



## WHISTLEBLOWING HELPLINE NEWSLETTER - JUNE 2013

### Welcome!

Another busy few months on the whistleblowing front!

Articles in this quarter's newsletter include news of the legal changes made in the Enterprise and Regulatory Reform Act, which received Royal Assent on 25 April, and the policy changes that organisations need to be making as a result. There's news on the Government's response to the Francis report, an update on the Whistleblowing Helpline's Bridging the Gap campaign, and a summary of recent research and survey results.

### Legal changes

The new Enterprise and Regulatory Reform Act makes an explicit requirement that all disclosures must be in the public interest, in order to be protected by the Public Interest Disclosure Act 1998. Given this new public interest test, the previous legal requirement that a disclosure needed to be made in 'good faith' has been removed - although Tribunals can reduce compensation to employees where they find that they have not acted in good faith. These two provisions will be effective from 25 June.

Finally, and very importantly, co-workers and other agents of an employer are to be made personally liable if they subject a worker to bad treatment or victimisation because they have made a protected disclosure. In addition, employers will be vicariously liable (partly responsible) for these actions, unless they can demonstrate that they have taken 'all reasonable steps' to prevent their workers from acting in this way. Given that fear of reprisals is a major barrier to people who wish to raise concerns, this will be a significant improvement. The Government plans to introduce this provision at a later date under delegated legislation.

More details can be found in these materials from the [Institute of Employment Rights](#) and [Personnel Today](#)

### Brush up your policy!

Now that the law has changed, it's a good time to refresh your Whistleblowing or Raising Serious Concerns Policies. Changes that you need to make are outlined in this article in [People Management](#). These are: that your policy should state that disclosures must be in the public interest; remove any references to a requirement for good faith; and take account of the provisions protecting whistleblowers from bullying and harassment which include vicarious liability. Research conducted by the Whistleblowing Helpline suggests that policies vary considerably in style and tone, and it's important they are easy to read, clearly state that people are encouraged to raise concerns at an early stage, and set out details of who to contact to report concerns clearly and prominently.

### Government response to the Francis report:

The Government has issued its initial response to the report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry (better known as the Francis report). The Government is to appoint both a [chief inspector of social care](#) and a chief inspector of hospitals, who will act as the nation's whistleblowers in chief. The chief inspector of hospitals has been named as Sir Mike Richards, and a new, more rigorous system of inspections has been announced together with [eight fundamental standards of care](#) which will be displayed in every ward and GP surgery. The NHS Constitution is to be revised and a statutory duty of candour is to be introduced for providers. 'Gagging clauses' which seek to prevent public interest disclosure are to be stopped. NHS Employers has [summarised the Government response](#) in more detail, and a further Government response is expected later this year.

Meanwhile, the Care Quality Commission has been severely criticised for its suppression of a report highlighting failings in its inspections at [Morecambe Bay NHS Trust](#) in 2008-10. Members of the CQC's Board, appointed since the scandal, have expressed revulsion at this 'coverup' and stress that the CQC is now being reformed.

Following on from the mid-Staffordshire report, the [regulation of social care](#) has been overhauled and a new duty of candour placed on providers of social care. A new [code of conduct for adult social care workers](#) was published in March. It includes a requirement to promote and uphold the privacy, dignity, rights, health and wellbeing of service users and their carers. This includes challenging and reporting any dangerous, abusive, discriminatory or exploitative behaviour. There is also a requirement to communicate in an open and effective way to promote the health, safety and wellbeing of service users and their carers.

### Bridging the Gap

As part of our campaign to raise awareness of how to raise concerns, we are continuing to supply posters and fliers to organisations within adult social care and the NHS. We undertook a survey of some 70 UNISON trade union representatives who have experience of using whistleblowing procedures, and also an organisational survey of whistleblowing arrangements within NHS Trusts which has received 30 responses so far. The data is being analysed and a report should be ready next month. We intend to use the research to inform a training package for managers which we will be launching in July. To help broaden the debate, the Policy Manager of the Whistleblowing Helpline is launching a professional discussion forum on whistleblowing issues on the social media site LinkedIn at the end of June, if you are interested just connect with Rosemary Crockett.

### Survey results on whistleblowing

We have received the result of several surveys relating to whistleblowing in the NHS over the last few months. The 2012 NHS Staff Survey found that 90% of those surveyed said they knew how to report concerns, but only 72% would feel safe to do so, with 18% not knowing if they would feel safe or not. Only 55% felt confident that their organisation would address their concerns, while 32% did not know. The [Royal College of Nursing](#) conducted a survey of 8,262 nurses and found that 64% of those surveyed had raised a concern, mostly about unsafe staffing or patient safety, but 45% of these said their employer took no action as result. 24% said they were discouraged or warned off taking any further action by managers or colleagues. Similar concerns were reported in the Guardian's [survey of NHS professionals](#), where almost two-thirds of those who reported serious concerns about patient safety felt that they were not dealt with satisfactorily. The Government has just asked the National Institute for Health & Care Excellence (previously known as NICE) to look at safe staffing levels and produce evidence-based guidance and tools for managers to use, which may help resolve some of these concerns, and Health Minister [Dr. Dan Poulter](#) has emphasised the measures that are being taken to encourage staff to feel able to speak up and raise concerns. Finally, Public Concern at Work and the University of Greenwich have completed a [research report](#) into the experiences of 1,000 people who have made a 'whistleblowing journey' both within and beyond the healthcare sector, which reinforces how stressful and isolated such journeys can be and the need for persistence when raising concerns.

### Conference roundup

The Whistleblowing Helpline attended a number of conferences in April/May/June, staffing an exhibition stall to meet people, answer questions, and distribute publicity materials. There was much about the Francis report at the UNISON conference and the NICE conference and an interesting workshop on safer whistleblowing at the Patient Safety Congress, hosted by the Nursing Times under the banner of their Speak Out Safely campaign. The Whistleblowing Helpline has pledged its support to this campaign, and welcomes the [new Nursing Times hub](#) on whistleblowing issues. Finally, the NHS Confederation conference provided an opportunity for raising awareness of the Helpline and its services and hearing more about the future direction of the NHS.

### More News

A GP has been given the go-ahead to take her [whistleblowing claim](#) that her health board failed to protect her from reprisals, on to an Employment Tribunal in July in a landmark decision... A hotline has been introduced in [Colchester](#) General and Essex County hospitals, which staff can ring to raise concerns, anonymously if they choose... Helene Donnelly who raised concerns at Mid-Staffordshire is now an ambassador for cultural change at Staffordshire and Stoke-on-Trent Partnership Trust, encouraging staff to raise concerns at an early stage... All Employment Tribunal claims presented from 29 July onwards will be liable for payment of a fee or an application for fee remission, further details will be posted on Whistleblowing Helpline website as soon as they are available.

### Contact Us

As always we welcome feedback about our newsletter, do let us know if you have any thoughts about what people want to read or if you have any suggestions for improvements. You can contact the Whistleblowing Helpline on 08000 724725, or email us at [enquiries@wbhelpline.org.uk](mailto:enquiries@wbhelpline.org.uk)

If you do not wish to receive the newsletter in future, please email [rosemary.crockett@mencap.org.uk](mailto:rosemary.crockett@mencap.org.uk) and ask to be unsubscribed.

