

ADVICE SHEET

RAISING CONCERNS AND WHISTLEBLOWING



Introduction

It is expected that each NHS organisation has a policy on raising concerns in response to the recommendations made from the Francis' report (2013) and the Public Interest Disclosure Act (PIDA) 1998. The aim is to help staff to raise concerns about malpractice and to ensure that they are promptly and properly investigated and resolved in order to provide patient safety and high quality of clinical care.

There is a difference between a grievance and a concern at work. Raising a concern is related to unacceptable risks which occur in relation to patients, the public or employers. A grievance is related to how you are being treated and is covered by other policies and procedures.

The General Dental Council (GDC) in 'Standards for the Dental Team' outlines the standards of conduct, performance and ethics for dental professionals. The 9 core ethical principles of dental practice include 'raising concerns of patients that are at risk'.

The GDC states that dental professionals must provide the following:

1. You must always put patient's safety first.

You must raise any concerns that patients might be at risk due to:

- The health, behaviour or professional performance of a colleague.
- Any aspect of the environment where treatment is provided.

You must raise concerns if someone is asking you to do something that you think conflicts with your duties to put patient's interests first and act to protect them.

You must raise a concern even if you are not in a position to control or influence your working environment.

Your duty to raise concerns overrides any personal and professional loyalties or concerns you might have (for example seeming disloyal or being treated differently by your colleagues or managers).

You must not enter into any contract or agreement with your employer or contracting body which contains a 'gagging clause' that would prevent you from raising concerns about patient safety or restrict what you could say when raising concern.

2. You must act promptly if patients or colleagues are at risk and take measures to protect them.

Act on concerns promptly. Acting quickly may mean that poor practice is identified and tackled without there being serious risk to patient safety.

If you are not sure whether the issue that worries you amounts to a concern that you should raise, think about what might happen in the short and longer term if you did not mention the issue. If in doubt, you must raise your concern.

You should not have to prove your concern for it to be investigated. If the investigation shows that there was no problem, the fact you raised the concern should not be held against you as long as you were justified in raising the concern.

Remember that you must put patient's interests first and act to protect them. If you fail to do so by not raising a concern, your own registration could be at risk. If it is not appropriate to raise your concerns with your employer or manager, or if they fail to act on your concerns, then consider raising the issue with your local NHS Commissioning Team or with the appropriate body from the following:

- Care Quality Commission.
- Healthcare Inspectorate Wales.
- The Regulations of Quality Improvement Authority.
- Healthcare Improvement Scotland.

You can also get advice from your defence organisation or professional association (BOS).

If you think that the public and patients need to be protected from a dental professional registered with the GDC, you must raise your concerns with the GDC for example:

- Taking action at a local level is not practical.
- Action at a local level has failed.
- The problem is so severe that the GDC clearly need to be involved (e.g. indecency, violence, dishonesty, serious crime or illegal practice).
- There is genuine fear of victimization or deliberate concealment.
- You believe a registrant may not be fit to practice because of ill health, performance or conduct.

You must refer all concerns about other healthcare professionals to the relevant regulator.

3. You must make sure if you employ, manage, or lead a team that you encourage and support a culture where staff can raise concerns openly without fear of reprisal.

You must promote a culture of openness in the workplace so that the staff feel able to raise concerns.

You should embed this culture into your policies and procedures, beginning with staff training and induction.

You should encourage all staff, including temporary staff, staff on different sites and locums, to raise concerns about the safety of patients, including the risks that may be posed by colleagues, premises, equipment or practice policies.

You may not offer staff contracts which contain a 'gagging clause' that would prevent them from raising concerns about patient safety or restrict what they could say when raising a concern.

4. You must make sure if you employ, manage or lead a team, that there is an effective procedure in place for raising concerns, that the procedure is readily available to all staff and that it is followed at all times.

You must make sure that there are written procedures in place to enable staff members to raise concerns. This means:

- Being aware of and adhering to current laws and regulations.
- Supporting staff members who raise concerns.
- Taking steps to tackle any shortfalls in the standards and performance of staff.
- Having systems in place for supporting staff who may be having problems with their health, behaviour or professional performance.

When a member of your team has raised a concern, you must:

- Take concerns seriously.
- Maintain confidentiality when appropriate.
- Investigate promptly and properly and make an unbiased assessment of the concern.
- Keep the staff member who raised the concern advised of the progress, explaining any action taken or reasons for not taking action.
- Ensure that you monitor the action you take to solve the problem.

5. You must take appropriate action if you have concerns about the possible abuse of children and vulnerable adults (see safeguarding advice sheet)

You must raise any concerns you may have about the possible abuse and neglect of children or vulnerable adults.

You must know who to contact for further advice and how to refer concerns to an appropriate authority such as your local social services department.

You must find out about local procedures for the protection of children and vulnerable adults. You must follow these procedures if you suspect that a child or vulnerable adult maybe at risk because of abuse or neglect.

SECONDARY CARE

Where possible, you should raise concerns first with your employer or manager. However, it may not always be appropriate or possible to raise concerns with them, particularly if they are the source of your concern. Raising everyday concerns about management are dealt by:

- Staff Complaints (Grievance) Resolution Procedure.
- Departmental meetings.
- Joint Consultant meetings.
- Local Negotiating Committee.
- Adverse Incident reports.

All NHS employers are committed to being open and transparent, but this should be balanced with patient and individuals right to their confidentiality. Therefore members of staff can raise a public interest concern under protected disclosure. This process is known as 'whistleblowing' and alerts a third person that a person has done, is doing or is likely to do something that will put people at unacceptable risk.

If someone raises a concern they should disclose any personal interest they have from the outset. Staff should feel they can raise their concerns without fear of retribution or dismissal. The PIDA states that it is unlawful for an employer to dismiss or

victimise an employee for making a protected disclosure of information. A qualifying disclosure should show one or more of the following:

- A criminal offence has been committed, is being committed 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 they are subject.
- A miscarriage of justice has occurred, is occurring or is likely to occur.
- The health and safety of an 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 one of the above paragraphs has been, is being or is likely to be deliberately concealed.

As a result the identity of the member of staff raising the concern will be protected. There may be times when the process cannot proceed if a member of staff does not wish for their name to be revealed.

WHISTLEBLOWING

The following concerns over matters of public interest should be raised:

- Healthcare: suspected mistreatment, discrimination or abuse of patients, provision of poor quality care.
- Health and safety issues affecting patients, visitors and staff.
- Suspicion or knowledge of theft, fraud, corruption, bribery or other financial malpractice.
- Professional or clinical malpractice or poor clinical competence.
- Suspected bullying, harassment or discrimination of staff.
- Employment standards and/or standards in working practice.
- Concern that the environment is or likely to be endangered.
- Failure to comply with legal requirements.
- Staff exploitations by extremists and radicalisers.
- Information that any of the above matters are being or likely to be deliberately concealed.

WHO MAY RAISE CONCERNS

All NHS employees whether they are on temporary or fixed term contracts, full time, part time, trainees or research staff. It includes agency workers and any worker that holds an honorary contract within the NHS.

Staff will not be at risk of dismissal or retribution by the Trust for making a protected disclosure. However, a person raising a concern which they know is untrue may face formal disciplinary action. As a result staff should raise concerns with the relevant policy and seek guidance from human resources or the Freedom To Speak Up (FTSU) Guardian.

Deterring someone from raising a concern or victimising or bullying someone who has made a protected disclosure will be treated as a formal disciplinary issue.

When raising concerns, NHS staff have a duty of confidentiality to patients. Unauthorised disclosure of patient's personal information will be regarded as a breach of confidentiality and will be disciplined. As a result, staff should anonymise all patient information and seek advice from the FTSU Guardian.

WHO DO I INFORM ABOUT MY CONCERNS

Initial concerns can be raised with your line manager. If you are unable, then one can raise the concerns with the Head of Department, Divisional Manager or Clinical Director. In hospital dentistry, clinical staff can talk to their Consultant, Clinical Director or Educational Director.

If the concerns are related to potential fraud, corruption and bribery one should notify the Counter Fraud and Corruption manager.

If you are employed by a contractor on a NHS site you can raise your concerns to the Chief Executive, Chief Financial Officer or the Executive Director of Workforce Development.

Staff can raise their concerns with their local trade union or professional association (BDA).

AFTER RAISING A CONCERN

When a formal concern/protected disclosure has been raised the managers or senior clinicians will respond to you in writing. They will inform you of the name of the person handling the investigation. If required the manager or senior clinician may request a further meeting to gather more information about the concern. At this meeting you can be supported by a colleague, trade union or professional organisation representative. The trust is expected to respond to the person raising the concern in 28 days with the results of the investigation. If this is not possible they should provide an expected date for reply.

DISSATISFIED WITH THE RESPONSE

Internal Process: If you are dissatisfied with the local investigation you may wish to contact a senior manager. Medical staff should approach Medical Director or Chief Operating Officer. Clinical staff should approach their appropriate professional head. All staff are free to approach any member of the Trust's Executive or Board.

External Process: External advice can be sought from professional and regulatory organisations. All staff have the right to seek guidance from their professional organisation or trade union e.g.

- GDC, BDA, BOS, Royal College of Surgeons.
- NHS Fraud and Corruption Reporting Line.
- The National Clinical assessment service (NCAS) for medical and dental concerns.
- Public Concern at Work.
- NHS whistleblowing Helpline.

FREEDOM TO SPEAK UP GUARDIAN

One of the recommendations by Sir Robert following the review of the failings at the Mid Staffordshire NHS Foundation Trust was the appointment of a National Guardian for the NHS and local Freedom to Speak Up (FTSU) Guardians. In July 2015 the Secretary of State confirmed the appointment of these guardians in each trust. The National Guardian Office has published guidance for each trust to have in place by October 2016.

National Guardian

The National Guardian Office is being organised and the National Guardian is being appointed. The appointed person will provide an overarching leadership and support to the local guardians and staff who have raised a concern that have not been effectively dealt with by their employer. The National Guardian will take the lead on cultural change to ensure that healthcare staff feel supported when raising concerns about public interest. They will have the following priorities:

- Establish and support a network of FTSU guardians.
- Highlight NHS providers who create the right environment for raising concerns so best practice can be established.
- Independently review cases where the NHS providers have not followed good practice.
- Work with statutory bodies to take action when required.

FTSU Guardian

They have a key role in helping to raise concerns in their organisations and provide confidential advice and support to staff in relation to their concerns about patient safety and the way their concerns have been handled.

Guardians do not get involved in investigations or complaints but can be involved in the process if required, ensuring that organisational policies in raising concerns are followed.

The FTSU Guardian will report to the Chief Executive and they do not assist staff who are employed outside their trust.

RAISING CONCERNS ABOUT YOURSELF

Concerns regarding your own work performance or conduct may be related to your health, life events, substance abuse, lack of confidence, mistakes, error or near misses and relationship with colleagues.

These concerns should be shared with your line manager who may involve professional health e.g. Occupational Health (professional counsellor)⁵, education and development team, Human Resources. In addition you may wish to seek advice from your trade union or colleague.

References Standards

Standards for the Dental Team. General Dental Council, protecting patients, regulating the dental team. www.gdc-uk.org Policy on Raising Concerns: King's College Hospital NHS Foundation Trust: Mark Preston (2014) Public Interest Disclosure Act 1998 Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry: Robert Francis QC (2013) NAHAT 'Protecting Patients' - guidelines for handling staff complaints about patient care - 1985 raisingconcerns@nhsemployers.org

Updated and reviewed by the Clinical Governance Directorate of the British Orthodontic Society 2020. Recommendations may change in the light of new evidence.

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