Definitions of whistleblower and whistleblowing

A. Various people have attempted to define whistleblowing and whistleblowers. The following definitions in this section (A) portray them in a broadly favourable light.

American political activist Ralph Nader is sometimes credited with coining the whistleblowing term (in the 1972 *'Conference on Professional Responsibility'* held in Washington DC).[9] In a book about the conference which he co-edited, whistleblowing is defined as:

> *"the act of a man or woman who, believing that the public interest overrides the interest of the organisation he serves, publicly 'blows the whistle' if the organisation is involved in corrupt, illegal, fraudulent or harmful activity".*[10]

Academics Marcia Miceli and Janet Near have defined *whistleblowing* as:

> *"The disclosure by organization members (former or current) of illegal, immoral and illegitimate practices under the control of their employers to parties and organizations that may be able to effect action".*[11]

The International Standards Organization (ISO) have published the following definitions:

> *Whistleblowing: "reporting of suspected or actual wrongdoing by a whistleblower"*
>
> *Whistleblower: "person who reports suspected or actual wrongdoing, and has reasonable belief that the information is true at the time of reporting"* [12]

The Gov.uk website contains the following description and information:

> *"You're a whistleblower if you're a worker and you report certain types of wrongdoing. This will usually be something you've seen at work - though not always.*
>
> *The wrongdoing you disclose must be in the public interest. This means it must affect others, for example the general public."*
>
> *"You're protected by law if you report any of the following:*
>
> - *a criminal offence, for example fraud*
> - *someone's health and safety is in danger*
> - *risk or actual damage to the environment*
> - *a miscarriage of justice*
> - *the company is breaking the law, for example does not have the right insurance*
> - *you believe someone is covering up wrongdoing"* [13]

In light of this healthcare workers may, not unreasonably, think that they and their careers will be protected if they raise concerns about patient safety. Unfortunately, as many have

found, UK legislation which in theory is supposed to protect whistleblowers is in practice weak and limited in its effectiveness.[14]

This legislation (principally the *Employment Rights Act 1996* [15], *Public Interest Disclosure Act 1998* [16], and *Enterprise and Regulatory Reform Act 2013* [17]) does not explicitly refer to *whistleblowers*. Instead, it refers to and defines *qualifying disclosures* and *protected disclosures* by *worker*s and *employees*.

In order for a raised concern to be a qualifying disclosure, the worker making it must have a reasonable belief that it is in the public interest, and that it tends to show one or more of the following:

(a) criminal offence
(b) failure to comply with a legal obligation
(c) miscarriage of justice
(d) health or safety endangered
(e) environmental damage
(f) information deliberately concealed.

To be a protected disclosure it must meet further criteria relating to the content of the disclosure and the way in which the information is disclosed.[18]

By contrast there are numerous explicit references to *whistleblowers* and *whistleblowing* in the 2019 EU Whistleblowing Directive.[19] Neither term is formally defined, although *'reporting person'* is:

> *'reporting person' means a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities*

Article 5 of the Directive also contains other definitions, including what it means by '*breach*', '*internal reporting', 'external reporting', public disclosure', 'retaliation*', and *'follow-up'*.

The Directive seeks to protect whistleblowers and help organisations to manage risks at an early stage, giving them opportunities to avoid or limit financial and reputational damage. Whilst the UK is no longer in the EU, a number of drivers (including compliance requirements for UK companies operating in Europe; the *UK-EU Trade and Co-operation Agreement*; and several Westminster parliamentary bills) suggest that enhanced UK whistleblower protection legislation will eventually come. Similar legal developments in other parts of the world are a further driver (relevant to the *Global Britain* agenda).

The National Guardian's Office, which was set up to provide support to the healthcare system in England, emphasise the term *'speaking up'* rather than *whistleblowing.* Their website describes speaking up as referring to *anything that gets in the way of doing a great job*.[20] Their training material tells managers that staff who speak up are giving them a gift, to which they should listen and respond.[21,22] The fact that this even needs to be said speaks volumes.

NHS England has an *External Whistleblowing Policy* [23] which defines a whistleblower in this context as:

> *"a person who works for an NHS organisation and contacts an external body with a concern about that organisation ..."*

This policy sets out NHS England's legal responsibilities as a prescribed person. It goes on to say:

> *"Some may identify as whistleblowers. Most, however, will not describe themselves as whistleblowers when they first make contact to share their concern."*

NHS England and Improvement (NHSEI) have a standard integrated policy which it expects will be adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns.[7] This policy specifies who can raise a concern under this policy:

> *Anyone who works (or has worked) in the NHS, or for an independent organisation that provides NHS services can raise concerns. This includes agency workers, temporary workers, students, volunteers and governors.*

The United Nations Office on Drugs and Crime (UNODC) has recently published guidelines intended for all organizations in the health-care sector that wish to adopt an effective whistle-blower protection policy. It includes the following definitions:

> *Reporting person:"an individual who discloses a reportable wrongdoing in the workplace"*
>
> *Whistle-blower: "a reporting person, falling within the categories of defined persons able to report according to the organization's whistle-blower protection policy, who discloses a reportable wrongdoing in good faith and/or on reasonable grounds using the established reporting channels"* [24]

B. However, set against the above broadly supportive views of whistleblowing, many people view whistleblowers with distaste and disapproval, as shown below:

The above UNODC guidelines comment that *Reporting breaches and wrongdoing can be a sensitive issue for cultural, legal and political reasons (e.g. whistle-blowers can be perceived as traitors or informants). Providing protection to those persons includes changing this negative perception.* [24]

Similar negativity is clearly shown by reference to *Roget's Thesaurus*. This contains numerous derogatory synonyms for whistleblower, including: rat, snitch, blabbermouth, squealer, informer, stool-pigeon, nark, troublemaker. [25]

Sadly, the experiences of an untold number of healthcare workers who have spoken up about patient safety and related issues attest to the fact that they are indeed seen by some as traitors and troublemakers.

Negative attitudes like these towards whistleblowers foster a climate of hostility towards staff who raise concerns - even when they are speaking up about matters which are clearly in the public interest. Correction of confused and dangerous thinking about this on the part of those who have led or condoned retaliation against people who have raised patient safety concerns is long overdue.

Alternative terms for whistleblowers, whistleblowing and concerns

Various alternative words and phrases, with differing nuances, have been used to describe: a person who raises concerns in the public interest; the act of raising concerns; and the concern itself (which is frequently overlooked when organisations divert attention onto the person who has raised it). Some of these are listed below.

- whistleblower (sometimes hyphenated or written as two words)
- reporting person
- reporter
- witness
- canary
- truth-teller
- bell-ringer

- whistleblowing (sometimes hyphenated or written as two words)
- raising concerns
- speaking up
- speaking out
- speaking truth to power
- reporting wrongdoing/breaches/violations **[11,12,18,23,26]**
- reporting
- disclosing
- blowing the whistle
- truth-telling
- ringing the bell

- concern
- disclosure
- report (of wrongdoing/breach/violation)

The EU Whistleblowing Directive **[19]** divides whistleblowing into three distinct stages:

- internal reporting
- external reporting
- public disclosure

UK legislation **[15-17]** refers to six categories of whistleblowing in the public interest, with detailed criteria for what constitutes a protected disclosure in each category:

- Disclosure to employer or other responsible person
- Disclosure to legal adviser
- Disclosure to Minister of the Crown
- Disclosure to prescribed person **[8]**
- Disclosure in other cases
- Disclosure of exceptionally serious failure