



All Party Parliamentary Group

Whistleblowing

Whistleblowing

The Personal Cost of Doing
the Right Thing and the
Cost to Society of Ignoring it

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Whistleblowing; The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it.

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cover photo: ugur akdemir



Forward

On 10th July 2018 we held our inaugural meeting, well attended by MP's, whistleblower constituents, the press and civil society organisations. Gosport Memorial Hospital was in the news that day, how whistleblowers had been ignored or silenced and how if they had been heeded lives could have been saved. It was against this backdrop that I committed to put whistleblowers at the heart of our work and to produce world class, gold standard draft legislation that would protect those speak out in the public interest.

Whistleblowing remains a major topic for members across both Houses of Parliament. I must pay tribute to the whistleblowers who made this report possible, many reliving very distressing events to help us understand the reasons for their suggestions and proposals for change.

Whistleblowers are the first line of defence against crime, corruption and cover ups. This is confirmed by The Chartered Institute of Fraud who found that 42% of internal fraud is identified by whistleblowers.

Whistleblowers are the vital element of a transparent society without whose voice many more crimes and unethical activities would remain unknown with far reaching impacts on our society and communities. Whistleblowers can help us develop policy that protects all of our citizens and they should be treasured.

Many MP's have met and worked with whistleblowers and know how complex and challenging the cases prove to be. MP's have experienced the frustration and the challenges of trying to access support from regulators who put up barriers to prevent what is simply someone trying to do the right thing. It is taxing for the whistleblower and their family, but it is also taxing on the MP and their team as it is with anyone who supports a whistleblower.

This report shines a light on a culture that too often supports the covering up of wrongdoing and the penalising of whistleblowers. With increasing focus on organisational culture and new global laws and regulations to support transparency and whistleblowers, the UK needs a comprehensive, transparent and accessible framework and an organisation that will support whistleblowers and whistleblowing.

We have made recommendations that will help shape the future of not only workers but all citizens by proposing an Independent Office for the Whistleblower that will transform the way both society and organisations react to whistleblowing.

**Stephen Kerr MP
Chair APPG**

July 2019

Executive summary

The voice of the whistleblower - the first line of defence against Crime, Corruption and Coverups

The notion of drawing attention to wrongdoing by 'blowing the whistle' originates from the Metropolitan Police Force who in February 1884 issued 21,000 whistles, the nineteenth century mobile phone! The effectiveness of blowing the whistle can be seen to this day on sports fields around the world. A whistle remains the most effective means of being heard above the crowd and drawing attention to an issue.

In 1998 the UK became the first EU nation to introduce legal rights and protections for whistleblowers when Sir Richard Shepherd introduced The Public Interest Disclosure Act. While ground-breaking it has failed in its most important role - to protect the whistleblower - perhaps because 'Whistleblowing' still has no definition in law. It is however generally understood to be an act by an individual or individuals that exposes wrongdoing or perceived wrongdoing on the part of an organisation of any kind.

Not a week goes by when Whistleblowing is not making headlines around the world exposing one major tragedy or scandal after another: Gosport Memorial Hospital, Cambridge Analytica, Lux Leaks, Barclays CEO, Lloyds/HBOS cover up, Mid Staffs or the Rotherham Grooming Gangs. What does not always reach the headlines is the appalling and unlawful treatment of the whistleblowers who by just doing the right thing risk everything to protect others. Despite acceptance that whistleblowers are the single most cost effective and important means of identifying and addressing wrongdoing, they become the target of retaliation by organisations determined to protect their reputation.

The APPG for Whistleblowing was launched in July 2018 to look at the case for an Independent Office for the Whistleblower. We set an ambitious workplan aiming to take back the UK's lead on this legislation, proposing to deliver World Class, Gold Standard draft legislation - a global solution to a global problem.

In less than 12 months we have collected and evaluated over 400 pieces of evidence from citizens who identify as whistleblowers, each one of whom has contributed to this report and to whom we must thank and pay tribute. Many testimonies were difficult to read or hear and have reinforced our commitment to put whistleblowers at the top of the agenda and deliver real protection. We have heard first-hand of the price they have paid: mental trauma and impact on whistleblowers and their families, loss and damage to careers, the cost of litigation, blacklisting and the use of NDAs to silence whistleblowers and cover up wrongdoing including the sexual abuse of children. From the evidence received over 20% of the disclosures relate to criminal activity; a further 30% relate to bullying in the workplace.

However, confusion and a lack of awareness about their role as a prescribed person by the police and regulators has resulted in many of these situations going unchallenged, leaving the public at risk.

In this report, the APPG sets out its findings as follows:

- The UK regulatory framework of whistleblower protection is complicated, overly legalistic, cumbersome, obsolete and fragmented.
- The remedies provided by PIDA are mainly retrospective and largely not understood.
- A general obligation for public and private organisations to set up whistleblowing mechanisms and protections is missing.
- The definition of whistleblowing and whistleblowers is too narrow. Consequently, the protections set by the law apply only to a limited number of citizens and do not properly reflect existing working practice or protect the public.
- As a result of the excessive complexity and fragmentation of the regulatory framework, there is little public knowledge or understanding of the existing legal protections for whistleblowers.
- That policy and procedure, while looking good on paper, bears no resemblance to actual practice.
- There is a disconnect between what is understood to be and what is the role of the prescribed persons leading to confusion, mistrust on both sides and allowing crimes and other wrongdoing to escape scrutiny.
- The cost of litigation is too great for most citizens and this is known and exploited by employers.

Whistleblowers taking part in this call to evidence were asked to suggest how PIDA might be improved or what should replace it. Those who commented called for a thorough review and overhaul of existing legislation to include the following:

- o An Independent office, regulator or ombudsman with regional centres.
 - Centre of expertise across all sectors.
 - Independent investigations by independent investigators.
 - Free information and legally privileged advice.
 - Kitemark or ISO standards to set standards and rate organisational response to concerns.
 - Provision of compulsory and refresher training to organisations & employees.
 - Job Protection or ringfencing and career monitoring.
 - Identification of trends and escalation to government or relevant other authority.
 - Prescribed persons who know and execute their responsibility.
 - Anonymous and confidential reporting line.
 - Appointment of whistleblowers as whistleblower champions on boards.
 - Oversight or settlement agreements.
 - State funded counselling to whistleblowers and their families.
- o Legal Protections
 - Formal consequences for retaliation or failing to abide by regulations.
 - Formal consequences for failing to follow internal whistleblowing processes.
 - State funded accredited lawyers to represent whistleblowers on behalf of the state.
 - Immediate and meaningful penalties for those who retaliate against whistleblowers.
 - Reverse the burden of proof.
 - Banning of Non-Disclosure Agreements (NDAs).
 - Extension of whistleblower protection to every citizen.

- o Equality of Arms
 - Regulators to sue employers on behalf of whistleblowers.
 - Compensation that addresses whistleblowers actual costs and losses.
 - Legal Aid for whistleblowers.
 - Full disclosure of spend by public sector organisations fighting whistleblower cases.
 - Capped spend for both sides to the amount available to the whistleblower.
 - Meaningful compensation for whistleblowers.

- o Specialist Independent Tribunals
 - Specialist trained judges, experienced and qualified in civil, employment and criminal law to hear whistleblowing cases.
 - Introduction and award of punitive damages.
 - Referral of cases to regulators and law enforcement.
 - Enforced disclosure of all disclosable information & administration of severe penalties for those who fail to comply.

APPG Recommendations - The 10 Point Plan

1. The term 'whistleblower' must be defined in law.
2. The legal definition of whistleblowing should be revised and include any harmful violation of integrity and ethics, even when not criminal or illegal. The focus should be on the harm (or risk of harm) to public.
3. Whistleblower protection should include all members of the public and include protection against retaliation.
4. Mandatory Internal and external reporting mechanisms and protections should be adopted to include meaningful penalties for those who fail to meet the requirements across all sectors to include those currently outside of the regulations, e.g. journalists and clergy.
5. A further review of compensation and how it is calculated.
6. An urgent review of the barriers to justice including access to legal aid and an introduction of measures to tackle inequality of arms including protection against costs.
7. Non-disclosure agreements in whistleblowing cases must be banned.
8. Better regulatory framework and coordination to include the introduction of international best practice and a public awareness campaign.
9. There should be an urgent review of the prescribed persons list, a more comprehensive guide to their role and measures put in place to ensure that they fulfil their responsibilities.

10. The introduction and establishment of an Independent Office for the Whistleblower with real power to; set standards, enforce the protections, and administer meaningful penalties to not only organisations but individuals within organisations.

Conclusion

The UK remains a leading authority on whistleblowing legislation and even allowing for the shortcomings of PIDA identified in this report we must not lose sight of the fact that many other countries have modelled their law on ours.

Twenty years after the introduction of PIDA, it is time for a radical overhaul to provide legislation that supports our citizens in the 21st Century workplace.

The aim of the APPG was to put whistleblowers at the top of the agenda and review existing legislation proposing changes that would be both gold standard and world class. Having received input from over 400 people in response to our call for evidence we have concluded that PIDA has not lived up to expectations and has failed to provide adequate and comprehensive protection to whistleblowers or the public.

The cost of whistleblowing to society amounts to more than the figure on the bottom of a balance sheet. We can estimate, based on the evidence provided by whistleblowers that the annual cost exceeds many millions every year and presents a substantial cost to the life and security of our citizens. Every Whistleblower headline exposes another failure of existing legislation and as we look to the future, we must ensure that the UK is a secure and ethical place to do business and to work.

We conclude that there is a case for the creation of an Independent Office for the Whistleblower to provide an agile and effective response to the issues raised by whistleblowers and to protect the public, and the whistleblowers who raise the alarm. Furthermore, we conclude that there is a case to extend the scope of legislation to include all citizens.

1. Introduction

For many years now, whistleblowing has been at the heart of many headlines in the news. Cases such as Piper Alpha, Lux Leaks, Panama Papers, Rotherham grooming gangs, the 'Project Lord Turnbull' Report, Barclays Bank, Danske Bank, Cambridge Analytica, Huawei, Morecambe Bay, Mid Staffordshire and the Freedom to Speak Up Inquiry, to name but a few, show that whistleblowers are the first line of defence against corruption, crime, and coverups. Despite the undisputed benefits to society there remains a backlash by organisations toward whistleblowing resulting in and stigmatisation and victimisation of whistleblowers¹.

While there is no legal definition, whistleblowing is largely accepted as the disclosure of information about corrupt, illegal or unethical behaviours in a public or private sector organisation mostly by employees of such organisations, but also individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers.

The benefits that whistleblowing can bring to society and business are many. The information disclosed can help prevent harm to the fundamental values of society, including individual rights and liberties, justice, health, economic prosperity and stability, and can help build a culture of integrity and accountability in business and public institutions. Whistleblowers are, therefore, a vital element of a transparent society.

To maximise such benefits, appropriate mechanisms and processes to ensure that whistleblowers disclosures are listened to, taken seriously and followed by appropriate action must be put in place, both within and outside the organisations involved. Moreover, whistleblowers must be protected from any possible retaliation from such organisations and supported throughout the process following their reporting. It is a fundamental flaw in the system that any citizen should have to pay themselves to do the work of the state.

The UK used to be a global leader on whistleblowing protection. The Public Interest Disclosure Act 1998 (PIDA) was the first act enacted in Europe to protect whistleblowers. In the last twenty years, however, the UK regulation on whistleblowing has become very fragmented and incomplete and it is not fit for purpose anymore. This prevents whistleblowing from producing its beneficial effects and exposes whistleblowers to a wide range of abuse and, as a result, to serious personal and professional costs, including the loss of their job, reductions in salary, irreparable damage to health, ruined reputation, blacklisting, false criticism and counter accusations.

The need for reform is, therefore, urgent.

¹ See the recent report Kenny, K., Fotaki, M. et al. (2019a) Post-disclosure Survival Strategies: Transforming Whistleblower Experiences. Galway, NUI Galway. Available from: <https://www.whistleblowingimpact.org/wp-content/uploads/2019/06/19-Costs-of-Whistleblowing-ESRC-report.pdf> (Accessed 10 July 2019).

The All Party Parliamentary Group for Whistleblowing

On 10th July 2018 the All Party Parliamentary Group (APPG) for Whistleblowing² was launched to 'Put Whistleblowers at the Top of the Agenda' and propose world-class gold standard legislation that properly protects whistleblowers.

APPGs are informal groups established by backbench MPs to help other MPs from all parties become better informed about a particular policy area. They have no statutory or formal role but are able to shine a light on specific cross-party issues and exert some influence on Government to take action to address these issues.

In the face of many recent scandals involving misconduct in the private and public sector, the APPG for Whistleblowing is working through an ambitious workplan³ to identify how, why and where the law fails to adequately protect whistleblowers. It is consulting not only with whistleblowers, but with academics, industry experts, regulators, law enforcement, the judiciary, media, businesses, trade unions in both public and private sector, the clergy and charities to recommend positive, effective and practical proposals for change. The APPG is also consulting beyond the UK seeking to learn from others countries who has effective whistleblower legislation and practices. The APPG aims not only to change legislation but also social perceptions of whistleblowers and the culture surrounding them.

The objectives of the APPG for Whistleblowing are:

- Influencing policies and decisions that affect whistleblowers globally
- Drafting legislation to ensure effective protection for whistleblowers
- Commissioning and publishing research, based on our work with whistleblowers and relevant groups and stakeholders across all sectors
- Engaging our supporters in campaigns to influence decisions affecting whistleblowers
- Giving whistleblowers safe platforms to speak out on issues affecting them
- Promoting positive social attitudes towards whistleblowing
- Encouraging MPs to promote positive recognition for whistleblowers
- Supporting and upskilling MPs and their staff to identify and manage constituent whistleblower cases.

The workplan of the APPG will develop in three reports:

1. The first (the present report) gives voice to the experience, concerns and proposals and recommendations for reform from whistleblowers themselves.
2. The second report will inquire on the experiences in addressing whistleblowing and the possible recommendations of regulators, government departments and agencies, tradeunions and representative bodies.
3. The third report will make enquiries of MPs, Lords and elected members, the judiciary and journalists.

At each stage, the evidence gathered will be used to assess the current framework and propose policy changes.

² <https://www.appgwhistleblowing.co.uk/>

³ Appendix 1.

The first call to evidence: the voice of the whistleblower

The APPG for Whistleblowing is committed to basing its policy and regulatory recommendations on the most accurate and up-to-date evidence. To do so, other than reviewing the academic literature to keep pace with the most recent findings and theories, the APPG is collecting empirical information through a range of approaches.

In October 2018, we launched an online survey and we asked some respondents across all sectors to meet in small groups. We met with further whistleblowers at one to one meetings to discuss specific parts of their experience and held a public meeting attended by approximately 60 members of the public.

The majority of responses were from people who were dissatisfied with current arrangements.

The whistleblowers survey

The purpose of the survey was to raise awareness about the APPG and gather evidence on whistleblowing practices from as wide an audience as possible across all sectors. Questions included both structured (multiple response) questions and unstructured (open answer) questions to allow respondents the opportunity to provide further explanation of their experience.

The first set of questions was aimed at understanding the respondents' position with regard to the relevant organisation at the time of raising their concerns:

- Where they workers?
- For how long?
- What level of seniority?
- What sector does the organisation belong to?

The second set of questions was aimed at identifying the concern raised by the whistleblowers and the organisational response to it:

- What was the concern about?
- To whom was the concern raised first?
- What action was taken?
- Was the concern raised again and, if so, to whom and what action was taken?
- What was the organisational response to the concern? Did they support the whistleblower or did they retaliate against them?
- What more could the organisation have done to support the respondents?
- Did the organisation follow appropriate ACAS Process in dealing with the allegations?

A third set of questions aimed at exploring the reaction of whistleblowers to retaliatory responses from the organisation:

- What did the retaliation consist of?
- How did respondents feel after retaliation?

- Did they make a claim using PIDA?
- What is the current status or outcome of the claim?
- What are respondents' views on how PIDA works in practice?

A final open question asked respondents to provide any further comments including their suggestions for improvement to legislation.

This report is based on 336 responses in total. These are the responses received so far, but the survey is still open and remains central to informing the work of the APPG having received over 1400 hits at the time of writing.

All personal information was managed in line with GDPR. The responses were carefully assessed and verified in the light of previous reports from other organisations, relevant literature and academic findings such as those cited in this report.

Scholars from the Centre for Financial and Corporate Integrity (CFCI)⁴ at Coventry University were consulted to analyse the survey responses and to integrate our literature review.

This report has two main purposes:

1. Illustrating the issues raised and making available the evidence resulting from our research including;
 - o The survey responses;
 - o The meetings and seminars with the respondents;
 - o Review of related literature;
 - o Analysis of reports from other organisations worldwide;
2. Presenting policy and regulatory recommendations on how to improve the UK framework of whistleblowing mechanisms and protection based on the evidence.



photo: nik macmillan

⁴ <https://www.coventry.ac.uk/research/areas-of-research/centre-for-financial-and-corporate-integrity/>

2. Whistleblowing in practice

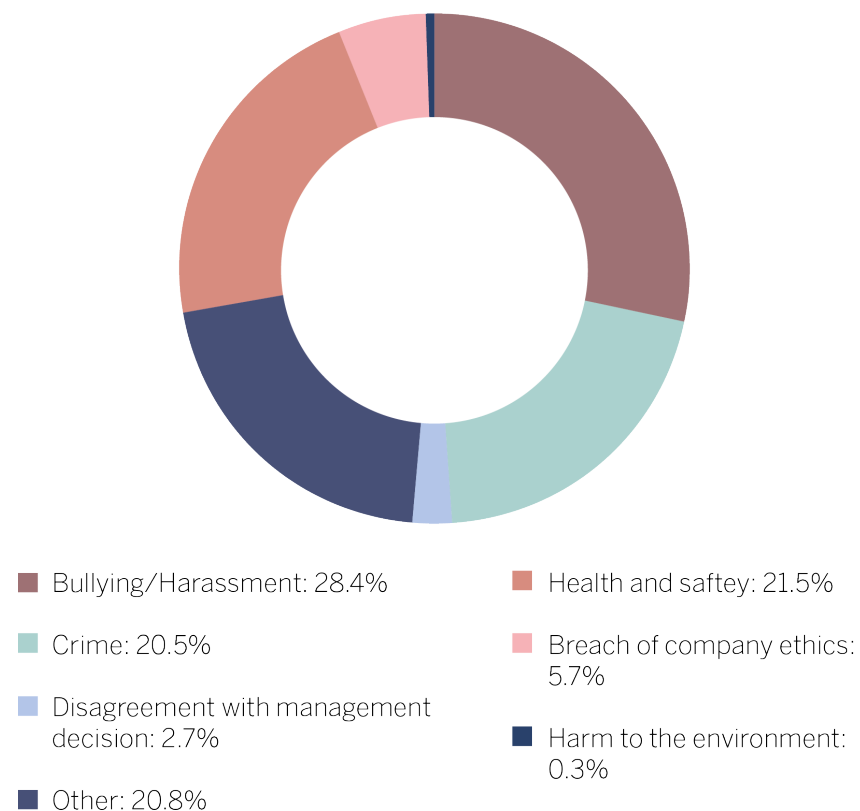
What is whistleblowing?

Whistleblowing is the disclosure of information about a perceived wrongdoing (or about the risk of such wrongdoing) in a public or private sector organisation to individuals or entities believed to be able to effect action (Transparency International, 2009: p. 44).

The wrongdoing subject to disclosure is potentially very broad. According to the definition suggested by Transparency International's International Principles for Whistleblower Legislation (2013: p. 4), relevant wrongdoing includes corrupt, illegal, fraudulent or hazardous activities which are of concern to or threaten the public interest. This means that whistleblowing can concern not only criminal or illegal behaviours, such as bribery or corruption offences, but also merely immoral or illegitimate practices, as suggested by some scholars (Near & Miceli, 1985). This is very important as it can happen that unacceptable harmful practices are not formally or clearly prohibited by the law (Pasculli and Ryder, 2019: pp. 6-7). This is the example of many lobbying practices in the UK that are perceived as 'corrupt' by the public, but are not illegal – as recent research shows (Ellis and Whyte, 2016).

According to the responses to our survey, only 20,5% of the reporting concerns criminal behaviour, while the rest concerns other forms of wrongdoing that may or may not be illegal – such as the breach of health and safety regulations (21,5%) or bullying and harassment (28,4%) – or is merely unethical – such as the breach of corporate ethics (5,7%).

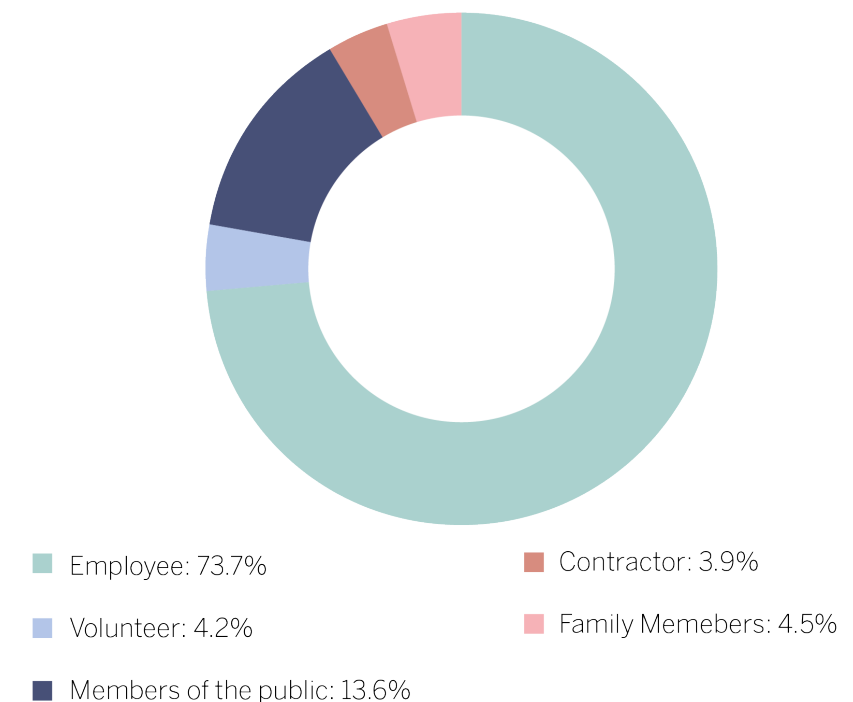
Figure 1: Reported wrongdoing



Whistleblowers are generally public or private sector employees or workers who disclose such information and who are at risk of retribution, but they can also be individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers and former employees (Transparency International, 2013: p. 4-5). More than that, some organisations are encouraging members of the public to make use of their whistleblowing arrangements to show their commitment to high ethical standards (PwC, 2013: p. 11).

The findings from our survey seem to indicate that whistleblowers are often employees from the organisation concerned (73.7%) or – significantly less frequently – members of the public (13.6%). Only in limited cases they are family members (4.5%), volunteers (4.2%) or contractors (3.9%).

Figure 2: Whistleblower-organisation relationship



Whistleblowers can report the wrongdoing to individuals or bodies within the organisation involved, such as their line managers (internal whistleblowing) or to individuals and entities outside the organisations, such as the police, the media, MPs, regulators etc.

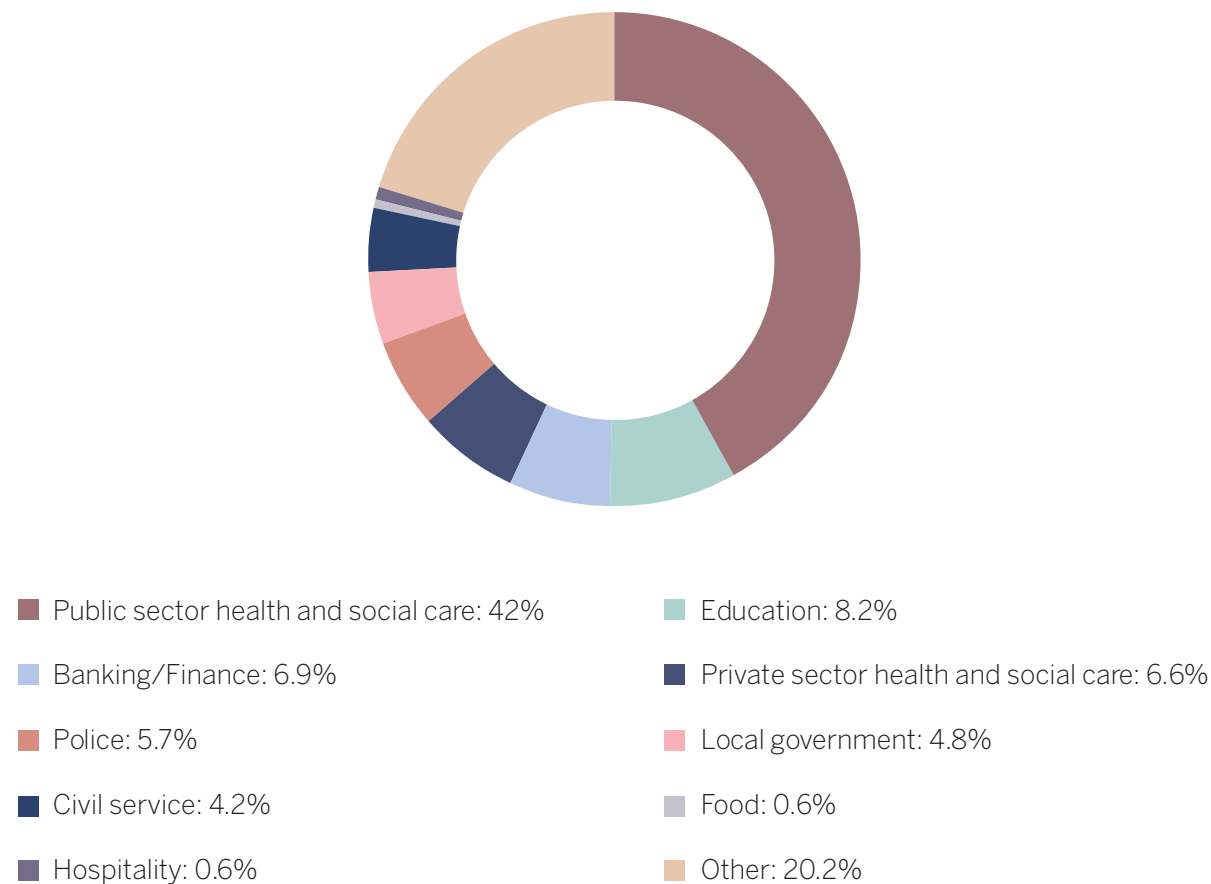
Whistleblowing can bring enormous benefits to society and to the organisations and businesses involved. For those who blow the whistle, however, there seem to be no real benefits, but only costs. Whistleblowers expose themselves to the risk of many adverse consequences for their professional and personal life, including harassment, isolation, dismissal, reputational damage, mental health issues (Transparency International, 2009, p. 3; Vinten, 1994: pp. 10-11).

Societal benefits

Whistleblowing is relevant to all to every organisation or institution of any size from either the public or the private sector: from local and national governmental agencies to business firms; from multinational enterprises (MNEs) to small- and medium-sized enterprises (SMEs) (Transparency International, 2009: p. 2). The information disclosed by whistleblowers can be therefore relevant for all sectors and levels of society. The cases studied by scholars (Vinten, 1994, 2003a and 2003b) and regularly covered by the press range from the civil service to banking and financial services, from the military to the pension system, from extraction industries to accounting and auditing services, from the national health system to education and research, from transportations to the pharmaceutical industry.

The findings from our survey confirm this and give an indication to what sectors are likely to be most impacted by whistleblowing (table 2). The most prominent sector is public health and social care, with 42% of respondents reporting cases related to this sector, followed by education (8,2%), banking and finance (6.9%), private sector health and social care (6.6%), police (5.7%), local government (4.8%), civil service (4.2%), food (0.6%) and hospitality (0.6%). 20.2% of the respondents have reported cases involving other sectors.

Figure 3: Whistleblowing in different sectors of society



This means that the wrongdoing reported by whistleblowers can potentially affect the most different societal interests, such as individual rights and liberties, justice, health, political and business integrity, transparency and accountability, economic prosperity, financial and market stability, fair competition, scientific and technological progress and international relations. If properly listened to and acted upon, whistleblowing can be a formidable instrument to protect such interests and the public at large.

But whistleblowing alone is not enough. Effective and fair mechanisms and processes are required to:

- Encourage internal reporting through accessible and reliable channels
- Manage and assess of disclosures
- Verify the reliability of whistleblower disclosures and related evidence
- Ensure adequate and timely responses (investigations and follow-up)
- Protect whistleblowers from retaliation or other risks (cf. Transparency International, 2017a: p. 5).
- Learn lessons and establish controls to prevent further wrongdoings

When in place, such mechanisms can strengthen the protection of the public interest:

- A) Prevention
- B) Responsibilisation
- C) Reform

A) Prevention

Legality, public order and public safety should be the first responsibilities of every organisation and government. Taking whistleblower disclosures seriously through appropriate investigations and effective responses can prevent the risk of future wrongdoing or stop ongoing wrongdoing. As a consequence, it enables the relevant organisations and authorities to detect and prevent harm (or any further harm) to the public.

B) Responsibilisation

The adoption of effective mechanisms to encourage reporting and follow it with appropriate action has responsabilising effects:

- It promotes a culture of integrity, accountability and compliance;
- It deters organisations and individuals working or acting for them from any misconduct;
- It allows to individuate and hold to account those responsible for wrongdoing;
- It helps authorities to establish legal responsibilities and apply the appropriate sanctions, it facilitates the reparation of any damage to possible victims and provides vindication and a moral reward to the whistleblower for speaking up. In doing so, it serves also the interests of justice.

C) Reform

Effective whistleblowing mechanisms and processes are not only useful to prevent or respond to specific occasions of wrongdoing. They are also an excellent opportunity to assess the regulatory or structural weaknesses of the organisations involved and to improve them through adequate reforms, thus strengthening the protection of the relevant public interests.

Business benefits

The adoption of effective whistleblowing systems is not only beneficial to society at large. It also produces considerable benefits for private companies by helping them pursue their business interests. In particular, corporate mechanisms to encourage internal reporting and ensure adequate responses allow companies to maintain control over the firm and protect its resources (cf. Stikeleather, 2015 and Stubben & Welch, 2019).

Effective internal reporting mechanisms can result in:

- A) Prevention/mitigation of liability and financial and reputational losses
- B) Enhanced reputation
- C) Enhanced corporate efficiency, compliance and culture

A) Prevention/mitigation of liability and losses

Whistleblowing is one of the most effective means of identifying and addressing risk enabling companies to protect themselves from the negative effects of misconduct, including legal liability, financial losses and reputational damage (cf. Stubben & Welch, 2019). Effective internal whistleblowing mechanisms:

- integrate and support internal controls on compliance with the complex regulation companies are required to abide by (labour, environmental protection, financial reporting, anti-corruption, anti-money laundering, product liability, consumer protection etc);
- facilitate the early detection of ongoing misconduct or, even better, of the risk of misconduct;
- Enable companies to adopt any necessary measure to de-escalate the situation and minimise harmful consequences, legal liabilities and the following reputational damage and any financial losses caused by the misconduct (Transparency International, 2017b: pp. 6-8; Association of Certified Fraud Examiners, 2016).

B) Enhanced reputation

Shareholders and stakeholders worldwide are increasingly demanding effective internal ethics and compliance. A reliable system of internal reporting and a fair treatment of whistleblowers is clear and public evidence of a company's commitment to integrity and social responsibility (Transparency International, 2017b: pp. 5 and 9). Such commitment is beneficial to business, as it enhances corporate reputation (Decker, 2012) and helps attract and retain investors and clients (cf. Ernst & Young, 2017).

C) Enhanced corporate efficiency, compliance and culture

The findings of adequate investigations following whistleblowers disclosures provide companies with precious information to devise and adopt the necessary measures to improve their organisational structures, policies, strategies and processes. Such measures increase corporate efficiency (for instance, allowing for up-to-date training or for a better allocation of resources) and to avoid future problems (Transparency International, 2017b, p. 8). Moreover, effective internal whistleblowing systems support the development of a corporate culture of openness, trust and integrity (Transparency International, 2017b, p. 9).

Individual costs

Although their revelations might bring extraordinary benefit to society and business, UK whistleblowers have little to earn from reporting (Dyck et al., 2010; Savage, 2019: p. 25-27). Whistleblowers risk major human and professional losses, especially when they are employees of the organisation involved in wrongdoing. Even when they are listened to, the best reward whistleblowers can hope for is the satisfaction of knowing that action is being taken to remedy the wrongdoing. Unlike other countries, including the United States of America, Canada and Nigeria, the UK does not have a system of financial rewards for those who report organisational wrongdoing. This remains a contentious issue across the EU.

The evidence presented by the report Freedom to Speak Up by independent reviewer Sir Robert Francis ('the Francis report', 2015) offers many examples of the losses experienced by whistleblowers in the NHS. The report evidences that positive experiences of whistleblowing are a minority. Only in a small number of cases whistleblowers have found in their organisation openness, support and adequate knowledge of policies and procedures (Francis report, 2015: p. 53). The vast majority of experiences are described as negative and characterised by a hostile culture of fear and blame leading to isolation and to various forms of reprisals and victimisation, such as counter allegations or disciplinary action (ibid.: p. 54-56). These findings align to those arising from the call to evidence by the APPG.

'Lives can be ruined by poor handling of staff who have raised concerns'

'The effect of the experiences has in some cases been truly shocking. We heard all too frequently of jobs being lost, but also of serious psychological damage, even to the extent of suicidal depression. In some, sad, cases, it is clear that the toll of continual battles has been to consume lives and cause dedicated people to behave out of character. Just as patients whose complaints are ignored can become mistrustful of all, even those trying to help them, staff who have been badly treated can become isolated, and disadvantaged in their ability to obtain appropriate alternative employment. In short, lives can be ruined by poor handling of staff who have raised concerns.'

(Francis report, 2015: p. 5)

These findings are confirmed by recent academic studies. Research suggests that only in a limited number of cases (38.1%) management offers some meaningful response, while in the majority of cases the response was considered ineffective (61.9%).

The same study suggests that the most common responses to whistleblowing in UK are negative responses (e.g. verbal harassment, closer monitoring, blocking resources, relocation, demotion, suspension, disciplinary action or dismissal), while only in a minority of cases whistleblowers were supported by the organisation (Vanderkerckhove & Phillips, 2017: p. 14-15).

Unfortunately, years after the above studies, the outcomes of our survey still uphold those findings and, therefore, the inadequacy of the existing regulatory framework. Whistleblower protection can be seen to fail at every opportunity, as internal and external mechanisms of reporting are either lacking or insufficient. In the following section, some of the major findings of our survey will be examined in detail, clearly identifying the flaws of the current system and the detrimental consequences for whistleblowers.

Vexatious and malicious reporting

Whistleblowing is about communicating information that tends to show wrongdoing. In order to enable an appropriate authority to act on the information, it is not necessary for an organisation to know the identity of the whistleblower. An assumption that every whistleblower is correct or acting on selfless motivations should be part of an effective assessment process.

During the call to evidence we discussed with whistleblowers the issue of vexatious and malicious allegations from both parties. Many of the suggestions made by the whistleblowers reflect the need to improve protections and include a proactive approach to investigating allegations. While unusual, there are cases in which complaints and disclosures are made for malicious or vexatious purposes or for personal objectives (career, revenge, etc) which could have nothing to do with the public interest. The case of Carl Beech is extreme but is not the only case that exposes the damage that can be caused by someone purporting to be a whistleblower⁵

Only disclosures made in the reasonable belief that there is some foundation to them and are in the public interest can have positive societal and business benefits and should be protected. On the contrary, malicious and vexatious reporting can be very detrimental to society and business and should not be protected as (or take advantage of the protection afforded to) whistleblowing.

It is therefore essential to develop effective whistleblowing mechanisms and processes, not only to protect genuine whistleblowers but to protect organisations and workers from vexatious and malicious claims.

⁵ <https://www.independent.co.uk/news/uk/crime/carl-beech-trial-westminster-vip-paedophile-ring-nick-newcastle-court-a8903286.html>

Key findings

- Whistleblower reports do not necessarily concern evidence or allegations of illegal or criminal practices
- Whistleblowers expose a range of harmful and inappropriate conduct that constitutes a breach of integrity and business ethics even if it is formally recognised as 'legal'
- Whistleblowers are generally workers of the organisation involved, although not exclusively: a small number of respondents identified as members of the public
- Whistleblowing can have very positive effects on society and business, whilst the impact on the whistleblower is negative both personally and professionally
- Appropriate whistleblowing mechanisms and processes would help prevent vexatious reporting and litigation

3. The lived experience of whistleblowing

In line with the findings of previous studies, the responses to our survey outline two main persistent problems for whistleblowers in the UK:

1. **Inaction** – an absence or lack of significant and sufficient responses to whistleblowing, which nullifies the possible beneficial effects of the disclosure to society, frustrates whistleblowers and discourages future reporting, and
2. **Retaliation** – various forms of retaliation against whistleblowers, with potentially devastating professional and human consequences.

Although, in principle, there can be inaction without retaliation and retaliation without inaction, the vast majority of respondents to our survey reported that the organisation retaliated against them, thus suggesting that inaction is generally accompanied by retaliation.

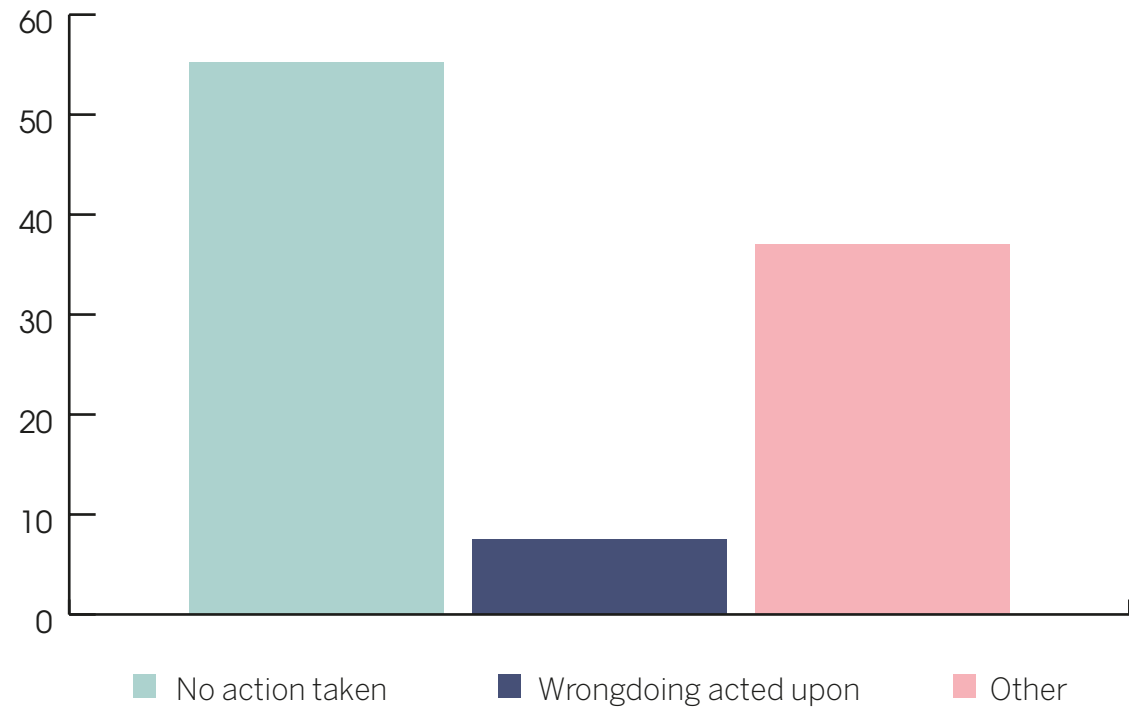
Responses to whistleblowing

Evidence from research and our survey exposes that often organisation adopt a Deny, Delay, Defend⁶ approach to whistleblowing. Whistleblowers can be subjected to retaliation often within hours of raising issues.

Our survey shows that, after the whistle is blown the first time, only in a very small number of cases (7.6%) the wrongdoing or malpractice is acted upon, while in the majority of cases (55.3%) no action is taken. In the remaining cases, 'other' responses followed the reporting.

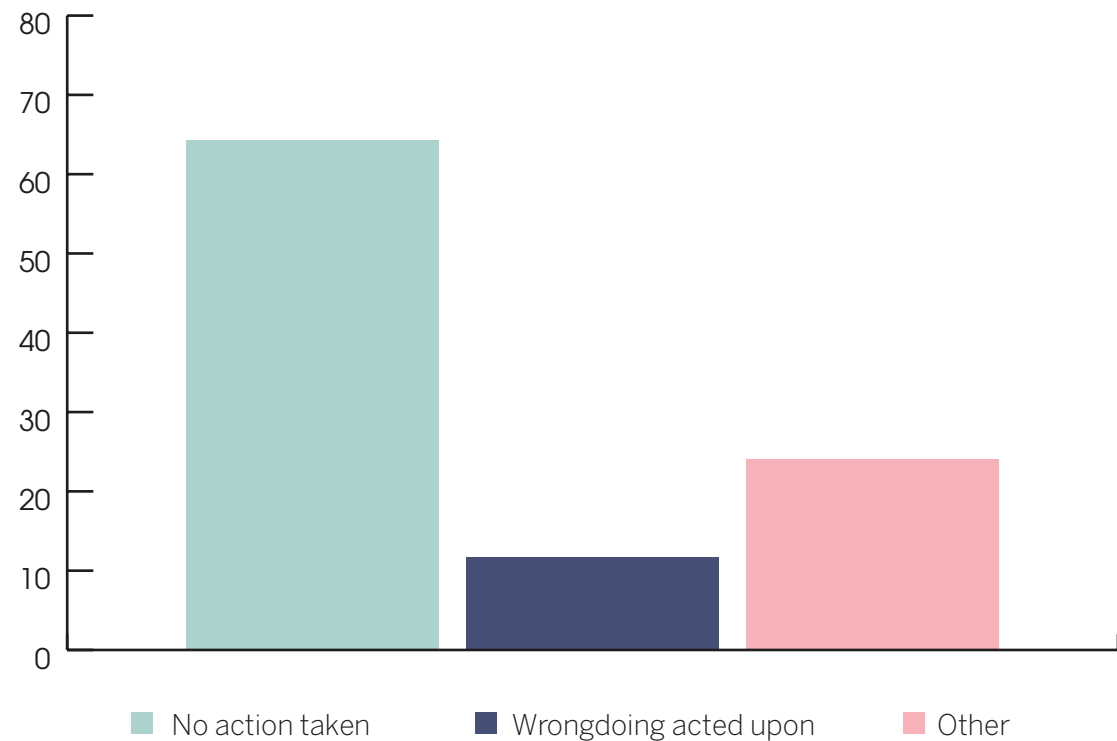
⁶ The expression is used, in another context, by Feinman, J.F. (2010) Deny, Delay, Defend. Why Insurance Companies Don't Pay Claims and What You Can Do About It. London, Penguin.

Figure 4: Organisational responses to first reporting



The situation doesn't seem to improve when the concern is raised a second time. Only in the 11.7% of cases the wrongdoing is addressed. In the 64.2% of cases no action is taken and in the remaining cases 'other' responses follow the reporting.

Figure 5: Organisational responses to reiterated reporting

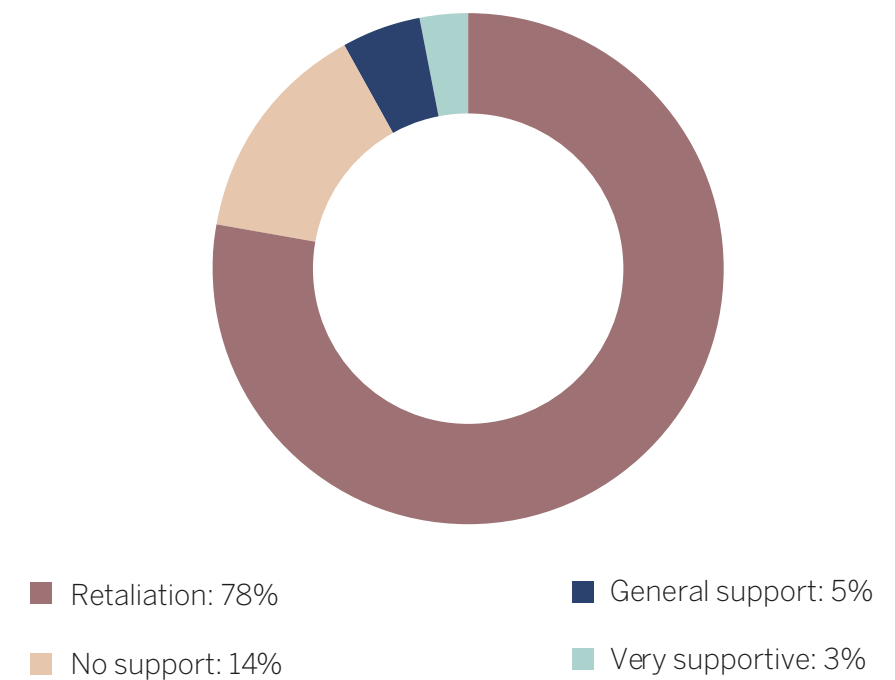


The vast majority (77.8%) of respondents declared that the organisation retaliated against them. In most other cases, the respondents have indicated that organisation was not supportive (14.2%). Only in a limited number of cases the organisation was deemed to be generally supportive (5.2%) or very supportive (2.8%). These responses, together with open comments by the respondents help shed light on the nature of the 'other' responses.

In the best cases, these comments report adherence to formal and published procedures but disappointingly result in no substantial outcome and 'whitewash' investigations.

In the worst cases, they report criticism, personal attacks, false allegations and attempts to discredit the whistleblower, cover up, 'perversion of the course of justice', attempts to destroy evidence, bullying, disciplinary action, suspension, threat of dismissal, dismissal.

Figure 6: Organisational reaction towards the whistleblower



Moreover, most respondents (91,2%) indicated that the organisation did not follow the appropriate procedures to manage whistleblowing as directed by the Advisory, Conciliation and Arbitration Service (see ACAS, 2013).

One of the elements which can frustrate whistleblowers and discourage reporting is delay and the exclusion of the whistleblower from the actions taken to follow-up the disclosure. One respondent reported that the organisation instigated an investigation "some months later" but that no feedback on the outcome was given to the whistleblower.

The cycle of abuse

Most respondents to our survey reported that the response by management to the whistleblowers disclosure is often not just inaction, but also retaliation.

In various cases, retaliation appears to follow similar forms and patterns and it often happens in stages. Relatively minor and informal retaliatory responses gradually escalate into more serious and formal ones, which culminate in the departure of the whistleblower from the organisation.

In these cases, a cycle of abuse can thus be identified, from the moment in which a whistleblower makes its first disclosure to the moment they lose their job. The cycle of abuse runs through the following stages:

- **Reporting:** The whistleblower decides to make a disclosure, often after longstanding concerns and discussions with colleagues, managers and family members;
- **Isolation:** The organisation starts distancing itself from the whistleblower in several ways, such as by excluding them from the processes following the reporting, by isolating them and/or by turning staff against them. This can be accompanied by intimidation or harassment by the organisation.
- **Scrutiny:** The organisation initiates a close scrutiny of the whistleblower and their work performance to discredit them. A previous high performer can suddenly be come an underperformer, and whistleblowers can be set up to fail with impossible workloads or deadlines. Sometimes, whistleblower are explicitly blamed for blowing the whistle.
- **Counter Accusations:** The organisation moves informal accusations against the whistleblower, as part of a strategy as 'character assassination', as described by a respondent to our survey, or to induce them to change their statements;
- **Disciplinary action:** In many cases accusations are formally brought by the organisation against whistleblower through disciplinary proceedings which can culminate in sanctions. This not only discredits the whistleblower, but can be used by the organisation against them in court proceedings, especially before employment tribunals;
- **Demotion/Pay reduction:** Several negative consequences might follow or accompany the attempts to undermine or intimidate the whistleblower, including demotion from a role or a location and reduction in salary or other benefits;
- **Dismissal/Forced resignation:** The most serious formal way to retaliate against employee is dismissal or forced resignation;
- **Non-Disclosure Agreement (NDA):** The organisation forces the whistleblower to sign a non-disclosure agreement preventing them from spreading their disclosure any further;
- **Allegations ignored/case closed:** Discrediting, silencing or removing the whistleblower allows the organisation to ignore or dismiss the allegations made in their disclosure.

Not every whistleblower is subjected to the full cycle of abuse. Many respondents to our survey, however, have suggested that organisations adopted different form of retaliation at the same time and in connection with each other. Also, a surprisingly large number of respondents reported they had to leave their jobs.

An employee can survive the cycle of abuse and perhaps win a case in court, but the cycle

of abuse can start all over again with the next whistleblower, as there is currently no legal obligation on the employer or on external authorities to investigate the allegations of the whistleblower. Sometimes there is no next whistleblower, as the cycle of abuse witnessed by others and can act as a deterrent.

Case studies

Many responses to our survey described very effectively the various stages of the cycle of abuse and the possible forms of retaliation. Here follow some notable examples.

Various respondents to our survey explicitly reported they felt 'isolated' or 'ostracised' or that the 'organisation closed ranks'. Some of the respondents' descriptions capture the essence of this reaction in more detail. One respondent wrote she/he felt 'blacklisted' and 'ignored by senior management'. Another one told her/his complaint was referred to the individual concerned, naming the whistleblower, whom – as a consequence – became the subject of office gossip. Another respondent said she/he was treated 'like (she/he) was invisible'. One whistleblower reported the organisation 'pressured others to drop support' to her/him. Another wrote: 'I was ostracized by staff members and management which made me feel very isolated and uncomfortable. I was watched like a hawk and people were chatting about me behind my back as I did have one ally there who was also treated badly'. This suggests that isolation can involve not only the whistleblower, but also people offering support.

Undue scrutiny, restrictions and criticism

Isolation is not always a passive conduct, but it often comes with active behaviours aimed at discrediting whistleblowers and restricting or scrutinising them beyond what is expected in their employment.

A common form of criticism, in this respect, is accusations of under-performance or incompetence. One respondent reported the organisation was 'unhappy' with her/him for a while. Another wrote: 'My work was checked, and other staff were canvassed regarding their opinions of me. I felt very much under threat. I had to ensure that I made no mistakes of any kind that could be used against me'. Another wrote she/he was told she/he was 'not competent at (her/his) job because (she/he) had anxiety and dyspraxia'.

Sometimes criticism is accompanied by restrictions. One respondent reported 'increased monitoring and restrictions' against (them) in the workplace. Another one wrote that the organisation 'hampered (their) side of investigation by limiting (initially refusing) access to () work emails and by deliberate time-wasting after giving limited time for access'.

Some respondents have perceived a form of whistleblower blaming for blowing the whistle. For instance, one respondent reported that the organisation reacted as '(she/he) was the problem and (her/his) concern was ignored'. A respondent told us that the organisation 'bullied and lied in order to turn the tables on (her/him)'. Another one wrote: 'When I first complained to a line manager I was sent home. I felt as though I had done something wrong'.



photo: tom parsons

Another respondent observed that the organisation tried to make she/he feel it was 'her/his behaviour which was inappropriate rather than the person whose behaviour necessitated the whistleblowing in the first place'. Another one wrote: 'management told me what happened was my fault, others said they would support me but just wanted information from me and then turned against me to blacken my name when I had done nothing wrong'.

Similarly, another respondent wrote that the organisation blamed her/him and 'twist(ed) what (she/he) said around'.

Intimidation

Sometimes organisations go beyond ostracism and criticism and adopt intimidating behaviours. One respondent was threatened with 'unspecified "formal action"'. Another one with police action.

In various instances, intimidation accompanies other forms of retaliation such as undue criticism. One respondent reported that, after refusing to provide evidence of investigations into the grievance raised, the HR officer behaved in 'an extremely confrontational and unprofessional manner'. In the ensuing meeting, described as 'difficult and threatening', the whistleblower was made feel as if (she/he) was 'a liar and a troublemaker'. Another respondent reported that (they) were called to a disciplinary meeting, threatened with dismissal for a minor mistake. Another one wrote that she/he was criticised and 'warned (...) as to future conduct'.

Harassment

Many whistleblowers reported being the victims of 'bullying' or other forms of harassment. The survey shows that this form of retaliation includes the most disparate abusive conducts designed, as one respondent observed, to make 'life very hard' for whistleblowers. This conduct amounts, in the words of two respondents, to being 'verbal attacked' and 'so much more', including 'some physical abuse but mainly emotional, psychological and financial abuse'.

More than one respondent reported that bullying behaviours involve more than one member of staff. There is also the risk that bullying is committed pre-emptively, to discourage future reporting. In one example, it was noted that the managers 'can forget about what has been happening and ignore it (because) the person speaking out has left and then they just bully all the other staff to just keep quiet'. A culture of fear can effectively prevent whistleblowers from reporting: one respondent wrote that they 'did not dare to raise concerns again for fear of being seen as manipulative or awkward to the case'.

False accusations

According to our survey, one of the most common forms of retaliation to whistleblowing is false accusations and against those who blow the whistle. These are used to discredit whistleblowers or even to induce them to change their statements. Some respondents have defined such strategy as 'character assassination'.

Responses to our survey suggests that whistleblowers can be accused of the most various behaviours. Some whistleblowers are accused of the same situation they reported, others of unrelated behaviours, such as stealing, racism or bullying.

Sometimes the accusation comes from the managers. One respondent wrote that senior management 'altered facts' to make (them) look bad. On other occasions the accusation comes from the individuals or entities responsible or close to those responsible for the wrongdoing reported by whistleblowers. One response is particularly significant in this respect: '(...) the person whom I complained about launched a counter complaint to my employers against me. At the time the allegations made against me were dismissed. (I continued to raise complaints against the partner agencies for my employer during this time and a year later allegations were again raised against me by an agency linked to the original agency who complained against me. The complaint was based on the same information which had been dismissed the previous year'.

Sometimes the false accusations remain confined within the organisation, but other times they are propagated outside. One respondent reported that the organisation 'conducted a sustained character assassination, making multiple false accusations about (her/him) to several government agencies, (her/his) union and Occupational Health stating that (she/he) made a habit of making baseless allegations, had falsely accused someone in the past and suggested that (she/he) fabricated an assault, none of which was true'. Another respondent reported that the senior management tried to 'smear (her/his) professional reputation to other organisations (she/he) was collaborating with on specific projects'.

Sometimes the false or counter accusations go beyond whistleblowers themselves and extend to the whistleblowers family and friends. Examples have been provided demonstrating that unscrupulous employers have extended influence into other agencies in order to discredit whistleblowers.

Disciplinary action

While some accusations against whistleblowers remain merely informal, some are turned into disciplinary action against whistleblowers. Sometimes, disciplinary proceedings are used as a means to perpetrate any of the above retaliatory conducts, such as ostracising or intimidating whistleblowers, to the purpose - as reported by one respondent - to 'cover up management failings'.

Some of the disciplinary actions fail. Some others result in disciplinary sanctions such as the suspension of the employee. Other proceedings result in negotiated settlements between the whistleblower and the organisation.

Different responses to the survey identify breaches of fairness and impartiality in disciplinary processes. One respondent reported that 'the person who (the respondent) made the claim against tried to start disciplinary action against me of which she would chair'.

Another one reported that the organisation suspended them without informing them of the reason and that after the suspension, the planned disciplinary hearings were then cancelled at the last minute. These practices are not unusual.

Responses to our call for evidence, supported by academic studies expose the use, or threat of criminal charges and sanctions against whistleblowers (Turksen, 2018; Lui and Turksen, forthcoming 2020). Sometimes criminal accusations are unrelated to the issue disclosed by the whistleblower: one participant to our survey reported that they were 'accused of stealing'. Other whistleblowers have been subjected to arrest and criminal charges later to have all charges dropped, cases dismissed and to be found not guilty on the grounds that they acted in the Public Interest. The impact of this action cannot be underestimated on the chilling of potential whistleblowing.

Demotion

Another common form of abusive response to whistleblowing is the removal of the whistleblower from his working position or location (sometimes also entailing repatriation to the UK from overseas) often alleging reasons unrelated to the disclosure.

In a significant case, the respondent reported that the organisation (a bank) initially associated to the respondent a 'co-head' for the 40-person team she/he was heading and later entrusted the exclusive leadership of the team to the person appointed as 'co-head', thus removing the whistleblower from his management position and, as a consequence, from management meetings and retreats.

Sometimes, demotion strikes subjects who are supporting whistleblowers. In one case, the manager who had supported the respondent was removed by the organisation, thus preventing the whistleblower from having any further input from him.

Pay reduction

Various respondents to our survey reported that they have suffered cut to their pay or to other financial benefits. One respondent wrote she/he was 'placed on nil pay, forced out of work and lost half of agreed pension'. Similarly, another one reported that her/his pay was reduced and she/he lost the pension. Another respondent reported that for five years she/he was paid only an extra 13% of her/his hourly rate for overtime work, whereas all the other employees were paid extra 40%.

Dismissal and forced resignation

The most serious formal way to retaliate against employee is dismissal. A surprisingly high number of respondents to our survey reported that their employer has either fired them (or tried to) or somehow induced them to resign.

Sometimes the dismissal follows disciplinary action. One respondent wrote that after having blown the whistle, the HR office advised her/him to file a grievance, but when she/he did so, the organisation (a hospital charity) immediately 'threatened (her/him) with the sack'. They then carried out an investigation against her/him and she/he was eventually dismissed, despite the HR consultant had supported her/his case. Another respondent reported that after refusing 'to undertake an unlawful instruction' she/he was suspended and 'threatened with redundancy and dissemination of (her/his) criminal record'. Eventually she/he was offered a settlement agreement with a non-disclosure clause.

Other times, employers make whistleblowers redundant, often supporting this decision with reasons unrelated to their disclosure. One respondent claimed that the employer 'got two line-managers to lie together about (her/his) performance at work' in order to justify dismissal. Another respondent was made redundant after the employer received a letter from the respondent's doctor certifying she/he suffered from medical conditions. (resulting from the stress at work after whistleblowing).

Various respondents have suggested that their organisations induced their resignation or retirement. Some respondents reported that they felt so uncomfortable at work or isolated by the abusive behaviour of the organisation that they had to leave. Another described losing their temper and resigning after being 'called in for an unwarranted criticism of (their) work'. In other cases, whistleblowers describe how victimisation resulted in increased levels of stress leading to extended sick leave and how this led to early retirement.

Organisations can induce resignation in indirect ways. An example of which is the assignment of an impossible task, where the whistleblower is set up to fail, consequently the employer then uses the failure to perform it as a justification to threat or impose dismissal.

Employers were accused of trying to 'buy' the whistleblowers dismissal or resignation and/or their silence with the offer of redundancy pay or other benefits. One respondent to our survey reported being 'side lined/bought off' with an agreement including redundancy pay. Another explained that the organisation made them sign an agreement stating they would resign and undertake 'not to speak to anyone about the incidents' in exchange for three months full pay. A further respondent wrote that the organisation made them sign a non-disclosure agreement in return for a paid notice period.

Complex patterns of retaliatory behaviours

As it is now clear, organisations can deploy multiple forms of retaliation at the same time against whistleblowers. The case studies reported in the boxes below are good examples of this. They are anonymised verbatim responses provided by three of the participants to our survey.

Case study 1: It seems like punishment

'XX Ambushed my PDR with a senior manager unexpectedly being there and "sitting in" (2:1 dynamic, power imbalance). (Senior Manager) then harangued me and accused me of things I hadn't done, talked over me, badgered me, manipulated and misrepresented what I had said, breached my confidentiality, denigrated me, called me a negative and divisive influence in the workplace (because I had dared to raise concerns). (...) Lied to me, lied about me and lied about my team. Made it clear that as long as (senior manager) is in post she will block my promotion.

Suggested I will be moved and redeployed and my team broken up - seems like "punishment".

Over the following weeks when I said how upset I was by this treatment I kept being given extra tasks to do but no extra time to do it; I ended up stressed, high anxiety, signed off sick'

Case study 2: They denied that a disclosure had taken place

'They started the disciplinary process against me, raised multiple allegations of misconduct in order to dismiss me.

They denied that a disclosure had taken place. My fight for my job lasted more than 3 months, made me feel exhausted, stressed and extremely anxious.

We ended up with a settlement agreement.

I was told by the employer that if I whistleblow externally it will damage the business and they can then raise a claim against me in a civil court.'

Case study 3: The many forms of retaliation

'I was ostracized by staff members and management which made me feel very isolated and uncomfortable. I was watched like a hawk and people were chatting about me behind my back as I did have one ally there who was also treated badly'.

'My work was checked, and other staff were canvassed regarding their opinions of me. I felt very much under threat. I had to ensure that I made no mistakes of any kind that could be used against me'.

(The organisation) 'hampered my side of investigation by limiting (initially refusing) access to my work emails and by deliberate time-wasting after giving limited time for access'.

'When I first complained to a line manager I was sent home. I felt as though I had done something wrong'

'Management told me what happened was my fault, others said they would support me but just wanted information from me and then turned against me to blacken my name when I had done nothing wrong'.

'I did not dare to raise concerns again for fear of being seen as manipulative or awkward to the case'.

'(...) the person whom I complained about launched a counter complaint to my employers against me. At the time the allegations made against me were dismissed. (I continued to raise complaints against the partner agencies for my employer during this time and a year later allegations were again raised against me by an agency linked to the original agency who complained against me. The complaint was based on the same information which had been dismissed the previous year'.

'(the organisation) conducted a sustained character assassination, making multiple false accusations about me to several government agencies, my union and Occupational Health stating that I made a habit of making baseless allegations, had falsely accused someone in the past and suggested that (she/he) fabricated an assault, none of which was true'.

'(the organisation) disseminated lies about me and also my family over a period of some 25 years, both within their own organisation and also to other public service agencies, to the detriment of (the whole family).

Non-Disclosure Agreements (NDAs)

Responses to our call for evidence have exposed the use of Non-Disclosure Agreements (NDAs) as a way to silence whistleblowers.

The UK has become familiar with NDAs and similar terms ('confidentiality agreements', 'gagging clauses', 'super gag' etc) since the rise of the #MeToo movement. Evidence from our survey and research shows that organisations use NDAs to cover up the wrongdoing reported by whistleblowers, similarly to what happens in discrimination and harassment cases, as recently denounced by the Women and Equalities Committee Report (2019)⁷.

In the context of whistleblowing, NDAs are legally binding agreements between the organisation and whistleblowers generally imposing on the latter the obligation not to reveal the disclosure or other related information outside the organisation (or beyond the people and entities in the organisation who are already aware of it). This can be adopted as part of a settlement agreement following a controversy between whistleblower and the organisation. They can be, therefore, a possible epilogue to the cycle of abuse.

Settlement agreements can include other clauses requiring the whistleblower to:

- Withdraw all allegations;
- Agree that grievances have been satisfactorily investigated;
- Agree to withdraw appeal and/or actions with the ICO (information commissioner);
- Accept the compensation as settlement in full of present and future claims;
- Agree to withdraw existing claims and undertaking not to make further subject access requests at any time in the future;
- Agree not to contact legal advisers, regulators or prescribed persons including without first notifying the organisation;
- Agree on misleading press releases that misrepresent the facts or the views of the whistleblower;
- Agree not to share the agreement with another person including a lawyer.

NDAs and settlement agreements in general can be very problematic. The testimonies gathered in our call of evidence confirm that there is a stark unbalance of power and resources between the organisation and the organisation. Whistleblowers can come to the settlement agreement after years of struggle with their employer and emotionally and psychologically strained. Moreover, organisations have financial resources to afford long legal battles which most whistleblowers lack. All this gives whistleblowers a very limited scope to resist to the pressures of their employer to sign a settlement agreement or to ask to modify it. The result is that whistleblowers will feel forced to sign an agreement they do not really understand or they do not really consent to, but which have permanent effects on their life and on the destiny of the case they have disclosed.

During meetings whistleblowers have told how they felt cheated and a prisoner to these agreements and that attempts to have them reviewed had been mainly rejected. Some of the whistleblowers interviewed disclosed that they had felt pressurised by their own lawyer to comply with NDA, and other have gone on to successfully challenge them.

⁷ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1720/172002.html>

“My solicitor put me under pressure to accept the settlement - despite the fact that he knew I really did not want to”.

Lawyers acting for whistleblowers told us that they feel intimidated to raise concerns when they identify settlement agreements with clauses that breach the legislation or Law Society Standards. They are voiced concerns about becoming the target for retaliation themselves.

We will be reviewing the role of the legal profession in subsequent reports.

The human and professional costs

The individual costs of organisational retaliation are enormous. The cycle of abuse has potentially devastating effects on the professional and personal life of whistleblowers and their families (cf. Savage, 2019: pp. 25-27).

Reputation and career

The most immediate damage is to reputation and career. Reputation is obviously damaged by unwarranted criticisms, rumours and false accusations levelled against whistleblowers. Sometimes, a compromised reputation can make it difficult for whistleblowers to find another job and advance their career. But reputational damage is not the only obstacle for whistleblowers careers.

One respondent reported that after being dismissed, they received bad references from the employer. Another one wrote that after being ‘forced out of work’ she/he became unable to trust senior management in other organisations. A respondent who resigned from his position reported that she/he was asked (but refused) to sign a document prior to leaving which would have effectively prevented her/him from working in her/his field for five years.

Some respondents have lodged claims against retaliation by their organisations. Complaints procedures and litigation, however, require time, money and resources and they are not always successful, as some of the experiences told by the participants to the survey testify.

Moreover, a career can be ruined by the actions of the organisation even if the whistleblower is later vindicated in court. One respondent reported that after she/he was bullied, suspended, isolated and eventually dismissed by the employer, they managed to win the case for unfair dismissal before the employment tribunal (ET), but nevertheless their career was ‘ended’ and her/his life was ‘over’.

Mental wellbeing and mental health

Many respondents to our survey reported how the retaliation against them had a negative impact on their mental wellbeing and health (cf. Savage, 2019: p. 26).

On a superficial level, the reprisals enacted against whistleblowers can trigger the most negative emotions. The following are just a few examples of the expressions used by many respondents to describe their feelings: ‘saddened’; ‘pretty hopeless’; ‘devastated’; ‘rejected, hurt’; ‘trapped, scared for my children’; ‘publicly ridiculed, bullied, abused’; ‘very threatened and hence insecure’; ‘very upset, humiliated, victimised, angry, outraged, unsupported’; ‘never felt so upset, angry, worthless in my life’; ‘completely betrayed, wronged and devastated at the lack of integrity in the part of the authority’ and ‘very upset’, after years of dedicated service. Others described the experience as ‘humiliating, frustrating and demoralising experience’ or explained the organisation ‘made (their) life hell’.

On a deeper level, organisational retaliation can cause or aggravate mental health issues. One respondent reported that she/he was ‘persecuted to the point where (she/he) did develop mental health issues’. Another one observed that the ‘sustained character assassination’ and the ‘multiple false accusations’ against her/him ‘devastated her/him and (have) had a massive impact on (her/his) life and (...) health’.

Stress and anxiety are amongst the more recurrent issues. One respondent wrote that ‘the whole thing made (her/him) ill with stress and very angry and disillusioned’ (and added that ‘it is shocking that large organisations are allowed to behave like this’). Another respondent explained that victimisation increased her/his stress and resulted in ‘extended time off sick with stress’. Others reported that victimisation caused anxiety and unwillingness to seek help elsewhere, or made them ‘very ill with work-related stress and anxiety’.

Depression is known to be the result of extended periods of stress and is frequently a reported outcome for whistleblowers who have undergone long periods of work-related anxiety. This can be triggered or aggravated by organisational retaliatory actions. More than one respondent suggested that the experience has ‘exacerbated’ her/his disability. Another respondent reported she/he felt ‘she/he cannot move on in (her/his) life’. Another wrote that she/he felt ‘suicidal and worthless’.

Whistleblowers interviewed reported self-harming including suicide attempts as a direct result of the retaliation by their employer to their whistleblowing disclosures. At least one whistleblower disclosed being sectioned or threatened under the Mental Health Act. Many felt unable to function and had withdrawn from their usual activities including work and social lives. One whistleblower described supporting a whistleblower colleague who had eventually taken his own life. Support organisations and prescribed persons are confronted, on a daily basis, by whistleblowers who have reached desperation.

Key findings

- The most common responses to whistleblowing are still inaction or retaliation.
- Internal support for whistleblowers is still very limited and even inadequate procedures of reporting are not often followed.
- In the majority of the cases presented, organisations respond to whistleblowing with a ‘cycle of abuse’ made of different retaliatory behaviours often connected to each other, such as isolation, harassment, intimidation, undue scrutiny and criticism, false accusations, disciplinary action, pay reduction and dismissal.
- Retaliation has devastating consequences on the personal and professional life of whistleblowers, causing serious harm to career, reputation, mental and physical health, and personal lives.



4. Current remedies

In the UK whistleblowers are currently protected by some dedicated regulations and institutional schemes. The analysis that follows highlights the main features of such mechanisms and some of their flaws.

Overview of existing whistleblowing protections and mechanisms

The Public Interest Disclosure Act 1998

The most significant instrument of protection are the provisions introduced in the Employment Rights Act 1996 (ERA) by the Public Interest Disclosure Act 1998 (PIDA). PIDA has established workers' 'right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure' (sec. 47B ERA). To qualify for protection a disclosure must be made by workers to their employers or other persons responsible for the matter in the reasonable belief that the disclosure is in the public interest and tends to show one or more of the following:

- a) that a criminal offence has been committed, is being committed or is likely to be committed,
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being or is likely to be endangered,
- e) that the environment has been, is being or is likely to be damaged, or
- f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

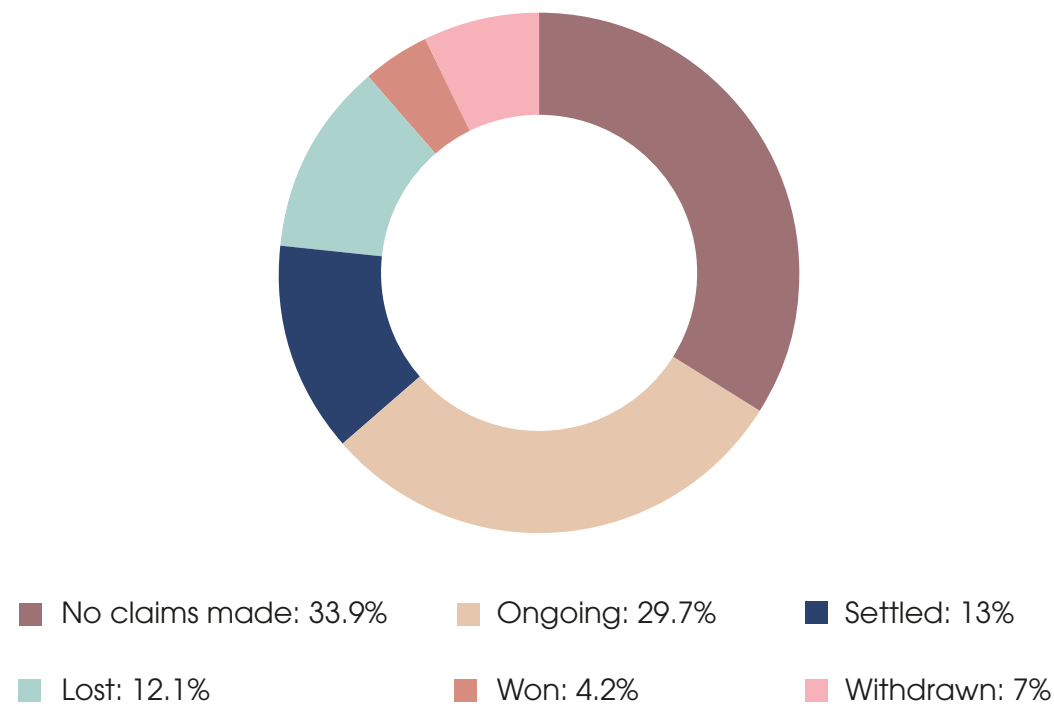
The definition of 'workers' given by the law is quite broad and covers many forms of working relationships, such as agency workers, non-employees undergoing training or work experience as part of a training course, self-employed doctors, dentists, ophthalmologists and pharmacists in the NHS, police officers, student nurses and student midwives. Nevertheless, this definition excludes many other categories of potential whistleblowers, such as members of the public not related to the organisation by any work relationship.

PIDA encourages, more or less directly, employers to adopt internal reporting procedures or internal mechanisms of whistleblower protection, but there is no legal obligation to do so (Balaban Lewis, 2015: p. 1131). Thus, the main protection offered by PIDA to whistleblowers who are subjected to any detriment by their employers is the presentation of a complaint to an employment tribunal (ET).

Other than their employers, workers can approach other 'prescribed persons' outside their workplace to report suspected or known wrongdoing. These are identified by the Prescribed Persons Order 2014⁸ which sets out a list of over 60 organisations and individuals. The role of a prescribed person is to provide workers with a mechanism to make their public interest disclosure to an independent body where the worker does not feel able to disclose directly to their employer and the body might be in a position to take some form of further action on the disclosure. A worker will potentially qualify for the same employment rights as if they had made a disclosure to their employer if they report to a prescribed person (Department for Business, Energy & Industrial Strategy, 2017).

Presenting a complaint to an ET is very formal and complex undertaking, which requires an investment in time, money and human resources. Approximately one third (33.9%) of the respondents to our survey made a claim to an ET under PIDA. The majority of claims presented are still ongoing, while only a very small proportion of the cases in our call to evidence have been won by the claimant. The majority have either been settled, lost or withdrawn (see figure 7 below). Our findings are corroborated by those produced in the official government report⁹. In 2017/18 of 1369 cases presented to the Employment Tribunal 32% were withdrawn, 22% unsuccessful and 3% successful.

Figure 7: Claims under PIDA 1998



The protection granted by PIDA is not universal, as some disclosures are excluded. Amongst these, notably, are external disclosures made to persons or bodies not responsible for the matter, as well as disclosures made by members of the public not related to the organisation by any working relationship. One whistleblower described losing his/her case because the regulator that he/she approached was not a prescribed person. Significantly, the regulator did not understand this legislation and failed to advise accordingly.

8 S.I. 2014/2418.
 9 <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2018>

Disappointingly, the vast majority of respondents to our survey declared that they are not aware, or not familiar with PIDA. Many of those familiar with PIDA confessed to not understanding it. Interestingly, some of the respondents also observed that they were not aware they were making a protected disclosure when they first flagged their concern and therefore did not consider using the protection of the Act. This ignorance of the legislation might be explained by the fact that the expression whistleblowing is not explicitly mentioned by the Act. Moreover, it might suggest that insufficient efforts are made by the government to raise public awareness and knowledge of the legal protections for whistleblowers.

The few respondents who knew about PIDA criticised it on several grounds. One respondent suggested that PIDA does not work as it 'turns (a) safety issue into (an) employment issue' because the 'legal link between disclosure and detriment (is) too easy to deny'. Others have also criticised, amongst other things, poor case management by the ET, a bias of the tribunal towards the employer and an ideological prejudice against whistleblowing. One respondent has defined the trial before the ET as 'a very expensive popularity contest in which the employer has massive advantages'.

The issue of the costs of ET trials was raised by many respondents and whistleblowers interviewed in person. One respondent wrote, 'employers have unlimited funds for legal representation, (while) employees (are) rarely supported financially'. In our meetings and seminars, whistleblowers also expressed frustration that the cost of legal representation was not a guarantee of good representation and raised issues about the quality of legal representation available to them not least because of the retainers paid to magic circle firms by many organisations including banks and NHS trusts.

This inequality of arms might explain why so few cases reach tribunal and so few of those that do win. Many observed that escalating costs resulted in excessive stress and insecurity. Whistleblowers disclosed that they had spent tens of thousands of pounds on legal advice before discovering that these costs cannot be recovered in the employment tribunal. The inability to recover costs was sighted as another reason that whistleblowers decided to withdraw or settle their cases. One whistleblower disclosed their pre-trial costs as £78,000. The average award of compensation for unfair dismissal in 2017/18 was £15,000¹⁰.

Some responses criticised the waiting time to reach trial before the ET. Whistleblowers reported periods of between 18 and 36 months from the commencement of action in the tribunal to conclusion. Another suggested that the excessive duration of trials may discourage whistleblowers from presenting complaints under PIDA, preferring resignation or retirement. Further comments included, 'I would have had to risk further delay by going to tribunal which is risky so took (voluntary retirement) to walk away'. Many respondents talked about the length of the trial and how the resulting costs implications influenced their decision to discontinue the case.

The APPG heard from litigants across the public and private sectors that court litigation is too expensive and not an adequate solution to what is described as a systemic collusion between different public bodies in the wrongdoing reported by whistleblowers. Some whistleblowers suggested that the tactics used by law firms amounted to a breach of the spirit of the legislation and in some cases a breach of the ethical codes of conduct.

10 <https://www.morton-fraser.com/knowledge-hub/employment-tribunal-awards-statistics-awards-down-despite-surge-claims>

These comments were attributed to issues including withholding documents, sending out documents by the 'lorry load' often late on a Friday evening and at the beginning of public holidays. Of omitting documents from bundles and of deploying a range of underhand tactics to mislead or confuse whistleblowers who had limited resources or were litigants in person with no formal legal assistance.

Another respondent criticised the definition of qualifying disclosure provided by the Act as too restrictive. Further criticism concerned the retrospective character of a trial before the ET, which inevitably addresses retaliation that have already damaged the whistleblower, but is incapable of preventing ongoing or future detriment. The overwhelming conclusion of respondents about the ET was criticism of the complexity of the legal provisions or the inherent unbalance in favour of the employer.

Case Study

"The bank I blew the whistle to used 3 City law firms against me, 2 of them 'Magic Circle'. The Global Head of Employment Law at one Magic Circle firm claimed (in writing) that they "had up to 37 people working weekends on (my) case". I frequently had crates of documents sent to my home after 10pm, on weekends and at the start of Public Holidays. (lawyer) "unintentionally omitted" over 95% of my evidence from the trial bundle they were ordered by the Court to produce, causing a more than 6 month delay in proceedings. The (employers)' lawyers also lied to the Court as to the relevance of documents (which were unlawfully withheld) and engaged in collusion in the production of witness statements which had bizarre, repeated errors across multiple statements as to facts".

More than one whistleblower told spoke of the need for the whistleblower to have a law degree before embarking on whistleblowing.

Sector-specific whistleblowing regulations and schemes: the cases of FCA and NHS

Certain public bodies – and particularly some of the prescribed persons – have adopted specific schemes to regulate whistleblowing in their relevant sectors. The most notable examples are the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)'s rules contained on whistleblowing¹¹ following the recommendations in 2013 by the Parliamentary Commission on Banking Standards (PCBS) and the NHS's Freedom to Speak Up (FtSU) scheme following the Francis report (2015).

¹¹ FCA Handbook, Senior Management, Arrangement, Systems and Controls (SYSC) 18. Available from: <https://www.handbook.fca.org.uk/handbook/SYSC/18/> (accessed 10 June 2019).

The FCA and PRA rules build on and formalise good practice about internal whistleblowing mechanisms in the financial services industry and aim to encourage a culture where individuals feel able to raise concerns and challenge poor practice and behaviour. The rules impose obligations onto firms in the financial sectors to adopt specific measures concerning whistleblowing. These include;

- Putting in place internal whistleblowing arrangements, including reporting mechanisms as well as training and development programmes, to handle all types of disclosure from any person;
- Appointing a Senior Manager or Non-Executive Director (NED) as whistleblower champion.
- Including a term in settlement agreements explaining that nothing in such agreements prevents the worker from making a protected disclosure to a regulator or other prescribed person.
- Presenting a report on whistleblowing to the board and regulator annually.

The FCA is also a prescribed person. Whistleblowers can report wrongdoing confidentially to the FCA whistleblowing team.

NHS's Freedom to Speak Up scheme establishes that every NHS trust must have a FtSU Guardian to give independent support and advice to staff who want to raise concerns. Guardians work with all staff to help NHS trusts become more open and transparent places. Employees are encouraged to 'speak up' without fearing the consequences. FtSU guardians offer;

- support and advice for staff who speak up, or are supporting a colleague who is speaking up
- feedback on investigations and the conclusions
- immediate action if patient safety is compromised.

FtSU does not carry out investigations, solve relationship problems in teams or between members of staff or deal with concerns raised by patients or visitors. NHS has also released specific guidance on whistleblowing for primary care providers (NHS England, 2017), as well as guidance on Freedom to Speak Up and a self-review tool for NHS trust and NHS foundation trust boards (NHS Improvement, 2018a and 2018b). NHS guardians, as well as the Care Quality Commission (CQC) and other healthcare-related bodies such as NHS Improvement and NHS England are amongst the prescribed authorities who can receive protected disclosures from whistleblowers.

An obvious criticism of these initiatives is that they are limited to the two specific (although broad) sectors, while whistleblowing occurs across every sector of business and social life.

Both the FCA and NHS whistleblowing arrangements attracted significant criticism, some as a result of heightened expectations arising from the introduction of what was promoted to be additional whistleblower protection to allow safe reporting. The main problem is that these arrangement might look good on paper but can be ineffective or insufficient in practice. Some of the respondents to our call for evidence referred to this as 'window dressing' and 'a charade'.

(Response to our survey): FCA whistleblowing process

'FCA Whistle-blowing process is pathetic. After a three-hour meeting presenting evidence, the FCA never again contacted me, no update, no process. After I was terminated, I pressed the FCA case officer, and he told me they never even contacted the company to inquire. Ultimately, the wrong-doing CEO of the bank was terminated after my allegations, with ZERO help from FCA. But too late for me as I lost my job, settled for an amount less than was owed to me in deferred compensation, and have been unable to get another job, because the word get(s) around the market'.

Specific criticisms of the FCA framework emerging from our meetings with whistleblowers included:

- Lip service to supporting whistleblowers
 - Failure by FCA to act on protected disclosures
 - No clear time plan to act on whistleblower disclosures
- Insufficient protection of the anonymity of whistleblower
- Poor or incorrect advice from the helpline
- Misleading advice from the whistleblowing team on the protection available
- Perceptions that the FCA is more concerned with the interests of the financial industry rather than of whistleblowers
- Perceptions of reluctance of the FCA to act and perceptions that FCA is looking for reasons not to act
- Conflicts of interest arising from former bank staff working at FCA ('revolving door' appointments)
- The lack of transparency about the process
- Absence of any feedback
- Failure by FCA to provide evidence of ongoing investigations for litigants at employment tribunals

The Senior Managers Regime attracted considerable concern throughout the call to evidence. The FCA were deemed to be partisan to the banks, demanding a higher threshold of evidence than the courts to be able to take action. The FCA on the other hand believe that this is an unfair criticism of a system that is still bedding in.

The FtSU scheme attracted significant criticism for failing to protect or support whistleblowers. The lack of confidence in the system was corroborated by a whistleblower who had left after being targeted for supporting a whistleblower. Further comments alleged that the guardians were using the role as a career stepping stone and that many of the guardian posts had been filled by HR with too few medical staff.

Many respondents commented on the mis-use of the 'public purse' and the lack of transparency or accountability by those who use it. One whistleblower summed up a 15 year battle with the NHS.

"The NHS are estimated to have spent £20m in legal costs targeting someone who simply wanted to report wrongdoing including overcrowding and poor care. The same case has cost me £1.48m in legal fees alone, relying on family to support me. It has also cost (us) the opportunity to have a family ourselves."

However, it was not all bad news. A respondent to the survey praised the FtSU scheme and suggested,

'...it should be rolled out nationally - especially to residential care homes and schools, and particularly in light of Academisation. In my experience, this will have an effect on schools because their increased levels of autonomy are potentially creating more opportunities for abuse, neglect and negligence. Inspections should be more frequent, more rigorous and without notice'.

Non-profit organisations

At the public meeting attended by approximately 60 members of the public emphasis was given to the role of civil society and support groups and the need for funding to ensure that every whistleblower can receive a full range of support, including emotional support.

Currently less institutionalised forms of support to whistleblowers are provided by organisations including; Protect and WhistleblowersUK. Protect is a charity that provides a free, confidential and legally privileged advice line, consultancy services including training for managers, senior managers and board members to help strengthen their internal whistleblowing arrangements¹².

WhistleblowersUK is a not-for-profit organisation that provides practical, help, information and support for whistleblowers by phone, email and in person and assists whistleblowers to organise their case in court. They assist whistleblowers and organisations across all sectors, public or private in the UK and around the world. WhistleblowersUK are secretariat for the APPG for Whistleblowing and provide advice to governments around the world¹³.

Both organisations campaign for better whistleblower protection and legislative reform.

Other sector specific organisations like Banking Confidential¹⁴ and Compassion in Care¹⁵ provide specific help and support to whistleblowers from the financial services health and social care sectors. Other are beginning to emerge alongside organisations such as CAB (Citizens Advice Bureau) and the FRU (Free Representation Unit)¹⁶. The cost of advice means that the need for organisations providing free or low-cost assistance outstrips availability. There have been calls for all these organisations to be included on the list of prescribed persons.

¹² <https://www.pcaw.org.uk/>

¹³ <https://www.wbuk.org/>

¹⁴ <https://bankconfidential.com/>

¹⁵ <https://compassionincare.com/>

¹⁶ <http://www.thefru.org.uk/>

The shortcomings of the existing framework

Our analysis highlights some important shortcomings of the existing regulation and mechanisms. They can be summarised as follows:

Insufficient protections

- Retrospective remedies, such as litigation before employment tribunals, are insufficient and do not address the whistleblowing subject matter. Proactive and preventive remedies are required to minimise the risk of retaliation and abuse against whistleblowers.
- There are no mechanisms and protections for whistleblowers who do not meet the legal definition of 'workers', e.g. members of the public not employed by the organisations involved in the reported wrongdoing.
- The terms whistleblowing/whistleblowers are not expressly used, nor defined in the legislation. This can undermine whistleblower protection, as some of those who report wrongdoing might not realise, they are 'whistleblowers' and might not be aware of the protections available.
- PIDA provides a list of matters that can be reported by whistleblowers¹⁷ which is apparently in line with Transparency International's definition of whistleblowing (Transparency International, 2013: p. 4). The problem is that such list can be interpreted as exhaustive, meaning that it does not admit further inclusions, while the list set out by Transparency International is an open one, where whistleblowing is defined as the disclosure or reporting of wrongdoing 'including but not limited to' the subjects listed by PIDA (ibid., p. 4).

Fragmentation and complexity

- The UK regulatory framework of whistleblower protection is complicated, cumbersome, obsolete and fragmented. It:
 - o hinders public awareness of whistleblowing protections and mechanisms,
 - o unnecessarily multiplies the number of bodies and agencies dealing with whistleblower reports,
 - o compromises the sharing of good practices across different sectors,
 - o creates inhomogeneous systems of reporting across different sectors and different areas of the Country,
 - o eventually, allows corruption, illegality and wrongdoing to go unchallenged.
- The relevant regulation, such as ERA and PIDA or the Prescribed Persons Order 2014, is too technical and complicated to be understood by potential whistleblowers and is inadequately advertised or explained.

Lack of uniform framework across whistleblowing mechanisms

- There is no general obligation imposing on any public or private organisation the duty of adopting internal reporting mechanisms and safeguards. Nor is there an obligation for organisations to verify and investigate whistleblowers allegations and concerns. Such obligations exist only for specific sectors. As a result, many businesses and public bodies do not have in place any whistleblowing system whatsoever.

There is no official guidance on best practices related to internal whistleblowing processes and follow-up mechanisms. While some sectors, such as public health care and finance, are developing specific guidelines, it would be important to independently and critically evaluate the effectiveness and identify best practices so that they could be used to roll out across every sector.

- The absence of general obligations and guidance on internal whistleblowing mechanisms and safeguards can:
 - o Nullify the potentially beneficial effects of whistleblowing;
 - o Discourage whistleblowing;
 - o Facilitate retaliation;
 - o Hinder the development of an organisational culture of integrity, transparency and accountability, therefore, facilitating opportunities, motivation and mechanisms of normalisation of corrupt practices in business and public institutions (Pasculli, 2019)

Effectiveness of Prescribed Persons

- The designation of external 'prescribed persons' for the reporting of wrongdoing can provide a remedy to the lack of internal whistleblowing mechanisms. Nevertheless, the current list of prescribed persons is too long and diversified. As a consequence, responses can vary considerably.
- The response by some prescribed persons, such as the FCA, CQC and Ofsted is still ineffective. While MP's appear to struggle with the identification of these cases and the complexities involved in providing assistance through their case workers due to the enormous resources that they can consume.
- There is a lack of coordination and control of prescribed persons. Currently there is no supervisory body to regulate and evaluate the performance of the prescribed persons and the adequacy of their reporting mechanisms and protections.

¹⁷ Sec. 43B EPA 1996.

The wrong regulator.

"I contacted the (Regulator) to talk about my concerns. Their website encouraged the reporting of concerns, offering a specific email address for the purpose. I was later told that a disclosure to (this regulator) was not protected and only OfQual registered as such".

Key findings

- The UK regulatory framework of whistleblower protection is complicated, overly legalistic, cumbersome, obsolete and fragmented.
- The remedies provided by PIDA are mainly retrospective and largely not understood.
- A general obligation for public and private organisations to set up whistleblowing mechanisms and protections is missing.
- The definition of whistleblowing and whistleblowers is too narrow. As a consequence, the protections set by the law apply only to a limited number of citizens and does not properly reflect existing working practice.
- As a result of the excessive complexity and fragmentation of the regulatory frame work, there is little public knowledge or understanding of the existing legal protections for whistleblowers.
- There is a disconnect between what is understood to be and what actually is the role of the prescribed persons leading to confusion, mistrust on both sides and allowing crimes and other wrongdoing to escape scrutiny.
- Inadequate legal protections for whistleblowers help wrongdoing remain uncovered and hinder the processes to hold those responsible accountable. This facilitates and might even encourage further corruption. In other words, poor policies and poor laws become a cause of corruption and crime (Pasculli, 2017; 2019; forthcoming 2020).



5. Recommendations

New definitions

PIDA, while known as 'the whistleblower law' does not define the word whistleblower. The legal definition of whistleblower and whistleblowing and the matters that can be subject to protection under relevant legislation should be revised according to the most developed international standards. We propose using the (Transparency International (2013)) recommendations to develop proposals that include any harmful violation of integrity and ethics, even when this is not criminal or illegal. The focus should be on the harm (or risk of harm) to public interests caused by the misconduct, rather than on its legal qualification (cf. Savage, 2018: p. 16).

The definition of whistleblowers could be revised to include all members of the public. Alternatively, specific protections and reporting mechanisms for members of the public should be devised and include protection against retaliation.

Internal reporting mechanisms and protections

Only when they are properly heard and acted upon can whistleblower reports be beneficial for society and therefore business. Adequate law and policies should be designed, enacted and adopted to ensure that effective reporting can take place in every organisation. This process cannot be left to individual organisations who will cherry pick and interpret to suit themselves, it must be a mandatory process, drafted centrally and enshrined in law.

- **Legal obligation of whistleblowing mechanisms:** in accordance with recognised best practice the law should:
 - a. establish accessible and reliable channels and processes to report wrongdoing;
 - b. ensure thorough, timely and independent investigations of whistleblower disclosures;
 - c. adopt internal processes to take any measure required to remedy or prevent any wrongdoing;
 - d. arrange for robust internal mechanisms of protection from any form of retaliation.

These obligations should cover all sizes of organisations, although they must be proportionate and reflect the ability of especially small and medium sized businesses to meet these requirements

- **National general guidelines:** The law should define the essential elements of internal whistleblowing mechanisms and protections, while national guidelines should define more in detail the common features that such mechanisms should have in every sector. These should be published online and should be subject to scheduled periodic reviews and revised to update them to the best practices available.
- **Sector-specific guidelines** should be published as a complement to national guidelines to provide guidance on how to tailor whistleblowing mechanisms and protections to each relevant public or private sector (broadcasting and communication, finance, education, healthcare etc.).

Whistleblower suggestions for improvements

Whistleblowers put forward a range of ideas and suggestions and called for a thorough review and overhaul of existing legislation to include the following:

- **An Independent office, regulator or ombudsman with regional centres.**
 - Centre of expertise across all sectors.
 - Independent investigations by independent investigators.
 - Free information and legally privileged advice.
 - Kitemark or ISO standards to set standards and rate organisational response to concerns.
 - Provision of compulsory and refresher training to organisations & employees.
 - Job Protection or ringfencing and career monitoring.
 - Identification of trends and escalation to government or relevant other authority.
 - Prescribed persons who know and execute their responsibility.
 - Anonymous and confidential reporting line.
 - Appointment of whistleblowers as whistleblower champions on boards.
 - Oversight of settlement agreements.
 - State funded counselling to whistleblowers and their families.
- **Legal Protections**
 - Formal consequences for retaliation or failing to abide by regulations.
 - Formal consequences for failing to follow internal whistleblowing processes.
 - State funded accredited lawyers to represent whistleblowers on behalf of the state.
 - Immediate and meaningful penalties for those who retaliate against whistleblowers.
 - Reverse the burden of proof.
 - Banning of Non-Disclosure Agreements (NDAs).
 - Extension of whistleblower protection to every citizen.
- **Equality of Arms**
 - Regulators to sue employers on behalf of whistleblowers.
 - Compensation that addresses whistleblowers actual costs and losses.
 - Legal Aid for whistleblowers.
 - Full disclosure of spend by public sector organisations fighting whistleblower cases.
 - Capped spend for both sides to the amount available to the whistleblower.
 - Meaningful compensation for whistleblowers.
- **Specialist Independent Tribunals**
 - Specialist judges trained and experienced judges who are qualified in civil, employment and criminal law to hear whistleblowing cases.
 - Introduction and award of punitive damages.
 - Referral of cases to regulators and law enforcement.
 - Enforced disclosure of all disclosable information & administration of severe penalties for those who fail to comply.

Independent Office for the Whistleblower

Following Transparency International's principles for whistleblower legislation (Transparency International, 2013: p. 11), a National Independent Authority for Whistleblowing, provided with appropriate resources and capacity, should be established to:

- Draft and publish national general guidelines and sector-specific guidelines on whistleblowing mechanisms and protections;
- Recommend measures, issue guidance and relevant information to prescribed persons and other agencies involved in whistleblowing and related processes;
- Monitor the activities of prescribed persons and other agencies involved in whistleblowing and related processes;
- Provide support, advice and training to members of the public, public institutions and private organisations on whistleblowing mechanisms and protections;
- Act as a last-resort centralised prescribed person:
 - to receive whistleblower disclosures when it is not possible or convenient to address them to the employer or other prescribed people or bodies or
 - to redirect whistleblower disclosures to the competent prescribed person when it is appropriate to do so.
- Receive and investigate complaints of retaliation and improper investigations of whistleblower disclosure;
- Monitor and review whistleblower regulatory and policy frameworks;
- Promote public awareness, understanding and acceptance of whistleblowing and of the related regulatory and policy frameworks.
- Detect and prevent vexatious and malicious reporting and prevent the abuse of whistleblowing protections.
- Provide:
 - independent investigators
 - mediation
 - and set rates for legal representation by accredited practitioners.
- Monitor whistleblowing cases to ensure all protections are in place and monitor the employment situation of whistleblowers to prevent or detect any retaliation;
- Commission and conduct research and collect annual data on whistleblowing, also through surveys and interviews with whistleblowers, prescribed persons, employers and any other relevant stakeholder.

This office would provide the independence and coordination that many respondents to our call of evidence have asked for.¹⁸

The new Office for the Whistleblower could be accommodated within the Home Office or the Ministry of Justice and could be funded through fines and levies but more importantly from the savings that will be realised by early intervention avoiding costly litigation and settlements;

¹⁸ <https://hansard.parliament.uk/commons/2019-07-03/debates/AA9B34FC-1CA3-4A24-9EEB-E37F-6DE8EBF2/Whistleblowing>

Better regulatory coordination

The laws and regulations concerning whistleblowing protection should be thoroughly revised and reformed in a more coordinated and uniform framework.

- The effectiveness of PIDA should be thoroughly reviewed and assessed and PIDA should be either reformed or replaced by a new statute to incorporate all the above recommendations;
- The new regulatory framework should include every best practice adopted by other jurisdiction and proven to be effective to ensure the highest possible regulatory standards;
- The new regulatory framework should include every best practice adopted by other jurisdiction and proven to be effective to ensure the highest possible regulatory standards;
- The new regulatory framework should be subjected to constant assessment and evaluation in order for it to be kept constantly up-to-date;
- The new regulatory framework must be properly publicised and properly explained to the public. A leading role in this should be played by the Independent Office for the Whistleblower.

APPG Recommendations - The 10 Point Plan

We have summarised our recommendations into a 10-point plan to take account of the many overlapping issues and incorporate international best practice.

1. The term 'whistleblower' must be defined in law.
2. The legal definition of whistleblowing should be revised and include any harmful violation of integrity and ethics, even when not criminal or illegal. The focus should be on the harm (or risk of harm) to public.
3. Whistleblower protection should include all members of the public and include protection against retaliation.
4. Mandatory Internal and external reporting mechanisms and protections should be adopted to include meaningful penalties for those who fail to meet the requirements across all sectors to include those currently outside of the regulations, e.g. journalists and clergy.
5. A further review of compensation awarded by employment tribunals.
6. An urgent review of the barriers to justice including access to legal aid and an introduction of measures to tackle inequality of arms including protection against costs.
7. Non-disclosure agreements in whistleblowing cases must be banned.
8. Better regulatory framework and coordination to include the introduction of international best practice and a public awareness campaign.
9. There should be an urgent review of the prescribed persons list, a more comprehensive guide to their role and measures put in place to ensure that they fulfil their responsibilities.
10. The introduction and establishment of an Independent Office for the Whistleblower with real powers allowing it to; set standards, enforce the protections, and administer meaningful penalties to not only organisations but individuals within organisations.

6. Conclusion

The UK remains a leading authority on whistleblowing legislation and even allowing for the shortcomings of PIDA identified in this report we must not lose sight of the fact that many other countries have modelled their law on ours.

Twenty years after the introduction of PIDA, it is time for a radical overhaul to provide legislation that supports our citizens in the 21st Century workplace.

The aim of the APPG was to put whistleblowers at the top of the agenda and review existing legislation proposing changes that would be both gold standard and world class. Having received input from over 400 people in response to our call for evidence we have concluded that PIDA has not lived up to expectations and has failed to provide adequate and comprehensive protection to whistleblowers or the public.

The cost of whistleblowing to society amounts to more than the figure on the bottom of a balance sheet. We can estimate, based on the evidence provided by whistleblowers that the annual cost exceeds many millions every year and presents a substantial cost to the life and security of our citizens. Every Whistleblower headline exposes another failure of existing legislation and as we look to the future, we must ensure that the UK is a secure and ethical place to do business and to work.

We conclude that there is a case for the creation of an Independent Office for the Whistleblower to provide an agile and effective response to the issues raised by whistleblowers and to protect the public, and the whistleblowers who raise the alarm. Furthermore, we conclude that there is a case to extend the scope of legislation to include all citizens.

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Appendix 1: APPG Workplan

	Agenda Item	Decision/Proposal	Actions Arising	Risk/Issues
1	Setting up APPG	Draft/Agree Aim & Objectives Elect Officers & Appoint Secretariat Complete Registration Set dates for meetings	Notify APPG office Update register Create data base	The term whistleblower
2	Agree TOR	Roles & Responsibilities Com's & Strategy Work Programme, budget/Funding	Identification/recruitment of supporters Agree policies to safeguard WB's Build website	Identifying funding Attracting assistance with the relevant skills and time
3	Call for Evidence			
	Whistleblowers Public Sector Regulators Investigatory Bodies Prof.Bodies Judiciary Academics	Design and agree questioning sets Confidentiality agreements /notification	Identify witnesses Invitations- live evidence MP Briefings Diary check Notetakers & Room booking Notify APPG office Identify themes arising	Risk assessments Support services Collateral use rule NDAs
4	Prescribed Persons			
	MPs Journalists Lawyers Protect Regulators Police	Agree questioning sets Confidentiality	ID witnesses & experts Invitations Briefings for witnesses & Members Diaries, note taker, room	
5	Best Practice Review			
i	All countries with legislation	International comparison	IBA summary update	
ii	Academic research	All Institutes	Review of findings & commissioning of further research Assistance with funding applications	
iii	Business review & self reports	e.g. Tesco, Monsanto, Banks, National Guardians, WB Champions	Develop stakeholders	
6	Whistleblower Protection	Identify opportunities to promote WB protection & introduce legislative change e.g. Vexatious complaints Retaliation Sanctions Ring fencing employee rights	Draft legislation & amendments	Expertise & keeping up to date with developments
7	Recognition & Compensation	Personal cost of WBing – is it right to place the social and economic burden on the whistleblower? Blueprint for change, who owns and who leads? What form should recognition take? Who should administer & arbitrate? Opposing opinions – public v private sector	Managing volumes of evidence Building resource and capacity	Meeting deadlines

8	Reporting			
	3 Reports spaced over 3 years	Report 1 – the voice of the whistleblower Report 2 – Prescribed persons and professional reps/bodies Report 3 – MP's, employers and others not covered	Managing volumes of evidence Building resource and capacity	Meeting deadlines



All Party Parliamentary Group

Whistleblowing