

19 March 2021

To the Health and Social Care Select Committee,

This letter is Protect's response to the Call for Evidence with respect to the Committee's inquiry of the Government's White Paper "*Integration and Innovation: working together to improve health and social care*".

I write to you as the Parliamentary Officer for Protect – the UK whistleblowing charity. Since 1993, Protect has operated its free, legal advice line offering specialist whistleblowing advice to over 3,000 workers a year. We provide consultancy and training services for employers to improve their whistleblowing arrangements which benefits the working lives of 1.3 million people. These experiences inform our policy work in campaigning for better whistleblowing laws.

This submission focuses on the proposal in the White Paper to create a statutory body called the Health Service Safety Investigations Body ("HSSIB"). The HSSIB will investigate incidents which have or may have serious implications for the safety of patients in the NHS. In our view, whistleblowing will inevitably form an important part of the enforcement actions of the HSSIB. Whistleblowing (often referred to as "speak up" in the health care sector) occurs when a worker raises concerns to their employer or a regulator about wrongdoing, risk or malpractice that is in the public interest. For example, [a case study](#) from our Advice Line involves an NHS nurse, Gillian (not her real name), raising concerns about poor staffing levels and force-feeding of patients with mental health illnesses. Gillian raised her concerns on four separate occasions, as well as with the Head of Department and the hospital's Chairman. Her concerns were not investigated and, instead, she was dismissed.

This, and other similar concerns in the workplace, can result in serious patient safety risks and fall within the remit of the HSSIB. It is through the actions of whistleblowers raising concerns to the HSSIB that it will be notified of such incidents. Whilst we accept that the HSSIB may become aware of concerns through other means (such as, a self-referral by an NHS Trust), the reality is that employers sometimes ignore or dismiss public interest concerns. Our report "[The Best Warning System: Whistleblowing During Covid-19](#)" analysed data from the Covid-19 related calls to our Advice Line during the first six months of the pandemic. We found that:

- just under 50% of the concerns raised about risks to public safety came from the health and social care sector;
- 43% of cases involving a risk to public safety were ignored by employers;
- only 10% of whistleblowers reported that their concerns were being investigated.

The HSSIB should not rely solely on the good faith of employers to notify it of serious patient safety concerns because it then risks losing vital intelligence from whistleblowers. In light of this, the Committee should consider how the HSSIB can incorporate whistleblowing best practice into its activity, particularly how it can protect the identity of whistleblowers.

To that end, Protect submits two recommendations for the Committee to consider.

**1. The HSSIB should be designated as a Prescribed Person for the purposes of the Public Interest Disclosure Act 1998 (“PIDA”).**

PIDA, as you will be aware, grants legal rights to employees and workers not to suffer victimisation or dismissal for raising whistleblowing concerns. In order to acquire this protection, the whistleblower must satisfy a series of legal tests. If the HSSIB were to become a Prescribed Person those legal tests are set relatively low. In effect, the whistleblower must raise a concern recognised in law as whistleblowing (patient safety concerns would so qualify) and reasonably believe that the information disclosed is “substantially true”. The advantage of the HSSIB being a Prescribed Person is two-fold: it creates an easier route for whistleblowers to acquire legal protection which means they are more likely to raise their concerns and it demonstrates that the HSSIB welcomes whistleblowing disclosures thereby increasing the intelligence available to it.

It is important to note that a number of regulators within the health care sector are already prescribed, such as NHS England and the Care Quality Commission. There is a clear precedent for the government to prescribe health sector regulators, recognising the need to present a clear and safe pathway for whistleblowers to raise genuine concerns and keep patients safe. As such, it would be an oddity for the HSSIB not also to become prescribed as this would create a disjointed system of regulation.

**2. The HSSIB should follow the principles for recommended practice in our [Better Regulators Guide](#).**

The Guide outlines six key principles that regulators should follow in order to maximise intelligence from whistleblowers and minimise harm to them. The Guide demonstrates how effective whistleblowing practices enhances the ability of regulatory bodies to carry out their functions.

Of particular importance for the HSSIB will be Principle 2 (maintaining confidentiality). The “Whistleblowing: Prescribed persons guidance” (published by BEIS in April 2017) states that a fear of reprisals is one of the main barriers facing whistleblowers. This accords very strongly with our experience advising callers to our Advice Line. It is highly likely that whistleblowers approaching the HSSIB with concerns will seek assurances that their identities are treated in confidence. Our Guide recommends that the HSSIB should communicate with whistleblowers how it intends to investigate (so as not to inadvertently reveal their identity), ensure staff are properly trained to manage confidentiality, and avoid notifying employers that the information originated from a whistleblower. We welcome the White Paper’s intention to create a “safe space’ whereby participants can provide information to the HSSIB for the purposes of an investigation in confidence”. The principles in our guide will assist the HSSIB to achieve that goal.

To conclude, we agree with the theme of the White Paper to enhance safety and quality of NHS services. Patient safety is a plain matter of public interest. The HSSIB, in particular, presents an opportunity to safeguard the public interest by creating a regulator that welcomes and protects whistleblowers. We hope that this concise submission of evidence provides the Committee with helpful guidance on a niche, but significant, aspect of the White Paper and assists with this inquiry.

Best wishes,

Kyran Kanda  
*Parliamentary Officer*

[kyran@protect-advice.org.uk](mailto:kyran@protect-advice.org.uk)