

## PSNC's Guidance to contractors on whistleblowing

Ever since the cases of Shipman, the Bristol Royal Infirmary and others, there has been increased awareness of the need for healthcare professionals to feel confident that they can raise concerns. One potential deterrent to raising concerns is the fear of reprisals for example by a fellow worker, or an employer.

The Public Interest Disclosure Act 1998 has made important changes to employment rights which protect a worker against detriment brought about by disclosure.

The government requires all NHS organisations to have an effective whistleblowing policy, the aim of which is to allow an employee (or locum) to raise at the earliest opportunity, any general concern that they might have about a risk, malpractice or wrongdoing at work, which might affect patients, the public, other staff, or the organisation itself.

Pharmacy contractors are required by the clinical governance provisions in the terms of service, to have a whistleblowing policy. If a contractor has not yet formally adopted a whistleblowing policy, the following are key steps:

- Expressing the contractor's commitment to whistleblowing;
- Gain buy-in from the senior members of the contractor's team;
- Develop a whistleblowing policy and if appropriate, suitable procedures;
- Brief all staff about the contractor's policy and procedures (and include in locum induction packs); and train those within teams that may receive concerns.

### Background law

To protect workers, the Public Interest Disclosure Act 1998<sup>1</sup> sets out what are called 'protected disclosures'. These include a 'qualifying disclosure' made by a worker which tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed; (for example, the supply of a prescription medicine without the authority of a prescription or other authority)
- that person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; (for example, a responsible pharmacist failing to make the appropriate record entry under the responsible pharmacist regulations)
- that a miscarriage of justice has occurred, is occurring or is likely to occur; (for example, the wrong pharmacist is taking the blame for something he had no part in)
- that the health or safety of any individual has been, is being or is likely to be endangered; (the most likely situations to arise in pharmacy; this could include prescribing errors, mis-diagnosis, dispensing errors etc.)
- that the environment has been, is being or is likely to be damaged, (for example the guidance about the disposal of waste medicines is not being followed); or
- that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed (for example, if a person in authority has turned a 'blind eye' to one of the above).

The qualifying disclosure would usually be made to his employer, but may sometimes be made to persons specified in whistleblowing procedures issued by the employer. The Act treats the pharmacy contractor – PCT relationship as if it was a worker – employer relationship – so pharmacy contractors can make qualifying disclosures to the PCT, which would be appropriate, if for example, there was concern about the conduct or competence of a prescriber. If authorised by the contractor, an employee can make a disclosure on behalf of the contractor to the PCT.

Where the relevant failure relates to a person other than his employer and responsibility for that other person rests with another person, the worker can make their disclosure to that other person. This may arise, for example, if a community pharmacist was raising concerns about another healthcare practitioner, not employed by their employer.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1998/23/contents>

There may be instances where the worker does not wish to make the disclosure to their employer, for example, if the failing is by the employer and previous expressions of concern to the employer have been ignored. In this case, disclosure to another party could still be protected if he makes a disclosure in good faith, he reasonably believes that the information disclosed and any allegation contained in it are substantially true, he does not make the disclosure for purposes of personal gain and that in all the circumstances of the case, it is reasonable for him to make the disclosure.

Protection from detriment only applies if the disclosure is a 'qualifying disclosure'. Public Concern at Work ([www.pcaw.org.uk](http://www.pcaw.org.uk)) will assist workers with deciding whether to make disclosures and if so, to whom the disclosure should be made.

### Notifying the PCT

Most whistleblowing incidents would be handled internally by the employer. But, if the incident involves a healthcare practitioner for whom the employer is not responsible, then it may be appropriate for the disclosure to be to the PCT. Such notifications should be made directly to the Director with responsibility for Primary Care Commissioning at their local PCT or the PCT community pharmacy lead.

### Next steps

If the Pharmacy Contractor has not yet adopted a formal whistleblowing policy, then this should be undertaken without delay, so as to comply with the terms of service<sup>2</sup>. The British Standards Institute has published a Code of Practice<sup>3</sup> on Whistleblowing arrangements. Section 4 of this document sets out how whistleblowing arrangements should be introduced and updated.

The steps to be taken are likely to include

- Expressing the contractor's commitment to whistleblowing; (this will be covered by a statement from the contractor on the importance the contractor gives to their workers feeling confident to raise concerns);
- Gain buy-in from the senior members of the contractor's team; (other than in single handed pharmacy contractor businesses, the senior staff need to be involved in developing procedures, and need to be supportive, since they will be involved in investigating concerns);
- Develop a whistleblowing policy and if appropriate, suitable procedures; (a template is available within the guidance 'How to implement and review whistleblowing arrangements in your organisation' published by The Social Partnership Forum ([www.socialpartnershipforum.org](http://www.socialpartnershipforum.org)) and Public Concern at Work ([www.pcaw.org.uk](http://www.pcaw.org.uk)). The use of this template is not mandatory, a pharmacy contractor may decide not to follow the template at all, so long as the requirements of the legislation is complied with;
- Brief all staff (and include in locum induction packs) on the contractor's policy and procedures; and train those within teams that may receive concerns. This will be the lengthiest part of the development. Involving staff in the development of the whistleblowing policy is recommended – and once complete, it is essential that all staff know about the whistleblowing policy and any procedures.
- As with all policies and procedures, timetable an appropriate review period.

### Further Sources of Information:

The Social Partnership Forum ([www.socialpartnershipforum.org](http://www.socialpartnershipforum.org)) and Public Concern at Work ([www.pcaw.org.uk](http://www.pcaw.org.uk)) have issued guidance on 'How to implement and review whistleblowing arrangements in your organisation', called 'Speak up for a healthy NHS'. Much of the above and the whistleblowing template is based upon this guidance.

The Royal Pharmaceutical Society ([www.rpharms.com](http://www.rpharms.com)) has prepared clinical governance guidance. Whistleblowing is included in its document 'Reducing workplace pressure through professional empowerment'. The Society may also produce a set of core principles / core requirements as well as publishing pharmacy based scenarios.

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<sup>2</sup> See paragraph 26(2)(e)(vi) of the terms of service, set out in Schedule 1 of the NHS (Pharmaceutical Services) Regulations 2005.

<sup>3</sup> <http://www.bsigroup.com/en/sectorsandservices/Forms/PAS-19982008-Whistleblowing/>