

the Whistleblower

Welcome

Welcome to the first issue of The Whistleblower, a bulletin to help you keep abreast of practical developments in accountability and governance. Inevitably it draws heavily on the activities of Public Concern at Work (PCaW), the charity set up to help Boards, policy makers, managers, workers, professionals and members of the community address these issues.

I am delighted to take over as chair of the charity and want to build on and broaden its work in influencing how wrongdoing is deterred and how self-regulation and accountability can better work in practice. Our contribution has been distinct and practical - emphasising how to influence the conduct of individuals and not focus exclusively on the systems they work with and under.

For those who do not know of our

work, PCaW does this through promoting and embedding a culture that helps ensure that staff know there is a safe alternative to silence and that those in charge are open to - and will address - serious concerns.

A culture where it is safe and accepted for the whistle to be blown makes real the principle of accountability (in that people know they can readily be asked to explain their conduct) so that managers have no excuse to duck difficult decisions. The self-discipline that this type of culture engenders in individuals helps deter wrongdoing without stifling innovation.

The alternative seems to be further prescriptive regulations, which entrench a check-box mindset that de-motivates many staff while challenging the few to outwit the rule-makers. The good news is that many in business now recognise that the benefits of this approach outweigh any disadvantages. I am confident that as we approach our second decade, PCaW will continue to help organisations, policy



Michael Smyth, Litigation Partner at Clifford Chance is Public Concern at Work's new Chairman.

makers and the wider community realise the advantages of putting the principle of accountability into practice.

Michael Smyth

Editorial from 'The Economist'

"Ultimately the answer is for employers, in both private and public sectors, to learn to appreciate the merits of whistleblowing and to reward genuine whistleblowers with promotion rather than the sack. They might even then eliminate the malpractices that trouble their conscientious employees in the first place - and what a good thing that would be."

Mailing

If your details are incorrect or you would like *The Whistleblower* by email or sent to a friend please email updates@pcaw.co.uk or phone 020 7404 6609

Corporations Risk Prosecution

As New Anti-Corruption Laws Make Whistleblowing A Must!

New anti-corruption laws in the Anti-terrorism, Crime and Security Act, mean that British corporations now face criminal charges for bribing public officials or private sector employees even where the arrangements and payments were made abroad. At a recent conference organised by the Department of Trade and Industry and chaired by Public Concern at Work's Director Guy Dehn, business was briefed about the content and practical application of the new laws. Business was urged to consider corruption as a risk management issue. Coming

from different perspectives, Edward Bickham, Vice President of Anglo American, and Tony Young, President of the TUC, emphasised the importance of whistleblowing in detecting and combating corruption.

Lack of adequate controls to deter and detect bribery look likely to impact on the share price of British corporations, quite apart from any risk of criminal charges. Fund managers are looking hard at the adequacy of internal controls, which might detect corruption. According to a recent survey by leading fund manager, Friends Ivory & Sime, less than half of companies surveyed said they had a whistleblowing policy.

Along with our activities at home, Public Concern at Work continues to work with leading organisations and the OECD, the Council of Europe and the Global Forum on the role of whistleblowing in combating corruption.

Delivering the pledge

What do whistleblowing and policing have in common? The aim behind each is to deter and detect wrongdoing and to protect the public. The link between them is strong and long: one of the origins of the word whistleblowing is the bobby on the beat summoning help to apprehend a criminal.

Yet today police officers have no effective whistleblowing protection. The costs of this are clear to all – the damaging miscarriages of justice leading to red tape and audit trails, which keep officers off the street and have led to a loss of confidence in our police.

With a cross-party amendment to the Police Reform Bill likely to succeed, this could change. Lord Borrie (PCaW's founding chairman and current head of the Advertising Standards Authority) is spearheading moves to give honest police officers real protection when they question or challenge wrongdoing in the service. If accepted, the amendment will bring police officers within the protection of the Public Interest Disclosure Act (The UK's whistleblowing legislation).

This will help officers deliver their pledge when they take office to "cause the peace to be kept and preserved and prevent all offences against people and property" to the best of their power.

The Association of Chief Police Officers and the Police Complaints Authority have both argued that police officers need the same whistleblower protection as their civilian colleagues. With the Government keen that the police should break from the canteen culture, police officers may soon regain the confidence to blow their whistles.

STOP PRESS

The Government has just announced that it will amend the Bill to give police officers full whistleblowing protection in this session of Parliament.

All the way With FSA!

As the Financial Services Authority took up its full powers at the end of last year, FSA Chairman Sir Howard Davies commented on how whistleblowing is viewed by the new super regulator.

"We are serious about expecting firms to put internal whistleblowing procedures into place and won't hesitate to consider making rules under the FSM Act if the guidance we plan to issue in the New Year does not lead to the higher standards we want to see."

And any evidence we get that a firm has acted to the detriment of an employee who has made a disclosure which is protected by whistleblowing legislation could call into question the fitness and propriety of the firm concerned and/or relevant members of the firm's staff."
(FSA/PN/143/2001)

FSA guidance on whistleblowing has just been published and can be found in "Whistleblowing, the FSA & the financial services industry" at www.fsa.gov.uk/whistle/

Train driver blows his whistle for safety

As another train disaster begs the question why safety concerns were not effectively raised, the potential value of the whistleblowing law is clear.

Connex driver, Laurie Holden, has been awarded £55,000 compensation after blowing the whistle on dangers on the railways, including that 11 signals had been passed at red.

A tribunal found that local management showed "no sense of realism or urgency" and "merely paid lip-service" to the health and safety concerns he had raised. Instead,

managers paid minute detail to Mr Holden's conduct and initiated disciplinary actions to warn him off blowing the whistle in future. These reprisals forced Mr Holden to resign after 25 years' service on the railways.

With no caps on compensation, the case shows how the Public Interest Disclosure Act helps to tackle bad practice. The FT reports that Connex is not appealing the decision and that the company is "sorry things had to go this far before being resolved".

Doing it for the kids

With help from the Nuffield Foundation, PCaW is working with providers in the voluntary childcare sector to make sure they can reap the benefits of whistleblowing. Free whistleblowing toolkits and training on dealing with concerns were made available at the end of last year. Delegates participating in the fully booked training workshops in London and Birmingham

acknowledged that being offered free places made all the difference to such hard-pressed charities.

The importance of this training was recognised by one delegate who said "I now understand my role and how my organisation's policy should work in practice." This project is being run jointly by PCaW and the National Council for Voluntary Child Care Organisations (NCVCCO).



Public Concern at Work's Vice Chair **Maurice Frankel** and Scottish Chair **Carole Ewart** flank Scotland Office Minister **George Foulkes MP** at the launch of our Scottish office.

Now Scottish whistleblowers have help too!

When Scotland Office Minister George Foulkes MP launched our new Scottish helpline he said, "This Government fully supports the Public Interest Disclosure Act which provides protection for employees against victimisation or dismissal for responsibly raising concerns about criminal offences, health, safety and environmental dangers and miscarriages of justice to name but a few."

Scottish Director Lynne MacMillan said, "The issues that face firms and workers in Scotland and the reality of the Scottish community will inform our work. Building on the successes down south, I hope we can make a real difference."

Scottish helpline 0141 550 7572

Lynne MacMillan (scot@pcaaw.co.uk)

No More Serving in Silence

PCaW is working with the Ministry of Defence on how to make whistleblowing work and how to handle concerns. Delegates at recent training courses included senior managers from governance, counter-fraud and human resources. The sessions were very well received, with positive feedback from all who participated.

Recognising the benefits that the Public Interest Disclosure Act (PIDA) brings to the work of its civilian staff, the MoD is looking to see how their new whistleblowing guidance and the principles of

PIDA can apply to the armed services even though, at present, the legal protection does not extend to services personnel. This is one welcome example of organisations seeing the self-interest in introducing a whistleblowing culture.

The Ministry is also proposing to promote PCaW's confidential helpline to staff to reassure those who may not have the confidence to raise their concerns internally or who need to know how best to ensure the message is heard.

PCaW People

Michael Smyth, Litigation Partner at Clifford Chance is the new Chair of Public Concern at Work.

Ex Chair of Public Concern at Work, **Michael Brindle QC**, is now Chairman of the Commercial Bar Association and also heads our Advisory Council.

New Trustees at PCaW include **Gary Brown**, an Executive Manager at Abbey National and **Martin Le Jeune**, director of Fishburn Hedges.

PCaW Director, **Guy Dehn** has been elected as a trustee of Consumers' Association.

Anna Myers, moves up to be Deputy Director of Public Concern at Work.

Kirsten Trott, previously at Australian law firm Corrs Chambers Westgarth, has joined us as our Legal Adviser.

Evelyn Oakley returns as our Company Secretary.

Bristol Heart-Op Hero — cleared at last

Ministers have rejected one of the key findings of the £14 million inquiry into baby deaths at Bristol Royal Infirmary. Following Public Concern at Work's challenge to the Kennedy Report's claim that Dr Bolsin would not have been protected by the Public Interest Disclosure Act had it been in force, John Hutton MP Minister of State at the Department of Health, told Parliament: "We are completely satisfied that if the Act had been in force when Dr Bolsin made his recommendations, it would have given him the necessary protection and cover, as it was designed to do."

The Kennedy report identified "a club culture" where the interests of professionals were put ahead of patient care and the lives of babies. Mr Alan Milburn, the Secretary of State for Health, said "perhaps the greatest tragedy of all is that concerns were raised in and indeed outside the hospital about

standards of care in paediatric cardiac surgery. Many people knew what was happening but no one acted. The fact that it took a whistleblower, Dr Stephen Bolsin, to bring the problems to the fore is perhaps the most serious indictment of the culture prevailing at that time".

The Act works not only by protecting individuals like Steve Bolsin but also all of his colleagues who feared there was no safe alternative to silence. Whistleblowers who are victimised in breach of the Act are entitled to full compensation for any losses. While the Act's structure encourages internal whistleblowing, it also protects reports to regulators and wider disclosures if they are reasonable and are made for good cause. This approach means organisations have every reason now to promote and embrace legitimate whistleblowing.

While PCaW recognises that work towards creating an open and

accountable culture in the NHS has already begun, Deputy Director, Anna Myers warns "real change takes time and commitment. No one wants a situation where individuals like Dr Stephen Bolsin have to take such risks to be heard. The challenge to all employers is to use the Act positively to encourage staff to raise concerns early and without fear."

Commenting on the news, Dr Bolsin says "I feel very reassured by the Government's statement and was pleased to see that Public Concern at Work took such strong, quick and determined action to obtain clarification of a very important point. I still believe that people should be able to speak out about issues of patient safety without being subjected to any adverse consequences."



THE LAST WORD

Public Concern at Work

is a whistleblowing charity and public interest consultancy, specialising in organisational accountability.

We:

- provide confidential and impartial advice through our free helpline for people concerned about wrongdoing;
- provide highly-rated training and professional support to organisations in the public and private sectors; and
- seek to inform public policy in the UK and abroad.

For information about our services or to support our charitable work please contact Evelyn Oakley on 020 7404 6609 or eo@pcauw.co.uk



Enron: An oil change

The disaster at Enron will bring real changes to the role and work of auditors across the world. No doubt regulatory and reporting lessons will be learned in and outside the US. The story also marks something of an oil change in public understanding of whistleblowing.

Historically a whistleblower was an employee who leaked embarrassing or damaging information about wrongdoing to sources external to the organisation – invariably at great personal cost. While the Nolan Committee report has assisted in some sectors accepting a more positive interpretation of the term, public attitudes have been slower to change. For much of the media a whistleblower must have gone public, usually with a questionable motive, and lost his job as a result.

Sherron Watkins has been lauded by the international media as a whistleblower though she neither went public nor to the regulators and has kept her job. At the hearings, Republican Senator James Greenwood said "Ms Watkins is not a whistleblower in the conventional sense.

She was – and is – a loyal company employee who sought valiantly and sadly in vain to get people in charge to face the facts".

Ms Watkins is clearly a whistleblower from a UK perspective. She put those in charge of Enron on notice, with the result that the refrain "If only we had known..." will not stick. By helping ensure that those who run organisations account for their conduct, whistleblowing will play an ever-increasing role. While part of this will be down to people like Ms Watkins, we will also see a shift in the culture of organisations as the new generation of business leaders themselves encourage such conduct.

The reasons are simple. Almost all people who run organisations want to do a good job and they want to be seen to be doing a good job. That's as much for self-respect as for legal reasons. So those in charge are now more likely to be aware of serious problems and more likely to deal with them. Whatever changes are made to the powers and duties of auditors, they are not enough in themselves. The fact is, risk management without a whistleblowing culture is like a building without foundations.