

the Whistleblower

The end of the hotline?

Recent efforts to get staff to report all manner of concerns anonymously to external hotlines have been checked by EU authorities. Following a French-led initiative, new EU Data Protection Guidance imposes additional rules on record management and rights for those implicated.

These hotline schemes have been attacked because (a) they apply to all concerns and not just whistleblowing issues, (b) they encourage anonymous reports, and (c) they ignore the organisation's existing management controls. As a result, the EU says, the risk of 'slandorous denunciations' is increased.

While the EU initiative has generated some confusion, it is an important move as it will help

distinguish between public interest whistleblowing (where the default is that concerns are raised openly) and anonymous informing. We also welcome it because, in our experience, arrangements where concerns are raised directly with a hotline subvert management accountability and create an unhealthy workplace culture.

As the approach that we advocate at Public Concern at Work differs substantially, we can advise on practical arrangements that readily meet these requirements and also the US and UK legislation. As to the recent growth in anonymous reporting schemes, this EU initiative may signal the end of the hotline unless organisations are willing to comply with these new rules.

What about the workers?

No matter how great whistleblowing arrangements are on paper, they can only work if employees know about them and trust them. And that is the reason that family-run company SC Johnson – makers of Mr Muscle, Pledge and Shout – cleaned up at the 2006 Great Place to Work Awards, winning the Whistleblowing-Friendly Culture award. A very high percentage of their staff said they would raise a whistleblowing concern confident that it would be addressed properly by the organisation.

As whistleblowing is a key governance tool, audit committees and boards want to evaluate the efficacy of the arrangements. If they work well then, above all, they should be deterring malpractice but also, where there are genuine concerns, these should be raised early and addressed properly at local levels. An effective way of assessing this is to conduct an independent survey of staff views and experiences. This is one of the ways in which we help leading companies monitor and evaluate their whistleblowing arrangements.

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"BLOW THE WHISTLE ON DODGY DATA", SAYS REGULATOR

The CBI - the employers' organisation - was relaxed about the prospect of the new rules encouraging City whistleblowing on company accounts. Susannah Haan, senior legal adviser at the CBI, told the Financial Times: "This could lead to a more targeted form of regulation, rather than blanket regulation, so we don't have a problem with it."



PCaW's Kirsten Trott presenting SC Johnson's Sallyann Brookes with the 2006 award.

Leading by example

While hitherto it has been employers who subscribe and contribute toward the costs of our free helpline, regulators and professional bodies are now joining the club as well.

CIMA – the Chartered Institute of Management Accountants – provides its members with a freephone link to our confidential helpline. This ensures that they get quality advice at no cost and that CIMA can track the use of the service.

Regulators such as the Audit Commission, the Northern Ireland Audit

Office and the Scottish Information Commissioner also subscribe to the helpline – ensuring they keep abreast of best practice and provide their employees with a safe alternative to silence.

Apart from the value to the organisation itself and its staff, these modest subscriptions help ensure the free service has the funds to operate. With current calls to the helpline increasing by 20% year on year, we expect more enlightened organisations will lead by example.

Flying the flag

The UK’s approach to whistleblowing continues to make its mark overseas. The UN has overhauled its policy so that now, following the UK’s framework, it protects external disclosures for the first time. A new report for the European Parliament has criticised the existing whistleblowing arrangements in EU institutions and urged that they be upgraded to match the best practice set out in the UK’s Public Interest Disclosure Act. Further afield, the Japanese whistleblowing law, closely based on the UK’s, has just come into force.

Public Concern at Work is briefing governance experts in the Philippines, energy regulators from Singapore and senior officials at the World Bank on legislative approaches to whistleblowing. We are also assisting an OECD/Australian project on whistleblowing best practice for the public sector. Charity staff have addressed conferences in Germany, France and Belgium and - in the wake of the UN Convention on Corruption - international events in the UK.

In the courts

In a landmark decision at the end of June, the Court of Appeal ruled that protection under the Public Interest Disclosure Act (PIDA) applies to post-employment victimisation. This is to discourage any ‘embittered exposed employer’ from trying to deny a whistleblower a reference to make life impossible for ‘the nasty little sneak’ for as long as it can. This decision confirms the whistleblowing law as anti-discrimination legislation rather than purely a private employment right.

Two other important appeals have been won by lay representatives against employers backed by legal teams. In the Court of Appeal, Adrian Melia – who had blown the whistle on health & safety risks – won his own case that he should

be compensated for the distress suffered and the legal costs incurred until the time he was forced to resign. In the Employment Appeals Tribunal, Julian Dobson successfully defended his wife’s PIDA victory against the novel argument that even though she had been acting in good faith when she reported child abuse, she should lose as the employer had not believed her good faith at the time it dismissed her.

Elsewhere an employment tribunal in Newcastle held that a whistleblower, who had leaked to the local press a confidential draft about dangers on a public beach, was PIDA protected against dismissal as the concern was exceptionally serious and his disclosure was reasonable.

“There is nowhere else to go for sound independent advice when you need it most.”

NHS Practice Manager



Mandarins get sweeter

Public bodies in the UK are starting to upgrade their whistleblowing arrangements to meet new government and regulatory obligations. This year, for the first time, the whistleblowing arrangements in local authorities and NHS bodies are being assessed as part of the annual audit of internal controls.

Pressure is also coming from central government which is reviewing the whistleblowing rules for public bodies following December's White Paper on Standards in Public Life -

"The Government agrees on the importance of ensuring that staff are aware of and trust the whistleblowing process, and on the need for the boards of public bodies to demonstrate leadership on this issue. It also agrees on the need for regular communication to staff about the avenues open to them to raise issues of concern...It will therefore revise and reissue the Cabinet Office guidance for NDPB [quango] staff and board members making

clear the requirement for effective and clear procedures for raising issues of concern, as well as the requirements of the Public Interest Disclosure Act 1998."

Local authority whistleblowing rules for councillors are being overhauled following the acceptance by the Standards Board for England of PCaW's suggestion that the current rules were so unworkable that they should be scrapped.

Finally, in a welcome if unexpected move, Whitehall mandarins are beginning to embrace the value of the UK's whistleblowing legislation as they update the Civil Service Code for the 21st century. The new draft Code sets out the whistleblowing obligations on civil servants and makes express reference to the Public Interest Disclosure Act.

While it is good news that public interest whistleblowing is going up the governance agenda, the real test will be how well policy is put into practice.



For your free copy of the Whistleblowing Best Practice Guide, email eo@pcaw.co.uk or ring us on 020 7404 6609

"... excellent presentation...challenging and thought-provoking...highest ratings on the feedback."

Letter from the Institute of Business Ethics following its conference in Paris

Spotlight on the NHS

Along with other leading employers, the Department of Health contributes toward the costs of our helpline and promotes it to NHS staff. The Department has just reviewed and agreed the value of this service. The following selection of issues from the second half of 2005 highlights the potentially serious nature of NHS concerns we advise on.

- Children being intubated whilst under anaesthetic for training purposes.
- Uncontrolled spending on an IT project which was never completed.
- Untrained care assistants performing medical tasks risking infection.
- An NHS driver making mistakes with the delivery of blood results because he was under the influence of cannabis.
- Understaffing and missed medication on a mental health ward.
- Excess employee expenses for hotels, overseas trips and cancelled conferences.
- Private patients being treated in NHS time and at NHS expense.
- Patient care being affected by proposed closure of ward.
- A consultant disconnecting the power to the machine supplying a patient's anaesthetic.
- Patients in a Mental Health Trust being made to sleep on the floor.
- A bogus doctor working in a GP practice over-ordering drugs on patients' prescriptions.
- Confidential patient data being used for unauthorised purposes.
- A GP over-prescribing morphine to a patient with cancer.

With the Healthcare Commission reporting that more than a third of the NHS workforce do not know whether their Trust has a whistleblowing policy, and with the Shipman recommendations still live, it's time the NHS refreshed its arrangements.

Record damages

The Department of Trade and Industry has paid Public Concern at Work compensation of £130,000, one of the highest single payments for maladministration by central government. It is also the first time that a corporate body has been compensated for “botheration”, reflecting the fact that the DTI’s serial and serious misconduct distracted the charity from its strategic work over four years.

The award follows a damning report by the Parliamentary Ombudsman into the “inherently misleading” way the DTI introduced new rules to keep secret information about claims under the Public Interest Disclosure Act. The current rules mean that the public now have no right to any information about - or even to know the existence of - a whistleblowing claim, as only tribunal decisions go on the public record. As two out of three whistleblowing claims settle and so lead to no decision, these

rules invite the parties to trade the public interest for private gain. This is because, however grave the risk to the public, the new rules allow the employer to buy off the claim to keep the malpractice secret, and enable an employee to solicit a windfall payment over and above any compensation. Inevitably, the more serious the wrongdoing, the more such blanket secrecy will be sought.

Public Concern at Work had told the DTI it would accept a reduction in the compensation award if the DTI agreed to a review of the flawed rules which, the Ombudsman held, had been devised without any consideration for “the powerful arguments for openness”. Regrettably the DTI declined our offer and the public interest continues to count for nothing in the present tribunal rules. This needs to be put right as such blanket secrecy can only foster wrongdoing and damage the public.

Goodbye and hello

We say profound thanks and fond farewells to Jean Brown, our long-serving volunteer Administrator; Harry Templeton, our part-time Scottish Director; Kirsten Trott who has been Deputy Director (maternity cover); and Robin Van Den Hende, our Policy Officer.

On the incoming side, we are delighted to have back from maternity leave Deputy Director, Anna Myers, and welcome Oli Sweet who replaces Robin Van Den Hende. Our legal team has also

been strengthened over the past year by the arrivals of Cathy James as Legal Officer, and Shonali Routray and Sohrab Goya as Helpline Advisers.

Harry Templeton’s departure followed our decision to close our part-time office in Glasgow. Though this decision does not affect our front-line services in Scotland, it was reached with real regret. We are delighted that Harry remains committed to the cause and the charity, and a good friend in Scotland.

Public Concern at Work is the whistleblowing charity

We promote individual responsibility and organisational accountability.

We believe prevention is better than cure and we promote open whistleblowing rather than anonymous informing.

We cherish our independence and have three main activities:

1. we offer free advice to people who are worried about crime, danger and wrongdoing at work but are unsure whether or how to raise the concern;
2. we help organisations manage risk, make whistleblowing work and demonstrate good governance; and
3. we campaign on and in the public interest.

More information about our work, our services and these issues is available on our website: www.pcaw.co.uk



“The important thing is that PCaW has taken the opportunities it has had...We are great fans.”

Stephen Pittam of the Joseph Rowntree Charitable Trust, without whose enlightened support PCaW would never have existed, wishing us well as we embark on a new life as a self-funding charity.