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WHISTLEBLOWING AND WHITEHALL

A review of how the policies of Government Departments
comply with accepted good practice on whistleblowing

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Public Concern at Work is the whistleblowing charity.

- We provide free confidential advice to people who are worried about wrongdoing at work but are unsure whether or how to raise it;
- We provide training and consultancy to organisations on governance;
- We campaign on the public interest; and
- We promote the Public Interest Disclosure Act.

Our work has been commended by Government, MPs, the Committee on Standards in Public Life, the appeal courts and public inquiries.

Launched in 1993, Public Concern at Work has never received government grant in aid. It depended on charitable grants in its first decade and is now self funding. This means that while its services are free for individuals, the income received from organisations for the support they request funds all the charity's work.

www.whistleblowing.org.uk

WHISTLEBLOWING AND WHITEHALL

A review of how the policies of Government Departments
comply with accepted good practice on whistleblowing

Introduction

This paper reviews the advice that Government Departments give their staff on whistleblowing, in the light of the good practice set out by the Committee on Standards in Public Life and accepted by Government (set out in Annex A). The time is right for such a review as the value of whistleblowing in promoting accountability and deterring malpractice is now being recognised at the top of Whitehall. The new Civil Service Code issued in June 2006 - the relevant sections of the Code are set out at Annex B - for the first time mentions the Public Interest Disclosure Act 1998 (PIDA).

The purpose of the review is to assess where good practice in Whitehall is on this issue and to inform the work of Departments as they develop their whistleblowing arrangements. It should be stressed that the review looks only at the content of Departmental policies and it does not assess the extent to which those policies are promoted by Departments or work in practice. This is something that we will return to in the light of the Government's recognition – stated in its White Paper Response on Standards in Public Life (Cm 6723, Dec 2005) – of the 'importance of ensuring that staff are aware of and trust the whistleblowing process and for the need for boards of public bodies to demonstrate leadership on this issue.'

As the League Table on page 12 shows, while the majority of Government Departments offer their staff some helpful guidance on whistleblowing, few policies fully comply with accepted good practice and some fall far short of it. The major flaw stems from what appears to be a concerted desire and intent that whistleblowing concerns should be kept internal in all circumstances. The origins of this flaw lie in the Directory of Civil Service Guidance (extracts of which are in Annex B) which is used by Government departments to comply with the law and good practice. The result of its errors are that a good many policies flout accepted good practice on whistleblowing, ignore the Civil Service Code and are misleading about the statutory scheme for whistleblowing in the Public Interest Disclosure Act.

Methodology

In August 2006 we wrote to Government Departments asking them to send copies of their current whistleblowing policies or to confirm that the policies we had collected in 2005 were still current. We were grateful for the co-operation we received from most Departments. We should record however that, despite reminders, we received no reply from the Cabinet Office, the Department of Trade and Industry (DTI), the Department of Constitutional Affairs (DCA) or the Department for the Environment, Food and Rural Affairs (DEFRA). We have in these cases assumed that the policies they supplied to us in 2005 remain operative.

We reviewed each Department's policy against six criteria, based on the good practice recommendations of the Committee on Standards in Public Life, set out in Annex B. After a draft of this paper and the rankings were supplied to those departments that had participated in the survey, we reviewed the analysis in the light of comments received and added one additional criterion – rating how well we consider the policy would give reassurance to an official unsure whether or how to raise a concern. The overall rankings

we gave each Department are set out in the league table on page 12 (which also explains the abbreviations used here for Departments' names). These rankings represent our estimate of how far Departments meet the basic requirements of setting out advice to staff on policy. As stated above, this was a paper review and did not cover key issues such as how the guidance is communicated to staff, how it actually works in practice and whether staff are aware of it.

THE SEVEN CRITERIA

1. Commitment & clarity

Leadership is paramount. In order to deter and detect malpractice, it needs to be made clear at the highest levels of the organisation that it treats malpractice seriously and welcomes employee concerns. If employees are unsure of their organisation's commitment to these two points, it is unlikely they will raise concerns about malpractice. The same principle applies to Government departments.

It is good practice to make clear at the outset that the Department is committed to achieving the high standards of conduct. For example:

The Department of Health is committed to achieve the highest possible standards of service and ethical standards in public life. Members of staff should not feel intimidated in reporting wrongdoing that should be disclosed or raising matters that they feel concerned about.

Placing a whistleblowing policy in this context is helpful as it gives the right signals and helps embed a positive approach to accountability. It is useful to go on to say that staff are encouraged to raise concerns even if they have only a suspicion – 'if in doubt, raise it' is an encouraging message which some Departments make explicit (DfES). The Department for Culture, Media and Sport (DCMS) elaborates as follows:

If something is troubling you which you think we should know about, please tell us straight away. We would rather that you raise the matter when it is just a concern rather than wait for proof.

We think this strikes the right tone: it is misguided for employers to suggest to staff that whistleblowing is confrontational. Nor is it desirable to urge whistleblowers to keep silent until they have proof. In this context statements like 'the more evidence you can present the better' (MOD), though not untrue, might encourage amateur investigation and prove unhelpful to the Department and indeed to the whistleblower (as the courts have held an overzealous investigation can jeopardise protection under PIDA¹). The message 'You do not need proof; that is our responsibility' (DTI, FCO) is better.

It is important that the policy distinguishes between public concerns (whistleblowing) and private grievances and gives practical examples of each. Some Departments have done this, and the following useful examples of public concerns have been given:

- fiddling expenses claims (MOD)
- rigging a contract for personal gain (MOD)
- misuse of official information to further private interests (DfES)
- bias in the public appointments process (DfES)

as against examples of grievances:

¹ Bolton School v Evans (Court of Appeal) [2006] EWCA Civ 1653

- not having been promoted (MOD)
- harassment/bullying (MOD/DH)

In our view it is unhelpful and counterproductive to mix in with concerns about wrongdoing matters of individual conscience – such as the options for an official who is strongly against abortion when his or her policy work takes the official into this field.

Cabinet Office advice to staff is in need of amendment. It is headed ‘Procedure for use by Cabinet Office staff who wish to make an appeal under paragraph 11 of the Civil Service Code’. This is hardly inviting or reassuring to an official who is concerned about some possibly serious wrongdoing but is unsure to whom they should talk. Additionally it is unsatisfactory because the term ‘appeal’ is overly formal, if not adversarial and inaccurately describes the purpose of those who raise whistleblowing concerns.

While supporting documents and FAQs can be very helpful, clarity is not aided where there is an inconsistency between these documents. For example, the FCO supplied staff with a circular, a chapter of guidance, a leaflet and a sheet of ‘Frequently asked questions’ which are not always consistent with each other.

2. Offering an alternative to line management

It is right to encourage staff to see their line manager as the normal first port of call. However there will be cases where staff do not wish or think it appropriate to use the line management chain. Their concern may relate to the behaviour of an immediate manager and in some cases they may be reluctant to refer the matter further up the management chain. The option of by-passing this chain is consistently made available, but there are a variety of approaches. These are the contacts within Departments, but outside line management, which are named in policies:

- Nominated Officers (generally)
- Officers with professional responsibility for standards (MOD)
- Departmental advisers specialised in whistleblowing (DfES, MOD, DTI)
- Internal audit (DH, DCLG, DCMS, DCLG)
- HR (DCMS, DfID, DfES, FCO, DCA)
- Welfare Officers (HO, DCA, DFID)
- A Risk Assurance Division (DWP)
- A Departmental whistleblowing hotline (DWP, DEFRA)
- Special routes for particular issues – notably special contacts (sometimes a hotline) for suspicions of fraud (DFID, HO, DH, MOD, FCO).

Trade Unions and the Civil Service Commissioners are also mentioned in this context. This will be confusing to some as they are not part of the Department’s command and control. In our view they each fall more properly under other sections and we deal with them below.

Usually more than one of these options is available. However in a few cases, Nominated Officers are the only contact mentioned (SE, HMT, DCA, Cabinet Office). As they tend to be very senior officials, who may not be or be seen to be readily approachable, that may prove counter-productive - particularly if the single Nominated Officer is also the source for advice on how to approach the Civil Service Commissioners if the official is dissatisfied with his/her response (SE). Now that the role of the Commissioners, including their willingness to consider taking reports direct, and their contact details, are clearly spelt out in the Civil Service Code, there seems no need to interpose anybody between the civil servant and the Commissioners.

3. Access to independent advice

In situations where staff feel unsure whether or how to raise a concern or where they suspect the overall management may condone or not wish to learn about some improper conduct, staff will find themselves in a dilemma about raising the concern with internal contacts. For this reason, they need to be able to discuss their concerns with an independent body.

Not all policies address this point. Where they do, they mention one or more of the following possibilities:

- Trade Unions (DCMS, DfES, DH, DFID, HO, DTI, Cabinet Office, DCA, DEFRA)
- Public Concern at Work (PCaW) (DCMS, DfES, DH, DFID, DWP, HMT, DTI, DEFRA)
- An independent professional external provider (the Employment Assistance Programme) (FCO, DFID)
- Legal advisers (DCMS, DH, DTI, DEFRA)
- A named contact at the NAO (FCO, DCLG)
- The Financial Services Authority's helpline (DH)

The last two of these are external regulators and are unlikely to hold themselves out as being a source of confidential advice – they fall more properly under the section which deals with raising concerns externally (see section 5 below). Departmental legal advisers will have a primary duty to their Department rather than to the individual official and so should fall more properly under section 2 above.

4. Openness & confidentiality

Several policies contain sensible statements about respecting whistleblowers' confidentiality. One good example is DCMS:

The Department recognises that you may want to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. However, in some circumstances, this may make it more difficult to fully investigate the matter. If the situation arises where we are not able to resolve the concern without revealing your identity, we will discuss with you how we can proceed.

This statement is helpful. The assumption is that concerns are raised openly but where confidentiality is requested, it makes clear there will be advance consultation if it proves difficult to resolve the concern without revealing the whistleblower's identity.

Conversely, whistleblowers, especially in cases where they are only voicing suspicions, may not be encouraged to come forward by policies which:

- make clear that in any case, their report, and the conclusions of the Nominated Officers on it, will go to the Permanent Secretary (HMT).
- state starkly that confidentiality 'cannot be protected where this would have an adverse effect on any disciplinary, civil, or criminal proceedings' (DH).

On the other hand, policies should not encourage staff to assume or seek anonymity. On this issue, the DCMS policy is again worth quoting as a good example:

Remember that if you do not tell us who you are, it will be much more difficult for us to look into the matter or to give you feedback. Accordingly, while we will consider anonymous reports, this policy is not designed to deal with concerns expressed anonymously.

Anonymous disclosures will also raise immediate questions about the motivation, good faith and reliability of the whistleblower. One policy (DfES) states that whistleblowing covers certain cases of discrimination 'where the whistleblower has good reason to preserve their anonymity'. The difficulty here is that in cases of specific sexual discrimination or harassment it is very difficult for an employer to proceed lawfully or effectively without the evidence of the victim and to imply otherwise can only sow confusion and raise expectations that cannot be delivered.

While there is nothing in the legislation about respecting whistleblowers' confidentiality, one policy (FCO) claims the Act 'gives an assurance of confidentiality' for disclosures made in the right way.

We believe open reporting should be encouraged, that staff should understand that their identity may be deduced even if it is not disclosed, and that withholding their identity can increase the focus on the messenger, rather than the message. DCA's policy is strong on open reporting, saying 'you are encouraged to put your name to any disclosures you make. Concerns expressed anonymously are much less credible and more difficult to investigate fully....'. While this is good, it does not mention the option of raising the concern in confidence should an official be worried, with good reason or not, about possible reprisals from a manager or colleagues.

One policy states 'if you raise a concern in good faith, i.e. not maliciously.... your discussions with any of the above officers/units remains completely confidential' (FCO). This is an undeliverable promise: the content of the discussion, at least, will need to be revealed if any action is to be taken by the Department on any serious wrongdoing.

5. Whistleblowing outside

Staff need to be aware of when and how they may properly raise concerns outside the Department - for example with an external auditor, a regulatory body or a law enforcement agency. Not only is this an obligation on officials, where there is evidence of a criminal or unlawful act, under paragraph 17 of the Civil Service Code, but it is a key aspect of the statutory scheme in PIDA. This is the main area where Departments seem to have real difficulty, caused largely, we assume, by the inaccurate advice given in the Directory of Civil Service Guidance. This Guidance sets out a purely internal procedure, with the possibility of reporting to the Civil Service Commissioners if the whistleblower is unhappy with the response, and then states that 'these procedures should also be followed if you wish to make any other disclosure covered by the 1998 Act'. This advice conflicts with PIDA's approach and has the unintended effect of triggering the protection for media disclosures (because it will give officials reasonable cause to believe they will be victimised for going to a prescribed regulator). Not surprisingly, some Departments have been misled by this central advice and their policies are seriously defective as a result (e.g. FCO, DCMS, SE, DCA, Cabinet Office).

While internal reporting should be encouraged and is the most readily protected form of disclosure under PIDA, some Departments go beyond encouraging it by making general statements implying it is the only option. As we have said, not only does this flout good practice accepted by Government for the whole of the public sector, it ignores the Civil

Service Code, and fundamentally misunderstands and misdescribes PIDA. Examples include:

- whistleblowing..... enables staff to be protected while reporting unethical, criminal or unlawful activity to employers (DfES)
- a person is protected if they make a disclosure in good faith to their employer or to a person appointed by their employer to receive disclosures (FCO)
- staff are encouraged to raise matters through internal procedures where appropriate and practical, and the legislation specifically refers to compliance with internal procedures authorised by an employer (HO)
- two conditions must be met. The first is that the disclosure is of a certain type – i.e. what is known as a ‘qualifying disclosure’. The second is.... to make a disclosure internally in the Department (MOD).

In the absence of other advice, staff reading these statements are unlikely to understand that external reporting is also protected in a wide range of circumstances. If they are unsure whether their department will deal with the issue or will protect them from reprisals, this approach leaves staff with two simple options – the first is silence and the second is the anonymous leak. While some policies (DfES, DEFRA, DTI) suggest that whistleblowers should seek advice from their Trade Union or from PCaW on when to raise concerns externally, best practice as set out by the Committee on Standards in Public Life, accepted by Government and reflected in the Civil Service Code is that policies should address the options for external disclosure.

Some policies mention the Civil Service Commissioners, but usually emphasise only their role as a final appeal when the whistleblower is not satisfied with the outcome of the internal procedures (HMT, DfES, DCMS, Cabinet Office, DCA). In fact the Commissioners have recently been allowed to accept a case which has not been raised locally first and so they no longer exercise what is purely an appeal or review function. However, while we accept the Commissioners have an important and welcome role to play, we do not think they should be the sole external body mentioned in a policy. First, their remit at present appears more akin to reviewing how a concern has been handled or how a whistleblower has been treated rather than whether the concern about malpractice has been substantiated and needs to be addressed. Secondly, while the Commissioners are independent of Departments, that may not be the impression that all civil servants have. For these reasons, there seems to us to be a need to mention other external contacts such as those statutory bodies prescribed under PIDA.

This does not imply that policies should spell out exactly when going to the media is allowed – indeed policies can sensibly say they should not be read as authorising media disclosures. However in our view it is counter-productive and extreme to say that going to the media would almost certainly constitute a disciplinary offence. We agree that going direct to the media is unlikely to be helpful or a sensible first port of call in almost all cases. The circumstances in which PIDA protects media disclosures – essentially where they are both justified and reasonable - are uncontroversial and Departments should recognise the balance in the Act. What is important is that the policies should clearly set out independent external bodies that can be contacted and it is this we now consider.

Under PIDA, staff are protected if they report to a prescribed regulator. PIDA protects disclosures to specified regulators because the existence of such protection makes it more likely that concerns will be properly raised and addressed internally and far more likely staff will have the confidence that they will. This beneficial effect can only be achieved if staff and managers are aware of the external route. MOD has made this clear to their staff in these terms:

PIDA also offers legal protection if you should make your disclosure to a relevant regulatory body – such as, for example, the NAO or the HSE – provided that you have a genuine and reasonable belief that something is wrong.

It is not the case, as DEFRA's policy states, that the whistleblower must have a 'good reason' before raising the matter outside the organisation. DEFRA's policy defines 'good reason' as including cases where employees reasonably believe they will be victimised, or that the organisation will cover up the matter. This is wrong and shows they are confusing the conditions for reporting to a regulator with those for making a wider disclosure (e.g. to the media).

The National Audit Office will have a clear interest in any financial matters likely to be raised under whistleblowing policies and it is for this reason that it is prescribed under PIDA in respect of 'the proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services'. But the helpful role of the NAO and of prescribed regulators in general is not well explained and is an area where most Departments could improve their guidance.

In this context, some misleading advice is given about compliance with confidentiality requirements. The Civil Service Code makes it clear that disclosures to appropriate authorities is authorised and PIDA itself makes it clear such disclosures are protected, notwithstanding any duty of confidence. It is therefore misleading to say that 'A civil servant choosing to make a disclosure externally..... would need to take account of their duty of confidentiality in regard to information not in the public domain' (HO). This is not a relevant factor under PIDA or the Civil Service Code where a civil servant approaches a regulator.

6. Sanctions

As part of the critically important protection for bona fide whistleblowers, policies should make clear to both management and staff that victimising employees or deterring them from raising a concern about fraud or abuse may be a serious disciplinary offence. Equally, it should make clear that abusing the whistleblowing process by raising unfounded allegations maliciously may also be a serious disciplinary matter.

We think that the DCMS policy gets it right by assuring whistleblowers that they will not be subject to disciplinary action if they raise a matter in good faith, but adding:

this assurance does not extend to someone who maliciously raises a matter they know is untrue.

It is important that Departments recognise that the fact a concern may not turn out to be well-founded does not mean it was not raised in good faith. Accordingly it is counter productive for a policy to state this may be so by saying 'staff who make claims which are untrue, vexatious or malicious may be subject to disciplinary action' (DH). The same policy says elsewhere, confusingly, that staff may be disciplined for making 'mischievous, malicious or vexatious complaints which they know to be untrue'. The latter seems to us the correct statement: the public interest is served if staff come forward with concerns that are honestly believed, even if they turn out to be untrue. It is also served if staff come forward with true concerns even if their motives may be mixed. We think it self-evident that it is only if a report is both untrue and maliciously motivated that there may be a need to invoke disciplinary procedures.

Another policy (MOD) states that whistleblowers qualify for protection provided the disclosure 'is not knowingly false or malicious and you have no vested interest in the outcome'. This takes an erroneous view of the statutory regime and, we believe, of the wider public interest. While there is no public interest in encouraging staff to raise concerns that they know are false, there could yet be in cases where they themselves are motivated by malice or where the whistleblower may be seen to have an interest in the outcome – for example the dismissal of a corrupt and disliked boss.

Some policies state that 'if you make a disclosure to someone outside the internal whistleblowing procedure and if what you say breaches the Official Secrets Act, then you may be subject to criminal and/or disciplinary procedures' (DEFRA, DTI). It is true that under PIDA a disclosure is not protected if the whistleblower is shown to have committed a criminal offence by making it, but this does not hinge on whether the disclosure is internal (within the Department) or external (e.g. to a regulator). As the Official Secrets Act is limited to cases where damaging disclosures are made which affect security, defence, criminal investigations or international relations, it is unlikely to be breached by whistleblowers other than in rare cases. This will be worth making clear, since there remain myths in and out of Whitehall about the scope of the 1989 Official Secrets Act, deriving from memories of the obsessively insecure 1911 Act.

7. Reassurance

After the initial consultation with the participating departments on the draft report, an additional criterion has been included in the assessment of departmental whistleblowing policies. This criterion addressed how well we rated the policy as giving reassurance to a staff member who read it so that he or she would raise a concern in line with it. In performing this, we drew on the experience generated from our helpline which enables us to pick up on issues and common problems that whistleblowers face when they first come across potential wrongdoing and are unsure whether or how to raise their concerns.

The Department of Health policy is an example of a weak policy in this respect. Its use of confusing flowcharts and the section entitled "Interaction With Legislation" does little to reassure the reader. This policy also confuses the legal test for prescribed bodies with wider tests. The policy of the Ministry of Defence deals both with handling concerns and raising concerns – resulting in a document that has two different purposes and two distinct readers.

OTHER ISSUES

In an attempt to assist Departments review their whistleblowing arrangements, we set out below other issues which they should also be considering.

Staff awareness

Staff should be informed of the policy and the contact points in induction packs and as part of training courses. They should also be regularly reminded of them by such means as emails and posters. It is vital that staff trust the contact points and they should be assured of their discretion and probity. Telling good stories will help –all too often it is only negative whistleblowing stories that become known.

We have little information on how Departments ensure awareness, though we know most have placed their policies on their websites. This is a helpful step, but not sufficient to ensure awareness. We are aware that dissemination of the policies is patchy in practice,

and that GRECO, the Council of Europe's anti-corruption body, recommended in its Second Report on the UK published in 2004 that the issue should be covered in in-service training. We also note that the Government agreed, in its response to the Tenth Report of the Committee on Standards in Public Life, that there is a need for regular communication to staff about the avenues open to them for raising concerns. It will be important for the Cabinet Office to follow up these points.

Review

There is evidence that many Departments revised their guidance during 2006, whether in response to the new Civil Service Code or as a result of the review of policies by the NAO. In general these changes have been positive. Nevertheless we encourage Departments not to leave the matter there but to monitor their procedures regularly. Ideally Departments should annually review how the procedures work in practice, check levels of staff awareness and trust, and refresh the policy as needs be.

By contrast, the absence of any reply to or acknowledgment of this research from the Cabinet Office, the Department of Trade and Industry, the Department of Constitutional Affairs or the Department for the Environment, Food and Rural Affairs paints another picture. It suggests that in these leading departments there has been no review and none is planned to ensure departmental policies comply with the statutory scheme, Government policy and the Civil Service Code.

Public Interest Disclosure Act 1998 (PIDA)

We are glad that all the guidance we have seen shows some awareness of PIDA and we are pleased that this recognition of the statutory scheme is now picked up in the new Civil Service Code. Indeed, if anything, we feel there may be too much emphasis on PIDA in the policies of the Department of Health and the Ministry of Defence as the law is only an safety net to a good policy which comes into play when things have gone wrong. As an example, policies occasionally refer to the concept of reporting 'under PIDA' (FCO, DCMS). This phrase seems to be based on a misunderstanding: it makes no difference whether or not the whistleblower says they are reporting under PIDA. The Act protects disclosures which comply with its tests, even if the person making the disclosure is unaware of its existence.

Summary and recommendations

As this review shows, while the clear majority of Government Departments offer their staff helpful guidance on whistleblowing, few policies fully complied with accepted good practice and some fell far short of it. The league table on page 12 rates the whistleblowing policies of Government departments against each of the six criteria of accepted good practice and against a seventh, the reassurance the policy would give an official unsure whether to raise a whistleblowing concern or not.

While congratulations are due the top scoring departments on the content and tone of their whistleblowing policy, the performance of the bottom three departments places them firmly in the relegation zone. There is one important caveat to this exercise – it is a review of the policies as stated, it does not assess how each department does in practice encourage or discourage its staff to raise concerns and how well its staff and managers are aware of and confident in the arrangements.

As this review shows a major flaw in many of the policies stems from what appears to be a concerted desire to insist that whistleblowing concerns should be kept internal in all circumstances. Such misplaced and counter-productive advice appears to be the result of the erroneous provisions in the Directory of Civil Service Guidance (extracts in Annex B).

By suggesting – albeit wrongly – that the legislative framework creates a hermetically sealed internal process for public interest whistleblowing, the Guidance gives managers little encouragement to address any substantive concern which may cause disruption or embarrassment. This is especially the case where an organisation's hierarchical style means a senior manager's default is to back his manager or where the rotation of posts means there is a good chance that by the time the risk does eventuate it will be someone else's problem.

With the new Civil Service Code expressly citing the protection in the Public Interest Disclosure Act, its referral to the Directory of Civil Service Guidance as a source of valid information suggests a lack of coherence and leadership at the centre. The fact that the Cabinet Office languishes at the foot of the league table reinforces that impression.

We recommend that

- The Cabinet Office should amend the Directory of Civil Service Guidance without delay so it provides accurate and helpful guidance on the Public Interest Disclosure Act and reflects the new Civil Service Code;
- The Departments at the foot of the league table (Communities & Local Government, the Scottish Executive and the Cabinet Office) should urgently upgrade their whistleblowing arrangements;
- All Departments should annually review their whistleblowing arrangements in the light of any serious incidents that have occurred where it is reasonable to assume that an official should have had a genuine concern about the issue ; and
- All Departments should ask staff about their awareness of and confidence in the whistleblowing arrangements as part of their annual staff surveys.

6 June 2007
Public Concern at Work
www.whistleblowing.org.uk

**LEAGUE TABLE OF WHITEHALL DEPARTMENTS
ON WHISTLEBLOWING GOOD PRACTICE**

<i>Department</i>	<i>Commit & clarity</i>	<i>Options outside line manager</i>	<i>Independent advice</i>	<i>Openly & confident</i>	<i>External o'sight</i>	<i>Sanction</i>	<i>Reassu- rance</i>	Total
Culture, Media and Sport (DCMS)	3	4	4	4	4	4	2	25
International Development (DFID)	3	4	4	4	4	3	2	24
Education and Skills (DfES)	4	3	4	3	2	4	3	23
Home Office (HO)	3	3	3	4	2	4	2	21
Trade and Industry (DTI)	3	2	4	3	2	4	4	20
Department of Health	3	4	4	2	3	3	0	19
Environment, Food and Rural Affairs (DEFRA)	3	3	4	3	2	2	2	19
Transport (DfT)	3	2	2	3	2	4	3	19
Work and Pensions (DWP)	3	3	4	2	1	2	2	17
Foreign and Commonwealth Office (FCO)	2	3	3	3	1	2	2	15
Defence (MOD)	3	4	0	3	2	2	0	14
HM Treasury (HMT)	3	2	3	1	1	2	1	13
Constitutional Affairs (DCA)	1	1	2	1	1	1	2	9
Communities & Local Government (DCLG)	2	2	0	0	1	0	1	6
Scottish Executive (SE)	0	1	1	0	2	0	0	4
Cabinet Office	0	1	1	0	1	0	0	3

GOOD PRACTICE ON WHISTLEBLOWING

Since its launch under the chairmanship of the late Lord Nolan, the Committee on Standards in Public Life has continued to highlight the role whistleblowing plays “both as an instrument of good governance and a manifestation of a more open culture”. Its approach and recommendations have been adopted by the Combined Code and regulatory bodies as relevant to organisations in all sectors. Emphasising the important role whistleblowing can play in deterring and detecting malpractice and in building public trust, the Committee has explained:

“The essence of a whistleblowing system is that staff should be able to bypass 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.”

In making this work, the Committee has said that “leadership, in this area more than in any other, is paramount” and that the promotion of the whistleblowing arrangements is critically important. The Committee has long distinguished a ‘real’ internal whistleblower from an anonymous leaker to the press and has recently stressed that the Public Interest Disclosure Act should be seen as a ‘backstop’ for when things go wrong and not as a substitute for an open culture. The Committee’s early recommendations were accepted in the 1997 White Paper on The Governance of Public Bodies.

Drawing in part on the practical experience of Public Concern at Work, the Committee has recommended that a whistleblowing policy should make the following points clear:

1. *The organisation takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistleblowing concern from a grievance.*
2. *Staff have the option to raise concerns outside of line management.*
3. *Staff are enabled to access confidential advice from an independent body.*
4. *The organisation will, when requested, respect the confidentiality of a member of staff raising a concern.*
5. *When and how concerns may properly be raised outside the organisation (e.g. with a regulator).*
6. *It is a disciplinary matter both to victimise a bona fide whistleblower and for someone to maliciously make a false allegation.*

However good the written policy is, how it works in practice is critical. As the Commerce & Industry Group state: “*How an organisation responds to a whistleblowing situation is the litmus test of its corporate governance arrangements which proves whether they are genuine or just lip service*”. In its most recent report the Committee on Standards in Public Life “emphatically endorsed” additional elements of good practice drawn from Public Concern at Work’s evidence that organisations should:

- (i) *ensure that staff are aware of and trust the whistleblowing avenues;*
- (ii) *make provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;*
- (iii) *continually review how the procedures work in practice;*
- (iv) *regularly communicate to staff about the avenues open to them.*

In its 2005 White Paper on Standards in Public Life, the Government responded that “*it agrees on the importance of ensuring that staff are aware of and trust the whistleblowing process, and on the need for the boards of public bodies to demonstrate leadership on this issue. It also agrees on the need for regular communication to staff about the avenues open to them to raise issues of concern.*”

EXTRACTS FROM EXISTING CENTRAL ADVICE TO CIVIL SERVANTS

The Civil Service Code

The new CSC, issued 6 June 2006, includes the following:

15. Your department or agency has a duty to make you aware of this Code and its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.

16. If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department's nominated officers who have been appointed to advise staff on the Code.

17. If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain; alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate authorities.

18. If you have raised a matter covered in paragraphs 15 to 17, in accordance with the relevant procedures ⁽¹⁾, and do not receive what you consider to be a reasonable response, you may report the matter to the Civil Service Commissioners. The Commissioners will also consider taking a complaint direct. Their address is:

3rd Floor, 35 Great Smith Street, London SW1P 3BQ.
Tel: 020 7276 2613
email: ocsc@civilservicecommissioners.gov.uk

If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.

¹The whistleblowing legislation (the Public Interest Disclosure Act 1998) may also apply in some circumstances. The Directory of Civil Service Guidance gives more information: www.cabinetoffice.gov.uk/propriety_and_ethics .

The Directory of Civil Service Guidance

The Directory of Civil Service Guidance dates from 2000. The existing text (vol 2 pp 54-56) summarises the 1998 Act effectively. It then goes on to state that:

6 The Civil Service Code advises that you should report any actions that are inconsistent with its provisions (paragraph 11). First you should raise the issue with your line manager. If for any reason you would find that difficult you should report the matter to the nominated appeals officer within your department.

7 If you are unhappy with the response you receive, you may report the matters to the Civil Service Commissioners (paragraph 12 of the Civil Service

Code). Exceptionally the Civil Service Commissioners will consider accepting a complaint direct.

These paragraphs are more introspective than PIDA and difficult to reconcile with the Civil Service Code which states (now in para 17) that evidence of criminal or unlawful activity should be reported to 'the police or other appropriate authorities'.

PIDA protects disclosures to statutory regulators such as the National Audit Office because the existence of such protection makes it more likely that concerns will be properly raised and addressed internally. However this beneficial effect can only be achieved if staff and managers are aware of the external route. Contrary to the spirit and letter of PIDA, paragraph 8 of the Guidance then states

8 These procedures should also be used if you wish to make any other disclosure covered by the 1998 Act.

The final section of the Guidance emphasises this different approach and is difficult to reconcile with the legislation:

Will I be protected if I blow the whistle before going through the internal procedures?

9 Only you can make this judgement, and in doing so you will need to consider the preceding paragraphs carefully. It is preferable and this is at the heart of the Public Interest Disclosure Act to raise the matter internally if appropriate and practical. It is after all in the interests of the organisation and its workforce that issues and concerns are aired in this way. If you are in any doubt you should speak to your departmental nominated officer. Your conversation will be treated in absolute confidence

First, this implies that internal disclosure is not whistleblowing. Secondly, it gives an overly complicated and negative impression of the protection available where an official goes, say, to the National Audit Office, the Information Commissioner or another prescribed regulator. Thirdly, as expressed it appears to put the departmental nominated officer in an impossible position if he is told of some serious malpractice as he is expected to keep it confidential rather than see that it is dealt with in the Department's interests.