



MEDICAL WHISTLEBLOWING IN UK: PROBLEMS AND PROPOSED SOLUTIONS

by

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Abstract:

Raising Concerns during training and employment has invariably resulted in the persecution of the person who raised these concerns.

Consequences for whistleblowers have been identified: harassment, loss of employment and career, loss of reputation consequent to a campaign of malicious allegations, mobbing in the form of sham peer review by regulatory bodies such as the General Medical Council, financial losses leading to bankruptcy, poverty, loss of credit rating, loss of other business, proliferation of court cases, social difficulties (loss of status and friends), physical and emotional changes related to stress such as various symptoms of Post-traumatic Stress Disorder [PTSD], sometimes suicide, exposure to corrupt state institutions, emigration and exile. Consequences of Post-traumatic stress disorder include: difficulties maintaining relationships with the opposite/same sex; marital difficulties; divorce; the breakdown of the family unit; children suffering; inability to find the financial means to supplement their education and other activities; repercussion of the low self esteem on the spouse and dependants with consequent high rate of depression in the spouse as well as other members of the family and friends.

The positive effects of whistleblowing are development of new skills, awareness of court procedures/failings and legal rights, more awareness of employment rights ; the creation of new circle of friends, increased political awareness, serving as advisers for peers in the same situation; the creation of political groups motivated to defeat corruption; expansion of horizon, creativity and increased determination. There is impetus to replace current legislations and procedures with awareness of responsibilities to safeguard public as well as whistleblowers.

Problems faced by whistleblowers include: secrecy and closed shop practices, the gang culture created by NHS Administrators and Medical Directors which serves as a deterrent to any person who dares to challenge, the Medical self-regulation hands being used as an extension of the arm of the defendant to reprimand any such concerns being raised, or any challenges facing Hospital Administrators; disrespect and misapplication of the laws by authorities, ignoring crucial evidence; the marginalisation of the concerns and the complainant; adversarial legal system unsuitable for the health regulation and various conflicts of interests at national level; and reversing the concerns on the complainant.

Proposed solutions: A European Whistleblowers Centre, public rehabilitation of whistleblowers, public education and increasing media awareness of the impact of whistleblowing, state pension for whistleblowers, psychological intervention for bullies, punitive measures shared by offenders and state/private institutions, reward system for whistleblowers and organization/individuals that handled whistleblowing well (The Gold Whistle Award).

Definition:

A Medical Whistleblower is a person who has come forward to report

Medical Fraud, Abuse or Neglect to State, Federal or international governmental authorities according to Dr Janet Parker, founder of Medical Whistleblower Advocacy Network.

Medical Whistleblowers are from many professional disciplines, patients and their families. Medical Whistleblowers are human rights defenders of others.

The United Nations has recognized the defence of human rights as a right in itself. The resolution [53/144](#) was adopted in order to protect both human rights defenders and their activities: "Declaration on human rights defenders".

Method:

Doctors4Justice is a political campaigning organization formed by Medical Whistleblowers in the UK. Research and experience of individual members in Medical Whistleblowing is considerable spanning over thirty years.

Doctors4Justice.net has a website which is visited by people on all continents in the world and we receive and give information/ support to those who approach us and to those we approach ourselves.

Findings:**Medical Whistleblowers Characteristics**

Personal characteristics of whistleblowers include intelligence, increased social awareness and empathy, integrity, openness, consciousness, competence and sometimes greater popularity. This may predispose them to increased chances of being attacked through bullying, mobbing and other forms of persecution. This may result in low self esteem, isolation, and inability cope with the en masse organisational retaliation involved in medical mobbing [*Huntoon et al*].

System Characteristics

Medical Whistleblowing occurs in system which is not performing well, when normal working is not possible or where a healthy response to concerns raised is not possible. On one level, one can assume that it is part of the normal working life to encounter problems which need resolving. Firstly, when problems are resolved smoothly some people might not even think of it as Medical Whistleblowing. On a second and more dysfunctional level, the organisational retaliation may be a response to their failure to accept fault or fear of repercussions e.g. subsequent litigation. The usual response is to shoot the messenger.

Problems:

General Problems

1. Medical professionals are self regulated and thus incapable of being objective in all the stages of investigation, defence and persecution in an adversarial legal system.
2. There is no independent organisation where concerns can be reported to anonymously or otherwise. There is no guarantee of protection for the whistleblower.
3. The Public Interest Disclosure Act (*PIDA*) has been shown to be ineffective [*Lewis et al 10 Years of PIDA*].
4. There have been a number of high profile cases elucidating the complete lack of support for whistleblowers. This is now resulting in financial cost and significant loss of life. Examples include Mid Staffordshire NHS Trust, Gosport Memorial Hospital etc. Patient safety is currently being placed in jeopardy. Without adequate protection of whistleblowers, there will continue to be a loss of life and significant resources meant for patient care deviated towards litigation. This is not in the economic interests of the current government.

Problems with Medical Regulation

5. Medical regulatory bodies have no intention to comprehend the problems surrounding whistleblowing. Every regulatory body will dismiss legitimate concerns raised by the whistleblower (Marginalisation and Gang Culture).
6. The White Coat of Silence is the term used to denote non reporting of mistakes by co-workers and White Coat Barricade - the silence of the regulatory bodies which actively protects the offenders and serves as a deterrent to anyone who dares to challenge.

The General Medical Council protects dishonest Expert Medical Witnesses and other doctors involved in Sham Peer Review. Other regulatory bodies appear to have the same response [*NMC v Margaret Haywood*]. This shows the prosecution of the whistleblower and the protection of those who were negligent. This characteristic is also highlighted by Wilmshurst et al [*A Personal View of the GMC*]

7. Defence Unions [Medical Protection Society, Medical Defence Union and MDDUS] provides poor service. Characteristically, they do not defend the whistleblower robustly and fail to obtain vital documents via disclosures when Medical Whistleblowers are mobbed by their own profession. Unfortunately the BMA, Medical Defence Organisations, from our personal experience, work with intent as part of the Gang Culture to obstruct any legal rights or any attempt to raise concerns to the Courts.
8. Bias [Religious, Political Affiliations, Scientology etc] is not well detected due to failure of the regulatory bodies to vet their panellists. Fitness to Practice hearings may be populated with panellists who are religious fanatics e.g. hold belief in exorcism, demons causing epilepsy etc., 4

9. they may have affiliations and friendships with the accused superiors, they may have political agendas e.g. governments may not approve of those who raise concerns on suboptimal care.

There is failure to adequately screen Fitness to Practise panellists and this leads to faulty decisions making where negligent doctors are not admonished and innocent doctors persecuted for a number of years until they are ruined professionally and financially..

10. That there is no Criminal Records Bureau checks of staff or panellists at the General Medical Council (GMC) is only one of the failings which have not been addressed despite our demands.
11. There are no Occupational Health screenings of staff and panellists at the GMC. Chronic alcoholics sit as panellists or as Legal Assessors [*Esther Cunningham SRA prosecution 10068-2008*]
12. GMC has on occasions failed to disclose complaints against doctors often termed as the “Discreet Inquiry”. *Pal v GMC 2004*, the GMC was described as acting like a totalitarian regime following an inquiry on a typographical error and a collection of material written on the internet, none of which affected patient care. The reversal of a complaint against a whistleblowing doctor has been shown in the following in *GMC v Vaidya*, *GMC v Phipps*, *GMC v Wilmshurst*, *GMC v Bright*, *GMC v Pal*, *GMC v Al Ruby*, *GMC v Varma* and others. No complaints against doctors accused of malpractice [raised by the whistleblowers] were taken up or investigated adequately by the GMC.

Character Assassination

13. Whistleblowing doctors can be subjected to character assassinations. One method used by regulatory bodies is to question their mental health. Psychiatric examinations of hundreds of doctors each year are performed by GMC selected Medical Experts.

These experts are not held accountable for the most extraordinary professional negligence and incompetence. International Classification of Diseases is not followed and neither is Diagnostic and Statistical Manual of Mental Disorders. Political dissidents are declared insane with discredited diagnosis such as querulous *paranoia*. As Dr Lawrence Huntoon said (20): “ Absolute immunity, like absolute power, corrupts absolutely and invites abuse”

Anything can be regarded as a sign of mental illness. For example: starting a sentence with word "But", or a typographical error, having an opinion different from the Department of Health, writing a six page letter, and having a number of complaints made against the doctor (not what the complaints are about and how truthful these are).

Criticism of medical colleagues and institutions is not tolerated by GMC (the Creation of a Police State-Like-Organisation). The GMC fails to practise what it preaches in its terms of what constitutes Good Medical Practice.

When doctors manage to defend allegations of mental illness, pseudo psychiatric monitoring is ordered instead, in the form of sanctions on medical practise such as supervision by psychiatrists, anger management, communications training, team working even when there are no findings of fact by the GMC itself that any patients have been harmed. The whistleblower is essentially labelled the trouble maker. This then has the ripple effect acting to prejudice employment prospects completely. There is always the prejudicial impact of the post Shipman recommendations – to disclose open and closed

complaints on job application forms. Naturally, a hospital will opt to employ someone who is not tainted by any hospital allegations or a regulatory body investigations. Effectively, whistleblowers who have been character assassinated are deemed damaged goods and even when they managed to get a couple of days work they do not get paid.

14. Challenges to the General Medical Council decisions prove impossible on occasions. Doctors with conditions or sanctions often do not have defence union cover as they are dropped by their defence bodies as unworthy lepers.

Pro Bono support is scarce and refused in complex cases. Without employment and lack of money, the doctor cannot fund their defence. Free legal aid is refused in view that similar cases are judged by the Legal Aid Panel as complex, long winded and difficult to win knowing the climate created by the Judges from previous cases.

This is the common result of the assassination of character as experienced by whistleblowers. The stigma suffered by an investigation is immense and the pariah effect commences. Social isolation results and whistleblower is left without peer support.

15. Alternative career development and structures are absent. Non medical careers are dependent on previous references too. Over qualification is an impediment to obtaining any job in the outside world. The only other option left for a whistleblower is Self Employment.
16. Employment Tribunals have failed to protect Medical Whistleblowers under Public Interest Disclosure Act (PIDA) and the tribunals have been structured to include a member who worked with defendants (ie in the same hospital as administrator). Again, there is poor recognition of the problems faced by whistleblowers [*Perkin v St Georges Hospital NHS Trust* – where the whistleblower's character was criticised].
17. Although there is a Code of Conduct for NHS Managers this is disregarded by GMC in case of medically qualified managers. Most whistleblowing episodes regarding suboptimal care have been due to medical mismanagement. There is no accountability for managers who mismanage their departments causing substantial cost and loss of life.
18. Investigators at GMC/CQC (Commission for Quality Care) have refused to obtain patients' records and have protected those doctors who actually made medical errors. The Medical Whistleblower is branded as being aggressive, incapable of good team working, with poor communication skills and alleged to be guilty of professional misconduct.[e.g. *Perkins v St Georges Hospital NHS Trust*]
19. There is abuse of power/process in many forms. There is a reluctance to vindicate the whistleblower. Instead, numerous unworkable conditions may be placed on their practise. This not only prohibits them from finding work in other countries but effectively stigmatises them permanently and prevents them from developing any private practise either.
20. The post Shipman disclosure policies of a doctors' employment and fitness to practise history is detrimental to doctors who have been subjected to organisational retaliation (mobbing). 6

20. The alert letter system has been repeatedly open to abuse. Unofficial alert letters have been sent [*Al Ruby v Norfolk NHS Trust*] with the persistent refusal to investigate the allegations at all levels.
21. Following the Soham Inquiry and the guidance on Data Retention, any defamatory, inaccurate or prejudicial allegation regarding a whistleblower is likely to remain on their records forever [*Pal v North Staffordshire NHS Trust* – false allegation of a needlestick injury in 1998 continues to remain on record 12 years later, *Al Ruby v Queen Elizabeth NHS Trust* – false allegations continue to remain]. There appears to be a lack of concern regarding the prejudicial repercussions to a medical career and inability of the High Court to protect whistleblowers. This therefore denies the whistleblower their civil rights to medical employment. The High Court is in contravention with the Human Rights Convention Article 6 (*Albert and Le Compte v Belgium (1983)* 5 EHRR 533).

In defining the autonomous meaning, for Convention purposes, of "civil rights and obligations" in article 6(1), the Court has chosen to give the expression a broad meaning, so as to embrace some administrative and disciplinary decisions. This has the consequence that decisions in fields such as this are routinely made in the first instance by bodies that do not have and are not intended to have the independence and impartiality to be expected of a judicial tribunal as required by article 6(1). This was, it would seem, true of the Provincial Councils considered in *Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 EHRR 1 and *Albert and Le Compte v Belgium* (1983) 5 EHRR 533, of the Social Insurance Office which featured in *Döry v Sweden* (Application No 28394/95) (unreported) 12 February 2003, of the planning authorities whose decisions were challenged in *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295 and of the rehousing manager who featured in *Runa Begum v Tower Hamlets London Borough Council (First Secretary of State intervening)* [2003] UKHL 5, [2003] 2 AC 430. The Court has not, however, held that the making of an initial decision by a body which does not meet Convention standards of independence and impartiality necessarily taints or invalidates the further stages of decision-making consequent on that initial decision: *Le Compte, Van Leuven and De Meyere v Belgium* 4 EHRR 1, para 51(a). But, as it was put in *Albert and Le Compte v Belgium* 5 EHRR 533, 542, para 29:

"in such circumstances the Convention calls at least for one of the two following systems: either the jurisdictional organs themselves comply with the requirements of article 6(1), or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of article 6(1)."

Thus, in cases such as *Le Compte* and *Albert* much of the argument turned on whether the Belgian Court of Cassation had the competence and provided the guarantees necessary to remedy deficiencies at lower levels.

22. Media Attitude. The media continue to misunderstand some of the aspects of whistleblowing. Initial whistleblowing to the press is followed by silence once regulatory bodies find doctors guilty.⁷

23. The positive aspects of doctors coping after whistleblowing have not yet been publicised.
24. At present there is no understanding of multidimensional effects of whistleblowing. The media understands – whistleblowing equals suspension and erasure from medical register and the matter ends there. The role of the GMC, mobbers retaliation, supportive stories to investigate the nature of the whistleblowers concerns rarely exist.
25. Moreover, junior whistleblowers are neither supported nor featured by the medical media or national media. Consultants are given preferential treatment in many cases up to the point they are successfully destroyed by medical regulators and inadequacies of domestic courts where the appeals are lodged.
26. Evidence of breach of Article 6 of Human Rights is withheld (absence of court recordings, judgement passed but not issued for months thus obstructing the right to appeal within the time limit).

Proposed Solutions:

1. European Medical Whistleblower Centre. This Centre would provide Advocacy and Communication of whistleblowing concerns to other authorities.
2. Psychological therapy for bullies/medical mobbers. Further studies on Medical Mobbing and Sham Peer Review in UK. US Research has been far more advanced in this area.
3. Gold Whistle Award for whistleblowers and those able to protect and support whistleblowers.
4. Independent investigation of complaints against doctors, separate from the medical Registration Body.
5. Education for Regulatory Bodies and the Media regarding the serious problems involved in whistleblowing.
6. Investigation into Regulatory Bodies response to whistleblowers in the last 10-20 years with a view to implementing improvements.
7. Health Select Committee Review of Whistleblowing with a view to obtaining recommendations for the NHS (National Health Service).
8. Enforcement of Data Protection Act 1998 and Freedom of Information Act 2000 where the Whistleblower has the right to all the information concerning them and the matter they raised.
9. United Nations protection for Medical Whistleblowers to be enforced. UK has breached it.
10. Personal Accountability and financial liability for the offenders along with health authorities accountability rather than leaving the tax payer to pay all the damages.
11. A Managers Regulatory Body in the United Kingdom.
12. Rehabilitation of Medical Whistleblowers by multidisciplinary team at the European Medical Whistleblower Centre – BioPsychoSocial Support.
13. Political Rehabilitation and Public recognition of all whistleblowers.
14. Pension for Medical Whistleblowers to include state compensating for all the lost years of not being able to contribute

Acknowledgement:

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