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When they see incidences of poor care or patient safety issues, nurses and other health professionals have a duty to raise concerns, but this may present personal risks

Is it safe for nurses to blow the whistle?

In this article...

- Difficulties of deciding whether to raise concerns
- What "blowing the whistle" really means
- Support mechanisms that should be in place

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Abstract Anton L (2016) Is it safe for nurses to blow the whistle? *Nursing Times*; 112: online issue 7, 5-7.
Nurses should raise concerns about patient care or safety at the earliest opportunity through internal processes. However, when all else fails, whistleblowing externally may need to be considered in the interests of patients and the public. But how do nurses and the public interpret the precise meaning of whistleblowing? What impact do such decisions have, and are attitudes now changing to support and protect those nurses who are compelled to blow the whistle to protect those in their care? This article explores these questions.

If health professionals see examples of poor practice or other causes for concern, it is vital that they feel able to report their concerns without fear of negative consequences. However, in the 2013 NHS Staff Survey, only 71% of staff who responded felt confident to raise concerns, and only 54.5% felt confident their organisation would address the concerns raised (NHS Staff Surveys, 2013).

The Mid Staffordshire inquiry found that care failings had been reported internally by staff but not acted upon, and those reporting them had been subjected to bullying (Francis, 2013). As a result an independent review, Freedom to Speak Up, was commissioned with the aim of alleviating the continuing concerns of staff and the general public about how whistleblowing was dealt with in the NHS, and to provide advice and recommendations to ensure NHS staff feel safe and confident raising concerns (Francis, 2015).

What is whistleblowing?

When nurses are faced with situations that cause them concern for the safety of patients or colleagues, they must decide what to do; if they do not feel safe to raise concerns within their organisation, or they have raised concerns that have not been addressed they may need to resort to whistleblowing.

> *"A whistleblower is a person who makes disclosures about unlawful or irregular conduct of other persons or bodies to people with a reciprocal interest in receiving the information or the public in general"* (McQuoid-Mason and Dada, 2011)

> *"Going public or speaking out to one's professional organisation or to the media in order to protect the welfare of patients because of a perceived wrongdoing on the part of others is whistleblowing"* (Anderson, 1990)

Jones and Kelly (2013) described whistleblowing as "an imposed, rather than a chosen, situation"; whistleblowers are ordinary people who, on becoming aware of a negative situation, are forced to decide whether to speak out or remain silent. Initially, a concern should be raised through an organisation's internal processes. Only when all internal processes have failed should the whistle be blown externally in the best interests of the public (Lachman, 2008).

Whistleblowing can highlight issues involving patient safety, incompetence and fraudulent activity (Lachman, 2008). However, it is not an easy thing to do;

5 key points

1. Recent care scandals have brought the issue of whistleblowing to the fore
2. Nurses may worry about the negative consequences of reporting poor care
3. Healthcare organisations should have policies and procedures to follow when concerns are raised
4. Nurses should be supported and encouraged to report care failings and concerns
5. A culture of transparency should be promoted in all healthcare organisations

Only 71% of staff responding to a 2013 survey felt confident raising concerns

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nurses – or patients and their families – often face a dilemma when considering whether or not to blow the whistle because of a fear of reprisals and the negative connotations of the word whistleblowing (Waters, 2008). Graham Pink, often seen as the original nurse whistleblower, has said "whistleblowing is an ugly term and, unfortunately, it is seen as a negative thing" (Agnew, 1998), while Whyte and Waters (2012) offered a less discordant expression, describing it as "speaking the truth". However, Harbridge (2014) argued that the "truth is not always welcome" and the courageous individuals who take the risk of whistleblowing are owed something better.

Consequences of whistleblowing

The decision to whistleblow can affect health professionals both professionally and personally for the rest of their lives (Harbridge, 2014), so they must bear in mind the potential for their action to result in personal, financial and/or professional loss. Many believe they are acting ethically, morally and in accordance with a duty of care or professional code of conduct.

Many whistleblowing cases have resulted in the public exposure of an organisation's wrongdoing but none more so than the cases of Graham Pink and Helene Donnelly. Mr Pink repeatedly reported a catalogue of concerns at Stepping Hill Hospital in 1989 (Pink and Brindle, 1990), and was eventually dismissed; Ms Donnelly raised concerns about care provided at Mid Staffordshire Foundation Trust, focus of the Francis inquiry (Francis, 2013), and was subjected to bullying and intimidation.

The negative consequences for Mr Pink, Ms Donnelly and other whistleblowers means health professionals contemplating this course of action should consider:

- How safe is the environment for whistleblowers?
- What protection is afforded to whistleblowers by their employers and in law?

Policy and law

To protect nurses and other health professionals from reprisals, appropriate protection needs to be defined in law (Wilmot, 2000). In 1992, Derek Fatchett MP published an NHS Freedom of Speech bill in an attempt to introduce a broad code of ethics for all healthcare staff. Clause 8 stated:

"A duty and a right to report to any competent person any instruction, policy or practice which they would believe would result in inadequate or unsafe conditions which are likely to either harm the health and safety or wellbeing of patients/clients or colleagues or be contrary to law or be to the detriment of the health service and public confidence in its operation." (McHale and Fox, 2007)

BOX 1. CRITERIA FOR PROTECTED DISCLOSURES

- A criminal offence had been, is being or is likely to be committed
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject
- A miscarriage of justice has occurred, is occurring or is likely to occur
- The health and safety of any individual has been, is being or is likely to be endangered
- The environment has been, is being or is likely to be damaged
- Information tending to show any matter falling within any of the preceding categories has been or is likely to be deliberately concealed"

Source: Game (2014)

Although Mr Fatchett's bill failed to reach Parliament, the following year the government responded to the Pink case by publishing staff guidance on relations with the public and media (NHS Management Executive, 1993) and, in 1998, Parliament passed the Public Interest Disclosure Act (PIDA). This law, which still regulates issues around raising concerns and whistleblowing, provides safeguards against unfair dismissal of employees who want to raise concerns internally under a protected disclosure. Parliament also amended the Employment Rights Act 1996 by ensuring if an employee is dismissed for making a protected disclosure, it will be deemed unfair dismissal (McHale and Fox, 2007).

Protected disclosures relate to breaches of law, and dangers to health, safety and the environment. The legislation provides that an employee must have a reasonable belief that the disclosure is protected (McHale and Fox, 2007), criteria for which are outlined in Box 1. When a disclosure is made externally rather than internally to the organisation, whistleblowers must satisfy further criteria to ensure their protection. They must reasonably believe the disclosure is:

- Not for any personal gain;
- Of a sufficiently serious nature;
- Fundamentally true (Game, 2014).

If the disclosure has been made to a regulator, such as the Nursing and Midwifery Council, it must conform to that regulator's conditions and professional standards (Game, 2014).

Further legislative support was published in 2014, when a statutory duty of candour for NHS bodies was introduced to ensure that they adopt an open, honest and transparent culture when things have gone wrong (Care Quality Commission, 2014). The NMC and General Medical Council (2015) also produced guidance around the duty of candour to further support nurses and doctors.

Confidentiality

Nurses often face a dilemma when their obligation to maintain patient confidentiality conflicts with their duties with respect to the NMC (2015) Code. Confidentiality in healthcare is not only part of a duty of care to the patient, but also a requirement within regulatory codes of conduct. It must be included in NHS contracts of employment with links to disciplinary procedures. Above all, it is a legal obligation drawn from statutory and case law. Beech (2007) advocated that all nurses keep up to date with professional codes and any changes in law to fully understand when it may be permissible to override a duty of confidentiality.

This remains an integral part of the NMC (2015) Code, which states that nurses should always act in a manner that upholds it and the law, and that:

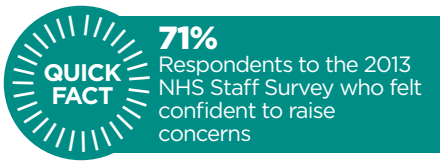
"As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately [...] share necessary information with other healthcare professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality."

A breach of confidentiality could be deemed as a breach of the Code but, under the same Code, a nurse should:

"Act without delay if you believe that there is a risk to patient safety or public protection [and] raise and, if necessary, escalate any concerns you may have about a patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices" (NMC, 2015)

Whistleblowers need to ensure their voice is heard and that they can justify their actions, but they also need to ensure, from an ethical and legal context, they have acted within the boundaries of their employment contract in terms of confidentiality and the Code.

In response to concerns over the inadequacy placed on confidentiality in the NHS (Clements, 2004), Caldicott Guardians were introduced in all NHS organisations. These are responsible for safeguarding the confidentiality of patient information (NHS Management Executive, 1999). Beech (2007) advised professional discretion may come into play when considering requests to disclose against duty of confidentiality to justify overriding this duty.



However, whatever course of action nurses decide to take, the decision will be their own professional and personal responsibility (Beech, 2007).

Support mechanisms

Nurses who have the courage of their convictions to blow the whistle on unethical practices when all internal processes have failed should not be ostracised by their colleagues but applauded for their moral courage (Lachman, 2008). They risk their jobs, careers and personal wellbeing for the sake of their patients, and should be encouraged not chastised.

Historically, there is protection in law for nurse whistleblowers with just cause but organisations also have policies and procedures to protect staff whistleblowers. Regulatory bodies such as the NMC also offer guidelines and procedures to help nurses who wish to raise concerns, and the joint publication by the NMC and GMC (2015) further supports a culture of speaking out: it directs that all health professionals have a professional duty of candour.

Further support is also available from other organisations and resources (Box 2). All these steps can only strengthen the protection of nurses who whistleblow.

Conclusion

The Francis (2013) report into care failings at Mid Staffordshire Foundation Trust is boosting support for nurses. It has led to NHS organisations providing more support for potential whistleblowers and dealing with confidentiality agreements that have historically "gagged" the individuals involved (Game, 2014). Its findings revealed that the NHS needs to be more transparent, safer and provide care with compassion.

Francis (2015) provided recommendations, principles and actions for NHS organisation; those outlined include a culture change and enhancing legal protection to those who make protected disclosures. Times are changing.

"The workplace that best enables and supports patient safety is one with a just culture, an understanding of human factors, high levels of staff engagement, and one that is appropriately resourced, led and managed." (Fecitt, 2014) **NT**

BOX 2. **FURTHER SUPPORT**

- In 2012 NHS Employers launched the Speaking Up Charter, requiring more commitment to NHS organisations working together to support those staff who raise concerns by creating a just culture of openness and transparency;
- In March 2013 following a survey of over 800 nurses that revealed staff concerns over the fear of repercussions if they blew the whistle on poor care, Nursing Times launched its award-winning Speak Out Safely campaign. Its aim is to make it safer for staff to raise concerns about patient safety by increasing honesty and transparency in the NHS, and asking organisations to sign up to support the campaign in their areas. For more details go to nursingtimes.net/sos

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