

PUBLICLY AVAILABLE SPECIFICATION

PAS 1998:2008

Whistleblowing Arrangements Code of Practice



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PAS 1998:2008

Whistleblowing arrangements

Code of practice



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Foreword

This Publicly Available Specification (PAS) has been developed by Public Concern at Work – the independent authority on public interest whistleblowing – in collaboration with the British Standards Institution (BSI). Acknowledgement is given to the following organizations that were consulted in the development of this specification:

Steering Committee

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Ann Craft Trust	Institute of Chartered Accountants in England & Wales
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Clan Care	Lloyds TSB
Collins Green	National Consumer Council
Committee on Standards in Public Life	NHS Employers
Confederation of British Industry	Prudential
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Status

This Publicly Available Specification does not purport to include all the necessary provisions of a contract. Users are responsible for its correct application.

Compliance with this Publicly Available Specification does not of itself confer immunity from legal obligations.

This Publicly Available Specification is not to be regarded as a British Standard.

Review

BSI reserves the right to withdraw or amend this PAS on receipt of authoritative advice that it is appropriate to do so. This PAS will be reviewed at intervals not exceeding two years, and any amendments arising from the review will be published as an amended PAS and publicized in *Update Standards*.

Comments on the content, value and development of this PAS should be sent to Customer Services. Tel: +44 (0)20 8996 9001.

0 Introduction

0.1 What is whistleblowing?

Whistleblowing is the popular term used when someone who works in or for an organization (referred to in this document as an “employee”) raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organization’s own reputation.

As an early warning system, whistleblowing can help alert employers to risks such as:

- a danger in the workplace;
- fraud in, on or by the organization;
- mis-selling or price fixing;
- offering, taking or soliciting bribes;
- dumping damaging material in the environment;
- misreporting performance data;
- medical negligence in a hospital;
- supplying food unfit for consumption; or
- wanton neglect of people in care.

0.2 Why organizations encourage whistleblowing

Every organization faces the risk that something will go badly wrong and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises, the first people to know of the risk will usually be those who work in or for the organization. Yet while these are the people best placed to raise the concern before damage is done, they often fear they have the most to lose if they do speak up.

Research for the Institute of Business Ethics¹ has shown that while one in four employees are aware of misconduct at work, more than half (52%) of those stay silent. Organizations that can overcome this culture of silence by encouraging openness are likely to benefit in a number of ways. An organization where the value of open whistleblowing is recognized will be better able to:

- deter wrongdoing;
- pick up potential problems early;

¹ Speak Up Procedures (2007), Institute of Business Ethics.

- enable critical information to get to the people who need to know and can address the issue;
- demonstrate to stakeholders, regulators and the courts that they are accountable and well managed;
- reduce the risk of anonymous and malicious leaks;
- minimize costs and compensation from accidents, investigations, litigation and regulatory inspections; and
- maintain and enhance its reputation.

The main reason enlightened organizations implement whistleblowing arrangements is that they recognize that it makes good business sense. On the other hand, those few organizations that deliberately engage in wrongdoing to boost profits or that routinely flout the law will not want to encourage whistleblowing.

“A whistleblowing policy will improve the trust and confidence among employees by creating what one respondent called a “culture of honesty and openness” by encouraging employees to report internally. This was seen as “good for the morale of employees”, giving them confidence to come forward with concerns. Senior managers will be the first to know of any issues that they may need to address. These can be dealt with internally. This also means that the costs of investigating any problems, such as fraud, are reduced as problems can be caught quickly. The management time and resources saved mean that whistleblowing procedures are a cost-effective early warning system for firms”.

**Financial Services Authority
Whistleblowing CP101 (2002) (feedback), page 26**

0.3 The key elements of effective arrangements

In the context of good governance, the Committee on Standards in Public Life, whose work has helped inform and influence practice on whistleblowing across and beyond the public sector, has observed that:

“The essence of a whistleblowing system is that staff should be able to by-pass the direct management line because that may well be the area about which their concerns arise, and that they should be able to go outside the organisation if they feel the overall management is engaged in an improper course.”

**Committee on Standards in Public Life
Third Report (1996), page 48**

The Committee has recommended that good whistleblowing arrangements are ones that:

- provide examples distinguishing whistleblowing from grievances;
- give employees the option to raise a whistleblowing concern outside of line management;
- provide access to an independent helpline offering confidential advice;
- offer employees a right to confidentiality when raising their concern;
- explain when and how a concern may safely be raised outside the organization (e.g. with a regulator); and
- provide that it is a disciplinary matter (a) to victimize a bona fide whistleblower, and (b) for someone to maliciously make a false allegation.

To be effective, the Committee has stated that it is important those at the top of the organization show leadership on this issue and ensure that the message that it is accepted and acceptable to raise a whistleblowing concern is promoted regularly.

0.4 The risks of ineffective arrangements

Without clear arrangements which offer employees safe ways to raise a whistleblowing concern, it is difficult for an organization to effectively manage the risks it faces. Unless employees have confidence in the arrangements, they are likely to stay silent where there is a threat, perhaps even a grave one, to the employer, its stakeholders or the wider public interest. Such silence denies the organization the opportunity to deal with a potentially serious problem before it causes real damage. The costs of such a missed opportunity can be great: fines, compensation, higher insurance premiums, regulatory investigation, lost jobs, lost profits and even lost lives. Where there is a serious accident or disaster and it turns out that the organization had discouraged, ignored or suppressed whistleblowing concerns, the organization's reputation and very existence can be in danger.

Lastly, without effective whistleblowing arrangements, the first an organization might hear of a potentially serious problem in its business is when an employee has raised the matter with a regulator, a lawyer or the media.

0.5 Whistleblowing concerns as distinct from grievances

Whistleblowing is where an employee has a concern about danger or illegality that has a public interest aspect to it: usually because it threatens others (e.g. customers, shareholders or the public). A grievance or private complaint is, by contrast, a dispute about the employee's own employment position and has no additional public interest dimension. Unless the organization's arrangements make this distinction clear, it cannot

assume or expect that its employees will understand the difference and act accordingly.

Inevitably, there can be occasions where a whistleblowing issue will be entangled within a grievance, for example where an employee complains about being made to drive when tired or to use a dangerous vehicle. Another example is where the underlying whistleblowing concern has existed for some time but, as nobody has felt able to raise it, the working environment has degenerated and led to a private complaint. These are two situations where organizations can reap benefits if they encourage their employees to obtain advice from an independent helpline. Evidence shows that organizations which work with a recognized union can also benefit in such situations.

For these reasons, it is important that the organization is clear on the type of concerns it wants staff to raise under its whistleblowing policy as distinct from the type of complaints it wants raised under its grievance procedure. Where the two are entangled, the organization will need to consider the facts, assess the risks and decide how it will best deal with the issue in hand. In doing this, it is helpful if the organization bears in mind that it could be asked to explain how it arrived at any decision. This could occur if the issue ends up before a regulator, a tribunal or a court (be it following a disaster, customers' complaints, a claim under a whistleblowing law or a lawsuit from shareholders or consumers) or in the media.

0.6 Won't a policy be a charter for troublemakers?

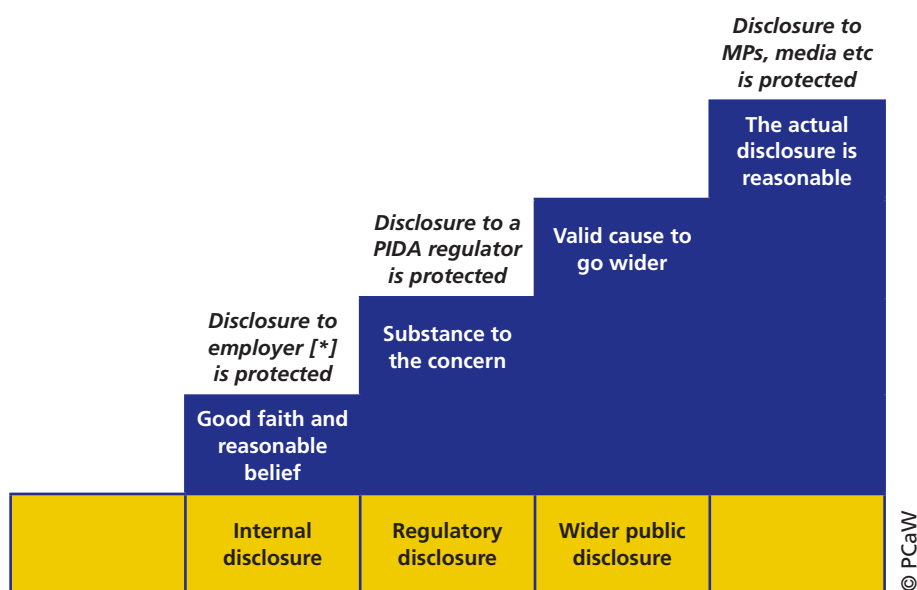
No. Good whistleblowing arrangements will have the opposite effect by providing the great majority of the workforce with a safe alternative to silence. If, however, an organization's approach is to treat whistleblowers as troublemakers, the chances are that (a) any troublemakers among its workforce will assume the policy has been designed for them, and (b) the workplace culture will be one where troublemakers can flourish. Rather than have a legalistic policy, it is much better to develop and write it for the majority of staff: for people who might discuss their concern with a family member or close friend but who, in the absence of an open workplace culture, would be unlikely to have the confidence to raise it with their manager or someone senior in the organization.

0.7 What does the law say?

The Public Interest Disclosure Act (PIDA) is known in the UK as the whistleblowing law. The Act provides that employers should not victimize any worker who blows the whistle in one of the ways set out in the legislation. While PIDA provides protection against victimization for whistleblowers, the Committee on Standards in Public Life has observed that: *"The statutory framework (Public Interest Disclosure Act 1998) is a helpful driver but must be recognised as a 'backstop' which can provide redress when things*

go wrong and not as a substitute for cultures that actively encourage the challenge of inappropriate behaviour.”²

It is important to stress that this PAS is not a guide to the Public Interest Disclosure Act or how to comply with it. However, as the legislation provides that wider public disclosures (including to the media) are more readily protected where there are no or ineffective whistleblowing arrangements, this is mentioned where relevant. Additionally, the stepped disclosure regime in PIDA helps to demonstrate the relationship between whistleblowing and accountability. It was this scheme which prompted the late Lord Nolan, speaking in Parliament, to praise PIDA for *“so skilfully achieving the essential but delicate balance between the public interest and the interests of employers”*.³



* or to the liable third party or – if from a worker in a quango or NHS – to Govt. Minister

Figure 1 – The Public Interest Disclosure Act (PIDA) staircase

As illustrated in Figure 1, PIDA most readily provides protection where the employee reasonably suspects there is wrongdoing and makes an internal disclosure (raises the matter within the organization) in good faith. As to external disclosures, Figure 1 shows that disclosures to prescribed regulators (the second step) are protected where the employee reasonably believes that the information and any allegation in it are substantially true. The third and fourth steps relate to wider disclosures (to an MP or the media, for example), and these can only be protected where there is justifiable cause for going wider and where the particular disclosure is reasonable.

² Getting the Balance Right, CSPL, (2005) para 4.46.

³ Hansard House of Lords, 5 June 1998, col. 614.

It is important to realize that while it is safest for the employee to go one step at a time and only as far as necessary to have the concern properly addressed, PIDA does not state that the employee has to take one step at a time. As with any staircase, there may be occasions where there is good reason to take two or more steps at a time.

Examples of whistleblowing that can be protected without taking each step at a time are:

- *a disclosure to a prescribed regulator* which can be protected whether or not the concern has been raised internally;
- *a disclosure made straight to the media* where the organization has a record of ignoring, discouraging or suppressing whistleblowing concerns.

0.8 Are organizations required to have a policy?

There is no statutory requirement in the Public Interest Disclosure Act for organizations to have a whistleblowing policy.

The Government expects public bodies to have a policy in place and the whistleblowing schemes in local authorities and NHS bodies in England are assessed regularly as part of their external audit and review.⁴ Under the Combined Code on Corporate Governance, companies listed in the UK are obliged to have whistleblowing arrangements or explain why they do not, while companies listed in the US are required to have whistleblowing arrangements under the Sarbanes-Oxley Act.

It should also be noted that, under PIDA, the adequacy of an organization's whistleblowing arrangements is one of the factors that tribunals and courts look at when they consider whether a wider public disclosure (say to the media, an MP or a consumer or citizen group) is protected under the legislation.

Finally, and importantly, regulators and the courts are increasingly looking at the adequacy of whistleblowing and other risk management arrangements to determine whether an offence has been committed by an organization under regulatory or criminal laws, for example misconduct by a financial firm or corporate manslaughter. The efficacy of the arrangements is also a factor that the courts and regulators consider when determining the level of fine or penalty.

0.9 What about small organizations?

A small organization's whistleblowing arrangements are best determined by its structure, its culture and the nature of the risks it faces. There is no "one size fits all" approach to this issue. For many small organizations,

⁴ See the White Papers *The Governance of Public Bodies* (1997 Cm 3557, page 43) and *Response on Standards in Public Life* (2005 Cm 6723, page 19).

where the person in charge of the organization knows the workforce by name, there will often be no need to introduce a procedural or complicated whistleblowing policy. Rather, in such organizations, it will be enough if those in charge give an unambiguous statement that it is safe and accepted for staff to speak up if they have a whistleblowing concern and that employees are reminded of this and given an opportunity to discuss the arrangements at staff meetings annually.

In small organizations there will often be additional reasons to make clear:

- a) the difference between a whistleblowing concern and a private complaint (see **0.5**);
- b) that employees and managers understand their role and that managers should not feel undermined if they are by-passed (see **3.3**);
- c) the difficulty of maintaining confidentiality (see **3.5.3**);
- d) the benefits of an independent helpline (see **3.7**); and
- e) how an employee can make an external disclosure (see **4.7**).

1 Scope and applicability

This Publicly Available Specification (PAS) sets out good practice for the introduction, revision, operation and review of effective whistleblowing arrangements. With the increasing emphasis on the role that whistleblowing plays *“both as an instrument of good governance and a manifestation of a more open culture”*,⁵ this code of practice has been developed to be of assistance to organizations across the private, public and voluntary sectors. The recommendations and guidance in this PAS are of particular relevance to public bodies, listed companies and organizations (e.g. in the health and care sectors) where there is legislative or regulatory expectation that effective whistleblowing arrangements are in place. Its application to small organizations is considered in **0.9**.

This PAS is informed but not dictated by the UK whistleblowing law, the Public Interest Disclosure Act.⁶

⁵ Committee on Standards in Public Life, Tenth Report *“Getting the Balance Right”* (2005), page 92.

⁶ Public Concern at Work, which developed this PAS in collaboration with BSI, promoted the UK legislation and is an authority on whistleblowing – see www.pcaw.co.uk.

2 Terms and definitions

For the purposes of this Publicly Available Specification, the following terms and definitions apply.

2.1 whistleblowing concern

reasonable and honest suspicion an employee has about a possible fraud, danger or other serious risk that threatens customers, colleagues, shareholders, the public or the organization's own reputation

2.2 employee

someone who works in or for an organization

2.3 open whistleblowing

where the employee openly raises the whistleblowing concern and does not request confidentiality

2.4 confidentiality

where the employee's name is known but will not be disclosed without their consent, unless required by law

2.5 designated officer

senior officer whom the organization designates to receive whistleblowing concerns

2.6 internal hotline

facility within an organization to which an employee can report, normally by telephone, email or web-based, a whistleblowing concern to a designated officer or function or someone senior in the organization

2.7 helpline

independent service offering confidential advice to employees on whether and how they can raise a whistleblowing concern internally or externally

2.8 commercial hotline

external reporting facility similar to an internal hotline that passes reports back to a senior or designated officer in the organization

2.9 external disclosure

raising a whistleblowing concern externally with a regulator or independent supervisory body, or as appropriate the police, MPs, consumer/citizen groups or the media

2.10 tip-off

indication of an otherwise unknown fact that can then be evaluated or corroborated by independent evidence

2.11 anonymity

where the employee does not identify him or herself at any stage to anyone

3 Key issues to consider

3.1 Does the policy have to use the word “whistleblowing”?

In the past the word “*whistleblowing*” has had negative connotations and, though this is changing, many organizations still prefer to avoid using the term. This is particularly the case where organizations operate in countries or cultures where whistleblowing is still confused with the anonymous informing (often on neighbours) that occurred and occurs under totalitarian regimes. Accordingly, some organizations – particularly those which operate overseas – prefer not to use “*whistleblowing*” to describe their policy or arrangements and instead use terms like “*speaking up*” or “*raising concerns*” or include the practical arrangements as part of ethics, compliance or disclosure policies.

3.2 Who should take the lead for the arrangements?

When an organization introduces or reviews its whistleblowing arrangements, its Board/governing body or audit committee should consider which function is to lead on the arrangements.

For listed companies, under both the UK Combined Code on Corporate Governance and the US Sarbanes-Oxley Act, audit committees (which are generally made up of non-executive directors) should oversee how the whistleblowing arrangements operate.

Depending on the nature of the business and the size of the organization, overall responsibility for whistleblowing should rest with one of the following people or teams: the Board, CEO, group secretary, legal⁷ or finance. (See **0.9** for guidance for small organizations.)

Day-to-day responsibility will often rest with internal audit, compliance or human resources (HR). Whichever of these is given responsibility, the other two functions should be involved in or consulted on the arrangements. Practical assistance and valuable input can also be obtained from communications, corporate governance, legal, security and supply functions.

HR should play a key role in communicating and supporting the policy. Where they are also given a role in receiving concerns, they should sift and refer whistleblowing concerns on to the appropriate unit rather than investigate the alleged wrongdoing themselves. This ensures that where, for example, a whistleblowing concern is raised about an environmental, safety or security risk, it is the people with the necessary technical skills and experience who handle any substantive investigation.

⁷ The Institute of Chartered Secretaries (www.icsa.org.uk) and the Law Society's Commerce & Industry Group (www.cigroup.org.uk) have respectively produced guidance for company secretaries and in-house lawyers on whistleblowing.

This clear division of function also helps separate the message from the messenger and leaves HR free to deal with any disciplinary or communication issues that might arise.

3.3 The role of management

The Board should consider the role of senior, middle and line management in the arrangements.

As whistleblowing can often involve an employee going above the immediate line manager, some organizations make the mistake of assuming that this should always be the case. The downsides to requiring or directing that all concerns be raised with someone senior to their line manager are that (a) it is both undesirable and impractical to expect employees to bypass their line manager whenever they identify a safety, financial or other risk, and (b) it could alienate those in the management line.

Organizations should ensure that line management will buy in to the whistleblowing scheme as, without their support and involvement, it will be an expensive and challenging task to keep the arrangements alive across the organization. Rather than develop a whistleblowing scheme which is a substitute for the management line, it is both more realistic and more effective to position and promote it as a safety net both for management and the organization.

“The provision of the means for all employees to raise ethical concerns with confidence outside the management line is an important element in any programme to ensure business conduct in a global company. However, the sign of an open, healthy ethical organisational culture is when ethical concerns can be raised, discussed and resolved in line with the Company’s values, principles and standards within the workplace and management line.”

Wolf Committee (2008)

Business ethics, global companies and the defence industry, page 50

Good arrangements should give the clear message that if an employee has a whistleblowing concern the organization hopes he or she will feel able to raise it with their line manager. Where the employee does not feel this is an option or a sensible course (for example because the issue may implicate the manager), or if the concern has been raised locally but remains unaddressed, the message should be that the concern can safely be raised at a higher level.

3.4 External oversight/regulators

The role of external oversight is important in reassuring employees and other stakeholders that the organization intends to deal with any mal-practice properly and that it is willing to demonstrate this.

The organization's policy should state that, while it is hoped concerns will be raised internally, the organization recognizes that employees can also contact an appropriate external body. Some organizations use a stronger message, stating that they would rather employees went to a regulator or the police than stayed silent.

An express provision in the policy for external disclosures which is not surrounded by caveats and conditions should be included, as it will help ensure that:

- managers concentrate on the substantive issue when a concern is raised with them;
- a concern is less likely to degenerate into a protracted personal battle; and
- regulators and other stakeholders have confidence in the arrangements and the integrity of the organization.

3.5 Whistleblowing rather than anonymous informing

3.5.1 Prerequisite

It is essential that the issue of how a whistleblowing concern can best be voiced is covered clearly in the policy and in any supporting briefings or Frequently Asked Questions (FAQs).

3.5.2 Open whistleblowing

The best culture is where an employee who has a whistleblowing concern feels it is safe and acceptable to raise the concern openly (where those involved know what the issue is and who has raised it).

This openness makes it easier for the organization to assess the issues, to work out how to investigate the matter, to get more information, to understand any hidden agendas, to avoid witch hunts and to minimize the risk of a sense of mistrust or paranoia developing.

3.5.3 Raising a concern confidentially

While openness is the ideal, in practice some staff will have good reason to feel anxious about identifying themselves at the outset and so a whistleblowing policy should ensure they can also approach someone confidentially. This means that their name will not be revealed without their consent, unless required by law. While the default should be that concerns are raised openly, some organizations provide that where a concern is raised beyond line management – with an internal hotline or a designated officer – the assumption then is that the contact will be made in confidence.

Where confidentiality is promised, the organization should make clear to the employee that, even though his or her name will not be mentioned, it cannot guarantee that others will not try to deduce (correctly

or otherwise) their identity. Where the employee has already voiced the concern to colleagues or their manager, it is worth pointing out that others may assume they are the source of any disclosure made higher up in the organization. This is another example of why open whistleblowing is the best approach. Often when an employee understands this, he or she will say that they do not want to invoke or retain confidentiality and will raise the concern openly.

3.5.4 Anonymous informing

Whistleblowing policies should not actively encourage or solicit employees to raise concerns anonymously (where the employee does not identify him or herself at any stage to anyone).

This is because anonymity makes it difficult to investigate the concern and to deter misuse and impossible to liaise with the employee (to seek clarification or more information, to assure them or to give them feedback). As an example, in the case of Enron, the US company which collapsed in one of the biggest financial scandals in corporate history, the company had a highly rated anonymous reporting scheme which, though it was regularly promoted to staff, proved ineffective.⁸

For the reasons explained in **3.6**, some organizations are required under US legislation to include an anonymous option in their whistleblowing arrangements. Where this is the case, the organization should note that the assurances it offers under the policy on feedback (**4.6**) and protection from reprisals (**4.8**) depend on it knowing the identity of the employee.

Whether or not an organization enables or promotes a route for anonymous reports, it may receive information in this way in any event. Where this happens, it should assess the information and establish whether it is possible or prudent to follow it up. A policy of automatically ignoring all anonymous reports is not recommended as it is unlikely to be in the organization's best interests.

3.6 Anonymity and data protection

Companies that are listed in the US have to have a facility that allows employees to submit anonymous reports either through an anonymous email function, answering machine, mail box or via a commercial hotline.

This is necessary to comply with US corporate governance legislation, the Sarbanes-Oxley Act, section 301. This requirement should be treated with particular care by organizations based or operating in Europe as the EU data protection authorities have issued Guidance on such schemes which

⁸ The Emperor's New Clothes, May 2004, interview with Enron whistleblower and Time magazine person of the year in 2003, Sherron Watkins: www.asaecenter.org.

some organizations have not found easy to reconcile with the US legislation. The EU authorities have observed that:

“As far as data protection rules are concerned, anonymous reports raise a specific problem with regard to the essential requirement that personal data should only be collected fairly. As a rule, the Working Party considers that only identified reports should be communicated through whistleblowing schemes in order to satisfy this requirement...(and) that whistleblowing schemes should be built in such a way that they do not encourage anonymous reporting as the usual way to make a complaint. In particular, companies should not advertise the fact that anonymous reports may be made through the scheme.”

Article 29
Guidance on Whistleblowing Schemes (2006)
WP117, para.11⁹

Where a whistleblowing scheme actively promotes anonymous reporting, it should take into account the additional Guidance from the EU data protection authorities. This Guidance covers prior communications about the scheme, the security of information, the privacy rights of those involved and data retention. As to data retention, the presumption is that personal data processed through a scheme that promotes anonymous whistleblowing should be deleted or archived within two months of conclusion of the investigation unless it has led to disciplinary or legal proceedings.

NOTE *The EU data protection authorities have confirmed that the additional obligations in their Guidance are not intended to apply to whistleblowing schemes – such as those described in this PAS – that do not promote anonymous reporting and that build on existing management, audit and compliance controls.¹⁰ Please note that the type of whistleblowing arrangements promoted here will still need to comply with ordinary data protection legislation.*

Companies obliged to comply with both EU and US legislation may decide either (a) to operate a scheme that is built on open and confidential whistleblowing as described in this PAS while additionally providing an anonymous mail box or phone line, or (b) to run one scheme but with additional safeguards and procedures for handling anonymous reports. Further information can be obtained from the data protection authorities, Public Concern at Work or legal advisers.

⁹ http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2006/wp117_en.pdf. See also http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2006-others_en.htm.

¹⁰ Correspondence with CNIL (02/06) and Article 29 (03/06 and 12/07). The UK data protection authority, the ICO, says that, in the light of PIDA, its main concern is with schemes that actively encourage anonymous reporting (04/08). See correspondence at www.pcaw.co.uk/policy/dp.htm.

3.7 Helplines

Organizations should tell employees how to obtain free confidential advice from an independent helpline on whether and how to raise a concern. As the purpose of a helpline is to provide a safe haven where the employee can confidentially discuss whether and how best to raise a whistleblowing concern, the information given and advice provided on a helpline are confidential between the helpline provider and the employee. Accordingly, unlike a hotline, information given to a helpline will not constitute legal notification to the employer.

The helpline provider will try and establish that there are safe and constructive ways to raise a whistleblowing concern internally and guide the employee on how best to communicate the concern clearly. The advice it offers will not be restricted to passing the information back to a particular contact in the employee's organization. Experience shows that in almost all cases where someone seeks advice from a helpline they will go on to raise any significant concern formally with the organization in a constructive way. Where the employee remains unsure or unwilling to do so him or herself, a helpline can pass on specific information to the organization but will only do so with the consent of the employee.

COMMENTARY ON 3.7 *Referring employees to an independent helpline is recommended by the Committee on Standards in Public Life, the Financial Services Authority and the Institute of Chartered Accountants for England & Wales. Examples include the helpline run by Public Concern at Work, a workplace chaplain, an ombudsman¹¹ or a union's legal advice line.*

3.8 Commercial hotlines

Organizations may commission a commercial hotline to which an employee can report a whistleblowing concern (often to multilingual operators available 24 hours a day) which will then pass information back to a designated officer or someone senior in the organization. Some external companies offer investigations as part of their service and some also encourage employees to report on private complaints. The additional data protection obligations under the EU Guidance (see **3.6**) normally apply to commercial hotlines because they advertise and encourage anonymous reporting. Wherever the commercial hotline is operated, contractual arrangements will be required to safeguard and make lawful the transfer of personal data. This poses additional considerations where the commercial hotline is based outside of the EU.

Organizations that consider using commercial hotlines tend to be those that operate in several countries, time zones and languages; those where there has been a serious loss of confidence in the management; or those which are subject to the US Sarbanes-Oxley legislation.

¹¹ See for example the ombudsman at UTC – www.utc.com.

3.9 Should employees be required to blow the whistle?

Organizations should not make it a requirement that employees blow the whistle as such a duty is unlikely to bolster staff confidence in the arrangements or help foster or embed a more open and accountable culture. If the organization decides itself to make whistleblowing a duty then the law is likely to say that it is unfair if that duty is not enforced consistently. This would likely mean that whenever an employee does correctly blow the whistle, the organization would be expected to see if there are colleagues who have failed to do so and consider taking action against them. Finally, such a duty is difficult to operate in a pragmatic way as some staff may feel obliged to report each and every infraction they see or suspect.

There are some statutory obligations on certain employees to report specific concerns. Examples include duties under the Proceeds of Crime Act 2002 on money laundering, on pension fund trustees under the Pension Act 2004 and on “approved persons” under the financial services legislation. Where such duties exist, they should be made clear to the specific staff involved and, if necessary, be dealt with in a distinct policy.

3.10 Bullying and discrimination issues

Where an employee claims s/he is being bullied or discriminated against, the organization should use the policy designed for bullying or discrimination or, if the organization does not have one, its grievance procedure.¹² Where an employee is concerned about the way a colleague is being treated, experience shows that whistleblowing arrangements are not well suited to concerns which involve specific allegations about bullying or discrimination. It is preferable in such cases that the victim is encouraged to raise the matter through the appropriate policy and to seek help from a union or specialist charity.

NOTE *It is extremely difficult for an organization to take any lawful action on the ground that an individual has been bullied or harassed without the victim's evidence. In addition it might be that the individual has decided to deal with the matter in his or her own way, and might be taken aback or affronted that a colleague has formally raised the issue on their behalf without asking them first.*

Notwithstanding the above, where an employee does use a whistleblowing policy to make a general allegation about bullying or harassment in a particular department or unit, it can be sensible to treat this as a tip-off and see if there is other evidence (including from any recognized union) to support this picture such as staff turnover, sickness rates, specific allegations and observations from exit interviews.

¹² The organization should nonetheless note that taking reprisals against an employee because s/he has raised a concern about bullying or harassment in the workplace is likely to fall foul of PIDA and other laws.

4 Introducing and updating a policy

4.1 Preparing the ground

Before an organization introduces or reviews a whistleblowing policy, its Board or governing body should make clear that the directors and senior management have a common and credible commitment that:

- a) they want employees to raise concerns about malpractice;
- b) they recognize that, in the absence of good arrangements, this can take courage;
- c) the organization will not tolerate the victimization of anyone who blows the whistle in good faith in line with the law or the policy; and
- d) they will provide the support necessary to ensure the arrangements remain effective.

Although setting up and maintaining whistleblowing arrangements is not a costly exercise, it is sensible that the Board is asked to consider what promotional and additional costs might be incurred at the outset. This is the case whether or not a helpline or commercial hotline is to be used. Apart from any specific training and promotional costs, the organization might also want to consider whether the costs of an investigation prompted by a whistleblowing concern should be borne centrally or by the unit that oversees that specific area (e.g. health and safety, security, internal audit).

4.2 Consultation

The organization should consult on the arrangements with staff, managers and any recognized union. Issues for consultation can sensibly cover:

- the risks that the organization faces;
- the importance of the distinction between whistleblowing concerns and grievances;
- its experience where whistles were blown and were not;
- the factors which may deter its employees from raising whistleblowing concerns;
- how to minimize misunderstanding or misuse;
- how the policy relates to the stated values and ethics of the organization;

- the role of line and senior management in the policy;
- the availability of advice;
- the options for external disclosures; and
- the communication strategy.

The consultation should clarify the drivers behind the organization's whistleblowing arrangements and the language of the policy. The organization might also want to consider asking staff (and any recognized union) for suggestions as to what the policy should be called. This can encourage them to think through the issues and have a constructive input into the arrangements.

NOTE *Arrangements are more effective if the organization makes it clear it wants to provide employees with a safe alternative to silence because it considers that is good for the organization and its people. This will not be achieved if the policy gives the impression that it is part of a tick-box response. Equally, if the policy closely follows the legislation, or is otherwise overly legalistic, it might give the reader the impression that one of its purposes is to enable employees to sue the organization (see 0.6).*

4.3 Workforce and subcontractors

The wider the scope of the workforce that the policy covers, the better. While the UK legislation covers most workers it does not extend to non-executive directors, volunteers or the self-employed. The organization should nonetheless consider whether to extend its policy to cover such people where they are likely to have whistleblowing concerns.

Organizations that contract out significant parts of their business activities should consider how best to approach the work of subcontractors. The simplest options are (a) to establish that the subcontractor has its own effective whistleblowing arrangements or (b) that the subcontractor agrees to promote the organization's whistleblowing contacts to its own staff where the concern relates to a threat or risk to the organization. While the UK legislation covers such a disclosure to an organization from an employee of a subcontractor,¹³ legal advice should be taken on how the organization can best achieve this within the contractual arrangements with the subcontractor. Such legal advice can also clarify that if an employee of the subcontractor were to be victimized as a result of such a disclosure, any legal claim s/he has would be against the subcontractor.

NOTE *It is not advisable for a whistleblowing policy to be expressly extended to members of the public or consumers in instances where, for example, a patient complains about a negligent surgeon, a passenger reports seeing a firm's truck dumping waste near a rail station or a passer-by sees a danger on a building site. This is because the issues of confidentiality, protection from reprisal and reporting lines either do not arise or operate in a markedly different way when the*

¹³ Such a disclosure would come within PIDA s 43C(1)(b)(ii).

information comes from members of the public. While in almost all organizations, there will be some pre-existing arrangements for individual customer complaints or consumer feedback, it is both common sense and good governance that an organization is open and receptive to warnings of risks and malpractice that may be raised by consumer interests, shareholders, community or public interest groups and other stakeholders.

4.4 Raising a concern

4.4.1 With whom?

The most practical starting point for the policy is to encourage staff to raise a concern with their immediate manager. Where an employee does not feel confident about raising a concern with their line manager (whether or not they suspect the concern implicates the manager in some way) or where it has been raised with the line manager but the employee does not think it has been properly addressed, the arrangements should provide safe and accessible alternatives.

In large organizations, two internal levels or ports of call (additional to the line manager) might sensibly be provided as simple alternatives. At the second tier, it might be one or more trusted individuals, the key specialist functions, or divisional or regional managers. At the top level, it could be an internal hotline or the Finance Director, the Group lawyer and/or a non-executive director.

NOTE *Such a streamlined approach emphasizes the link between the accountability and good governance of the organization and its whistleblowing arrangements.¹⁴ It also reduces the need for all senior managers in a large organization to be trained in handling whistleblowing concerns.*

Whichever senior contacts the organization decides upon, their names and contact details should be easily found and should be updated as necessary when the arrangements are reviewed (see **6.2**).

4.4.2 How?

Employees should be encouraged to raise a concern verbally with their manager or using the channels provided by the organization. Mostly concerns are raised verbally and so it will be counter-productive to state that employees should submit them in writing. Where an employee raises the concern at a higher level, she or he may be offered the chance to talk through the matter on the phone first, though some people might prefer to write. Where the concern is raised formally (by invoking the policy) or with a designated officer or hotline, a record should be made of the key details and a copy may be shared with the employee (see **5.9**).

¹⁴ It should be noted that if an employee raises a whistleblowing concern with a senior manager other than those specified in the policy, this will not prejudice their protection under PIDA.

While it is best that concerns are raised openly (see **3.5.4**), it is counter-productive if those receiving the concern insist that the employee identifies him or herself at the outset. This is because often it is only after contact has been established and any initial unease has been dispelled that the employee will provide his or her name and contact details.

4.4.3 When?

It is best that employees are encouraged to raise their concerns at an early stage.

It is preferable that a whistleblowing concern be raised as soon as the employee has a reasonable suspicion. It is unhelpful if employees think they are expected to investigate the matter themselves or to prove that their concern is well-founded. If this is not made clear in the policy and supporting material some employees might decide to delay and seek the evidence to build a strong case to safeguard their own position.

4.5 The availability of independent advice

As explained in **3.7**, it is recommended that organizations offer employees access to a helpline for confidential advice. This is because some will need or benefit from reassurance before they raise a concern, perhaps to check whether the concern comes within the scope of the organization's whistleblowing policy or simply to talk the matter through in confidence first and discuss how best to raise the concern.

Where an organization does include reference to independent advice or a helpline in its policy, any suggestion that employees have to first exhaust the internal routes will discourage employees from seeking advice when it will be most helpful. Any contacts for the helpline should be provided along with the promotion of the internal arrangements.

4.6 Feedback and follow-up

The whistleblowing policy should state that the organization will provide feedback to the employee on the outcome of the concern. This will help reassure employees that the policy works. If the employee receives no feedback, he or she may assume that nothing has been done and decide to take their concern outside. Under PIDA the absence of feedback on a concern makes it more likely that a wider, public disclosure will be protected.¹⁵

It should, however, be made clear that while the organization will give as much feedback as it properly can, due to the legal obligations of confidentiality it owes other employees, it might not be able to freely provide feedback on the outcome of any disciplinary action taken against another employee. Where this is the case, it can be particularly important

¹⁵ PIDA s 43G(2)(c) and 43G(3)(e).

that the organization makes clear to all those involved that the employee was right to raise the concern.

Whistleblowing arrangements should encourage the employee to say if they would like an update or feedback and also to let their contact know if they see further evidence that the wrongdoing is continuing or are anxious about some perceived or actual reprisal.

The organization should think through the practicalities before including detailed prescriptions in the policy about how it will respond to the concern. While setting time limits to respond or act in some way might be appropriate in a grievance or disciplinary procedure, this is unlikely to be the case in a whistleblowing policy. Some concerns might be based on a misapprehension which the line manager or designated contact can explain without delay, some may require urgent action, while others could be akin to a tip-off which can be better addressed as part of a forthcoming audit or review.

4.7 External disclosures

Whistleblowing policies should include an option for staff to make an external disclosure.

The simplest way this can be achieved is by stating that while it is hoped the policy will reassure employees to raise concerns internally, the organization accepts that employees can safely or properly contact an appropriate external body. The policy should include the contact details of the regulators, or independent supervisory bodies that are most relevant to the work of the organization, or the police.

Where the organization encourages employees to obtain independent advice about external disclosures from a helpline, there will be less reason to list the contact details of the regulators and other bodies for external disclosure.

Where the policy specifically mentions certain regulatory or supervisory bodies, the organization itself might wish to notify those bodies that its whistleblowing policy includes such a provision and should confirm that the contact details are correct.

NOTE *There are two reasons under PIDA why it is not advisable for an organization to seek to deter or discourage its staff from contacting an appropriate regulator, or for its whistleblowing policy to require that a concern be raised internally before any disclosure to a regulator. First, such provisions can trigger the protection for a wider public disclosure.¹⁶ Secondly, any such attempt could fall foul of the anti-gagging provision in PIDA. This states that any provision (whether in an employment contract, whistleblowing policy or compromise agreement) that seeks to stop an employee making a protected disclosure is void in law.¹⁷*

¹⁶ PIDA s 43G(2)(a).

¹⁷ PIDA s 43J.

4.8 Safeguards

The policy should include a clear statement that the organization:

- a) does not tolerate any reprisal against an employee because he or she has raised a concern under the policy; and
- b) will treat any such reprisal as a disciplinary matter which might lead to dismissal.

To protect the integrity of the whistleblowing arrangements and to discourage their misuse, the policy should also state that this assurance is not extended to those who maliciously raise a concern that they know is false.

As employees are expected to raise a concern at an early stage, the policy should not give a contrary message by suggesting disciplinary action may be taken against an employee if the concern is not held, after investigation, to be well-founded.

Finally, when the organization reviews its disciplinary and other procedures or its employment contracts it should remove or revise any conflicting messages they contain.

4.9 The whistleblower with an ulterior motive

While whistleblowing arrangements should be written to reassure the great majority of staff that there is a safe alternative to silence, there is always the chance that a rogue employee will try to misuse them. It is worth noting that even if there were not a whistleblowing policy, such an employee would be likely to try and misuse whatever other policy or arrangements the organization had.

Misuse of the policy is likely to arise in one of three circumstances.

- 1) Where an employee who has participated in the malpractice hopes to use the policy to secure or negotiate immunity from any disciplinary action. In such a case it should be clear that the arrangements do not guarantee protection for any substantive misconduct the employee owns up to. While it may well be sensible to take into account the fact that the employee has come clean in considering what penalty to apply for his or her substantive misconduct, this can best be left to the discretion of the organization. It is important to ensure that whistleblowing arrangements are not promoted to employees as a scheme designed to allow those who defraud or damage the organization to escape punishment.
- 2) Where an employee is concerned that his or her own position is vulnerable, either because a redundancy situation is on the cards or because of some pre-existing disciplinary issues. Clearly such a person could still have a genuine whistleblowing concern and, where they do raise one, it will be important to consider and address the substantive concern. However, the fact they raise a

concern should only offer them protection from reprisals for raising the concern. It should not guarantee them a privileged position in any redundancy situation that may arise, nor should it automatically stop the organization pursuing any managerial or disciplinary action it can show was already under way.

- 3) Where an employee raises the concern for some private motive and not to prevent or correct the wrongdoing. An example might be where two employees have had an affair that has ended in acrimonious circumstances and X wishes to harm Y and so alerts the employer to some corrupt or fraudulent conduct of Y. In such a case the organization is usually grateful to learn of the malpractice and may decide, notwithstanding any distaste felt about X's motives, to take no action against him or her. For this reason a whistleblowing policy should restrict the scope of disciplinary action for misuse of the policy to cases where the concern is found to be false *and* it was raised in bad faith (see **4.8**).

5 Running a scheme

5.1 Roll-out

When the policy is introduced and when it is updated, employees should be briefed on the key points/changes by their line managers. This (a) helps ensure that managers have a clear role in the arrangements and their role is widely understood and (b) communicates the message from managers themselves that it is safe and accepted for their staff to take concerns above them. Where there is a recognized union, its assistance should also be obtained on the roll-out.

NOTE *When the policy is first introduced, a personalized letter or an article from the Chairman or CEO in a newsletter or on an intranet will give the initiative credibility across the organization. It is also an effective way to demonstrate leadership on the issue.*

New employees should be told about the whistleblowing arrangements when they join the organization.

5.2 Awareness

However good a whistleblowing policy is on paper, it is of little value if employees do not know of it. For this reason organizations should ensure there is good awareness among staff, be it by displaying striking posters or using engaging messages on an intranet which remind staff to raise a concern before it becomes a complaint (see **0.5**). The main advantage of a high level of awareness is that it will optimize the benign effect the arrangements can have in deterring those tempted to do wrong.

Where a helpline or commercial hotline is engaged, they will normally provide promotional posters and tools. Where there is a recognized union they too can help promote awareness.

The policy should be readily available on any intranet and in the staff handbook so employees can easily access the information without feeling anxious about where it is or who to ask.

5.3 Trust

Trust in the whistleblowing process is best secured if whistleblowing concerns are solicited and addressed effectively, if the organization does what it says, and if those at the top lead by example. For these reasons genuine whistleblowing concerns should be dealt with properly and any temptation to ignore or cover up serious but difficult issues should be resisted.

Where a whistleblowing concern involves a high-risk or sensitive issue, the professional body for in-house lawyers has observed that the organization should handle it well: *"How an organisation responds to this*

situation is the litmus test of its corporate governance arrangements, which proves whether they are genuine, or just lip service.”¹⁸

Organizations should accept that openness is the safest strategy and that good whistleblowing arrangements can help underpin and demonstrate an organization’s commitment to this. If an organization victimizes a genuine whistleblower or misleads employees, regulators or stakeholders about a genuine concern then, quite aside from any legal consequences the senior officers expose themselves to, it will undermine trust in its whistleblowing arrangements and demotivate staff.

Employee confidence in the integrity of the arrangements will also suffer if an organization allows them to be hijacked by a disaffected or misguided employee or if it seeks to buy the silence of an employee who has raised a genuine whistleblowing concern internally. In either case it can be assumed that colleagues will hear about what has happened and this will influence their view of and trust in the organization and its whistleblowing arrangements.

5.4 Regular communication

To keep the arrangements live, an organization should remind employees of them at least every other year. This can be done by one or more of the following.

- Briefing staff or commenting in a newsletter on issues that have been covered in the media or the local community that highlight the value of whistleblowing.
- Surveying employees on their confidence, knowledge and experience about the whistleblowing arrangements (see **6.4** for more information).
- Reminding employees of the value of whistleblowing when responding to or reporting on an adverse incident (see **6.5**).
- Placing FAQs on an intranet.
- Explaining the role of the arrangements when the values or ethics of the organization are promoted.
- Introducing or updating a guide for managers and employees.
- Publishing a summary of how the arrangements have worked.
- Disseminating lessons learned and responses prompted by the review process.

Where there is a recognized union, the organization should consult and involve it in such initiatives. In addition, promotional material should be refreshed and, where necessary, replaced every other year or earlier if it

¹⁸ Blowing the Whistle – Guidance to In-house Lawyers (2007) – www.cigroup.org.uk.

becomes clear there is low awareness of the arrangements or if contact details have changed.

5.5 Briefings for managers

Even if a commercial hotline is engaged, many whistleblowing concerns will be raised openly with line managers as part of normal day-to-day practice. Good whistleblowing arrangements should do nothing to undermine this and it is important that this is made clear to employees and managers.

Depending on the structure, size and culture of an organization, managers should be briefed on how to handle cases where one of their team formally cites the policy when raising a concern. They also should be told where the manager can get help or should refer such a concern.

5.6 When a concern is raised

When a concern is raised, whether formally under the policy or not, it is important that the manager listens carefully and avoids pre-judging the issue. If the manager does not feel able to do this, he or she should encourage the employee to raise the concern with someone more senior.

The first issue that will need to be decided is whether it should be treated as a whistleblowing concern. When considering this, it is helpful to bear in mind the following factors.

- Whistleblowing presupposes there is an outside agency (e.g. a regulator, the police or media) which would have a legitimate interest to investigate the underlying public interest concern.
- A whistleblower is best viewed as a witness who is putting the organization on notice of the risk rather than as a complainant seeking to dictate to the organization how it responds.
- Whistleblowing is an aspect of good citizenship in that the employee is speaking up for and on behalf of people who are at risk but are usually unaware of it and so unable to do anything to protect themselves.

Managers will obviously consider the information in the context of what they know about the particular area or activity and the information the employee provides. From that, and on the assumption that the information is well-founded, the manager should assess:

- how serious and urgent the risk is;
- whether the concern can best be dealt with under the whistleblowing policy or some other procedure; and
- whether the assistance of or referral to senior managers or a specialist function will be desirable or necessary.

If the information can be treated as a tip-off and simply followed up during a routine audit, or if it could just as easily have come from a customer complaint, then there will often be practical advantages for all concerned if the organization addresses the matter on that basis and does not build its response around the employee's evidence. If this appears a realistic way forward, the employee should be informed.

Where an employee formally invokes the policy and raises a concern with their manager or at a higher level, it is helpful if the manager or designated officer establishes:

- if the employee is anxious about reprisals;
- when the concern first arose and, where relevant, what is prompting the decision to speak up now;
- whether the information is first hand or hearsay;
- where the approach is to a designated officer, whether the employee has raised the concern with their line manager and (a) if not, why and (b) if so, with what effect;
- whether confidentiality is sought (see **3.5.3**);
- whether and when the employee wants feedback; and
- if there is anything else relevant the employee should mention.

These issues are indicative of the approach that may be taken and should not be seen as a definitive list.

Finally, the manager might wish to write to the employee summarizing the concern, noting whether it was raised openly or confidentially, and stating what steps will be taken. Such a note, which can usefully also serve as a record, may helpfully state when feedback can be expected. It can also ask the employee to make contact if he or she has any questions or further information relating to the concern.

5.7 Addressing a concern

Where the issue is sensitive, the number of people involved in addressing any whistleblowing concern should be kept to a minimum and, where the implications are potentially serious or far-reaching, the independence and oversight of the investigation should also be considered. It is also important that, where confidentiality has been promised (see **3.5.3**), it should be respected.

Where the concern needs to be referred on (e.g. by HR, as in **3.2**) to a more specialist function such as internal audit or health and safety, this should be done without undue delay. Additionally the employee should be asked whether s/he wants to be in direct contact with the function themselves, or would rather any communication was done through the designated officer or the internal hotline.

Where specific inquiries need to be made in the area where the whistleblower works, the whistleblower should be forewarned so s/he is prepared to answer questions along with everyone else.

NOTE *Keeping the whistleblower updated as to progress, and ensuring s/he can contact the designated officer if s/he has any questions, will help manage expectations, pre-empt problems and ensure the process works well.*

When considering how to address the concern, the organization and those dealing with it can sensibly assume that they will be asked to explain their actions, be it to a regulator, court, supervisory body, shareholders or the media. The organization should also consider whether it should itself inform an external body (e.g. a regulator, a supervisory department or the police) once a serious issue has been identified, either to enlist their assistance or to reassure them and employees that the matter is being addressed properly.

“Escalating a local concern to head office

In a recent IBE survey of larger companies with Speak Up procedures, the involvement of head office was shown to depend upon the seriousness of the report. Some procedures require that all reports come to head office to be logged. Others rely upon the discretion of regional or business managers. Issues involving a criminal offence e.g. fraud, were in all cases reported to head office as a matter of course. Where there were board committees whose remit included risks or integrity issues, they required regular information on the use (or misuse) of call lines.

Below are some examples quoted in the survey of different companies’ procedures:

- *Regular reports of calls are made to the local Audit Committee, if applicable but important issues are escalated to the Audit & Risk Committee/Audit Committee at the corporate headquarters.*
- *The group director of Human Resources coordinates the process.*
- *All cases reported to Corporate Ethics and Compliance are logged into a case management system and a compliance officer determines how they are investigated.*
- *In the US, all reports received are logged in the Ethics Office database and tracked until resolved. The receipt of reports and their resolution are reported to the US Compliance and Ethics Committee at their periodic meetings; the Group Legal Department is also involved. Which function (i.e. ethics office, HR, etc) actually investigates the reported allegations depends on the nature of the allegation.*
- *In the UK, reports are usually raised with the Director responsible for the relevant department before investigation commences. There is also regular reporting to the Business Conduct Committee with earlier notification to the most senior levels if appropriate. Reports are given to the Corporate Executive Committee and the board.*
- *Reports are brought to the Non-Executive Directors of the board who consider what actions should be taken.”*

**The Institute of Business Ethics
Speak Up Procedures (2007)**

5.8 Training

Senior managers and designated officers who are given a specific role in the whistleblowing arrangements should be trained in the operation of the policy and in how to handle concerns. Training can cover such issues as:

- the drivers behind and value of the whistleblowing arrangements;
- the role of line management;
- receiving concerns at a senior level;
- expectations of confidentiality;
- assessing a concern;
- addressing the substantive issue;
- feedback to and reassurance for the whistleblower;
- records;
- safeguards; and
- internal and external accountability.

5.9 Records

As many whistleblowing concerns will be raised with and addressed by line managers in the course of day-to-day business, care should be taken not to impose a disproportionate scheme for recording all whistleblowing concerns. It should be sufficient for managers to record and pass on a summary of the concern where an employee has formally invoked the whistleblowing policy, or where the manager thinks the concern of such significance that it is sensible that a central record is kept. Those who receive a concern outside of line management – be it a designated officer or an internal hotline – should keep records and these should also be logged centrally.

NOTE *Such records can helpfully include:*

- *the date, the section of the business, the risk(s) involved and whether they are ongoing;*
- *a summary of the concern and its background, the response proposed (including whether it is to be referred on or up) and any action taken;*
- *whether confidentiality was requested/explained/promised;*
- *whether the concern was raised with line management;*
- *whether feedback was given and any response from the employee; and*
- *any general observations.*

The organization should ensure that the compilation and maintenance of these records complies with its data protection procedures. Where

anonymous reporting is encouraged or a commercial hotline engaged, the additional Guidance referred to in **3.6** also needs to be considered.

5.10 Reassurance and rewards

Reassurance: Where the employee is concerned that s/he might suffer reprisals, they should be encouraged to come back to the designated officer or their original point of contact at the earliest opportunity. Sometimes a reassuring word is all that is needed to calm an overly anxious employee, but at other times it will be necessary to liaise with HR on whether some swift reminder of the organization's policy or some other action is appropriate or necessary.

Rewards: Sometimes a whistleblowing employee will sound the alarm on a matter that can save the organization substantial sums of money. Where this happens, some organizations may consider giving the employee a reward – be it a bonus, promotion or some other benefit. Rather than spell this possibility out in any procedure, the issue should be left to the discretion of the Board.

6 Reviewing and evaluating a scheme

6.1 Official guidance

As to reviewing whistleblowing arrangements, the Combined Code on Corporate Governance recommends that: *"The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action."* (para. C3.4)

The Committee on Standards in Public Life has recommended that a well-run organization will review its whistleblowing arrangements to ensure they work effectively and that staff have confidence in them. It advises a review is undertaken when a case is brought against the organization under the Public Interest Disclosure Act or if there has been a damaging unauthorized public disclosure. In the light of its recommendations that *"leaders of public bodies should commit their organization to the following four key elements of good practice"*, these matters can sensibly be considered in any review:

- (i) ***"Ensure that staff are aware of and trust the whistleblowing avenues. Successful promotion of awareness and trust depend upon the simplicity and practicality of the options available, and also on the ability to demonstrate that a senior officer inside the organization is accessible for the expression of concerns about wrongdoing, and that where this fails, there is recourse to effective external and independent oversight.***
- (ii) ***Make provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity. While requests for confidentiality and anonymity should be respected, there may be cases where a public body might not be able to act on a concern without the employee's open evidence. Even where the employee's identity is not disclosed, 'this is no guarantee that it will not be deduced by those implicated or by colleagues'.***

(iii) Continually review how the procedures work in practice. This is a key feature of the revised Code on Corporate Governance, which now places an obligation on the audit committees of listed companies to review how whistleblowing policies operate in practice. The advantage of this approach is that it ensures a review of action taken in response to the expression of concerns about wrongdoing; it allows a look at whether confidentiality issues have been handled effectively and whether staff have been treated fairly as a result of raising concerns.

(iv) Regular communication to staff about the avenues open to them. Creative approaches to this include the use of payslips, newsletters, management briefings and Intranets, and use too of Public Concern's helpline, which has been available through subscription since 2003."

**The Committee on Standards in Public Life
Getting the Balance Right (2005), page 91**

The Government in its 2005 White Paper response stated that: *"The Government agrees on the importance of ensuring that staff are aware of and trust the whistleblowing process, and on the need for boards of public bodies to demonstrate leadership on this issue. It also agrees on the need for regular communication to staff about the avenues open to them to raise issues of concern."*¹⁹

6.2 Evaluating progress

In order to evaluate progress the organization should ensure that the review focuses on:

- a) whether the organization's policy meets good practice (see **0.3**);
- b) the whistleblowing concerns recorded (see **6.3** and **6.4**);
- c) employee awareness and trust (see **6.5**); and
- d) significant adverse incidents (see **6.6**).

Such an evaluation can provide the Board or audit committee with a reliable picture of the efficacy of the organization's whistleblowing arrangements. Depending on its size and the risks it faces, the organization can repeat the exercise as part of regular reviews of its internal controls to track progress and highlight any issues that require attention.

¹⁹ Response to Getting the Balance Right (2005) Cm 6723, page 19.

Review of effectiveness

The board ought to consider the effectiveness of whistleblowing policies and procedures on a regular basis. It should provide input to the board's review of the system of internal control. The review arrangements should be appropriate to the size of the company, the industry(ies) in which it operates, the nature of its activities, organizational structure and internal control and risk management systems. For some companies, the internal audit function may provide relevant assurance.

The audit committee might wish to consider:

- *is there evidence that the board regularly considers whistleblowing procedures as part of its review of the system of internal control?*
- *are there issues or incidents which have otherwise come to the board's attention which they would have expected to have been raised earlier under the company's whistleblowing procedures?*
- *where appropriate, has the internal audit function performed any work that provides additional assurance on the effectiveness of the whistleblowing procedures?*
- *are there adequate procedures to track the actions taken in relation to concerns made and to ensure appropriate follow-up action has been taken to investigate and, if necessary, resolve problems indicated by whistleblowing?*
- *are there adequate procedures for retaining evidence in relation to each concern?*
- *have confidentiality issues been handled effectively?*
- *is there evidence of timely and constructive feedback?*
- *have any events come to the (audit) committee's or the board's attention that might indicate that a staff member has not been fairly treated as a result of their raising concerns?*
- *is a review of staff awareness of the procedures needed?*

**Institute of Chartered Accountants in England and Wales (ICAEW)
Guidance for Audit Committees: Whistleblowing arrangements (2004)**
www.icaew.com.

While this guidance addresses the work of audit committees in listed companies, it might be useful when reviewing the efficacy of whistleblowing arrangements in other organizations in the private, public and voluntary sectors.

6.3 Concerns – volume

When reviewing the efficacy of the arrangements, there are two issues that organizations often dwell upon. The first is whether a high or low volume of whistleblowing concerns is a good thing. The second is whether minimal or no usage indicates that there is no malpractice or a worrying culture of silence. There is no simple answer to these questions as much depends on the size of the organization, the type of business and the risks it faces, its existing controls, and also employee awareness of and confidence in its arrangements.

In addition to the number of concerns formally recorded, organizations should seek information on how the arrangements are working from its senior or divisional managers. This is because line and senior management will normally both receive and deal with whistleblowing concerns, some of which will not formally be raised under the policy.

Where a commercial hotline is used, it should be asked to provide relevant data on volume and type of calls. Equally, if a helpline service is engaged, this might, subject to client confidentiality and the nature of the support provided, provide information on the types of concerns on which advice was sought.

6.4 Concerns – substance

More important than the number of concerns recorded is their significance and whether investigation showed them to be well-founded, partially substantiated or unsubstantiated. One single, well-founded concern over a period of several years can more than justify the modest expense that whistleblowing arrangements incur.

If the review shows that the matters raised are in fact mostly grievances, the organization should revisit the way that the policy is communicated and understood. The review is also an opportunity to consider whether matters had first been raised with line managers or at a higher level.

6.5 Employee awareness and trust

To give context to the number and substance of concerns, organizations should assess levels of employee awareness of and confidence in the arrangements. Whether this is done at team briefings, by questions in a general employee satisfaction survey or by a dedicated confidential survey on the workplace culture or by a random sample will depend on the size and nature of the organization.

NOTE *Depending on the size of the organization, the risks it faces and its experience, the following questions might be useful to help gauge levels of employee awareness and trust in the arrangements.*

- *Have you been troubled about some malpractice in the past three years? If so, did you raise the concern, and with what result?*

- *How aware are you of the whistleblowing arrangements?*
- *How likely are you to raise a whistleblowing concern with your manager and with senior managers?*
- *How confident are you there will be no reprisal for raising the matter with your manager and those above?*
- *How confident are you the matter will be addressed properly by your manager and those above?*
- *How do you assess your colleagues' general attitude to whistleblowing?*

Open ended questions can seek additional information on experiences of good and bad practice, attitudes to whistleblowing and to what extent employees think the organization lives up to its values.

Where there is a recognized union, the organization should seek its views, as employees might have commented on the whistleblowing arrangements to it or sought their assistance on raising or pursuing a whistleblowing concern.

6.6 Adverse incidents

Another important way to assess the efficacy of the arrangements is to identify significant adverse incidents the organization has had to deal with where the underlying issue should have been picked up earlier. This might be a fatality or serious accident, a raft of consumer complaints, a proven fraud or some substantial regulatory intervention or governance issue that has exercised or demanded the attention of the governing body or audit committee. This is not to suggest that in all or most such cases an employee should have blown the whistle but if, when reviewing such an issue, it is apparent to the organization that an employee could reasonably have been expected to raise a concern, then the issue can helpfully be explored and lessons learned.

Reviewing an adverse incident can show, for example, that:

- employees in that area were unaware of the policy or had no confidence in it;
- the concern had been raised locally but ignored;
- employees had assumed the practice was approved by those at the top;
- nobody thought anything was amiss; or
- the commitment of Board and senior management had not reached or been believed by employees.

6.7 Additional sources of information

Promotional material: As part of the audit process, checks should be made (across or in a sample of the organization's sites) to ensure that posters or other promotional material are available and up to date.

Annual declarations: Senior employees are often asked to complete an annual declaration confirming that they have read and followed their organization's code of conduct. This also offers an opportunity to ask about the whistleblowing arrangements, and whether they had raised any whistleblowing concern they might have had.

Exit interviews: Where an organization conducts exit interviews, departing employees could be asked if they had any whistleblowing issues, whether and how they were raised and to what effect.

Reprisals: Claims of reprisal, whether made internally or to a tribunal, should be noted in any review of the arrangements, along with the outcome and any pertinent findings.

6.8 Addressing the issues

Where the review suggests there are problems e.g. with awareness levels, staff confidence or management conduct, either generally or in a given area, the organization should decide what action is necessary to address them.

Any key findings from the review should be communicated to management and employees as this will demonstrate that the organization listens and is willing to learn and act on how its own arrangements are working in practice. Where the review also draws upon experiences outside (e.g. elsewhere in its sector or from the local or national media) this can help demonstrate to all concerned that it is an outward facing, learning organization.

6.9 Keeping a perspective

Effective whistleblowing arrangements will help those at the top of an organization to demonstrate leadership and to have a broad perspective on how it operates in practice. For these reasons, the attitude that the Board and senior team take to whistleblowing is a valid indicator of the culture of the organization and is increasingly seen as such by present and future employees, regulators and other stakeholders.

While whistleblowing arrangements are an integral part of the governance of any responsible organization, they are not – as this Code of Practice explains – a substitute for its management, compliance and other controls. Rather, they are a safety net for those controls which will pick up problems, deter wrongdoing and promote accountable conduct. This is the perspective in which to keep the whistleblowing arrangements themselves.

6.10 Checklist

The Checklist (see Table 1) is to assist those who might be asked to review an organization's whistleblowing arrangements in the light of this Code of Practice. Where an organization's whistleblowing arrangements are reduced to a tick-box exercise, they will not work. Accordingly this Checklist should not be used by someone who has not read this PAS.

While compliance with the recommendations and guidance in this PAS are not obligatory (see **1.0**), organizations may find it helpful to note how they have met a particular recommendation or alternatively, the reason they have decided not to follow a particular recommendation.

Table 1 – Checklist

Issue	Yes	In part	No	Explanation
<p>The Policy</p> <p>1. The organization's policy conforms to good practice (see 0.3) and:</p> <p>a) gives examples of the types of concerns to be raised, so distinguishing whistleblowing from grievances;</p> <p>b) gives the option to raise concerns outside of line management;</p> <p>c) provides access to an independent helpline offering confidential advice;</p> <p>d) offers option to raise concerns in confidence;</p> <p>e) explain when concerns may safely be raised outside (e.g. with a regulator); and</p> <p>f) prohibits [i] reprisals against a bona fide whistleblower, and [ii] the making of a false allegation maliciously.</p>				
<p>Buy-in</p> <p>2. Those in charge have been briefed on the role of management and openness, confidentiality, anonymity and trust (see 3.3, 3.4, 3.5, 3.6, 4.1 and 5.3)</p>				
<p>The right start</p> <p>3. Practicalities, feedback, safeguards and misuse are consulted on (see 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.10 and 4.11)</p> <p>4. The role of subcontractors is considered (see 4.3)</p> <p>5. Line managers brief employees on the arrangements when rolled out and updated (see 5.1)</p>				
<p>Communication and confidence</p> <p>6. The organization undertakes activity to promote staff awareness of the arrangements (see 5.2 and 5.4)</p> <p>7. Employee confidence, knowledge and experience of the arrangements are assessed (see 6.4)</p>				
<p>Briefing/Training</p> <p>8. Line and senior managers are briefed on their roles under the policy (see 5.5 and 5.7)</p> <p>9. Designated officers with a role in handling concerns are briefed and trained (see 5.6 to 5.8)</p>				
<p>Logging concerns</p> <p>10. Concerns raised formally through the whistle-blowing arrangements are recorded and logged centrally (see 5.9)</p>				
<p>Reviewing the arrangements</p> <p>11. The effectiveness of the arrangements is reviewed by those charged with governance e.g. the Audit Committee (see 6.2)</p>				

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