



Department
of Health

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To: Auditors of NHS Foundation Trusts

Dear Auditor

Whistleblowing disclosures to auditors of NHS FTs

A Statutory Instrument, The Public Interest Disclosure (Prescribed Persons) Order 2014 (S.I. 2014/2418), was laid before Parliament on 10 September and comes into force on 1 October 2014. It is available here: <http://www.legislation.gov.uk/uksi/2014/2418/contents/made>

The SI updates the list of prescribed persons to whom “a protected disclosure”¹ may be made by a whistleblower and it now includes auditors of NHS Foundation Trusts². The previous list³ of prescribed persons included auditors of NHS Trusts (and other health service bodies). The Department of Health considers that auditors of both NHS Trusts and NHS FTs should be prescribed persons.

Becoming a prescribed person does not give the auditor of an NHS FT any new statutory powers or duties, because the whistleblowing legislation does not impose functions on prescribed persons. So, becoming a prescribed person will not, of itself, require the auditor to investigate information disclosed by a whistleblower. Rather, the auditor is expected to exercise his/her existing statutory and other functions, as s/he would for a concern raised

¹ “Protected disclosure” is defined by section 43A of the Employment Rights Act 1996 (as inserted by section 1 of the Public Interest Disclosure Act 1998).

² Auditors appointed by NHS foundation trusts are mentioned on page 3 of S.I. 2014/2418; the S.I. applies to disclosures made on or after 1st October 2014.

³ The previous list of prescribed persons is The Public Interest Disclosure (Prescribed Persons) Order 1999 (S.I. 1999/1549), as amended by several S.I.s, remains applicable to disclosures made before 1st October 2014.

from any other source. If the matter does not fall within the auditor's functions, then the information should be passed on to the appropriate regulator or other person (subject to any confidentiality constraints), if appropriate.

The primary objectives of the whistleblowing framework are to provide that (i) a worker has the right not to be subjected to detriment by his/her employer (or by another worker) as a result of making a protected disclosure (whether the disclosure is made to the employer or to a prescribed person); and (ii) if a whistleblower does suffer detriment, s/he has the right to present a complaint to, and seek a remedy from, an employment tribunal.

The worker has discretion whether to disclose information to his/her employer, a prescribed person and/or other persons mentioned in the relevant legislation⁴. Whistleblowing policies usually encourage disclosures to be made to the employer in the first instance, but there may be reason(s) why the worker wishes to make a disclosure externally. The list of prescribed persons directs the whistleblower to the most appropriate regulator or other person that has relevant statutory functions in relation to the subject matter of the disclosure.

Monitor is also a prescribed person. There may be times when it is more appropriate for a whistleblower to make the disclosure to the auditor of the NHS FT than to Monitor, because of the different functions that the auditor can exercise as compared with Monitor's functions. In some cases it may be appropriate for the disclosure to be made to both Monitor and to the auditor of the NHS FT. Ultimately it is for the whistleblower to decide the appropriate person(s) to which to make his/her disclosure.

Yours faithfully



Dr Nick P Clarke
Deputy Director, Professional Standards

⁴ See sections 43C to 43H of the Employment Rights Act 1996.