

# the Whistleblower

## Getting the balance right

In a welcome, if rare, move for public bodies, the Committee on Standards in Public Life (now chaired by Sir Alistair Graham) is reviewing how some of its key recommendations – including those on whistleblowing – are working in practice.

Key witnesses agreed that the main problem was the lack of awareness of whistleblowing policies and the protection available. In our evidence we called on public bodies to use posters to promote whistleblowing to ensure staff know how to go outside the management line and outside the organisation. Without such simple steps, we said, there was a risk that the essence of whistleblowing would be lost in the

tick-box mindset that can frustrate so much of the public service.

While there is evidence that whistleblowing is helping to make public bodies more open and accountable, we emphasised there is a long way to go. Along with better promotion, we recommended that public bodies should be under obligations similar to those on listed businesses (see below) to monitor and review their whistleblowing arrangements.

To find out more about this review or to see the written submissions and oral evidence we and others gave, please visit its website at [www.public-standards.gov.uk](http://www.public-standards.gov.uk).

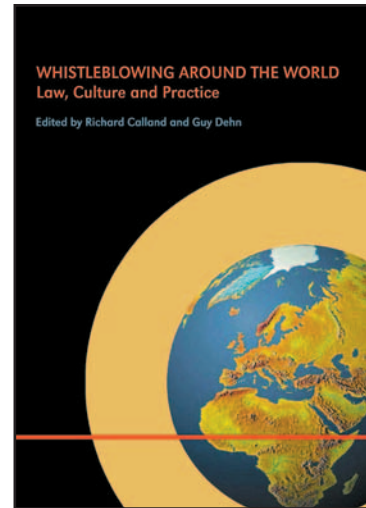
## Whistleblowing gets down to business

The revised Combined Code for top companies now emphasises the value of effective whistleblowing arrangements. This obliges audit committees to review both the company's policy on and experience of whistleblowing, and also to see that concerns are addressed in a proportionate and independent way.

The Institute of Chartered Accountants has published helpful guidance on how companies should meet these new obligations. The practical guidance – which will

also be of value to employers in and auditors of the public and voluntary sectors – explains how whistleblowing is a key tool in risk management and how organisations can best make it work.

The guidance makes the critical point that any review should look not only at cases when the policy was used but also at significant incidents where no-one blew the whistle, even though they could have been expected to. The guidance can be found at [www.icaew.co.uk](http://www.icaew.co.uk).



### New Book

With four compelling case studies and bundles of practical advice for employers, lawyers, regulators and campaigners, "Whistleblowing Around the World" is an Amazon best-seller. Orders also from [eo@pcaw.co.uk](mailto:eo@pcaw.co.uk).

### Immigration shambles

The real story behind the recent shambles in the UK's Immigration Service is not that two people blew the whistle, but that so many of their colleagues and managers turned a blind eye to concerns about fraud, forged documents and secret policies.

Unless government departments start promoting a safe alternative to silence for public servants, it is all too easy to imagine similar breakdowns occurring in the future in this or some other part of government. In an attempt to wake up Whitehall, the Cabinet Secretary is starting a series of whistleblowing roadshows this summer.

If Whitehall can get whistleblowing right, it will do much to reassure us all that the government machine is more of a public service than some routine bureaucracy.

# Whistleblowing around the world

**North** In the Council of Europe's key initiative in the Netherlands on conduct in the police and local government, we explained the role of whistleblowing. Paul van Buitenen, the auditor who blew the whistle on fraud in the EC, has been elected to the European Parliament.

**East** Japan has just passed a whistleblowing law, based on the approach of PIDA, but restricted to the private sector. In India the murder of civil engineer Satyendra Dubey after he raised concerns about corruption on a major project has prompted a mass campaign for a whistleblower law and moves to set up an independent body similar to PCaW.

**West** In the United States, after a successful book launch with GAP, we briefed the Foreign Relations Committee in Congress on whistleblowing and multilateral development banks. Amendments to the US Whistleblower Protection Act are due to be agreed this year. In Canada a new whistleblower bill for the public sector is expected this Parliament.

**South** In South Africa the British Council and ODAC held a successful book launch in Cape Town, while their workshop in Johannesburg saw calls from civil society and professional groups for the new approach to whistleblowing to be adopted throughout the SADEC region.



Tom Devine (legal director, Government Accountability Project, USA), Guy Dehn (director, Public Concern at Work, UK) and Richard Calland (executive chairman, Open Democracy Advice Centre, South Africa) address a seminar in Washington DC. Photo © Marianne Camerer.

# PIDA in the courts

**Good Faith** The Court of Appeal will shortly give an important ruling – in Street - on whether “in good faith” in PIDA means ‘honestly’ or whether the requirement also bars protection from people with mixed motives. Once judgment is given, details will be on our website.

**Compensation** The EAT – in Boyle - has held that compensation under PIDA can cover injury to feelings and should be assessed in the same way as under discrimination cases. This means that the top award for injury to feelings in a serious case is

between £15,000 and £25,000. The EAT also confirmed that aggravated damages can be made under PIDA.

**When to whistle?** In Kraus the EAT held that, under PIDA, if an event is “likely” to happen, it should be “more probable than not”. This does not mean that the whistleblower must show the risk was more probable than not, only that he reasonably believed the information tended to show it was.

For a recent review of PIDA cases by Income Data Services, visit [www.ids.co.uk](http://www.ids.co.uk).

## Act now!

Five years ago this month, the Public Interest Disclosure Act came into force. Later this year we will review how the Act is working and we will be asking for views on issues like -

*How can the Act work better in everyone's interests? Is the balance right between employee, employer and the public interest? Should employers be obliged to promote whistleblowing to their staff? Should the role of regulators be more clearly defined? Are the sanctions*

*sufficient? Is there any evidence that the Act is open to abuse and if so, how can that be checked?*

If you have any views on how the Act is working or how it can be improved, we want to hear from you. Please drop us a line soon, as that will help us ensure the review and consultation considers all key points.

Also, please say if you wish to be added to the list of consultees. Send an email to [review@pcaw.co.uk](mailto:review@pcaw.co.uk).

## Public Concern at Work

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

Our free helpline, public policy and education work is funded from the income we earn from our training and consultancy services and from donations.

If your organisation wants quality help on how to make whistleblowing

work, or you want to support any of our activities, please contact us on

020 7404 6609

or

[whistle@pcaw.co.uk](mailto:whistle@pcaw.co.uk)



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## Show & tell

The Royal Society of Arts invited Information Commissioner, Richard Thomas, and Public Concern at Work's Director, Guy Dehn, to debate whether the data protection and whistleblowing laws were hindering market competitiveness.

As to whistleblowing, we maintain that it is helping to make markets work by improving internal controls and stressing openness and accountability. Part of Guy Dehn's thesis was that public policy had

focussed on rights in the 60s and 70s, before turning to redress in the 80s and 90s. He argued that – learning from what happens in truly competitive markets – if more attention was paid to remedies and their deterrent effect when developing policy, better laws would result.

A transcript of this Eversheds-sponsored lecture and discussion can be read at [www.rsa.org.uk](http://www.rsa.org.uk).

## Changes at PCAW

A warm welcome to our two new trustees, Peter Connor and Carol Sergeant CBE. They replace Rosalie Langley Judd, Michael Moore CBE and Marlene Winfield OBE, to whom we give a fond farewell and record our thanks for many years of invaluable help.

On the staff side, we were sorry to lose

our Legal Adviser, Kirsten Trott, to the Law Society. We are, however, delighted that Fatima Shah has replaced her and we also welcome Amy Bush who has joined us as a Helpline Adviser.

Many thanks also to Yvette Budé for helping us through the interim.

## Confusion to cost even more

This October, the new statutory dispute resolution regime comes into force. Intended to reduce the number of employment disputes, there is a good chance the detailed rules will have the opposite effect. One welcome provision, however, stresses the importance of distinguishing whistleblowing from grievances. Employers who do not understand this difference - and who do not

explain it to their staff - risk facing additional and costly claims under the new law. Our whistleblowing compliance toolkit at £187.50 (exc VAT) will help you get this right.

Employers will also face an up-lift of between 10% and 50% on any tribunal awards if they fail to comply with the rules for disciplining and dismissing staff. See [www.acas.org.uk](http://www.acas.org.uk) for more information.



**Blessed are the  
whistleblowers**

The Sun's Richard Littlejohn minced no words in his piece on 18 June 2004

## PCaW's helpline

Public interest concerns our helpline has recently advised on include:

- A customer, with possible links to a suspect organisation, laundering money through a major financial services company.
- Faulty electrical products not being recalled when safety risks became apparent.
- An elderly resident of a care home tied to a chair by a care worker.
- Workers fouling produce on a fresh food preparation line.
- Financial services products being added to loans without customers' knowledge or consent.
- Repairmen doing bogus and unnecessary repairs in order to get bonuses.
- A debt advice service operating without the required consumer credit licence.
- A business removing labels from clothes so that customers would not know they were sourced in Burma.
- Loans being denied to Afro-Caribbean people who had passed all the standard financial tests.
- Sales agents encouraging customers with bad credit ratings to use someone else's name to obtain hire-purchase agreements.
- An MD buying a sports car for himself with company funds and putting it on the books under purchases of plant and machinery.
- A deli section in a supermarket selling meat and cheese beyond its "best before" date.
- A 747 that had been flown for a week when it should have been grounded for repairs.

## First light in Scotland

For a country that suffered so much from BCCI, Piper Alpha and Dunblane and is now paying dearly for the home of its new Parliament, we were disappointed that the Scottish Executive failed to comment on whistleblowing in its response to the Committee on Standards in Public Life.

A ray of light has come from a campaign by the Daily Record and UNISON to encourage whistleblowing to tackle abuse in Scottish care homes. This has won the backing of Health Ministers and prompted a surge of interest in the issue. At a sell-out conference run by Age Concern, PCaW's Anna Myers said much more had to be done in Scotland if the country was to begin to reap any benefit from whistleblowing.

More illumination is coming from two key regulators north of the border. The Scottish Information Commissioner wants to ensure the role of whistleblowing is understood when his work enforcing new rights to openness begins next year. In another development, Audit Scotland has just launched a welcome whistleblowing initiative with our help. Practical leaflets for public sector employees and managers on how whistleblowing can help tackle fraud and corruption have been sent to all public bodies. They can also be found at [www.audit-scotland.gov.uk](http://www.audit-scotland.gov.uk).



Anna Myers, PCaW's deputy director

## The loneliness of silence

As a child I was taught society's values and right from wrong in what was expected of me and what I was entitled to receive from individuals and authority in return. However the clarity of those simple messages was frequently undermined by peers and adults, sometimes by those in authority, who made it clear that speaking out against transgressors was wrong. "Snitching" was odious, socially unacceptable and, in the views of many, worse than the wrongdoing itself. Within this moral malaise I watched bullies go unpunished and the indifferent weigh down upon the worthy.

Subsequent careers within the police service and business repeatedly highlighted the serious consequences of the gag that twisted morality had placed over the mouths of people from across society. Individual or community silence too often allows criminals to escape the consequences of their selfish behaviour, often to the despair and isolation of the most vulnerable in society.

In the work environment, an indifferent, incompetent or dishonest manager damages morale and motivation at the very least. Corporate governance at the top becomes meaningless when something is clearly wrong in the system but it cannot be expressed. Further immeasurable damage occurs when those who speak

out are viewed as the problem rather than the malpractice they have highlighted.

Launched a decade ago, two charities have tackled this moral malaise head on and with increasing effectiveness. From slightly different standpoints both have identified the feelings of loneliness, frustration and fear that effectively stop people from communicating their concerns and are providing safe and secure ways that allow the gags to be thrown away.

The Crimestoppers Trust has had spectacular successes, with thousands of criminals arrested, charged and convicted for serious offences as a result of calls from the public. As this newsletter shows, Public Concern at Work continues to make real headway. Both have given a voice to individuals who would normally have kept quiet. However welcome these achievements, we must continue to untangle this moral maze for the next generation. As children see humbug for what it is, practical lessons showing that citizenship means little if people are not given a voice would undoubtedly lead to a more involved and confident society than we have at present.

*Ian Harley*

*Chair of Risk and Security Forum*

## Obituaries

We are sad to report the loss of two dear friends who have helped our work over the past decade. Sir Ralph Gibson, formerly a senior judge and chair of the Law Commission, headed our Council for five years and right up to his death helped in all our work with his common sense, wisdom, humility

and warmth. David Wellings, joined our Council when he retired as CEO of Cadbury Schweppes. He provided welcome advice on, and won support for us from, the business community.

Our condolences go to both their families.