The future for whistleblowing: speak up and stop harm

General Features | Large Corporate



22 June 2023

In March 2023, the government announced a review of the UK's whistleblowing framework. What might this mean for whistleblowing and the role that workplace culture can play?

Key Points

What is the issue?

In March 2023, the government announced a review of the UK's whistleblowing framework. Our current law is 25 years old and is no longer seen as world leading.

What does it mean for me?

Brexit means that the UK is not required to update its whistleblowing laws. However, any organisation trading with the EU would be wise to take note of the very much stricter obligations to have detailed procedures in place.

What can I take away?

It is a myth that whistleblowers are persistent – most will raise a concern only once – so managers have a small window to identify a whistleblowing concern and give assurances.

Rarely a day goes by without a whistleblowing story in the press – from patient safety concerns in hospitals, to fraud in the meat industry to toxic workplaces in the CBI. What many of the cases have in common is that internal whistleblowing processes are not working. Staff working inside these organisations have been too scared to speak up, have spoken up to the wrong person, or have spoken up only to be ignored. That’s bad news for the whistleblowers, but it is also very bad news for employers.

Finance professionals should care about whistleblowing. When their organisations get it wrong, there may be an impact on the bottom line. The consequences can be reputational damage or regulatory intervention, with knock-on effects on the confidence of shareholders and investors. There’s a human cost to the whistleblower too, which can result in uncapped damages being awarded at an Employment Tribunal.

On the more positive side, there is evidence that staff are even better than internal audit at detecting fraud – and can act as a vital early warning system for employers. Put simply, whistleblowing is good for business.

Protect is the UK’s whistleblowing charity and this year we celebrate our 30th anniversary. We see whistleblowing in the round: from the perspective of those trying to speak up to stop harm – the 3,000 whistleblowers who call our confidential legal advice line each year – and from the perspective of businesses that understand the benefits of whistleblowing.

We know that advising whistleblowers is only half the story. Getting workplace cultures right so that whistleblowers can be heard is equally important. We provide businesses across all sizes and sectors with training, consultancy and benchmarking

to help them on their journey to best practice.

There are several reasons why it is timely to review the health of your whistleblowing arrangements.

International perspective

First, from an international perspective, most countries across the European Union have now passed laws implementing the EU's Whistleblowing Directive. Brexit means that the UK is not required to update its whistleblowing laws (but, as explained below, it may well do so). Anyone with a trading subsidiary in the EU should look carefully at the new obligations in each country. However, any organisation trading with the EU would be wise to take note of the very much stricter obligations placed on employers to have detailed procedures in place, as well as the sanctions for breaching whistleblower confidentiality. It is only a matter of time before organisations will expect these higher standards from anyone in their supply chain.

UK government proposals

Second, there are political changes afoot. As the latest economic crime bill passes through Parliament, the government plans to introduce a new 'failure to prevent fraud' offence. Any organisation facing prosecution under the new offence will want to argue in their defence that they took all 'reasonable steps'. Effective whistleblowing arrangements should be key here.

In March 2023, the government announced a review of the UK's whistleblowing framework (see bit.ly/44RBJlo). Our existing protections were introduced through the Public Disclosure Act 1998. They are now 25 years old, and are no longer seen as world leading.

The review will consider:

- whether the framework encourages and protects whistleblowers;

- the benefits of whistleblowing to employers, regulators and others; and
- best practice for responding to whistleblowing disclosures.

At Protect, we're keen to see the law updated – it simply hasn't kept pace with the modern workforce. The 'protections' to whistleblowers are only after-the-event remedies which, due to the complexity of the law, are difficult to obtain. We want many more employers to be required to introduce effective arrangements. Outside of regulated sectors such as financial services, most employers have no legal obligations to introduce even a policy. We'd also like positive steps to prevent whistleblower victimisation.

With an election not too far away, there is limited time to bring forward the primary legislation needed for such reforms. However, some changes could happen quickly, such as extending the definition of 'worker' for whistleblowing purposes to include non-executive directors, charity trustees, self-employed contractors, job applicants and others currently denied a remedy if they are treated badly as a result of whistleblowing. This can be done swiftly through secondary legislation.

Responding to the ESG agenda

The third reason for a review is that the ESG agenda is here to stay. Whistleblowing is a golden thread across all three areas of environment, social and governance.

The climate emergency means new requirements on firms to act in the interests of groups well beyond shareholders and customers. Regulators want transparency in climate-related disclosures and there is a crack-down on 'greenwashing' where claims to be environmentally friendly are overstated or misleading. The Advertising Standards Authority and Competition and Markets Authority have already acted, while the Financial Conduct Authority has consulted on the importance of accurate labelling of investment products. Those working inside organisations are likely to have insight into whether claims can be substantiated, and we should expect to hear more from whistleblowers concerned about greenwashing and wider environmental concerns.

Whistleblowing has always been central to good governance (the 'G' of ESG). It is difficult to imagine how an organisation could claim to have sound governance if it

did not have processes for managing risk and heeding staff concerns. Where potentially harmful activities are taking place, it is in the interest of the board and senior team to be aware. Good whistleblowing arrangements enable this vital flow of information, enabling action to be taken early.

Until recently, whistleblowing may not have been seen as crucial to the ‘social’ element of ESG. However, risks about organisational culture that are not addressed can be a ticking timebomb. Before the #Metoo and Black Lives Matter movements, many issues about harassment, discrimination or bullying in the workplace were simply dealt with as grievances (when they were taken seriously at all). Toxic workplace cultures don’t just emerge overnight, and you can be sure that your staff will know where the problems are.

Whistleblowers who witness others being treated badly can provide vital intelligence that will allow deeper dives to uncover wrongdoing. Organisations that are truly safe for speaking up are likely to be the ones which attract and retain staff and obtain the benefits that come with staff trust.

Getting ahead of the curve

So, what can you do to check that your processes are as good as they can be? At Protect, we work with hundreds of employers who want to have effective whistleblowing arrangements and understand the value of information from their staff. Over the last 30 years, we’ve gained insight into what makes whistleblowing work.

Having a whistleblowing policy is a necessary, but not sufficient, first step. Make sure that the policy is well-written, easily accessible and widely communicated. Good employers will use a range of channels – from newsletters to one-on-one meetings – to communicate the key messages:

- We want you to speak up.
- It is safe to speak up.
- We’ll take action if anyone victimises a whistleblower.

Leaders set the tone, so this message needs to be endorsed by those at the top of an organisation, and by every line manager. Good words need to be backed with clear processes.

In our experience, having a range of channels outside of line management to raise concerns is helpful. Training of all staff is important – not just about how to speak up, but also about how to respond to concerns. Line managers are likely to be the first recipient of concerns. It is a myth that whistleblowers are persistent – most will raise a concern only once – so managers have a small window to identify a whistleblowing concern and give assurances.

Training those who may investigate whistleblowing concerns is also vital – protecting the whistleblower's identity while being fair to those under investigation is no easy challenge.

The right time for a review is now

Things go wrong in every organisation – human nature means that we can't eliminate all risk. But how we respond to that risk can make the difference between an internal discussion and correction, and being the next organisation in the headlines for the wrong reasons. Listening to staff means you can act fast on small risks, and addressing concerns early means your staff won't need to take them externally. Getting whistleblowing right is in every organisation's interest – and the best time to review your arrangements is now.

Auditing and reviewing your arrangements can be done using Protect's Whistleblowing Benchmark (see protect-advice.org.uk/our-benchmark). Our unique diagnostic tool allows you to assess your whistleblowing arrangements across three key areas: governance (your policies, processes and audits); engagement (training and communications); and operations (the experience of the whistleblower using the system).

© Getty images/iStockphoto