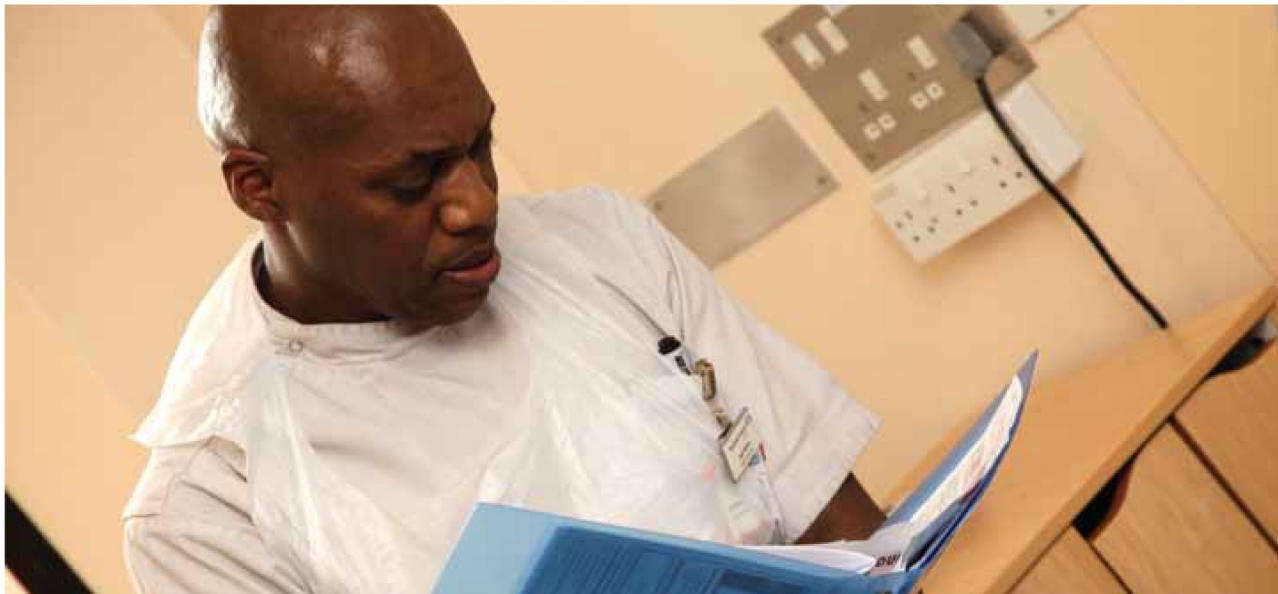


Raising concerns: a guide for RCN members

Safe, compassionate care is everyone's business. Raising and responding to concerns is something that we should all comfortably be able to do. But we know that being able to speak out is not always as easy as it sounds. This resource will support you to raise concerns wherever you work – in the NHS or independent sector.

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It can sometimes be hard to know whether a situation should be raised as a concern. You should be guided by this question: *Has the situation caused harm or distress or if you let the situation carry on, is it likely to result in harm or distress?*

Your concern must be based on a reasonable belief that you can justify, but you do not always need hard evidence that wrongdoing is happening, has taken place or is likely to happen in the future. If in doubt, raise the concern with your manager or senior colleague as soon as you can.

Remember, you are protected in law from harassment, bullying, dismissal and other detrimental action when you raise a concern appropriately, even if you do this after the end of your employment.

Raising concerns or whistle blowing?

Are you raising a concern or are you blowing the whistle? Or are they the same thing? It can often be very difficult to understand. Essentially, they *can* be the same thing depending on:

- what you are concerned about
- its seriousness
- how you make your concerns known and how they are dealt with.

Whistle blowing is a popular phrase but in legal terms under the [Public Interest Disclosure Act 1998](#) (PIDA), it means a making a **'protected disclosure'** in the **public interest**. In most cases your concerns will hopefully be dealt with internally and it will only be appropriate to disclose your concerns externally when you have exhausted your organisation's relevant internal policies and procedures.

A protected disclosure is disclosing information regarding:

- mistreatment of patients
- criminal offences
- law breaking – for example not complying with a contractual obligation
- health and safety to an individual/individuals
- financial irregularities
- environmental damage
- information showing above is or has been deliberately concealed.

A worker/ex-worker, employee/ex-employee, 'home worker or trainee on work experiences (for example students on placement) can all make a protected disclosure.'

The [step by step flow chart on page 4](#) will help you consider whether your concern needs to be escalated and whether it could be a whistle blowing issue.

Raising concerns: rights and responsibilities

It is everyone's responsibility to be aware of the importance of preventing and eliminating wrongdoing at work. You should be watchful for unsafe, illegal or unethical conduct and report anything of this nature. Your employer has a duty to respond, if they do not we can help you escalate your concerns. All employers should have a formal policy for raising concerns, which will usually be known as the 'Raising concerns' or 'Whistle blowing policy', and you should familiarise yourself with this at an early stage if you wish to raise a concern.

Nurses and raising concerns

Registered nurses must follow the Nursing and Midwifery Council (NMC) code of conduct at all times, but other members of the team should also use it to guide their practice. The NMC has produced its own guidance on raising concerns, including a training toolkit. Please see www.nmc-uk.org and search for 'raising concerns'.

Raising and acting on concerns early

Don't wait for a problem to develop. If you see poor care or feel you are being prevented from providing safe, compassionate care, start discussing it with your colleagues now. More importantly, ensure you are aware of the approaches you can take to help improve the quality of care and deliver the best clinical practice to prevent a problem emerging in the first place.

For more information about delivering high quality care and to learn more about areas such as dementia and nutrition, see the useful resources section on page 7.

Practicalities

How do I raise a concern?

When you have identified who to approach, you can raise a concern either verbally or in writing. You will need to include some background along with a history of your concerns and the reasons why you are concerned.

However you report your concerns, ensure that you keep records and notes throughout the process of the issues that you are concerned about for future reference. At any stage, whether you are following your employer's policy or the steps outlined here you can contact the **RCN** for support and advice.

See our [step by step flow chart on page 4](#) on how to raise a concern.

Contact the RCN

The RCN will support you and you should contact **RCN Direct** on 0345 772 6100 or your local rep to ask for help with raising concerns and speaking out about patient safety, malpractice or the quality of care. If things are becoming difficult and you think you are being victimised, contact us at the earliest opportunity.

The RCN is also here to provide you with moral support and a sounding board to check whether you are doing the right thing in raising a concern, and doing it the right way.

See our step by [step flow chart on page 4](#) on how to raise a concern.

Raising concerns step-by-step guide

Has the situation caused harm or distress or if you let the situation carry on,
is it likely to result in harm or distress?



Step 1	Step 2	Step 3	Step 4	Step 5
<p>Access your local raising concerns or whistle blowing policy. The policy should detail with whom you can raise a concern</p>	<p>Raise your concerns in line with your local policy</p>	<p>If you are unable to talk to your line manager or if concerns are not addressed: escalate the issue to the next level of management or director of nursing or equivalent.</p>	<p>If your concerns are still not addressed satisfactorily then escalate the issue again to the chief executive (or equivalent) but ensure your director of nursing is aware that you have taken this step.</p>	<p>If you have exhausted all local workplace policies and procedures, you should consider raising your concerns externally. A list of external bodies to which you can make a disclosure can be found at www.gov.uk enter 'Blowing the whistle: list of prescribed people and bodies Oct 2014',</p>
RCN Support	RCN Support	RCN Support	RCN Support	RCN Support
<p>If there is no policy or if the policy is unreasonable; Call RCN Direct</p>	<p>Unable to do so or if the issue unresolved; Call RCN Direct</p>	<p>Call RCND if you need support.</p>	<p>Always do this with RCN support.</p>	<p>Always do this with RCN support.</p>

On occasion it may be appropriate to jump to Step 4 /Step 5 especially if you believe your employer will cover up the situation. Always seek advice from the RCN.

Important: Going to the media should always be a last resort after exhausting the steps outlined here. There may be confidentiality issues and employer policies that you need to be aware of. At each stage ensure that you keep records of your concerns and any steps you have taken to resolve them for future reference.

RCN Direct - 0345 772 6100. NHS national whistle blowing helpline - 0800 072 4725

Can I raise a concern confidentially?

Your employer's policy should enable you to raise your concern confidentially, which means your name will not be revealed without your consent, unless required by law. When you raise your concern, either verbally or in writing, make it clear if you are doing so confidentially.

It can be difficult to speak out but there are risks when concerns are raised anonymously. For example:

- it is harder to investigate the concern if people cannot ask follow-up questions
- it is easier to get protection under the Public Interest Disclosure Act if the concerns are raised openly
- being anonymous does not prevent others from successfully guessing who raised the concern
- it can lead people to focus on who the whistle blower is, possibly suspecting that he or she is raising the concern maliciously.

What support can I expect?

We understand that raising a concern can be difficult. In addition to RCN support, whistle blowing legislation provides you with the necessary protection. It is important the concern is raised appropriately and is a qualifying disclosure according to the legislation. Do not be worried if this sounds technical as the RCN can guide you through it.

If you work for the NHS, all employees have a contractual right and a duty to raise genuine concerns with their employer that they consider to be in the public interest - including malpractice, patient safety, financial impropriety, or any other serious risks. This is set out in section 21 of the NHS Terms and Conditions Handbook.

Additionally:

- in England the NHS Constitution and handbook include a pledge to support staff who wish to raise concerns
- in the NHS in Scotland staff are covered by a nationally agreed Partnership Information Network (PIN) policy on whistle blowing
- in Northern Ireland staff are covered by the Regulation and Quality Improvement Authority whistle blowing guidance

- in Wales the Health Care Inspectorate Wales has produced a document called *Concerns and Complaints about Health Services in Wales* which covers NHS services and independent health care settings.

What response should I expect when I raise a concern?

When you raise a concern you should be listened to carefully and without fear of detriment. Your employer should investigate your concern thoroughly, promptly and confidentially. Your concerns should be assessed as to:

- how serious and urgent the risk is
- whether the concern is best dealt with under the local whistle blowing or raising concerns policy or another local procedure
- whether assistance is required or if referral to senior managers, or a specialist function, is desirable or necessary.

The issues you raise should be answered in writing, summarising your concerns, noting whether you raised them openly or confidentially and stating the steps that will be taken to resolve the situation.

If you do not receive this the RCN can help you. Contact RCN Direct for advice.

Will there be personal consequences for me if I raise my concerns?

The RCN recognises that raising concerns can sometimes require courage in the face of possible victimisation and we will support those who face difficulties for having taken this step. Most employers take concerns very seriously and respect their moral and legal obligations; however, legislation protects you if you raise concerns.

Protection and support

- You are protected in law from victimisation by your employer and your employer should treat any acts of victimisation against you as a disciplinary offence.
- Your continued employment and opportunities for future promotion or training should not be affected. If this happens, you can bring a claim at an Employment Tribunal or an industrial tribunal

in Northern Ireland. There is no cap on the awards for victimisation, and some employers in the past have been ordered to pay significant compensation to the worker. There are strict time limits in relation to making an Employment Tribunal claim. In most cases the claim must be lodged **within three months** less one day of the relevant event/detriment occurring for example date of dismissal. Please note that workers who are not employees cannot claim unfair dismissal as a result of making a protected disclosure, but they are protected and can claim they have been subjected to a detriment.

- Accredited RCN representatives who raise a concern on behalf of others or themselves are protected by trade union legislation.
- An instruction to cover up wrongdoing is a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, you should not agree to remain silent. The NMC identifies a duty of candour for registrants, but this is good practice for all.

However, you also have a duty of honesty:

- if you deliberately make a false allegation it may be a disciplinary offence. If you make an allegation which you believe to be true, but turns out not to be, you may be protected by the legislation
- committing an act of misconduct and/or breaching your employer's disciplinary procedures (for example by disclosing patient/confidential records to third parties, unauthorised access to confidential records) could justify your employer taking disciplinary action against you. **If in doubt, seek advice from the RCN.**

We understand that raising concerns can be stressful. If you feel under pressure, the RCN can provide an opportunity to discuss your situation confidentially.

What are compromise agreements and 'gagging clauses'?

A 'compromise agreement' is a standard method of terminating employment in difficult cases, drawn up between the employer and employee as a final resolution to an ongoing dispute, usually involving the employee leaving the place of work.

Much confusion has arisen in the health sector about the use of compromise agreements and particular clauses which feature in such agreements, commonly referred to as 'gagging clauses', which may prohibit an employee from raising a concern about patient safety issues.

With respect to public interest disclosure cases, gagging clauses are **unlawful** and cannot be enforced. However, it can sometimes be hard to determine the meaning of particular clauses in an agreement, especially if you are involved in a termination of employment and feel overwhelmed by the experience. Seeking advice is therefore vitally important. If you think that a gagging clause is being proposed you should contact the RCN and take legal advice.

Call RCND for advice on 0345 772 6100.

How should managers act on a concern?

If you are in a management position, creating an environment of openness is paramount. You should model openness and transparency in your own approach and should foster a culture in which all members of staff feel able to raise concerns without fear. You should escalate any concerns you may have appropriately, according to local policies.

NHS guidance published by the Social Partnership Forum and Public Concern at Work for England outlines how to achieve this type of culture and why it is important. This guidance also includes practical tips for NHS managers in handling concerns including: responding to concerns; communicating the importance of raising concerns; and auditing, refreshing and reviewing existing approaches.

Similar whistle blowing guidance is provided by the Regulation and Quality Improvement Authority in Northern Ireland, and PIN policies in Scotland. The Health Care Inspectorate Wales has produced a document called '*Concerns and complaints about health services in Wales*'. This covers both NHS services and independent health care settings. See our [resources page](#). At any time, you can call RCND for advice **0345 772 6100**.

NB The Public Interest Disclosure Act 1998 is applicable in England, Scotland and Wales. Equivalent provisions apply in Northern Ireland under the Public Interest Disclosure Order, 1998.

RCN Resources

RCN Direct 0345 772 6100

Dementia: www.rcn.org.uk/dementia

Dignity: www.rcn.org.uk/dignity

Executive Nurse Network:

www.rcn.org.uk/development/rcn_executive_nurse_network

Nutrition and hydration:

www.rcn.org.uk/development/practice/nutrition

Older people:

www.rcn.org.uk/development/practice/older_people

Patient safety:

www.rcn.org.uk/development/practice/patient_safety

Making sense of patient safety (online learning)

www.rcn.org.uk/development/practice/cpd_online_learning/making_sense_of_patient_safety

Safeguarding:

www.rcn.org.uk/development/practice/safeguarding

Principles of Nursing Practice:

www.rcn.org.uk/development/practice/principles

Safe staffing:

www.thisisnursing.rcn.org.uk/members/areas/staffing/

RCN (2012) Mandatory nurse staffing levels

Supervisory ward sisters:

www.thisisnursing.rcn.org.uk/members/updates/supporting-ward-leaders

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Whistle blowing guidance

Blowing the whistle to a prescribed person.

List of prescribed people and bodies.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360648/bis-14-1077-blowing-the-whistle-to-a-prescribed-person-the-prescribed-persons-list-v4.pdf

CQC guidance www.cqc.org.uk/content/whistleblowing-quick-guide-raising-concern-cqc

Health Care Inspectorate Wales - Concerns and Complaints about Health Services in Wales.

<http://www.hiw.org.uk/sitesplus/documents/1047/Concerns%20%26%20Complaints%20about%20Health%20Services%20in%20Wales%20%28E%291.pdf>

National PIN Policy on Whistle blowing Scotland

www.scotland.gov.uk/Resource/Doc/364407/0123806.pdf

NMC guidance on raising concerns:

www.nmc-uk.org/Documents/NMC-Publications/NMC-Raising-and-escalating-concerns.pdf

NHS Speaking up charter:

<http://www.nhsemployers.org/your-workforce/retain-and-improve/raising-concerns-at-work-whistleblowing/speaking-up-charter>

A commitment by NHS employers and other organisations to work together to support those who raise concerns in the public interest.

NHS Terms and conditions of service handbook

– **section 21:** www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/AfC_tc_of_service_handbook_fb.pdf

Public concern at work: www.pcaw.org.uk is an independent charity that advises individuals, supports organisations with their whistle blowing arrangements and informs public policy.

Regulation and Quality Improvement Authority whistleblowing guidance Northern Ireland

www.rqia.org.uk/contact_us/complaints_and_feedback/whistleblowing.cfm