



Giles Crompton-Howe  
Room 2E11  
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Quarry Hill  
Leeds  
West Yorkshire  
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Date: 8 May 2017

Dear Sirs,

**Re: Employment Rights Act 1996 (NHS Recruitment – Protected Disclosure) Regulations Consultation on Draft Regulations**

I write in my capacity as Secretary to the Law Society of Scotland's Health and Medical Law Subcommittee (the Committee) and in relation to the above consultation. The Committee has recently considered and discussed this and wishes to put forward the following comments.

Against the recent Court of Appeal decision in *Day v Lewisham and Greenwich NHS Trust and Health Education England UKEAT/0250/15/RN* the Committee considers that the continuing tethering of whistleblowing protection to employment status will continue to create anomalies.

In order to provide clarity, and indeed effective application of whistleblowing legislation, the Committee suggest that consideration should be given to the Thomson Reuter Foundation and Blueprint for Free Speech report which, following research of the Public Interest Disclosure Act 1998 (PIDA) and relevant cases, made a number of key recommendations which seek to afford greater help and to improve protection for whistle-blowers in the UK.

Crucially the report identifies that the PIDA lacks the most critical element of any whistle-blower protection framework –preventing or quickly stopping the full retaliation of the whistle-blower by his or her employer. Pre-retaliation protection mechanisms are not included in the PIDA.

I hope these comments are helpful. If you have any questions, or wish to discuss further, please do not hesitate to contact me on the number below

Yours faithfully

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