



National Audit Office

Investigation

by the National Audit Office

Government whistleblowing policies

JANUARY 2014

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The National Audit Office study team consisted of:

Alan Banks, Jennifer Bayliss, Sarah Hipkiss and Sian Jones, under the direction of Paul Oliffe.

This report can be found on the National Audit Office website at www.nao.org.uk

For further information about the National Audit Office please contact:

National Audit Office
157–197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7000

Enquiries: www.nao.org.uk/contact-us

Website: www.nao.org.uk

Twitter: @NAOorguk

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Summary

- 1** Whistleblowing is when an employee reports suspected wrongdoing. Officially this is called ‘making a disclosure in the public interest’. Whistleblowing is important to safeguard the effective delivery of public services, and to ensure value for money. It serves to protect and reassure the workforce, and to maintain a healthy working culture and an efficient organisation.
- 2** Whistleblowing has become much more high profile in recent years; as well publicised cases such as Hillsborough and the Mid Staffordshire NHS Foundation Trust inquiry have shown. A greater public need for transparency, coupled with wider access to knowledge and information and its dissemination through social and other media, mean that there is an increasing scope to uncover and report on wrongdoing.
- 3** Having a good quality whistleblowing policy is particularly important in the current economic climate. A clear, accessible policy is vital during cost reductions to protect the public purse from waste, as well as to improve trust in public institutions. Government delivery chains are becoming more devolved, introducing complexity into the process for making disclosures and monitoring cases. There is the risk that employees at ‘arm’s-length’ to departments are not aware of their rights and do not know how to blow the whistle.
- 4** This is the first phase of a series of work on whistleblowing. This report provides the context around whistleblowing and examines the procedures in place for employees to whistleblow within government departments. We focus on the importance of a framework to support whistleblowing, namely having a high quality, clear and accessible policy and process. However, having this framework is only the first step. Phase two of our work will be focused on examining how departments implement and publicise policies, the skills and culture needed to support them, and the role of the ‘prescribed person’.
- 5** We reviewed 39 whistleblowing policies across government against eight criteria on a five-point scale. We identified common areas of strength and areas for improvement. We often found strong performance in setting a positive environment for whistleblowing to occur. In general, the policies aimed to engage with whistleblowers; they clearly expressed the importance of whistleblowing to the organisation, and highlighted the moral obligation to report concerns. However, the policies we reviewed sometimes failed to outline suitable alternatives to line managers when making a disclosure or explain when the confidentiality of a whistleblower may be compromised. Some policies did not mention the risks and limitations of disclosures outside the organisation or highlight the benefits of seeking independent advice.

Part One

Context

Defining whistleblowing

1.1 GOV.UK defines whistleblowing as “when a worker reports suspected wrongdoing at work”.¹ **Figure 1** overleaf outlines one such scenario. These wrongdoings are often related to financial mismanagement, such as misrepresenting earnings and false accounting, but can also have more immediate consequences, as highlighted by the recent whistleblowing nurse from the Mid Staffordshire NHS Foundation Trust. The whistleblower reported instances of faulty equipment, poor mixes of staff skills and falsifying patient records. A subsequent report into the hospital’s practices found widespread poor patient care and a focus on systems and targets rather than patient outcomes.

1.2 An employee can report things that are not right, are illegal or if anyone is neglecting their duties,² including:

- when someone’s health and safety is in danger;
- environmental damage;
- a criminal offence; or
- when the organisation is not obeying the law (for example not having the right insurance).³

1.3 Whistleblowing can be more broadly defined as simply ‘raising a concern’.⁴ People outside of an organisation, including stakeholders, suppliers and consumers, can also raise concerns. It is different from making a complaint or raising a grievance. Whistleblowers can often act out of a feeling a fairness or ethics rather than a personal complaint. As Public Concern at Work states, it is important to note that:

“... the person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequentially, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern – they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it”.⁵

1 Information published online by GOV.UK, available at: www.gov.uk/whistleblowing/overview, accessed 17 December 2013.

2 In this report we use the term ‘employee’ to refer to those individuals who are protected by the Public Interest Disclosure Act 1998 (as amended). This includes contractors, trainees, and agency staff in addition to individuals under a contract of employment.

3 See footnote 1.

4 Some public organisations treat the terms ‘whistleblowing’ and ‘raising a concern’ as distinct and have separate policies for each. For the purposes of this report, we use the terms interchangeably.

5 *Where’s whistleblowing now? 10 years of legal protection for whistleblowers*, Public Concern at Work, March 2010.

Figure 1

Whistleblowing: a scenario

Imagine you work for a central government department. You work in a small team with one other colleague. The team gives grants to new businesses working in the technology sector. Your manager oversees several other teams and so is not involved in the day-to-day activities of you and your colleague.

One day, your colleague is on leave when your manager asks you to compile some data on previous awards. To complete his request you need to look in detail at previous awards that your colleague has made. While compiling the data you notice something odd. The awards do not seem to be made consistently and some enterprises are favoured over others. It appears that a lot of companies owned by your colleague's friends have been chosen over other companies. Is this fraud? You hesitate to think such a thing but there are too many instances for it to be a coincidence. What can you do?

You use the department's intranet to research your options. It sounds like the organisation's whistleblowing policy addresses your dilemma. You wish this was not the case but it seems like you are going to be a whistleblower. You do not want to get your colleague into trouble but you cannot ignore these unfair allocations of public funds. You go to knock on your manager's door...

Source: National Audit Office

1.4 The term whistleblowing can have negative connotations of telling tales or being disloyal to colleagues. Some bodies choose to use the terms 'raising a concern' or 'speaking up' in their policies to avoid these negative associations. However, a recent survey of the public by Public Concern at Work found that the term is increasingly being seen in a more positive light. In 2013, 39 per cent of respondents viewed the word positively, compared to 36 per cent in 2007.⁶

Whistleblowing is important

Protect and reassure the workforce

1.5 The British Standards' *Whistleblowing Arrangements Code of Practice* highlights that:

"... the first people to know of any risk will usually be those who work in or for the organisation. Yet while these are the people best placed to raise the concern before damage is done, they often fear they have the most to lose if they do speak up. Research for the Institute of Business Ethics has shown that while one in four workers are aware of misconduct at work, more than half (52 per cent) of those stay silent".⁷

6 The surveys were undertaken by YouGov, commissioned by Public Concern at Work. Data for 2013 is found at: www.pcaaw.org.uk/files/news_attachments/Results%20for%20PCAW-YouGov%20Survey.pdf (accessed 17 December 2013), the data for 2007 is in *Where's whistleblowing now? 10 years of legal protection for whistleblowers*.

7 *Whistleblowing arrangements Code of Practice*, PAS 1998:2008, British standards, July 2008.

1.6 Many people who have blown the whistle have done so because they have a strong sense that something they have seen or heard in their workplace is not right, ethical, or compliant with workplace regulations. But while they feel compelled to raise the alarm, they may also be concerned for several reasons. They are concerned that:

- they will not be protected against retaliation for reporting a concern;
- the issue should be investigated appropriately; and
- any ‘wrongs’ are righted.

To blow the whistle makes people vulnerable, so there must be clear, comprehensive and accessible policies to support and reassure staff at what is likely to be an extremely stressful time.

Foster a healthy culture and improve efficiency

1.7 Organisations should view whistleblowers as an early warning system to let them address problems before they escalate. As the British Standards’ *Whistleblowing Arrangements Code of Practice* notes:

“... the main reason enlightened organisations implement whistleblowing arrangements is that they recognise that it makes good business sense. An organisation where the value of open whistleblowing is recognised will be better able to:

- deter wrongdoing;
- pick up potential problems early;
- enable critical information to get to the people who need to know and can address the issue;
- demonstrate to stakeholders, regulators and the courts that they are accountable and well managed;
- reduce the risk of anonymous and malicious leaks;
- minimise costs and compensation from accidents, investigations, litigation and regulatory inspections; and
- maintain and enhance its reputation”.⁸

1.8 Organisations that have strong clear policies to encourage whistleblowers and the ability to support them can often show that they are improving by learning lessons from what they find. The willingness to examine areas of potential weakness and listen to all staff, including on the front line, means these organisations can address issues and concerns early on. These organisations are more likely to be the ones that avoid the disasters and negative publicity that come from these policies failing.

Need for transparency

1.9 At a time of increased austerity measures and deeper cuts to government spending, taxpayers are concerned that public money is well spent. There have been several well publicised scandals involving the cover-up of wrongdoing despite allegations being made (such as Hillsborough, and most recently Mid Staffordshire NHS Foundation Trust). These facts have led to a demand for wider transparency in our public institutions, and means that a whistleblowing process is vital for employees to raise and address their concerns.

Complex delivery chains

1.10 The way the government implements policies has become more complex as delivery chains have become devolved. In more complex delivery chains there is a greater distance between those that are accountable and those that are delivering, and the delivery itself can often be more intricate. These factors increase the risk of ineffective oversight arrangements, highlighting the need for greater clarity in the process for reporting concerns across long delivery chains.

Legal framework for whistleblowing

The Public Interest Disclosure Act 1998

1.11 Almost every inquiry into scandals and disasters in the 1980s and early 1990s including the Clapham rail crash, the Piper Alpha disaster, the Zeebrugge ferry tragedy, and the collapse of Barings Bank, found that employees knew of the dangers that existed but had either been too scared to sound the alarm or had raised the matter incorrectly or with the wrong person.

1.12 To address this, the Nolan Committee on Standards in Public Life in 1995 said that unless staff thought it safe and acceptable to raise concerns internally, they were likely to stay silent, raise it anonymously or leak the information. Dr Tony Wright, MP, asked Public Concern at Work and the Campaign for Freedom of Information to draft a whistleblower protection law to raise the issue in Parliament. The Public Interest Disclosure Act (commonly known as PIDA) was the legislative response, and received royal assent on 2 July 1998.

Legislation and case law

1.13 There is now a body of case law around PIDA including decisions on key elements of the legislation, such as employment status and showing an employee has suffered harm. The Enterprise and Regulatory Reform Act received royal assent in April 2013. It makes three key changes to the law on whistleblowing by:

- amending the definition of ‘qualifying disclosure’ to introduce a public interest test;
- removing the requirement that certain disclosures be made in good faith, replacing this with a power to reduce compensation where a disclosure is not made in good faith; and
- introducing ‘vicarious liability’ for employers if an employee is subjected to detriment by a co-worker for making a protected disclosure.

1.14 This legislative activity reflects a strong desire to bolster whistleblowing in response to recent scandals, such as that seen in Mid Staffordshire NHS Foundation Trust.

Figure 2 outlines some of the key points of the Act.

Figure 2

The Public Interest Disclosure Act 1998 (PIDA), as amended

An act to protect individuals who make certain disclosures of information in the public interest. It defines disclosures qualifying for protection as “... any disclosure of information which in the reasonable belief of the worker making the disclosure is in the public interest, tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or
- that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be, deliberately concealed.”

Notes

- 1 The definition of ‘worker’ is extended by section 43K of the Employment Rights Act 1996 but it does not cover the self-employed (except for those in the NHS), volunteers, the intelligence services or the armed forces.
- 2 The act also sets out when a qualifying disclosure will be protected.
- 3 If an employee blows the whistle anonymously he or she is likely to face problems with what is described as ‘causation’. For an employee to win protection a tribunal must be satisfied that the employee was victimised by the employer because (and hence the employer knew that) the employee had blown the whistle.

Source: Public Interest Disclosure Act 1998, available at: www.legislation.gov.uk/ukpga/1998/23/contents, accessed 17 December 2013

1.15 The legislation introduced through PIDA does not seek to directly encourage or protect whistleblowers in the normal course of their duties. PIDA is applied when a whistleblower has suffered harm as a result of their actions in making a disclosure in the public interest. PIDA only has an effect if it can be shown that an employer's actions, in response to this disclosure, have been detrimental to the person making it. This can only be assessed through the courts when an employment tribunal case is brought.

1.16 Between 1999 and 2009, there were 1,761 PIDA-related claims, 19 per cent of judgments from these were to do with financial malpractice.⁹ **Figure 3** outlines some examples of cases brought under PIDA legislation.

Government obligations for whistleblowing

1.17 While PIDA protects whistleblowers, it does not require organisations to set up or promote whistleblowing policies. Instead, the objectives underpinning PIDA encourage employers to:

- positively consider the benefits of introducing a whistleblowing policy or, if they have one, review and refresh it and promote it effectively;
- recognise it is in their own interests to introduce and promote effective whistleblowing policies; and
- make it clear through the management line and across the organisation that it is safe and acceptable for employees to raise a concern about malpractice. This may be as part of the policy or separately.¹⁰

1.18 In addition to the requirements of PIDA, the Constitutional Reform and Governance Act 2010 confirmed in legislation that there should be a civil service code. The civil service code outlines the core values of the civil service: integrity, honesty, objectivity and impartiality. It sets out the standards of behaviour expected of civil servants and the duties of civil service employers. Civil servants who consider that they are being required to act in a way which conflicts with the code, or where they are aware of actions by others that are in conflict with the code, should raise a concern in line with the code and report this immediately within their department. If a civil servant raises a concern within their department and is not satisfied with the response, the civil service code management code encourages employees to contact the independent Civil Service Commission. The Commission is also a source of independent advice for civil servants.

⁹ *Where's whistleblowing now? 10 years of legal protection for whistleblowers*, Public Concern at Work, March 2010.

¹⁰ Public Concern at Work: *A Guide to PIDA*, available at: www.pcaw.org.uk/guide-to-pida, accessed 5 December 2013.

Figure 3

Examples of cases brought under PIDA legislation

Lingard v HM Prison Service (2004)

Detriment: Claimant's identity revealed

Lingard, a prison officer at Wakefield Prison, raised concerns with senior managers that a fellow officer had arranged a bogus assault charge to be filed against a prisoner and had heard colleagues say he had asked them to plant pornography in the cell of a convicted paedophile. Without telling her, Lingard's managers identified her to staff as the source. She was ostracised by colleagues and offered no support by the Prison Service, even when the situation was clearly causing her stress. An enquiry by outside officers seemed indifferent when key documents went missing and a senior manager argued Lingard's whistleblowing showed she was disloyal. She was forced out. When she took and won a PIDA case, the ET found that the governor of the prison was 'dripping with hostility' to Lingard and that his claim that he was not aware that whistleblowers in the prison service were victimised was 'simply not credible'. She was awarded £477,602. The Director General of the Prison Service told the BBC the case was indefensible and that lessons needed to be learned from it.

Collins v The National Trust (2005)

Disclosure to the media protected

Collins was a National Trust (NT) warden in charge of a stretch of north east coastline, which included the site of a former quarry. Coastal erosion had created a real risk that chemicals and waste from the quarry would leak on to the beach. The NT and the local council had long been in dispute about what should be done and by whom. Collins was shown in confidence by the NT a report the council had obtained which highlighted the risks of further erosion. As the report was already a year old, Collins thought the site should be closed. Two weeks later he passed the report to the local media, who wrote it up and quoted Collins. As a result, he was dismissed. He made a successful PIDA claim. The tribunal found that the disclosure was protected as an 'exceptionally serious' concern because children played on the beach and the public, relying on the NT's reputation, would think it safe. Award not known.

Fraser v The Royal Free Hampstead NHS Trust (2008)

Danger of anonymous disclosure

Fraser was a social worker employed by an agency and not the Trust. He was concerned that his manager, Ms Ross, was not fulfilling her contractual duties in relation to time keeping, seeing patients and filling in a movement book. He raised this with Ms Ross's manager. This manager subsequently left without passing on the concern. Fraser further complained that a report prepared by him had been buried by the department. An anonymous letter complaining about Ms Ross was then sent to the trust. Ms Ross believed the letter was sent by Fraser. Ms Ross then failed to inform Fraser of a permanent job at the Trust and fired him on performance issues a few weeks later in what the tribunal described as a high-handed and vindicate manner. While the tribunal sympathised with Fraser as to the manner in which he had been treated, they concluded that he had been sacked due to Ms Ross's mistaken belief he was responsible for sending the letter and could not make out a causal link between his genuine disclosures and the detriments suffered.

Source: *Where's whistleblowing now? 10 years of legal protection for whistleblowers*, Public Concern at Work, March 2010

1.19 While being alert to their responsibilities under the Official Secrets Act and the security policies of their department, civil servants are encouraged to report criminal or other unlawful activity to the police or other appropriate regulatory authorities. Government bodies should address this option in their whistleblowing policies to ensure that civil servants are clear on possible routes for raising a concern to comply with both pieces of legislation. The advice in the civil service code primarily promotes internal reporting, and does not reference the role of the prescribed persons, however the provisions contained in PIDA set out protection for whistleblowers who raise a concern to external prescribed persons. Departments face the challenge of producing a policy which satisfies the statutory positions of both.

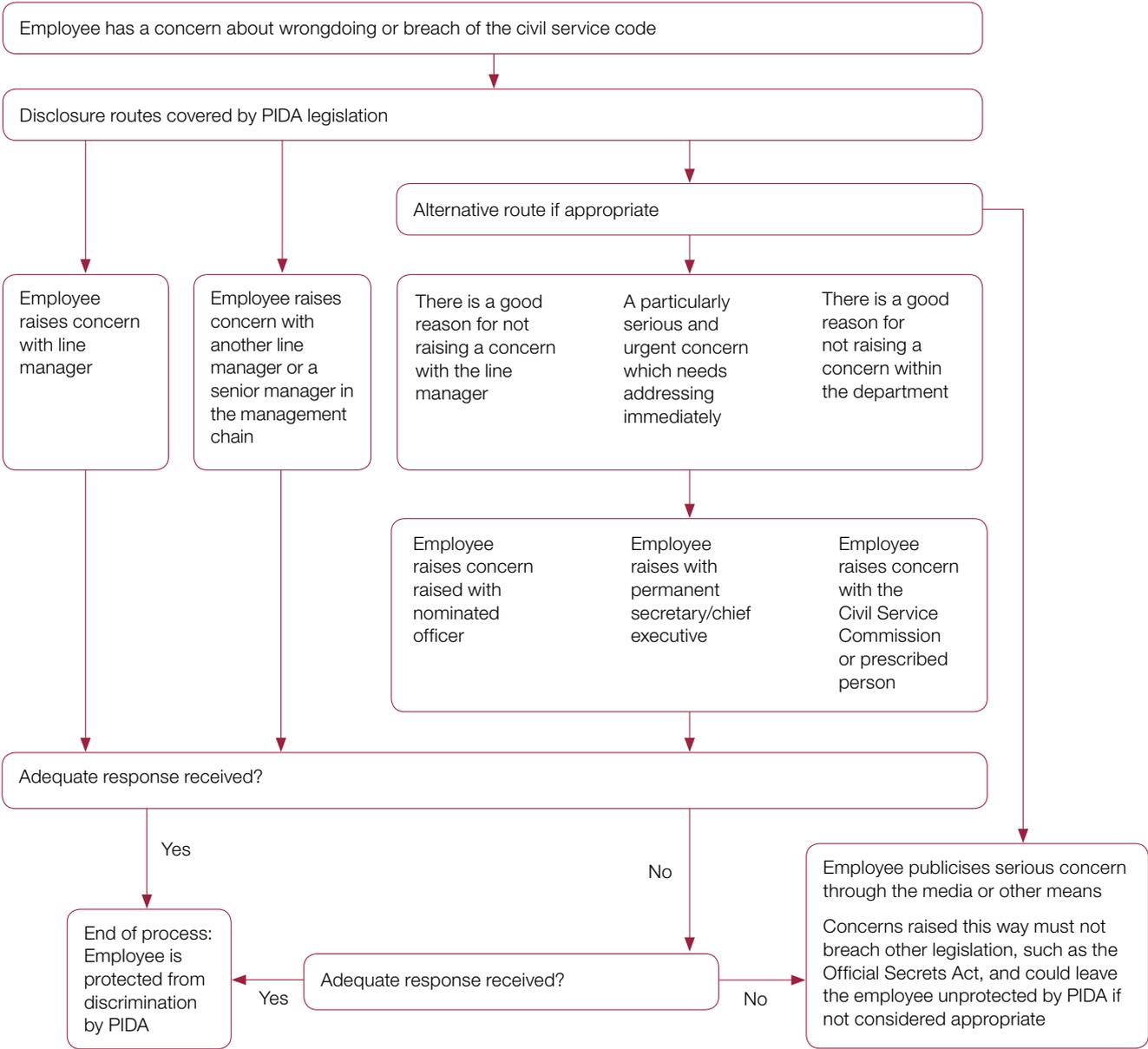
1.20 There are various other documents that encourage government departments and arm's-length bodies to introduce whistleblowing arrangements, including the corporate governance code and Managing Public Money. The Civil Service Employee Policy Service provides HR policy assistance across government departments to promote simplified and modernised policies and practices. We have worked closely with this service during our review, and the service is currently leading a piece of work on behalf of departments to support them in addressing the issues we have raised.

How employees blow the whistle

1.21 The way employees 'blow the whistle' generally follows a standard process. This involves raising a concern with their line manager, or another manager if appropriate in the first instance. This action should then trigger the process. Policies should also state an alternative to line management, so people can use different routes if there is good reason to do so. **Figure 4** gives an example of a generic whistleblowing process.

1.22 The personal cost of whistleblowing can be high and some people may be tempted not to put their names to reports. Most organisations will investigate anonymous disclosures but this can be open to abuse and organisations generally discourage anonymous reports. Confidential reporting recognises the potential personal cost to whistleblowers and allows the person to remain unidentified, while providing a channel for further communication. This method of reporting reduces malicious reports and allows the investigator to get more information.

Figure 4
Example of a whistleblowing process



Source: National Audit Office analysis

Part Two

Whistleblowing policies

Main criteria for an effective policy

2.1 Stakeholders with interest and expertise in whistleblowing generally agree about the criteria that should be included in a good-quality policy (**Figure 5**). A more detailed version can be found in the supplementary document published alongside this report.

Whistleblowing policies across central government are generally of good quality

2.2 We reviewed 39 policies against our eight criteria on a five-point scale. **Figure 6** on pages 16 and 17 shows our assessment for each organisation against each of the criteria. Strengths and areas for improvement are outlined in more detail in paragraph 2.4 onwards. During our review, many departments updated their policies in light of our comments, or have committed to doing so.

2.3 Having a good policy however is only part of implementing appropriate whistleblowing arrangements. The organisations' behaviour and culture are equally as important as having a good whistleblowing policy.

Figure 5

Main criteria to include in a whistleblowing policy

Addressing concerns and providing feedback

Whistleblowing policies should set out procedures for handling concerns. This should reassure employees that their concerns will be taken seriously and will ensure that instances of malpractice are identified and dealt with appropriately.

Commitment, clarity and tone from the top

Guidance should make clear that any concerns are welcomed and will be treated seriously.

Guidance should reassure the reader who may be thinking of raising a concern that the organisation's leadership will take the concern seriously and will not punish the employee if the concern turns out to be untrue, as long as they had reasonable suspicion of wrongdoing.

Openness, confidentiality and anonymity

Guidance should make sensible and realistic statements about respecting whistleblowers' confidentiality. Guidance should also outline the potential issues that could arise from employees reporting concerns who wish to remain anonymous.

Reassuring potential whistleblowers

Guidance should make clear that it is an offence for management and staff to victimise employees thinking of making a complaint. Similarly, it should make clear that employees who deliberately raise malicious and unfounded grievances will be subject to disciplinary action.

“ I've seen/heard something and I think I should report it – but who to and how? ”

Offering an alternative to line management

Concerns may relate to behaviours of line managers or employees may be unwilling to discuss concerns with immediate management. Thus alternative channels inside the organisation should be offered.

Whistleblowing to external bodies (prescribed persons)

Guidance should make employees aware of how they can raise concerns outside the department, e.g. to an external auditor or regulator. This is an obligation for officials in certain circumstances, for example where there is evidence of criminal activity.

Access to independent advice

Employees may need advice where they feel unsure or unaware of how to raise a concern. Guidance should indicate where employees can seek advice.

Structure

It is important that guidance is easy to use so that readers are clear as to how they should take their concerns forward. The policy should cover all areas expected under best practice. It should be clear, concise and avoid including irrelevant detail that might confuse readers.

Note

1 These are from our main criteria against which we judged policies. A copy of the policy checklist can be found in our supplementary document.

Source: National Audit Office, building on Public Concern At Work criteria, and external experts

Figure 6
Evaluation of whistleblowing policies

	Setting a positive environment for a whistleblowing policy		
	Commitment, clarity and tone from the top	Structure	Offering an alternative to line management
Cabinet Office	●	●	●
Charity Commission	●	●	●
Crown Prosecution Service	●	●	●
Department for Business, Innovation & Skills	●	●	●
Department for Communities and Local Government	●	●	●
Department for Culture, Media & Sport	●	●	●
Department for Education	●	●	●
Department of Energy & Climate Change	●	●	●
Department for Environment, Food & Rural Affairs	●	●	●
Department for International Development	●	●	●
Department for Transport	●	●	●
Department for Work & Pensions	●	●	●
Department of Health	●	●	●
Export Credits Guarantee Department	●	●	●
Food Standards Agency	●	●	●
Foreign & Commonwealth Office	●	●	●
Government Actuary's Department	●	●	●
HM Land Registry	●	●	●
HM Revenue & Customs	●	●	●
HM Treasury	●	●	●
Home Office	●	●	●
Ministry of Defence (Civilian)	●	●	●
Ministry of Justice	●	●	●
National Audit Office	●	●	●
National Savings & Investments	●	●	●
Northern Ireland Office	●	●	●
Office for National Statistics	●	●	●
Office for Standards in Education, Children's Services and Skills	●	●	●
Office of Fair Trading	●	●	●
Office of Gas and Electricity Markets	●	●	●
Office of Qualifications and Examinations Regulation	●	●	●
Office of Rail Regulation	●	●	●
Serious Fraud Office	●	●	●
The Crown Estate	●	●	●
The National Archives	●	●	●
The Supreme Court	●	●	●
The Treasury Solicitor's Department	●	●	●
The Water Services Regulation Authority	●	●	●
UK Trade & Investment	●	●	●

Note

1 We assessed these policies on a relative scale shown above.

Source: National Audit Office analysis

Our evaluation

2.4 We identified common areas of strength and areas for improvement across organisations.¹¹

Strong performance: setting a positive environment for a whistleblowing policy

2.5 Between 28 and 31 policies were assessed as either good or excellent, for the five criteria that focus on the background and purpose of the policy.¹² These policies often had the following qualities:

- ✓ Clearly expressed, woven into all organisational levels and viewed as an important source of information and organisational performance improvement.
- ✓ Clear about when whistleblowing is appropriate and when other processes are better suited to resolving concerns.
- ✓ Specify specialist contacts, such as nominated officers, who are trained to engage with whistleblowers and are aware of the sensitivities.
- ✓ Reassure potential whistleblowers that their information is valued and that they will not be treated adversely should they have the courage to raise their concerns.
- ✓ Aim to engage with whistleblowers and inform them of the outcome of any investigation into the concerns raised.
- ✓ Well structured, with processes in clear and easy-to-understand formats.
- ✗ Despite 28 policies being assessed as good or excellent for offering whistleblowers a suitable alternative to line management when reporting concerns, seven policies were poor (red or amber) because the suggested routes for reporting were often too senior staff.

¹¹ These observations cannot be quantified as they concern a range of criteria.

¹² This covers the following criteria: commitment, clarity and tone from the top; structure; offering an alternative to line management; reassuring potential whistleblowers; and addressing concerns.

Areas for improvement: supporting whistleblowers

2.6 Between four and five of the policies were poor in the three criteria that are designed to support whistleblowers.¹³ These policies often do not do the following:

- X** Clarify the differences between confidentiality and remaining anonymous, and the impact that this decision may have on the investigation of the disclosure.
- X** Highlight the benefits of seeking independent advice and the potential sources of specialist support available.
- X** Provide information on when it may be appropriate to make disclosures outside of the organisation, the risks and limitations of this and the roles of prescribed persons.

2.7 As part of this work, we reviewed our own whistleblowing policy. We found it was strong in two areas: reassuring the reader that the leadership team is committed to high ethical standards and will welcome any concerns; and providing named contact details for potential whistleblowers to approach. It could be improved in some areas, for example including a flow chart to guide the reader through the process and explaining the risks of disclosure to the media.

¹³ This covers the following criteria: openness and confidentiality; access to independent advice; and options for whistleblowing to external bodies (prescribed persons).

Setting a positive environment for a whistleblowing policy

Commitment, clarity and tone from the top

Number of departments with each rating 

2.8 Most organisations scored highly on this criterion. Those that scored the highest were where:

- there was a stated commitment from the top of the organisation to maintaining high ethical standards;
- language is personal, inviting and reassuring;
- guidance encourages individual to report an issue and emphasises there is no need for proof of the concern; and
- guidance covers management's obligations, responsibility and commitment to investigate concerns.



Having a permanent secretary own the 'foreword' to the policy with accompanying photo would indicate tone from the top and also provide a personal touch.

Structure

Number of departments with each rating 

2.9 Many policies scored highly on this criterion, which relates to policies being concise, consistent, and with clear signposting of sections, with FAQs and examples to help the reader understand.

2.10 Policies that scored poorly on this criterion were overly brief or lacked key information. The language was often overly complex, formal or convoluted.



A concise, clear and logically structured policy helps employees to understand the process. Policies that have flow charts or similar pictorial and diagrammatic representations that outline the step-by-step process are useful techniques to support a well laid-out policy.

Offering an alternative to line management

Number of departments with each rating

3	4	4	17	11
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2.11 This criterion has the most poor (red or amber) ratings. Policies that received the lower scores failed to offer a suitable alternative to the line manager, directing the whistleblower to someone who could be too senior for the whistleblower to feel comfortable approaching. The policies that scored highly offered the line manager as the first point of call, and also gave details of specific alternative appropriate contacts where employees feel unable to raise concerns with their line manager. Furthermore, these better policies explain that a person with suitable skills will investigate the different types of disclosures.



Departments should give viable and appropriate alternative reporting lines aside from line management, and be as specific as possible (including names, telephone numbers and email addresses that are valid and up to date). This will make employees feel they have realistic alternative reporting lines.

Reassuring potential whistleblowers

Number of departments with each rating

3	5	31
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2.12 Most policies scored well on this criterion, although no policies received an excellent rating. Those policies that had the highest score had the following characteristics:

- The policy says that where concerns are honestly believed to be true, staff will not suffer detriment, even if the concerns prove unfounded. However, where employees deliberately raise malicious or unfounded grievances they will be subject to disciplinary action.
- It makes clear that the organisation will not tolerate any form of harassment, bullying or victimisation of any individual who has raised a genuine concern.



Clearly outlining the need for potential whistleblowers to honestly believe that wrongdoing is occurring, or is likely to, should reassure those with genuine concerns and deter others from knowingly supplying false information. Equally, stating that whistleblowers will be protected against any reprisal may encourage them to come forward.

Addressing concerns and providing feedback

Number of departments with each rating

1	3	4	22	9
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2.13 Most policies scored well on this criterion. Those policies that had the highest scores were those that clarified to whistleblowers how their concerns would be treated by:

- clearly outlining the process, including indicative timescales and the nature of feedback that can be expected;
- describing the process clearly and concisely, with an informal tone;
- explaining employees' rights; and
- explaining roles and responsibilities so that employees know who they should report to, and who to ask for support and advice.



Explaining the procedure step-by-step can help a whistleblower to understand how the process will operate. Indicating timescales for review meetings or feedback will also provide valuable information for a potential whistleblower.

Supporting whistleblowers

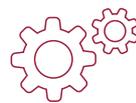
Openness, confidentiality and anonymity

Number of departments with each rating

2	2	15	19	1
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2.14 There were more varied scores for this criterion. The policies that scored at the lower end of the scale were those that did not clarify the difference between remaining anonymous and identifying oneself on a confidential basis or make realistic statements about protecting confidentiality.

2.15 The policies that scored highly were those that encouraged employees to raise concerns openly, while discussion about the drawbacks of anonymity was included. Some policies also discussed the issue of confidentiality and potential difficulties involved in maintaining it.



Being realistic and honest about the pros and cons of confidentiality and anonymity, and also of the possibility of being identified, will mean that employees will be able to make a fully informed decision as to their options.

Access to independent advice



2.16 This was the criterion with the most varied range of scores: it has both the highest number of red ratings and the highest number of dark green ratings.

2.17 The poorest scoring policies were those where there was:

- no reference to independent advice; or
- limited reference but no supporting explanation as to the type of advice given, or how to access it.

2.18 Conversely, the top scoring policies were those where a number of viable external and independent sources were given, along with accompanying explanatory narrative and contact details. These policies also gave employees guidance on the potential breach of their legal duty of confidentiality in communicating confidential information that would not pass a public interest test.



There are a number of sources of free and independent advice for employees, depending on circumstance, such as the Civil Service Commission, the Citizens Advice Bureau, Public Concern at Work, their Employee Assistance Programme, and the Health and Safety Executive. These sources will give employees an opportunity to get an independent perspective on their concerns, before they report anything formally.

Whistleblowing to external bodies (prescribed persons)



2.19 This criterion received the least number of good or excellent ratings with most policies receiving a rating of satisfactory. Those with red or amber ratings were where the role of the Civil Service Commission, regulators or prescribed persons were not mentioned, whereas those with higher scores explained the role, and also the associated protection under PIDA when reporting to prescribed persons.



Outlining the appropriate routes and including up-to-date contact details allow an employee to report a concern while maintaining their PIDA protection. These routes are likely to include the Civil Service Commission and prescribed persons. A collated list of prescribed persons can be found on the Department for Business, Innovation & Skills' website.¹⁴ It is equally important to explain the routes through which employees will not be PIDA protected, unless particular circumstances apply.

¹⁴ List of prescribed persons can be found on the Department for Business, Innovation & Skills' website: www.gov.uk/government/uploads/system/uploads/attachment_data/file/183340/11-641-blowing-the-whistle-to-a-prescribed-person.pdf

Skills and capacity

2.20 Addressing the points above will allow an organisation to have a high-quality whistleblowing policy but producing a policy is only the first step. For a whistleblowing policy to be successful the organisation must create the right culture. An organisation with an open and accountable environment, with those at the top taking the lead on the whistleblowing policy, can show that whistleblowers' concerns are taken seriously and valued. Such organisations can tackle risks to the organisation, employees and the public early on.

2.21 The policy must be supported throughout the organisation and be led or sponsored by an appropriate member at the most senior level. They should ensure that the policy is periodically reviewed and that it is working effectively. The policy development should involve senior managers, staff associations, trade unions and any other interested parties such as providers or specialist staff. The sponsor should make sure that policy development and good practice is reflected in the policy and its implementation.

2.22 The main contacts for whistleblowing disclosures should have the full support of the organisation, the power to respond to disclosures and have access to relevant staff and information. These contacts must be able to give advice on the policy, and help others to make or receive reports and support whistleblowers and managers. They must be accessible and approachable. They must remain impartial but be friendly and engaged and have experience of investigative interviewing techniques.

2.23 In our next report we will examine in more detail how policies are implemented and publicised, and the skills and culture needed to support an effective policy. We will also examine the role of the prescribed person and how this works in whistleblowing.

Appendix One

Methodology

1 We reviewed 39 policies using an evaluative checklist. The checklist can be found in our supplementary document.

2 We interviewed a range of stakeholders including:

- Association of Certified Fraud Examiners
- Chartered Institute for Public Finance and Accountancy (CIPFA)
- Civil Service Employment Policy (CSEP) – Civil Service expert service
- Expolink
- Public Concern at Work
- Transparency International
- Whistleblowers UK

3 We also liaised closely with CSEP throughout clearance of the report.

4 We reviewed relevant literature, including documents relating to UK legislation and in other comparable countries.

5 We discussed our work and findings and sought advice from experts in the field of whistleblowing. We are grateful to Professor David Lewis, Professor of Employment Law, Middlesex University Law School and Ian A Younger CFE, APCIP, PgCAIP Certified Fraud Examiner for their guidance and assistance during this work.



National Audit Office