Whistling in the wind?

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David’s article is gloomy reading, but he at least was spared the common fate of many NHS whistleblowers. What about those who endure a more heavy-handed NHS response?

After having spoken up for over 16 years about serious blunders in Morecambe Bay’s NHS Trust (UHMB) – including avoidable deaths, near-misses, disobedience to the coroner and an overt cover-up – I was constructively dismissed in late 2016 (later ruled as an illegal dismissal that broke employment law due to salary deductions) after taking my concerns to the Care Quality Commission.1

Where are we now with NHS whistleblower protection?

1. NHS promises
   All NHS trusts make whistleblower protection pledges, UHMB included. With punishments and contrived contractual disputes following directly after my whistleblowing, culminating in a loss of £36 000 earnings in illegal salary deductions, these promises are evidently not as robust as they need to be.

2. Regulators
   As part of their policy, each NHS regulator makes strong statements about the importance of whistleblowing as a clinical duty.2 However, on many occasions this support turns out only to be a token gesture as regulators often lack any enthusiasm for protecting whistleblowers after they have raised legitimate concerns.

3. The law
   The law can repeatedly fail whistleblowers. In permitting NHS trusts to exaggerate facts and use these against the whistleblower under hostile cross-examination, it can be the whistleblower themselves who ends up on trial and potentially discredited. Cost threats – where the whistleblower is threatened with the employer’s legal costs if they fail to win their case (in my case a six-figure sum) – are routinely used to silence whistleblowers and force them to reduce/withdraw their case. Also, as a monopoly employer, the NHS can influence which of its staff might appear as a witness.

   Furthermore, the law demands evidence to link whistleblowing with the subsequent dismissal/illegal sacking before awarding proper compensation – yet it also permits redaction of emails, dropping out of third-party witnesses and intimidation of the whistleblower with cost threats. Under such circumstances, the prospects for any whistleblower successfully proving that important evidential link are forlorn indeed.

   The catch-22 of the whistleblower
   The whistleblower can therefore find themselves in a mutually conflicting position: they can speak up and risk counter allegations from colleagues and managers; or stay quiet and potentially face regulatory censure, or be struck off, for their silence over clinical risk taking.

   In my experience, colleague and managerial retaliation was savage after I raised legitimate concerns. I was targeted with false accusations of bullying, racism and potential NHS fraud while the Trust withheld £1000 per week of my salary over a nine month period (subsequently found to be an illegal pay deduction). As a result, I was forced to resign from the NHS to protect myself from further retaliation, including retrospective pay cuts, with no support from NHS leaders/regulators and a hypocritical refusal from the offices of the then Health Secretary, Jeremy Hunt, and then Matt Hancock, to meet with me – despite Matt Hancock’s recent public pledge to ‘stand with whistleblowers’.

   Until NHS whistleblower and patient safety is taken seriously, the ruthlessness of some in NHS management will continue to ruin the careers of well-meaning and motivated staff. Until and unless such leaders show true courage and heavyweight commitment to medical staff raising legitimate concerns on care provision, the NHS will continue to lose thousands of patients a year to avoidable deaths while NHS whistleblowers continue to play Russian roulette with their careers.

Declaration of interests

Peter Duffy has no financial interest in this article but is currently completing a book detailing his experiences as an NHS whistleblower.

Peter Duffy currently practices as a Consultant Urological Surgeon on the Isle of Man. He anticipates another seven years of working abroad before he can return home and be back with his family.

References