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PSNC Briefing 020/17: PSNC's Guidance to contractors on whistleblowing (updated)

Introduction

Following several high-profile scandals and disasters in the 1980s and 1990s, the government introduced the Public Interest Disclosure Act 1998, which made important changes to employment rights to protect a worker against detriment brought about by disclosure. Almost every public inquiry found that workers had been aware of danger but had either been too scared to sound the alarm or had raised the matter in the wrong way or with the wrong person. One potential deterrent to raising concerns is the fear of reprisals for example by a fellow worker, or an employer.

Pharmacy contractors are required by the clinical governance provisions in the terms of service to have a suitable whistleblowing policy.

Background law

To protect workers, the Public Interest Disclosure Act 1998¹ 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 being forced to take 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).

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

Raising concerns within the pharmacy

In the community pharmacy setting, the qualifying disclosure would usually be made to the worker's employer, and where it is appropriate members of the pharmacy team should be encouraged to raise concerns internally with the view that the pharmacy employer will then have an opportunity to address the issue.

Raising concerns outside the pharmacy

Most whistleblowing incidents should be handled internally by the pharmacy employer. However, there may be occasions where it is appropriate to disclose concerns to a person/s outside of the pharmacy employer i.e. a "Prescribed Person". Examples include, where the relevant failure relates to a person other than their 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. Or 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.

A "prescribed person" is an organisation or individual that a worker may approach outside their workplace to report suspected or known wrongdoing. Making a disclosure to a prescribed person provides the right for a worker to take a case to an employment tribunal if they are victimised at work or they have lost their job because they have 'blown the whistle'.

Prescribed persons are identified in law; an [up-to-date list is accessible](#) and guidance is available on the Department for Business, Energy & Industrial Strategy's website². Those relevant to the NHS include:

- The General Pharmaceutical Council and equivalent healthcare regulators for GPs, Optometrists and Dentists;
- NHS England; and
- Health Education England.

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

NHS England Guidance

On 1st November 2016, NHS England published [Freedom to speak up in Primary Care](#)³ - Guidance to primary care providers on supporting whistleblowing in the NHS. The guidance is for all providers of NHS primary care services including community pharmacies. It details the principles and actions to apply in primary care to support the raising of concerns by staff about the delivery of primary care services to patients and the management of the matter raised.

² <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

³ <https://www.england.nhs.uk/2016/11/support-whistleblowers-pc/>

The NHS England guidance expects contractors to review and update their whistleblowing policies and procedures **by September 2017**.

Nominating a Freedom to Speak Up Guardian

The NHS England guidance also requires each contractor to name an individual as the Freedom to Speak Up Guardian who can ensure that policies are in place and that staff know who to contact if they have a concern; this person must be independent of management within the pharmacy and not be the direct employer.

NHS England's guidance notes that there are a range of people that could be a Freedom to Speak Up Guardian, including:

- Arrangement with another local primary care provider;
- Assigned staff role within a larger provider federation/network;
- Arrangement with the local hospital trust Freedom to Speak Up Guardian;
- Nominated member of the local Clinical Commissioning Group (CCG);
- Nominated member of the Local Professional Network (LPN);
- Nominated member of the Local Pharmaceutical Committee (LPC);
- Regional manager in larger pharmacy businesses;
- Superintendent Pharmacist;
- NHS England Responsible Officers.

NHS England will work with CCGs, LPNs and Local Representative Committees to support local nominations and during 2016/17 they will establish a network of Freedom to Speak Up Guardians in primary care so that NHS England can offer support, resources and further guidance to individuals in this role.

Next steps

If the Pharmacy Contractor has not yet adopted a formal whistleblowing policy, then this should be undertaken without delay, to comply with the terms of service⁴.

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 sample template is produced – 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. If contractors do use the template, it must be customised by the contractor as this is only the bare bones);
- 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.

Pharmacy contractors with existing formal whistleblowing policies should review and update their whistleblowing policies and procedures in light of NHS England's guidance **by September 2017**.

⁴ See National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, [Schedule 4, Paragraph 28 \(2\) \(e\) \(vi\)](#)

Further Sources of Information:

- NHS Employers have a [Raising whistleblowing concerns hub](#) with information, resources and guidance.
- [Public Concern at Work](#) raising concerns guidance – Public Concern at Work (www.pcaw.org.uk) is a whistleblowing charity which encourages workplace whistleblowing. The organisation can assist workers with deciding whether to make disclosures and if so, to whom the disclosure should be made.
- The [Royal Pharmaceutical Society](#) has prepared clinical governance guidance. Whistleblowing is included in its document 'Reducing workplace pressure through professional empowerment'. The Society has also produced guidance for its members on raising concerns and speaking up safely in pharmacy.
- The GPhC has created a [guidance leaflet](#) which sets out the responsibilities of pharmacy professionals to take action if they believe patients and the public are at risk.
- The [Whistleblowing Helpline](#) is a free-phone service for employees, and organisations working within the NHS and social care sector.

If you have queries on this PSNC Briefing or you require more information please contact [William Goh, Regulations Officer](#).