

Shared Insights: NHS whistleblowing post Covid-19 – common pitfalls and best practice

14 July 2020

These insights were shared at our fortnightly online forum for NHS professionals on 14 July 2020. To find out more please visit our [Shared Insights hub](#)

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[Helen Badger](#), Partner at Browne Jacobson specialising in employment within health, social care and education spoke about the law protecting whistleblowers, how to recognise a protected disclosure and the Trust's statutory duties when dealing with whistleblowers. Alison Bell, the Freedom to Speak Up Guardian at University Hospitals of Derby and Burton NHS Foundation Trust, highlighted some examples of best practice and common pitfalls when dealing with whistle-blowers.

The Shared Insights were:

- Dismissal is automatically unfair if the principal reason for it is that the employee made a “protected disclosure”.
- A “protected disclosure” occurs when a worker discloses information relating to one of six types of “relevant failure” defined in the legislation (the most common is Health and Safety). In order to be protected:
 - The disclosure must be made to one of the individuals or organisations defined in the legislation, which includes the employer, the Trust that is responsible for the relevant failure and the CQC.
 - The worker must have a reasonable belief that the disclosure is in the public interest and that the relevant failure has occurred or is likely to occur – but it does not matter if that belief subsequently turns out to be wrong.
 - Importantly, there is no requirement that the disclosure has to be made in good faith in order to be protected.
- Workers (which includes employees, bank, agency and locum staff) also have the right not to be subjected to any detriment (e.g. denied access to training or promotion) on the grounds they have made a “protected disclosure”.
- Trusts should train managers to recognise that they are dealing with a whistleblower and how to address this.
- Investigations should be suitably independent and robust and decisions documents.
- Trusts should act quickly once a disclosure has been made and involve the Freedom to Speak Up Guardian.
- Trusts need to create an open culture where all staff feel safe to speak up.

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