



The Royal College of Emergency Medicine

Patron: HRH Princess Royal
7-9 Bream's Buildings
London
EC4A 1DT

Tel +44 (0)20 7404 1999
Fax +44 (0)20 7067 1267
www.rcem.ac.uk

Raising a concern: 'whistleblowing'

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The College works to ensure high quality care by setting and monitoring standards of care, and providing expert guidance and advice on policy to relevant bodies on matters relating to Emergency Medicine. However, the College is not a healthcare regulatory body, unlike the GMC or Care Quality Commission (CQC). This statement seeks to clarify the role of the College and to provide advice and guidance for members and fellows who may be facing a difficult decision regarding raising a patient safety concern. Note that the term 'raising concerns', and 'escalation' are used in preference to the term 'whistleblowing' in the document.

Examples of Cause for Concern¹

- Unsafe patient care
- Unsafe working conditions
- Inadequate induction or training for staff
- Lack of, or poor, response to a reported patient safety incident
- Suspicions of fraud
- Bullying culture across a team or organisation

Background

The GMC states that it is the **duty** of every doctor 'to take prompt action if patient safety, dignity or comfort is or may be seriously compromised. If patients are at risk because of inadequate premises, equipment or other resources, policies or systems then should put the matter right if that is possible'. Furthermore, a doctor 'must promote and encourage a culture that allows all staff to raise concerns openly and safely.'² Failure to raise concerns is in itself a failure of the duties of a doctors' professional (and ethical) obligations, and could potentially result in disciplinary procedures against the doctor who fails to raise concerns. Other professional regulators with health-care place similar obligations upon practitioners.

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'Whistleblowing', or escalation is generally understood to mean making a protected disclosure in the public interest, under the Public Interest Disclosure Act 1998 (PIDA).³ A protected disclosure applies to anyone raising a genuine concern regarding malpractice under the terms of the Act. Malpractice – crimes, civil offences (negligence, breach of contract, breach of administration law), miscarriages of justice, dangers to health and safety or the environment, or cover up of any of these.³ The Act applies to employees, trainees and agency workers. It provides protection against unfair dismissal as well as the right not to be subjected to any 'detriment' by their employers, e.g. lack of promotion, because they have made a protected disclosure.

Trusts are expected to adhere to the standards published by the NHS, which set out support structures to enable all employees to raise concerns, such as individual Board level accountability as well as the local appointment of Freedom to Speak Guardians. This latter role should be an 'independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including chief executive, or if necessary, outside the organisation'.¹

It is important to remember that raising a concern or whistleblowing is not for concerns that only relate to an individual's employment, which are probably best dealt with under local grievance policies. Barriers to raising a concern are many but the GMC is clear that if the concerns are genuine and honest, then patients' interest must come first (overriding personal and professional loyalties) and there is a not a need to wait for proof if there is a basis of reasonable belief and the appropriate channels are used. 'Gagging clauses' are strictly forbidden if it prevents a doctor raising concerns about patient safety⁴. As a doctor, when raising a concern, you must consider the implications for patient confidentiality.

Barriers to Raising a Concern⁴

- Nothing will be done
- It will cause problems with colleagues
- Negative effect on career
- Counter-complaint against 'whistleblower'

Raising a Concern

Raising a concern may follow a single linear process, moving through and completing each stage, before moving onto the next or resolution. However, it is recognised that there may be circumstances when this may not be possible (e.g. lack of local policy) or appropriate, due to the nature of the concern and the individuals involved.

"The essence of a whistleblowing system is that staff should be able to by-pass the direct management line, because that may well be the area about which their concerns arise, and that they should be able to

go outside the organisation if they feel the overall management is engaged in an improper course."

Committee on Standards in Public Life⁵

When raising a concern, do...

- Keep contemporaneous notes, paying full regard to patient confidentiality
- Strongly consider seeking advice from a senior colleague, medical defence organisation, BMA, HCSA, GMC confidential helpline, particularly if local resolution is difficult or has failed
- Decide whether the concern is to be treated in confidence or not from the outset; an anonymous concern potentially makes it more difficult to investigate, can lead to a focus on 'who is the whistleblower?' (if relevant criteria are met, it is easier to get protection under the PIDA if concerns are raised openly³)

It is important that once the concern has been raised, that it is acknowledged and that the person escalating concerns is made aware of how the concern is being dealt with. There is an obligation on Trust boards to have oversight about all concerns raised by staff as well as the organisation to have appointed an executive director and a non-executive director with responsibility for whistleblowing.

1. Internal Escalation

Raise concerns in line with local policy, which may be in keeping with escalation below:

- Incident Reporting
- Line Manager/Clinical Director
- Chief Medical Officer/Responsible Officer for the organisation
- Freedom to Speak up Guardian/Chief Executive

2. External Escalation

When internal escalation has failed or is inappropriate, it is strongly recommended to discuss the matter with a senior colleague, medical defence organisation, BMA, HCSA, GMC confidential helpline before embarking on external escalation.

To make a protected disclosure, it must be in good faith and made honestly so that the concern can be addressed. Disclosures made in good faith to the employer will be protected if the whistleblower has the reasonable belief the information tends to show that malpractice has occurred, is occurring or is likely to occur.³ A protected disclosure is made to a prescribed organisation.

Healthcare Prescribed regulators include⁶:

- CQC www.cqc.org.uk
- National Guardian's Office <https://www.cqc.org.uk/national-guardians-office/content/national-guardians-office>
- Healthwatch England www.healthwatch.co.uk
- GMC www.gmc-uk.org
- Healthcare Improvement Scotland www.healthcareimprovementscotland.org
- Health Education England <http://hee.nhs.uk/>
- Local Education and Training Boards (LETBs) <http://hee.nhs.uk/about/our-letbs/>
- Monitor (also known as NHS Improvement) www.improvement.nhs.uk
- NHS Business Services Authority (fraud, corruption, security management) www.nhsbsa.nhs.uk/Protect.aspx
- NHS Trust Development Authority (also known as NHS Improvement) enquiries@improvement.nhs.uk
- Healthcare Inspectorate Wales www.hiw.org.uk

Wider disclosures (eg. media, MPs) are protected if, in-addition to the above, they are reasonable and not made for personal gain. They must also fall into one of the following categories³:

- The 'whistle-blower' reasonably believed they would be victimised if they had raised the matter internally or with a prescribed regulator
- The concern had already been raised with the employer or prescribed regulator
- The concern was of an exceptionally serious nature

Emergency Medicine and raising concerns

Due to the nature of Emergency Departments and the issues of faced by the practitioners within these departments there is potential for risks: the 'VUCA' (volatile, uncertain, complex, ambiguous) environment for example.

Many of these issues are raised appropriately and using the local internal polices; some examples given below.

- A doctor's performance in affected by drugs or alcohol: this should be handled (by the line manager) under the Maintaining High Professional Standards ('Disciplinary policy')

- Drug errors due to poor prescribing practices (e.g. incorrect dosing on automated prescribing) (Incident reporting)
- Treatment delays because of admission policies (e.g. not all urgent treatments completed prior to admission (Incident reporting, Freedom to Speak Up Guardian)
- Failure to meet key audit targets (e.g. sepsis, analgesia) (Audit and governance processes)

Unless there was a persistent and/or excessively prolonged delay in effectively managing these concerns, escalation would not be appropriate. Alternatively, if the deviation from standards was so great and frequent such that it becomes clinically unsafe, despite raising concerns then escalation is appropriate. Transparency in the processes is an important element in ensuring those raising concerns are re-assured that the concerns are addressed.

Some issues, however, are less obvious, and are only generally noted when large data are available such as the issues of overcrowding, national audit, and Quality Indicators. The College role here is described below.

After Whistleblowing

The NHS is committed to helping 'whistle-blowers' back to work⁷. However, following several high-profile cases, the personal, professional, and legal 'fallout' from whistleblowing should not be underestimated.

The Role of the College

As it is not a healthcare regulator, concerns cannot be raised directly with the College. Rather, it should be done with one of the prescribed organisations listed above, eg. GMC, CQC.

However, should the College, as part of an Invited Service Review, identify **serious and urgent concerns** about a service, particularly about patient safety, then it reserves the right to inform the appropriate regulatory and commissioning authorities directly if the organisation under review does not do so.

The College can provide advice in relation to standards in emergency care (and therefore where these might be not met) and direct members and fellows to resources regarding raising a concern or the appropriate healthcare regulator.

The College also has a role to play in contributing to a more transparent culture where excessive fear does not inhibit the raising, and if necessary, escalating, concerns relating to safe practice. This is both through the leadership training and support it offers Fellow and through the through training and education functions. These look to enhance practitioner's knowledge regarding standards and quality improvement, and how to monitor standards to identify deficits in care. It also through the national audit programme and Quality Improvement function helps with this monitoring.

References

¹ NHS Improvement (2016) [Freedom to speak up: raising concerns \(whistleblowing\) policy for the NHS](#). London: NHS Improvement.

[Accessed 7 January 2019]

² General Medical Council (2013) [Good Medical Practice](#). General Medical Council: Manchester.

[Accessed 7 January 2019]

³ Protect (2019) [A guide to PIDA](#)

[Accessed 7 January 2019]

⁴ General Medical Council (2012) [Raising and acting on concerns about patient safety](#). General Medical Council: Manchester.

[Accessed 7 January 2019]

⁵ Committee on Standards in Public Life (1997) [Standards of Conduct in Local Government in England, Scotland and Wales](#). London: Her Majesty's Stationery Office.

[Accessed 7 January 2019]

⁶ GOV.UK (2018) [Whistleblowing: list of prescribed people and bodies](#)

[Accessed 7 January 2019]

⁷ NHS Improvement (2017) [Freedom To Speak Up: Whistleblowers' Support Scheme \(pilot\)](#)

[Accessed 7 January 2019]

Appendix 1 – Organisations that can help

- [Care Quality Commission \(CQC\)](#)
- Medical Defence Organisation
- Professional Association
- [Public Concern at Work](#)