgraduate deaneries are empowered to address this type of concern. If you contact the postgraduate deanery the Training Programme Director would be the best first point of contact. You can and should approach them if local routes, such as speaking to the educational supervisor, are unsuitable or unsuccessful.

Concerns about research

Welfare of subjects in clinical trials or other research may also be a cause for concern. Whilst ethical approval can be taken as a guide, if you see problems that perhaps the ethics committee did not see then it is still your duty to say or do something about it. If you have concerns about research probity within the NHS then you need to raise this. If you hold a substantive medical academic contract and there are immediate direct clinical issues involved then using the processes outlined in this guidance would be the most appropriate route. However, it is important that you should inform your academic head of department as well, and the Dean of the Medical School may need to be involved at an early stage. If there are no immediate direct clinical issues then (even if your academic contract is honorary) you may wish to pursue the matter via the University procedures, but again when doing so it is advisable to ensure that your clinical team and management are kept fully informed.

What are my contractual entitlements?

If you are employed on a nationally agreed contract of employment or terms and conditions of service the following clause should apply:

“A practitioner shall be free, without prior consent of the employing authority, to publish books, articles etc., and to deliver any lecture or speak, whether on matters arising out of his or her NHS service or not.”

For those doctors on the new Specialty Doctor and Associate Specialist contracts schedule 13 paragraph 7 applies. For consultants on the 2003 contract this clause is included in the model contract as paragraph 11.4. For consultants on the pre-2003 contract, it is contained in paragraph 330. For Junior Doctors, those doctors on the pre 2008 Staff and Associate Specialist contract and the pre 2003 Consultants contract, paragraph 330 of the NHS Medical and Dental Staff and Doctors in Public Health Medicine and Community Health Service (England and Wales) Terms and Conditions of Service September 2002 applies.

Check to see if this clause is contained within your contract as the BMA interprets this to mean that in addition to the protections afforded to you if you raise concerns under the Public Interest Disclosure Act 1998 your contract also entitles you to speak freely.

What are my professional obligations?

Raising concerns with your manager is an integral part of a doctor's duty to maintain a professional attitude to colleagues and patients. Sometimes it has been seen in a negative way, but in fact it is a professional responsibility. Every doctor has an obligation to protect fellow colleagues, patients and themselves from unprofessional conduct or acts of clinical negligence. Speaking up is an act of conscience, knowing that inaction, while an easier option, may lead to harm to others.

These are specific GMC obligations relating to the duty to protect patients. *Good Medical Practice* states the following on raising concerns about systemic problems:

6. If you have good reason to think that patient safety is or may be seriously compromised by inadequate premises, equipment, or other resources, policies or systems, you should put the matter right if that is possible. In all other cases you should draw the matter to the attention of your employing or contracting body. If they do not take adequate action, you should take independent advice on how to take the matter further. You must record your concerns and the steps you have taken to try to resolve them.

and this about raising concerns about colleagues;

43. You must protect patients from risk of harm posed by another colleague's conduct, performance or health. The safety of patients must come first at all times. If you have concerns that a colleague may not be fit to practise, you must take appropriate steps without delay, so that the concerns are investigated and patients protected where necessary. This means you must give an honest explanation of your concerns to an appropriate person from your employing or contracting body, and follow their procedures.
44. If there are no appropriate local systems, or local systems do not resolve the problem, and you are still concerned about the safety of patients, you should inform the relevant regulatory body. If you are not sure what to do, discuss your concerns with an impartial colleague or contact your defence body, a professional organisation, or the GMC for advice.
45. If you have management responsibilities you should make sure that systems are in place through which colleagues can raise concerns about risks to patients, and you must follow the guidance in *Management for doctors*.

So raising concerns is not just a matter of personal conscience – in some circumstances it is a professional obligation.

Who do I approach in order to raise a concern?

In order to make sure you receive the protections that the Public Interest Disclosure Act 1998 provides when raising concerns you need to follow your employer's policy, if it is a reasonable one. If you do not believe your employer's policy to be reasonable then please contact the BMA or Public Concern at Work (PCAW) for guidance as to how best to proceed. Your employer's policy should identify with whom you need to raise your concerns and, if necessary, provide details of how you escalate your concern. Check your employer's policy and follow it.

Your employer's policy should have information such as that included in steps 1 to 3 below. When you are preparing to raise a concern, ensure that you keep records and notes of the issues that you are concerned about for reference throughout the process. At any stage, whether you are following your employer's policy or the steps outlined here, you can contact the BMA or PCAW for support and advice.

Step 1: In general terms an employer's policy would normally request that you initially raise your concern within your team or directly with your manager/immediate superior. If you feel uncomfortable doing this (particularly if your concern relates to management) speak to the designated officer. Your employer's policy should allow for a formal and confidential (if necessary) procedure for raising concerns, and will indicate who the designated officer is. Some issues (eg bullying by staff of other staff) should be raised as a grievance using the employer's formal grievance procedures, rather than the whistleblowing policies. Once you have identified with whom you need to raise your concern, read the next section of this guidance on **raising a concern**.

A confidential approach outside the line management structure should not be necessary in the first instance. Unless you feel you may meet resistance, your approach should initially be at the level of your immediate clinical team – telling your colleagues, supervisor or head of department, for instance.¹ Contact your human resources (HR) department and take the opportunity to familiarise yourself with the policy for your place of work.

Step 2: If your concerns are not addressed escalate the issue to the Medical Director.

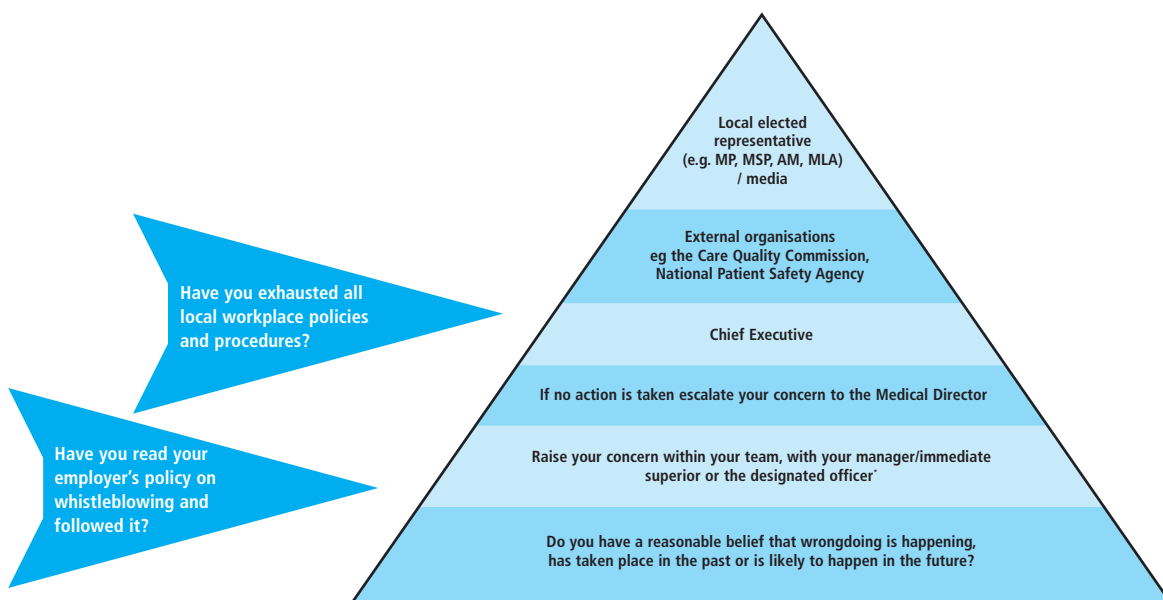
Step 3: If your concerns are still not addressed satisfactorily then escalate the issue again to the Chief Executive but ensure your Medical Director is aware that you have taken this step.

If you have followed your employer's policy and your concerns have not been resolved you may wish to consider taking the following steps:

Step 4: Only once you have exhausted all local workplace policies and procedures should you consider raising your concerns externally. The BMA can help you to find the right person to notify of your concerns, and sometimes that person may be outside the usual NHS or health department structures. Contact the BMA on 0300 123 123 3 or email support@bma.org.uk. The Care Quality Commission (successor to the Healthcare Commission) and the National Patient Safety Agency are suitable organisations to approach, as are your local Strategic Health Authority, Local Health Board, NHS Board or Health and Social Care Trust (depending on where in the UK you work).

Step 5: Going directly to your local elected representative (such as your relevant MP, MSP, AM or MLA) or the media is only advisable if your employer has a record of ignoring, discouraging or suppressing concerns that have been raised and this is the experience you are having even after escalating it to the highest level. You should consult the BMA or a defence body before taking this step. For advice on dealing with the press or local elected representatives please refer to the relevant BMA contact for your nation on page 8.

¹ A recent BMA survey of hospital doctors revealed that only half of all respondents were aware of their employer's whistleblowing policy, and only 15% had read that policy



* At any time throughout this process you can contact the BMA or PCAW for support and advice.

Raising a concern

When you have identified whom to approach to raise a concern, you can do so either verbally or in writing. You will need to include some background with a history of your concerns and the reasons why you are particularly concerned. Ensure that throughout the process you keep records of your concerns and any steps you have taken to resolve them which you may need to use as reference at a later date. The ideal situation is one where you feel you are able to raise your concern openly where those involved know what the issue is and who has raised it. Openness can make it easier for your employer to investigate your concerns. However, in practice you may feel very uncomfortable about being open and have good reason to wish to raise your concern confidentially. Your employer's policy should enable you to raise your concern confidentially, which means your name would not be revealed without your consent, unless required by law. When you raise your concern, whether this be verbally or in writing, you need to make it clear whether you are doing so confidentially. You do not need evidence and facts, although these are always helpful, but you do need to have a reasonable belief that wrongdoing is either happening, has taken place in the past or is likely to happen in the future.²

When you raise a concern you should be listened to carefully and without fear of detriment. Your concerns should be assessed as to how serious and urgent the risk is and whether the concern is best dealt with under the whistleblowing policy or another local procedure. Consideration should also be given to whether assistance is required or if referral to senior managers, or a specialist function, is desirable or necessary. The issues you raise should be answered in writing summarising the concerns, noting whether you raised them openly or confidentially and stating the steps that will be taken to resolve the situation. The BMA's survey showed that of those doctors who have experienced raising concerns, almost three quarters indicated they would be prepared to do so again in the future, despite the process being challenging.

Will there be personal consequences for me if I raise my concerns?

The BMA recognises that raising concerns can sometimes require courage in the face of possible victimisation or other detriment, and the BMA will support those who face difficulties for having taken this step. An employee who is victimised after having made such a disclosure under the Act can bring a claim at an employment tribunal. There is no cap on the awards for victimisation, and there have been very heavy fines for employers in the past. This alone will give your employing organisation a strong incentive to protect you, quite aside from their moral and legal obligations. Obviously being in such a situation can sometimes be stressful, but be reassured that there are protections there for you. If you feel under pressure, the BMA counselling service Doctors for Doctors gives doctors and medical students in distress or difficulty the choice of speaking in confidence to another doctor. To access this service call **08459 200 169**.

² BMA research shows that around 70% of hospital doctors who have experienced concerns have elected to raise them with a responsible employee

The BMA will support you and you should contact us (0300 123 123 3) or PCAW early to ask for help with raising concerns and speaking out about patient safety. If things are becoming difficult from the point of view of victimisation, again contact the BMA at the earliest opportunity.

Going directly to your local elected representative (such as your relevant MP, MSP, AM or MLA) or the media is only advisable if you have run out of options. For advice on dealing with the press or local elected representatives please refer to the relevant BMA contact for your nation on page 8. You will be offered advice on whether any additional action ought to be taken before contacting your local elected representative or the media.

Where else can I find guidance?

All NHS organisations should have a policy on whistleblowing, which sets out how concerns should be escalated within the organisation. If you are unable to access your employer's policy, or have been told there isn't one, the BMA can locate this on your behalf. It is possibly best to approach the local BMA representative or the Local Negotiating Committee Chairman for this. Your LNC Chairman and local BMA representatives can be identified by calling the BMA. Further information can also be found in "Medical Ethics Today: The BMA's handbook of ethics and law." London: BMJ books, 2004.

Medical students

The BMA has produced specific guidance for medical students which is available at:
http://www.bma.org.uk/careers/medical_education/undergraduate_education/whistleblowing.jsp

Armed forces

Defence Medical Services (DMS) doctors need to follow their host employer's guidelines if concerns occur within an NHS hospital, and inform their Clinical Director and/or Medical Director. In a military environment, you should go to your Chain of Command to raise issues of concern. However, the overarching principle for all DMS doctors is that you should follow the GMC's guidance as laid down in publications such as Good Medical Practice.

Public Concern at Work

The Public Concern at Work website (www.pcaw.co.uk) provides information on whistle-blowing in the NHS and elsewhere. Their key advice is found at:
<http://www.pcaw.co.uk/news/practicalguidewbnhs.htm>

The Medical Defence Organisations have provided guidance as well, which is shown below.

The **Medical and Dental Defence Union of Scotland (MDDUS)** have advice available at this address: <http://www.mddus.com/media/23324/05WinterF14-15-Whistleblower.pdf>

The **Medical Protection Society (MPS)** have advised us of the following:

"Members do regularly contact our Telephone Advisory Line for general advice or to talk through specific difficulties they are experiencing in the workplace. We provide advice in accordance with the GMC's Good Medical Practice and, in particular, refer them to paragraph 6 'Raising Concerns About Patient Safety' and paragraphs 43-45 'Conduct and Performance of Colleagues'.

"The other area in which we occasionally advise members in where they are unfortunately subject to disciplinary proceedings, and the member is concerned that they are being targeted due to the fact they have previously whistle blown. Clearly, those cases are dealt with on an individual basis and we provide legal advice to our member on the protections that are provided by the Public Interest Disclosure Act."

And from the **Medical Defence Union (MDU)**:

“The MDU’s advice to members about raising concerns is influenced by the fact that registered medical practitioners have a professional obligation to protect patients in circumstances where they have grounds to believe that a doctor or other healthcare professional may be putting patients at risk. The GMC also expects doctors to put matters right if possible, if they have good reason to think that patient safety is or may be seriously compromised by inadequate premises, equipment or other resources, policies or systems.

“The MDU would encourage members who find themselves in any of these situations and who are uncertain about the responsibilities in respect of raising concerns to contact the MDU for advice. Their 24 hour advisory helpline service can be reached on 0800 716 646.”

Key points

- You have a duty to protect patients and colleagues if you are aware of misconduct that may lead to harm to others
- If possible, start at a low level and escalate your concerns if you meet obstructions
- You are protected in law from harassment and bullying when you raise a concern
- In addition to local support structures, the BMA can support you and you should contact the BMA at an early stage if you have any concerns about the situation you are in.

Contact details

British Medical Association – 0300 123 123 3 (support@bma.org.uk)

Doctors for Doctors – 08459 200 169 Doctors for Doctors Advisory service and BMA counselling service – 08459 200 169

Public Concern at Work (PCAW) – 020 7404 6609 (helpline@pcaw.co.uk)

BMA press and parliamentary services

England – the Parliamentary Unit can be contacted on: 0207 383 6681 / parliamentaryunit@bma.org.uk. Similarly, if you are considering raising an issue in the media the BMA’s Press Office (020 7383 6254 / pressoffice@bma.org.uk) can advise you.

Scotland – contact the Public Affairs Office for advice on media or engaging with MSPs on: 0131 247 3050 / press.scotland@bma.org.uk.

Wales – contact Senior Public Affairs Officer for advice on media or engaging with AMs on: 029 2047 4611 / bmawales@bma.org.uk

Northern Ireland – contact the Public Affairs Officer for advice on media or engaging with MLAs on: 028 9026 9672/ press.ni@bma.org.uk