

the Whistleblower



This is one of the new colour posters we designed to help NHS Trusts effectively promote their whistleblowing policy. Similar posters are available to PCaW helpline subscribers. For further information, please call us on 020 7404 6609.

Celebration time, Come on

Five years ago this July, the Public Interest Disclosure Act (PIDA) reached the statute book. To mark the occasion, the Bill's sponsor, Tory MP Richard Shepherd, and one of its key backers, Labour MP Ross Cranston, will be flying the whistleblowing flag in their Midlands constituencies. Events include sessions at Walsall NHS Trust and Dudley Primary Care Trust to celebrate steps toward a more open culture in the NHS. These will also showcase our newly updated Policy Pack - the whistleblowing toolkit - which the Government has ordered for all NHS Trusts in England.

October marks the tenth anniversary of Public Concern at Work. Cabinet minister Ian McCartney MP will be giving the key note address and whistleblowers and experts will be flying in from distant parts to mark the occasion on Tuesday the 14th. The celebrations then move to Edinburgh for the first national conference on whistleblowing in Scotland on October 16th.

If you wish to attend one of these events, hold your own office or street party, or simply publicise the celebrations, please email party@pcaw.co.uk

Should whistleblowing be rewarding?

What happens if you don't blow the whistle? If you are a senior manager, you might find yourself in the dock. If you work somewhere like Enron or WorldCom, you'll end up losing your job. But if you are a regular Joe or Jane, the chances are you may just lose some sleep.

Rather than actively reward whistleblowing, the UK legislation - modelled on the Public Concern at Work approach - fully protects those who question or challenge workplace wrongdoing from reprisals. Its approach is that you shouldn't end up out of pocket if you do the right thing. Being a good citizen should be sufficient reward in itself - beyond that, we see moral hazards.

But across the sea in the land of the free, they have few qualms about making whistleblowing a financially rewarding activity. Under false claims laws, US whistleblowers get a slice - on average 15% - of the money they save the Government by reporting frauds on public/private contracts. Average rewards are running at \$1 million. Historically, most of these claims have related to defence contracts and many of the pay-outs have created multi-millionaires (including the odd UK employee working here on a US contract). This approach is now being applied to the healthcare sector, where frauds are often sophisticated and hard to detect without a whistleblower. A report just out (www.taf.org) shows that the Government recovered \$1 billion for US taxpayers in 2001 from healthcare frauds - including \$345 million from GlaxoSmithKline and Bayer for overcharging on their drugs. Moral hazards aside, that's quite a success rate. We would welcome your views on the role of rewards - rewards?@pcaw.co.uk

Wise words out of the wastes of WorldCom

"That the fraud continued as long as it did was due to a lack of courage to blow the whistle on the part of others in WorldCom's financial & accounting departments; inadequate audits by Arthur Andersen; and a financial system whose controls were sorely deficient."

From the formal report to WorldCom's independent directors into the \$9 billion fraud.

Can you afford a culture of silence?

Now a Healthier Service - the full picture

We only hear about whistleblowing in the NHS when it goes wrong - an inquiry revealing that staff were too scared to raise concerns or that their concerns were ignored, or media reports that a whistleblower has been victimised. PCaW joined forces with UNISON, the main NHS union, to discover how well whistleblowing is working on the ground in the NHS.

With 90% saying they had blown the whistle on risks to patient safety, the culture of fear that bedevilled the NHS a decade ago is changing. That's backed up by 1 in 4 staff saying it's easier now to raise concerns than three years ago. And with two-thirds of those who raised concerns reporting no reprisals and one-half stating the concern was dealt with reasonably, that's great news for patients.

The survey also demonstrates the real value of a whistleblowing policy. When a policy was used to raise concerns, no staff reported reprisals and two out of three said the concern was dealt with reasonably. But - despite clear government orders that Trusts have and promote policies - 50% of staff did not even know if their Trust had a whistleblowing policy.

If employers offer staff neither guidance nor reassurance about how to raise concerns, it's no surprise that employees either stay quiet or risk going about it the wrong way. In the NHS this is simply not an option. With our updated Policy Pack being distributed across all Trusts in England, it shouldn't be long before the NHS can say "so long silence".

Public service - bleak future, bright light

With governance, audit and oversight all live issues for public bodies, it's no surprise that IPF's Better Governance Forum decided to make whistleblowing the theme of its annual conference. PCaW asked the delegates whether they thought the public sector would be in stronger health, weaker or about the same in a generation's time. No delegate thought it would be stronger and just two thought it would be the same. Almost all thought it would be weaker. Against that background, the vital role of whistleblowing in rebuilding the confidence of both

the workforce and the public is abundantly clear.

Following the conference, PCaW ran full day training sessions for officers from over 60 public bodies in London, Chester, York and Bath. While delegates from local government were keen to review and update their whistleblowing policies, those from other public bodies were addressing the issue for the first time. The key issue across the public sector was how to get staff to believe the organisation's commitment to providing a safe alternative to silence. Without that, there is little chance staff will use whistleblowing policies in a constructive way.

Marathon man

Many thanks to PCaW trustee Martin le Jeune who ran the London marathon to raise funds for our educational work and helpline.

We are offering a free PCaW T-shirt to the reader who has the best answer to the question "What was Martin thinking during those 26 miles?"

Entries please to quiz@pcaw.co.uk



PCaW staff Kirsten Trott & Robin Van den Hende join Martin (centre) after the race.

Public Concern at Work

Public Concern at Work is an independent charity. We receive no state aid.

Our helpline and public education work is funded by charitable donations and from the income we earn from our training and consultancy services.

If you want to support what we do or your organisation wants

expert and practical help on how to make whistleblowing work, please contact us on **020 7404 6609** or whistle@pcaw.co.uk

Do the right thing

Reg Charity 1025557
VAT 626 7725 17

Mailing

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

Scotland: The brave

We are delighted to announce that Harry Templeton has agreed to take over our Scottish office – and thanks to Lynne MacMillan for getting the project underway.

Harry Templeton brings a wealth of practical and personal experience to our activities. Sacked by Robert Maxwell for challenging the way he abused the pension fund, Harry has since built a career in financial services. His evidence to the Parliamentary Inquiry on Maxwell can be found on our website on the whistleblowers page.

The main task of our Scottish work is to promote awareness of the issue and the legislation. A seminar attracting around 100 lawyers across Scotland was rated as one of the best the Law Society had run. This was swiftly followed by media outcry at the gagging of a whistleblower who

raised concerns about impropriety in charitable fundraising for breast cancer research. In June, when the organisation's assets were frozen by the courts, it turned out the same judge had issued a blanket gagging order last year preventing the whistleblower from raising his concerns about the financial misconduct with anyone.

We have trained staff at the Royal Bank of Scotland, set in train a major initiative with Audit Scotland to promote whistleblowing across public bodies in Scotland and linked up with EVH on support for voluntary sector staff. These activities and increasing publicity have generated many calls from Scotland to our helpline.

The Scottish office number is 0141 883 6761 and the email contact is ht@pcaw.co.uk

PIDA - policy and practice

- A full house of press coverage greeted PCaW's report on the early years of the PIDA. With awards running at £10 million a year, the report details graphic examples of why the public interest requires whistleblower protection. The report is at www.pcaw.co.uk/news and also provides valuable insights into labour relations, the perceived role of tribunals and how the public interest is an alien concept to some people. So, it's worth reading all the cases!
- PCaW is urging that the new anti-corruption laws recognise the key role whistleblowing can play in deterring and detecting bribery.
- While in the US there is a heated debate over proposals that law

firms should blow the whistle on corporate clients that insist on breaking the rules, here PCaW is calling for PIDA protection for lawyers who raise concerns about client misconduct with the client or with a senior partner.

- Ros Wright QC, ex-head of the Serious Fraud Office, has suggested that statutory auditors be made prescribed persons under the PIDA. Oxford Brookes academic Dr Lucy Vickers has suggested union officials be given a similar role and also that the Act have a public interest catch-all test.
- PCaW has successfully lobbied that Northern Irish police officers should have statutory protection for whistleblowing.

PCaW's helpline

In the first six months of 2003, our lawyers gave advice on over 350 public concerns. The issues we dealt with included:

- The cover-up of serious misconduct by court bailiffs.
- Double standards at a utility company which took action where billing errors favoured the customer, but kept quiet where the same errors favoured the company.
- A quango where grants were made to bodies linked with every Board member.
- Care staff for the elderly who regularly were drunk on duty.
- A bribe to secure a large overseas contract.
- No safety guards on electrical saws in a factory.
- Falsifying food safety records.
- Overcharging on overseas financial transactions.
- An actuary flouting regulatory safeguards for an occupational pension fund.

Feedback from all our clients remains positive, as this letter illustrates -

"I am writing to thank you for your help and support over my workplace problems. I felt I got a much needed kick up the proverbial which enabled me to seek a new direction with my future employment and move on with my life. With many thanks again."

We are sad to report that Derek Gladwin (Lord Gladwin of Clee) died this Spring. He was a great friend and supporter of PCaW and a founding member of our Council. Ruskin College Oxford is establishing a scholarship in his memory.

Co-operating on whistleblowing

The Co-operative Group - the world's largest consumer co-operative - places great value on the expectations of key stakeholders and on its workplace culture. In 1997 we introduced a Code of Business Conduct setting out our people values. As part of this, to help engender an open, honest and socially responsible working environment, we established a whistleblowing procedure.

When recently the Code underwent a thorough revision, it highlighted the need to re-examine the Group's whistleblowing procedure. As the leading authority in this area, we invited PCaW to review the current operation and make recommendations for improvement.

Along with subscribing to PCaW's helpline, one issue for us was the need to communicate more clearly to our workforce the differences between grievances and whistleblowing. To address this issue, the procedure has been reworded and the messages simplified in easily accessible posters and notices. We will reinforce this with a communication programme, using practical case studies, over the coming months.

As part of the Group's social accountability programme, we are undertaking wide-ranging stakeholder engagement. This will show levels of awareness of and confidence in the whistleblowing procedure across the

business and help us to identify where improvement or remedial action may be necessary. Tied to this, we will be working with PCaW and our external auditors, on how we can most effectively monitor and audit the use and value of the policy. Five years after we launched the whistleblowing policy, we have determined to take a much more integrated approach now - one which recognises the role of whistleblowing as an effective means of risk management and of protecting the integrity of the business.

*Peter Rogan
Social Accountability Manager
The Co-operative Group*

PCaW News

Spring:

- Fraud Advisory Panel seminar
- Advised on Lithuanian Law
- IPF Better Governance roadshows
- RoSPA Safety Congress
- PIDA case summaries published
- Employment Law Annual Conference

Summer:

- South African Law Commission seminar
- Policy Pack 2003 launched
- PCaW/Unison survey on whistleblowing in the NHS
- Seminar on whistleblowing laws at Middlesex University
- Law Society Scotland seminar
- RJW seminar for union advisers
- PIDA anniversary celebrations
- Advise on Japanese draft law

Autumn:

- International whistleblowing conference in Germany
- PIDA book launch
- Biennial review published
- PCaW 10th anniversary celebrations
- Whistleblowing conference, Scotland

THE LAST WORD

Global solutions?

Ten years ago we wondered if whistleblowing might be an Anglo-Saxon activity – some peculiar illustration of the role of the individual against an all-knowing collective. Today it is clear that whistleblowing is an issue wherever there is wrongdoing, whatever the culture. The issues are - should there be a safe alternative to silence and, if so, how should it work? Is it preferable to encourage people to question such conduct openly with those involved? Or is a better answer an anonymous hotline to the authorities or a leak to the media? Should we outlaw reprisals against whistleblowers or offer whistleblowers rewards?

As a matter of public policy, countries around the world are now considering these issues. In the Far East, Korea has adopted a US approach and legislated for rewards. Japan is preparing a draft law, based more closely on the UK approach, but restricting it to whistleblowing to protect consumers. One issue to be resolved is how Japan will recognise the role of public disclosures,

whether to the media or NGOs. South Africa and New Zealand are both reviewing their whistleblowing laws. Lithuania is considering how best to promote whistleblowing in a transitional economy and one where the legacy of the Soviet state is barely a decade away. In the US, many states are turning to whistleblower reward schemes to tackle corporate, if not public, wrongdoing. In Europe, the Netherlands and the UK have legislated and campaigns have begun in Denmark and Germany.

Whatever the legislative solution, the fundamental and universal problem is a human one. How do we educate or encourage people to speak up? In the corporate context, this issue is addressed in *"When you say yes but mean no"*, Leslie Perlow (2003). One sound piece of advice Prof. Perlow offers is that people should be helped to question suspect or unwelcome conduct in a constructive way. In our view, schools, churches, governments, employers, unions and NGOs all have a role to play in this. Are you playing yours?