

## MEDICINE BALLS



### NHS Gagging Wars (cont)

**SEVERAL** Eye readers point out that NHS whistleblowers can only be gagged by their employers if they consent to it, and that a true whistleblower would forgo any pay-off to get their story in the public domain (see last Eye).

The government meanwhile argues that, under protection offered by the public interest disclosure act (PIDA), all such gags are legally void and that whistleblowers who are persecuted for speaking up may gain unlimited damages at an employment tribunal. So what's the problem?

Alas, the NHS at its Stalinist, bullying best uses public money and a host of dirty psychological tricks to destroy whistleblowers long before they make it to an employment tribunal (see *Shoot the Messenger*, Eye 1292). And those who refuse to be gagged find any compensation swallowed up by legal fees.

Consultant surgeon Ramon Niekrash was suspended from Queen Elizabeth Hospital, Woolwich, for 10 weeks after raising concerns about the impact of closing a urology ward was having on patient care. The tribunal found in his favour but left him with a £160,000 legal bill.

The NHS is a monopoly employer and any employee who goes public with safety concerns can find it hard to get work elsewhere. Whistleblowers are often counter-smearred, suspended on spurious grounds, referred to the General Medical Council, isolated from their friends and repeatedly fobbed off in their attempts to get the NHS to release information to help them prove their case. Their battle for justice can drag on for years while they face career and financial ruin. Unsurprisingly, many take the money and sign the gag. The gag may be theoretically void, but few have the strength or financial security to test it.

The Department of Health insists that such gags are strictly against policy and that "before an NHS employee considers signing a compromise agreement, the employer is required to pay for the employee to have independent legal advice on the terms of the agreement". But NHS trusts that ignore whistleblowers also ignore PIDA and DoH policy, safe in the knowledge that most employees lack the resources to pay for a prolonged legal challenge.

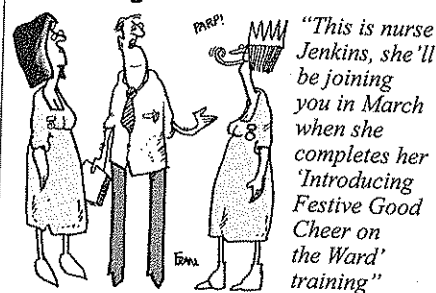
So who monitors the pay-offs and the gags? In a response to Peter Bottomley MP, health minister Simon Burns confirms that "All non-contractual 'special' severance payments for employees or ex-employees must be approved by HM Treasury. NHS trusts are required to ensure that any proposals to make such payments are sent to the Department of Health initially for scrutiny."

So the large sum of public money paid to former United Lincolnshire Hospitals NHS Trust chief executive Gary Walker in combination with the gag that prevents him, or any of his employment witnesses, speaking publicly about the serious safety concerns he reported to NHS chief executive (Sir) David Nicholson and director of commissioning (Dame) Barbara Hakin was a) scrutinised by the Department of Health which failed to spot that a high profile whistleblower was being silenced; and b) approved by the Treasury. Either the Treasury and DoH were fully aware of this legally dubious attempt to protect the reputation of the NHS' two most senior managers or – like News International – they simply rubber stamp huge pay-offs to make problems go away without investigating their legality or morality.

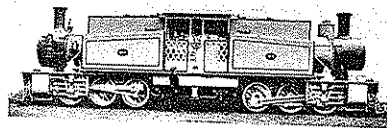
When Great Ormond Street hospital tried to silence Baby P whistleblower Dr Kim Holt, it offered her £120,000 not just to sign a gag but to withdraw her allegations, sign a document to say GOSH was never aware of her concerns and hand over all her evidence. Dr Holt bravely refused and should be summoned as first witness when the health select committee considers compromise payments and gagging clauses this month. Closely followed by Gary Walker, David Nicholson, Barbara Hakin, Andrew Lansley and whoever it is at the Treasury who signs the cheques.

M.D.

### Fallen angels



## SIGNAL FAILURES



### Boxing mismatch

**RAIL** travellers in Kent who were put out last Christmas when Southeastern abandoned its Boxing Day services at last have an explanation: blame rail privatisation.

To the annoyance of people heading to the sales or football matches, few rail franchisees run any services on Boxing Day, preferring to leave subsidised infrastructure and trains idle. Southeastern, though it wasn't specified in its original franchise, *did* run Boxing Day trains, however, more than covering its costs.

However, last year Southeastern started receiving "revenue support". This comes into play if a franchise's annual revenue is significantly less than it was predicted to be when the franchise was awarded. Under the subsidy, taxpayers cover 80 percent of any shortfall from year five. Once a franchise is so far adrift from its projections, any effort to improve revenue mainly benefits taxpayers (by reducing how much they have to make up) while the costs of that effort fall on the franchisee.

In a letter forwarded to the Eye, Southeastern managing director Charles Horton explained to a local MP: "The revenue support mechanism... creates a situation whereby any revenue generating scheme needs to achieve a rate of return in excess of 5:1 to be viable financially." Continuing to run trains on Boxing Day "would lead to substantial losses" for Southeastern which, he stressed, is "a commercial organisation and it is not in our interests to operate services which are not financially viable".

Thus it is that a service which had netted enough revenue to cover its costs no longer runs. Future franchises won't include "revenue support". But Horton's letter confirms that services not protected in franchise agreements will vanish unless they swell franchisees' profits.

**HOWLS** of outrage normally greet the annual announcement of RPI+1 (inflation + 1 percent) rises in regulated rail fares. The government decreed RPI+3 for January 2012, but last month promised RPI+1 instead. So there's general relief – although at 6 percent fares will still rise above inflation again as real incomes fall.

Meanwhile train firms remain free to raise unregulated fares by RPI+3 or more, and to carry on confusing passengers into overpaying at ticket machines.

Northern Rail is a master at this. At Rochdale the ticket machine's default screen lists 12 "popular tickets" including three to Leeds tagged "any permitted" (jargon for tickets valid on more than one route). Near the bottom is one fare, an "anytime" single, to Leeds "via Hebden Bridge".

All Rochdale-Leeds trains (three per hour) go via Hebden Bridge, although many Rochdale residents might not realise it; Rochdale-Leeds by road goes nowhere near Hebden Bridge, a small town the other side of the Pennines. The "any permitted" tickets entitle passengers to depart in the wrong direction to Manchester Victoria, whence they'd have to cross the city centre to Piccadilly for a train to Leeds via Huddersfield.

Average speed going that way is under 20mph, so how come that option accounts for three of Rochdale's 12 most "popular tickets"? Why doesn't the default screen list any return fares to Leeds via Hebden Bridge? Why aren't the choices labelled "direct" and "valid via Manchester" for clarity?

Answer: Rochdale-Leeds "anytime" return costs £12.40 "via Hebden Bridge" – but the "any permitted" alternative is a whopping £26.10. People unfamiliar with rail maps and lacking the time and determination to find the £12.40 fare will needlessly select "any permitted" and boost Northern's profits. Kerching!

'Dr B Ching'

## The Agri Brigade

**NEWS** that farmers Hugh and Mary Davies from Carmarthenshire are offering a £5,000 reward for the return of their Welsh Mountain sheep is more evidence of worsening rural crime and farmers' increasing lack of faith in rural policing. To tackle this twin crisis, rural constabularies must come up with ever more inventive ruses.

When the farming couple rounded up their 1,000-strong flock from the Black Mountain near Brynamman they realized that 146 sheep had been stolen. They were moved to offer a reward for information leading to their recovery or the conviction of the thieves because their sheep are irreplaceable. Without much in the way of stone walls or fences in some upland areas, sheep have to be bred and reared on the mountain so they know instinctively where the farm boundaries lie – what is known as "hefted" to the farm.

A more gruesome example of how rising meat prices have

encouraged the rustling of livestock occurred in Essex last month when a farmer found his in-calf cow had been butchered. The farmer discovered the cow's hide, entrails and four hooves in the gateway to a field near the junction of the M25/M11.

Farm machinery is also a common target. Machines worth of total of £70m were stolen from UK farms last year – much of it to order. Recovery rates are low (about 5 percent) because most machines are put on ships bound for eastern Europe within 15 hours of being stolen. Detective Constable Ian Elliott of the Stolen Plant and Agricultural Equipment National Intelligence Unit said last month that "it's an easy job for thieves" as there is a "massive return for little risk".

By "little risk" he was presumably referring to the low detection rates and to the lenient fines or sentences sometimes meted out. A man caught stealing a standing barn at Blairgowrie in Scotland, and causing £80,000 worth of

damage in the process, was fined just £225 at Perth Sheriff Court last month.

To counter the perception of increasing rural crime police have launched Farm Watch schemes around the country with varying degrees of success. In west Wales, North Ceredigion Neighbourhood Policing Team has launched something called "Dogwatch", which encourages dog walkers to report any "suspicious vehicles such as transit vans or flat-bed lorries". As a reward for being the community's "extra eyes and ears", Dogwatch members are given goodie packs including a fridge magnet, poopa scoop bags and a yearly health check for their dogs. Now that the Big Society has deployed its free "blinking dog collars", the thieves must be quaking and know their days of "massive return for little risk" rural crime are surely numbered.

'New Bio-Waste Spreader'