



Protect

7-14 Great Dover Street

London SE1 4YR

Tel: 020 3117 2520

Fax: 020 3096 7710

Email: whistle@protect-advice.org.uk

www.protect-advice.org.uk

Protect Submission to the Scottish Justice Committee on Elder Abuse

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We are delighted to contribute this short submission for the committee's consideration. Our evidence focuses on our experience of the ability and willingness of whistleblowers to report elder abuse on behalf of victims. Many vulnerable adults, particularly in the care sector, are unable to articulate concerns themselves and it is vital that care workers speak up on their behalf to prevent abuse.

Background

1. Protect (formerly Public Concern at Work) is the UK's leading authority on whistleblowing. Set up 25 years ago, at the heart of the charity's work is the free, confidential Advice Line, which helps almost 3000 individuals each year from across the UK. The advice line helps workers who have witnessed wrongdoing, risk or malpractice in the workplace but are unsure whether or how to raise their concern. Protect has advised over 40,000 individuals to date, and this in turn informs its approach to policy and campaigns for legal reform.
2. All of the charity's work is aimed at protecting the public interest by encouraging workplace whistleblowing. In addition to the work with individuals on the advice-line, the charity helps organisations to create a safe environment in which staff can raise concerns at the earliest opportunity. The charity supports hundreds of organisations to help ensure their whistleblowing arrangements are trusted and effective. We currently work with many regulators, professional bodies, commercial, public sector and voluntary organisations including: NHSScotland, the Association of Accounting Technicians (AAT), the General Medical Council (GMC), the Law Society, John Lewis Partnership, Barclays, the Bank of England, ITV and the British Red Cross.
3. Since 2013 we have run the NHSScotland Whistleblowing Alert and Advice Service on behalf of the Scottish Government, providing a vital advice service for concerns raised by health workers. As part of the contract, we have produced promotional materials, as well as developed and delivered training sessions across NHSScotland.
4. Protect has a unique perspective on whistleblowing, recognising both the challenges faced by individuals in speaking up, and those within organisations listening to and addressing concerns. Protect's experience has shaped the frameworks in which individuals raise concerns, and how organisations handle them.
5. This includes: helping to draft the primary piece of legal protection for whistleblowers, the Public Interest Disclosure Act (PIDA); drafting the British Standard Institution's Guidance on Whistleblowing Arrangements; establishing the Whistleblowing Commission which developed a Code of Practice for whistleblowing arrangements, a

guide used by many organisations in creating their whistleblowing processes; ongoing involvement in sectoral developments within the NHS and Financial Services; and long-standing collaboration with government on numerous initiatives which have touched on the wider world of whistleblowing. Protect will shortly launch a “Better Regulators” campaign, with the aim of bringing together the various bodies given responsibility for receiving whistleblowing concerns to develop and share best practice.

Experiences of whistleblowers from the care sector

6. In our experience, there are several challenges facing the care sector and potential elder abuse. First, many care homes operate as very small businesses without the infrastructure for policies about raising concerns internally, and without resources to invest in training on whistleblowing best practice. How a line manager reacts to a concern raised is critical to stopping harm quickly. Without training about whistleblowing culture (sometimes referred to as a ‘Speak Up Culture’) concerns may be ignored, or inappropriately dealt with as individual grievances – both responses may discourage others from coming forward. Survey work with UK workers has consistently found the fear that nothing will change if they raise concerns would prevent workers from coming forward.¹ In workplaces where this is seen as the expected response, when concerns are ignored, then it will dissuade future whistleblowers from coming forward.
7. Training is crucial for both members of staff and managers. For staff it is vital they know who to raise concerns internally to but also who their appropriate regulator is; if they are unable to raise concerns with their employer, or if they have received an inadequate response from their managers. Managers need to know how to handle both the concern raised and how to handle the whistleblower, otherwise not only can there be a situation where a whistleblower feels ignored or mistreated but this can ripple out the wider workforce.²
8. Too often there is not even a policy available for staff who are considering raising concerns. Finally, low paid staff, particularly in areas where jobs are difficult to come by, are reluctant to raise concerns where they feel this may lead to their jobs being put at risk. The many public stories about whistleblowers being victimised or dismissed may act as a deterrent. The perception of whistleblowing needs to change: care home and health service managers need to recognise that those closest to vulnerable adults will often be the first to recognise signs of abuse and encourage and thank those who speak up to stop harm.
9. Last year 17% of cases to the Advice Line were from the care sector, this equates to around 400 calls and the care sector have been our second largest sector for a number of years. Below are some key statistics from cases to the Advice Line from 2018 calls that will build for the committee a profile of the types of whistleblowers in the sector, the concerns they raise, how the concerns have been handled and how they were treated as a result.
10. *Who calls us for advice:* Whistleblowers from the care sector who are seeking advice from us tend to be more junior staff with 58% of callers describing themselves as

¹ YouGov and Protect survey work: <https://www.protect-advice.org.uk/attitudes-to-whistleblowing/> and page [Whistleblowing: Time for Change July 2016](#) p.g. 31

² *ibid*

either carers or support staff? In other research by Protect we found that a large proportion of whistleblowers are relatively new members of staff – as a fresh pair of eyes may identify concerns which may have been “normalised”. New staff – without ordinary unfair dismissal rights – are particularly vulnerable to being bullied into keeping quiet, with a threat that they may lose their jobs if they continue to pursue their concerns.³

11. *What type of concerns are witnessed by care sector whistleblowers:* The types of concerns witnessed range from minor medication errors to incredibly serious abuse of vulnerable people with 48% of concerns witnessed by whistleblowers being some kind of safeguarding issue whether that’s physical or sexual abuse or neglect.
12. *Where are these concerns raised:* Whereas overall most callers in other sectors escalated their concerns to senior management, in the care industry most callers - 49% - escalated their concerns to their direct line manager.
13. *Whistleblowers from the care sector are often left unsupported by their employer:* One in three say their concerns were ignored. Examples include raising concerns about sexual abuse of vulnerable older people where the manager is reluctant to discipline a senior staff member, not least because of the recruitment difficulties in the sector. Nevertheless, the impact of being unsupported contributes to staff leaving unsafe environments with an additional impact on continuity of care for the vulnerable residents of the home.
14. *Too many whistleblowers from the care sector are victimised for raising their concerns:* more than half of callers to our Advice Line report experience some form of victimisation, 23% were dismissed after raising their concerns.

Comments and insights from a survey of care workers

15. Last year we ran a care sector survey to get a wider view of workers from the sector toward whistleblowing in an attempt to dig further into the whistleblowing numbers beyond those that call us for advice. Below are some of the responses we received in free text.

16. We asked care home workers ranging from managers and care home owners, if they felt enough was being done to support whistleblowing in the care industry. Whilst a few said yes, the majority disagreed and had the following recommendations:

“An inspector designated for each home who is responsible for raising whistleblowing issues from staff members and monitoring their resolution and spot checking that they do not recur.”

“Improved protection for the person raising the concern, better training for managers to enable them to deal with concerns, to be believed and listened to. Reduce the clique culture in care homes, for professional status for care workers, transparency, to be informed of the outcome, to ensure managers refrain from “circling the wagons” and to sweep concerns under the carpet.”

³ less than 39% of callers to the Advice Line have worked for the organisation less than two years, page 6 [Whistleblowing: the inside story a study of a thousand cases from Protect \(formerly Public Concern at Work\) Advice Line.](#)

“Inspections are hit and miss and falsified documents go unnoticed, and the night team do not exist. I mean, who cares for residents from 8pm until 8am? No one seems to concern themselves with our conduct or performance, if I was an area manager that would be my first task; seeing what really happens on the nightshift.”

“Higher wages, more staff checks, training.”

“The sector needs a strong drive to empower and support staff to whistle blow and not fear recrimination. Training to encourage this is needed for all working in care.”

“Anonymity and support for the whistleblower, otherwise management and staff can ostracise the whistleblower.”

“More protection for whistleblowers. I recently had to go to board members to whistle blow. I am experiencing reprisals for this as I have been suspended and have threats of disciplinary and dismissal hanging over me. Of course, they won’t admit this is because I made a protected disclosure, but I know that is the case. I am worried about my future career now and this has caused me severe stress. However, I would whistle blow again if I had to as client care and safe practice must come first. It’s very sad that whistle blowers are seen as a problem.”

Protect’s recommendations for reform

17. There are clearly some challenging issues for the care sector to tackle when it comes to whistleblowing. The sector as a whole, from policy makers to care home owners, should address perception concerns of whistleblowers and encourage a speaking up culture.

In addition, these policy changes may improve the workplace culture:

- A framework that assists care providers with their whistleblowing arrangements that meet a minimum set of standards. NHSScotland has advanced policies and procedures for whistleblowing, including a requirement for board level champions at each Health Board, and a proposal to establish an Independent National Whistleblowing Officer. However, the care sector lags behind – there are no requirement on care home managers to implement any whistleblowing arrangements, nor even to publicise relevant regulators (such as the Healthcare Commission). A policy of requiring care home providers to introduce board champions and/or whistleblowing guardians or ambassadors within the care sector would be welcome.
- The sanctions for organisations who fail on whistleblowing might be strengthened. The employment tribunal system provides a remedy for individuals who have been treated badly or dismissed, but the individualised approach does not guarantee that the wrongdoing itself is addressed. A high staff turnover in the care sector may mean that some workers choose to leave unpleasant working environments and leave the difficulties behind. Protect encourages care workers to raise concerns, even after they have left employment, but many workers fear that they will be refused references from those they report.

- Regulators, such as the Healthcare Commission, might be given powers to withdraw licenses where companies have shown to fail either to address whistleblowing concerns, or where they victimise whistleblowers. Professional bodies could also be more robust in holding managers to account where they fail to act on concerns, or where they are found to victimise whistleblowers.

Andrew Pepper-Parsons

Head of Policy

andrew@protect-advice.org.uk

Elizabeth Gardiner

Interim Director of Policy and Legal Services

elizabeth@protect-advice.org.uk