

A BRIEF WORD

Were you shocked by the child abuse scandal in North Wales, the infant deaths at the Bristol Royal Infirmary, the train crash at Ladbroke Grove, the problems at British Biotech or the corruption at the European Commission? Did you wonder how things could have been allowed to go so badly wrong? Do you think you might have made a difference had you been there?

Time and again the official inquiries into these disasters reveal that people were aware of the dangers but either were too afraid to say anything or raised the concern to no effect. These incidents graphically show the costs of a culture where genuine concerns about wrongdoing at work are discouraged, ignored or suppressed. Each such incident fuels the search for victims and culprits and the drive for ever more regulation. Outside the workplace, these same attitudes foster the “walk on by” culture.

Public Concern at Work offers practical help to people who believe there is an alternative to this cycle of inaction, indifference and isolation. We work mainly with employers and employees but also with organisations and people across the whole community. Our approach is that if an employee is so troubled by wrongdoing to raise that concern with friends and family, that concern should be openly raised and properly addressed in the workplace - or, where necessary, outside. It is only on this basis that an employer is able to take action if there is substance to the concern. It is only on this basis that an employee who is mistaken or misguided can be put right.

The same approach lies at the heart of the new statutory framework in the Public Interest Disclosure Act. This legislation enables and helps employers and employees to address these issues in a constructive way which protects them and the public. People call this whistleblowing.

This review looks at this issue and the activities of Public Concern at Work at the millennium.

THIS REVIEW AT A GLANCE

CUTTING A PATH

- The Public Interest Disclosure Act (PIDA) came into force on 2 July 1999 – four years after MPs first asked us to promote and draft such a law
- PIDA maintained support among the business community, dispelling fears that it would be a regulatory burden
- Our campaign against a cap on compensation under PIDA was vindicated when one of the first awards was for £293,000

DELIVERING THE GOODS

- Our free helpline gave impartial advice to employees on over 850 prospective or actual whistleblowing issues
- 85% of helpline clients go on to recommend the service
- 71% of clients informed us that they followed our advice

OFFERING A HAND

- We provided training and guidance to employers and regulators on whistleblowing
- Our compliance toolkit and services were used by major businesses, public authorities and across the NHS. Leading employers recommend our helpline to their own staff
- We worked with Unison on a practical guide for their members on PIDA

STANDING OUR GROUND

- We continued to emphasise the value of internal whistleblowing
- We won our High Court case that the Government was wrong to withhold information about whistleblowing claims
- We stressed in all our work that a whistleblower is a witness not a complainant

INFORMING THE DEBATE

- We were the only body which promoted and monitored PIDA across the UK
- We produced expert guides to PIDA and briefings on caselaw and developments
- We published papers on corporate killing, the Human Rights Act, trade secrecy and the ACAS code

EXPORTING THE MESSAGE

- At the joint request of international union and business representatives, the OECD commissioned us as consultants on whistleblowing
- The new European Commission appointed us special advisers on how its staff regulations should be amended to facilitate and protect public interest whistleblowing
- We helped draw up South Africa's new whistleblowing law

The cost of this work over these two years was under £500,000.

CHAIRMAN'S REVIEW

As this report shows 1999 and 2000 were eventful and taxing years for us as our work on whistleblowing moved from helping to formulate policy to putting it into practice.

The introduction of the Public Interest Disclosure Act in the summer of 1999 represented a welcome reward for everyone who had endorsed our approach to legitimate whistleblowing. While the support we have had from many quarters enabled us to exercise influence over the approach and detail of this private member's bill, little could have been achieved without the strong support of the Government.

Since then demonstrations of the Government's commitment to the Act have been patchy. Following the early steer from the Committee on Standards in Public Life, both the health service and local authorities were quick to recognise the implications and value of the legislation. In the City and among large businesses, organisations have begun to take heed of this new climate for whistleblowing. Some public authorities and major charities have introduced sound whistleblowing policies and leading employers have recommended their staff to seek independent advice from us. However, the general picture - particularly among small and medium sized firms - is that levels of awareness remain low and we have not so far been able to persuade the Government to address this.

As a result we have had to take on the promotion of the legislation. This is quite a challenge for a charity as small as Public Concern at Work. Such success as we have had has only been possible with the support of enlightened employers, unions and the media. Events have also played their part. The public inquiry into child heart operations at Bristol Royal Infirmary was prompted by anaesthetist Steven Bolsin's whistleblowing. The Report of the North Wales Child Abuse Inquiry vindicated social worker Alison Taylor who had been sacked for blowing the whistle. The resignation of the European Commission was set in train by auditor Paul van Buitenen's disclosures. And problems at

British Biotech were forced into the open when the company sacked its chief scientist Andy Millar over his concerns about the prospects for two new drugs.

These incidents illustrate how important the whistleblower is and how much he needs support and protection. We believe that the Government should take steps to promote the new legislation and inform the public about the vital role of legitimate whistleblowing. Without such an initiative, employees will not know that there are safe and legitimate ways to raise concerns. The result will be that many will continue to turn a blind eye, while others will blow the whistle in the wrong way. Furthermore, unless employers are aware of the legislation, they cannot take advantage of its simple message and practical approach: some will not discover a serious problem until it is too late, while others may make an ill-considered response to what is now a protected disclosure.

However, responsibility does not and can not lie only at the door of the Government. Regulators, employers, trade associations, unions, professional bodies, churches, voluntary groups, schools and colleges all have a stake and a role in addressing this issue. It was right that the chair of the Trade and Industry Select Committee recently called on the Government and interested bodies to promote the Act. As the legislative initiative and so much of the drive behind it came from MPs themselves, we hope that Parliament's renewed interest in this issue will encourage others to take action.

Linking policy to practice is the essence of our work with individuals and employers. Clients of our helpline continue to recommend it highly and we are determined to maintain that level of satisfaction. That the helpline also has the confidence of so many employers confirms the vital role that independent advice can play in an area where public and private interests meet. To be most effective that advice needs to be available at the earliest opportunity before unnecessary damage is done or the raising of the concern is mishandled. For this reason we are pleased that organisations across the public, private and voluntary sectors have begun to recommend our helpline to their own people.

As this Report details, we have spent the greater part of our resources over the past two years on educational activities. While this has included projects in schools and colleges, the bulk of it has been through offering training and guidance to employers and others involved in the workplace. Our Policy Pack has been well received as have the training courses we run for employers, unions and regulators. Over the coming year we will develop these tools and offer a subscription service which will ensure that appropriate levels of practical support and guidance are available for employers of all sizes.

Through providing these services, Public Concern at Work earns the funds which enable the charity to operate. We shall continue to earn as much of our income as we can through our education and training work. However as we receive no state aid we will continue to rely on donations from individuals and grants from trusts. At the end of this report we set out what has been achieved so far and the tasks ahead of us. The fact that we have made any progress at all would not have been possible without the support of a range of organisations and people. On our own behalf and that of our clients, we thank them all. I do hope this report will encourage you to support our work, be it by making a donation or by using our services.

MICHAEL BRINDLE QC

SUMMER 2001

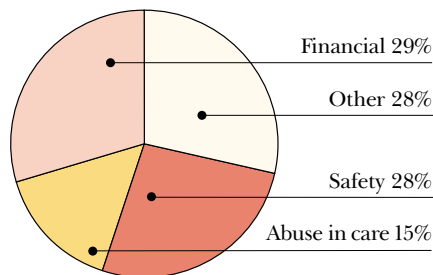
“The adviser helped put things in perspective”

THE HELPLINE

In 1999 and 2000, we recorded some 1600 requests to our helpline. Of these, 874 (54%) were public concerns – in that they were essentially about a perceived danger or threat to someone other than the client, rather than a private dispute he or she was involved in. These two years are the first time that the majority of our callers have had public concerns and this shift has been due to media coverage of the issue and the legislation. The following sections and charts give a breakdown of what we know about these 874 public concerns.

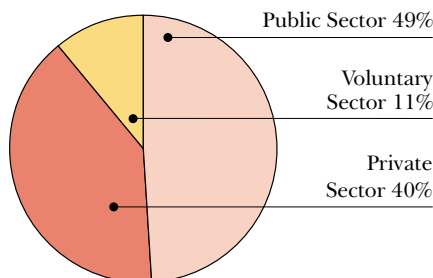
TYPE OF WRONGDOING

Two notable differences from the results of our surveys before PIDA came into force are the significant increases in concerns about public safety (as opposed to workplace dangers) and in the ‘Other’ category which includes competition, consumer, environment and ethical issues.



SECTORS

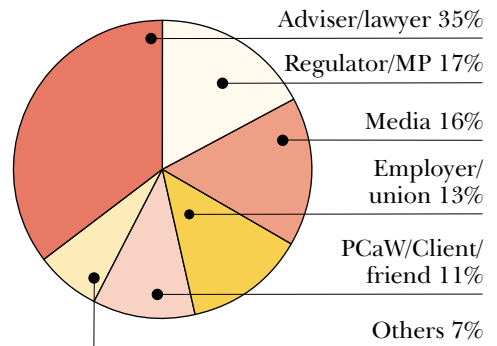
Just under half (49%) of concerns came from the public sector. Although it is over three times as large, the private sector accounted for 40% of the concerns we handled. 11% of concerns came from the voluntary sector – making it, proportionate to its size, the highest of the three sectors.



“I thought the advice and the adviser were both brilliant”

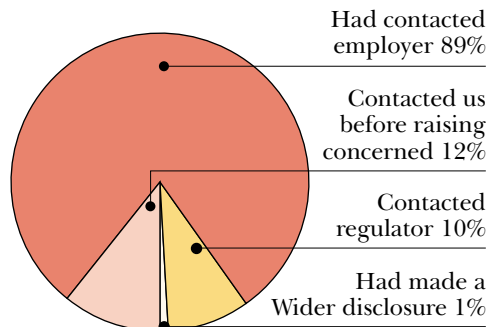
HOW CLIENTS KNOW ABOUT US

The significant developments here are that we are now getting referrals from the workplace (be it through employer's policies or unions) and from regulatory and public authorities. While we welcome personal recommendations, we recognise that it is not the most effective way to promote a national helpline.



ACTION TAKEN

12% of clients contacted us before they had raised the concern - a decline over recent years which may be because the legislation has itself given people more confidence to raise concerns themselves. Of those clients who had already blown the whistle, 89% had done so to the employer, 10% had contacted the regulator and 1% had made a wider disclosure (media/police). This trend is consistent with our own approach and that of the legislation, namely to encourage internal whistleblowing where possible. It is also notable that one third of those clients who had blown the whistle contacted us to discuss the response to the concern, rather than to report any victimisation or reprisal.



CLIENT SATISFACTION

We rang all those who had left contact details up to three times seeking feedback on our service. We successfully contacted 229 clients and they all agreed to give feedback. The results were that:

96% said the advice we gave was clear

85% said they would recommend us

78% said the advice was helpful

71% said they followed the advice

While the feedback remains overwhelmingly positive, there has been a slight fall in satisfaction from the previous 5 year averages where the recommendation rate was 91% and where 86% of clients found the advice helpful. From the responses to open questions, this fall appeared to be linked to the increased number of callers who mistakenly expected us to provide free legal representation for them. The quotes at the bottom of the pages of this report were from thank you letters or were views expressed during the feedback surveys.

“Public Concern at Work was my lifeline”

CASES FROM OUR FILES

1 Pocketing the Money

2 Hard Men

3 Witness Dismissed

4 Informing Policy

5 Too Close for Comfort

6 Cut-throat Competition

7 Charity Begins on Holiday

8 Media Madness

Case Note 1: Pocketing the Money

FA worked as a care assistant in an old people's home. He and some of his colleagues were worried that SM, one of the managers, might be stealing cash from the residents.

SM, who looked after their pocket money, kept a ledger of when sums were paid out. FA was fairly sure that money was recorded as being given out to particular residents when they had received none. After a while, he thought he had to raise the concern as the amount involved was adding up.

After he raised his concerns with the owners of the home, an investigation quickly found he was right and SM was dismissed and the police were called in.

Relations within the home were tense as some of SM's friends strongly objected to the whistleblowing. Within weeks, FA was suspended over allegations that he had mistreated the residents. He rang us.

We advised that he should bite his lip and deal with these allegations squarely.

Although the investigation found they had no substance, the owners decided to transfer FA to another home. FA was very unhappy and rang us again.

We helped him draft a letter to the owners explaining that he wanted to stay at that home and that transferring him after he had blown the whistle would give out the wrong messages to other staff. The owners reconsidered and FA stayed at the home.

When FA rang to tell us that SM had been convicted of stealing £1400 from the residents, he said the atmosphere in the home was now much improved.

Case Note 2: Hard Men

JM was the personnel manager for a successful family-run engineering firm. To help with its expansion plans, it had recently raised investment capital.

When in the past the directors had put through the books some private work done on their own homes, JM had let it pass as it was a family business.

Two employees had recently told him that the scale of these private works was now reaching new heights. JM was worried about this and doubted that the non-executive directors the new investors had put on the Board would approve. He thought something should be done but knew that the directors had a well-earned reputation as hard men in the local community. He feared that if he said anything to the non-executive directors he would lose his job or something worse might happen. Not surprisingly, the dilemma had undermined JM's commitment to the firm. He rang us for advice.

If he wanted to stay with the firm and deal with the issue, we advised the best way was for him to raise the concern with the family directors. By referring to the fact that staff were talking about it and the risk that they might report the wrongdoing elsewhere, he could help the family see why the private works should be stopped. As this approach made his role part of the solution, it was unlikely he would be victimised.

If the malpractice continued, we would then discuss with him what other options there were. We explained that if he lost his job, he would be protected by PIDA. However, this meant he would be fully compensated - not that he couldn't be sacked. The other option was for JM to find a new job and then decide whether to raise the concern himself. Thankful for the advice, he took the second option.

Case Note 3: Witness Dismissed

JB was one of several pharmacists at a chemists in a small town. Her boss owned the shop and was himself a pharmacist. Part of his work was to claim rebates from the NHS for the drugs prescribed.

Occasionally the NHS would ring to check one of prescriptions and when her boss was not there, JB would answer. More often than not she would realise that some error had crept into the paperwork which favoured the pharmacy. She would put this right and then politely point it out to her boss. The errors kept on being made and whenever the NHS asked JB she would deal with it honestly and fairly.

One day when the boss was away two NHS investigators called in to the shop and asked to meet JB to go through some of the rebates claimed. She agreed to meet them and told her boss. After the interview, at the request of the investigators, JB made a formal statement. Again she told her boss what was happening. Some weeks later he was arrested and charged with fraud. The next day she received a letter from

his solicitors dismissing her. They claimed that if she continued to work there, her boss could also be charged with interfering with a witness. JB rang us.

We contacted the NHS prosecutors and the appropriate authorities and explained that this practice could only thwart their efforts to tackle workplace fraud. We suggested that to avoid this they should seek to attach bail conditions which would reduce the risk that witnesses would be sacked.

As to JB's case, we advised her to bring a PIDA claim and put her in touch with lawyers willing to help ensure she got proper compensation. We also advised her how to approach future employers and before long she had another job.

Case Note 4: Informing Policy

GB had worked for many years as a scientist for a firm of research consultants. While the firm was working on a key project to inform Government policy on energy efficiency, GB was asked to review related scientific research.

In the course of her review, she discovered that in an influential piece of research, a colleague's conclusions had misinterpreted the data. The effect was that the facts did not support the conclusions. GB raised this with her manager who said they would look into it. She then heard that another colleague was unhappy with the analysis.

GB knew from colleagues that there was real pressure to complete the Government project as a ministerial announcement was due soon. When she asked her manager whether the suspect research would be used in the Government report, she was left with the distinct impression that it was none of her business.

GB was alarmed that Government policy might be built on such an error and thought something had to be done. She wrote in confidence to the civil servant running the project, pointing out that the piece of research should not be relied on without some independent corroboration, which could be easily sought.

A week later GB was dismissed as the civil servant had told the firm about GB's confidential letter. GB rang us.

We advised GB that she had a claim under PIDA and also against the Department for breach of confidence. We helped her bring a PIDA claim and settle it whilst ensuring that the suspect research was dealt with properly. GB has since returned to academia.

Case Note 5: Too Close for Comfort

AM was a residential social worker in a children's home. He grew increasingly concerned that a colleague PE seemed to have developed a close relationship with a 12 year old girl in the home. Colleagues and some of the children joked that PE was becoming rather infatuated with the girl.

During a holiday trip, AM was alarmed that PE insisted that the girl should travel in his car alone with him and that he spent a lot of time with her during the holiday. AM raised the issue with PE who just laughed it off.

On return from the holiday, AM decided with a colleague that they should raise their concerns discreetly with the Council. They were told they had a duty to report them formally. When they did, an investigation was launched and PE was given special leave and told to stay away from the home.

AM contacted us when he learned that the investigation had finished and that PE would be returning to the home. He and colleagues were worried that this was not the right decision.

We advised him to contact the Council's head of child protection and explain his concerns. However, we pointed out it was the Council's job to decide what action to take and that what mattered was that the Council felt sure that PE was not a risk. We also said that the fact that PE was returning to the home did not mean that no action had been taken.

After discussing the matter with the Council, AM felt happier with its decision as he knew the Council would be keeping a watchful eye over the home and that staff would be reminded of the whistleblowing policy.

Case Note 6: Cut-throat Competition

DA had worked for 8 years as operations manager for a specialist food company. In the last year the man who founded the business had retired and his son had taken over. The son was keen to expand the firm and wanted to take on its main competitor and also see off a former colleague who had just entered the same market.

One day the son gave DA a file with all the main competitor's key client confidential information. DA was told to contact all their clients and undercut their prices. DA objected and was told that if she didn't like it, she could go. She raised her concerns at the management meeting to no avail and then decided to leave. She rang us six months later asking what she could do.

As DA had a new job, her only concern was to stop the malpractice. We discussed the various options with her, including the competition authorities and the data protection office. Our initial advice was that she should write to her former employer setting out her concerns about their misuse of a competitor's information and the risks they were taking.

During our next discussion, we realised that DA was reluctant to write such a letter and was very keen that the authorities should take action. We asked more about the nature of the market and what DA now did. It transpired that she had left the firm to join her former colleague's business which had just entered the same market. We pointed out that she had not been candid with us from the outset and discussed the options she had as a player in a competitive market. We said that her new firm's lawyers would be better able to advise her on the risks and opportunities for reporting a competitor.

Case Note 7: Charity Begins on Holiday

The Director and a senior colleague left a community resource project to take up new posts in the charity world. In replacing them the project recruited a finance officer, CM, who had much experience in the area and asked the deputy director to be acting manager until funds were obtained for a new post.

Not long after joining, CM discovered that the two former staff had drawn and signed cheques to one another for almost £1000 apiece. While these were listed as outstanding holiday pay, CM was troubled that no deduction had been made for tax or national insurance and there was no indication the payments had been authorised. To try and sort the issue out, she asked a colleague for their holiday records but was concerned that large sections had been encrusted with Tippex.

CM raised the issue with the Deputy Director and dropped him a short note to say she awaited his instructions. The next day CM was suspended for “malicious mischief resulting in danger to fellow employees; reading personnel records without prior consent; discussing these

issues with other members of staff other than the Deputy Director; and discourteous behaviour.” Two weeks later at her disciplinary hearing she was dismissed for gross misconduct. She then contacted us.

We discussed all the options with her, as to her own position and the concern.

Though she was very hurt by what had happened, she felt the project was good and was keen to stay and try to sort out its finances. If things did not improve, she would seek another job. We helped her bring an internal appeal against the dismissal explaining what had happened and mentioning the new law. This was successful and she returned to her post.

Case Note 8: Media Madness

For five years KD had helped run a Council recycling project. When her boss was on holiday, she came across several sacks of patients' records which had come from the local hospital. She rang them up and the bags were collected that day without a by-your-leave. A few odd records were left behind which KD locked away. She left a note for her boss, hoping that the hospital would send a word of thanks. None came.

A few weeks later, the project had an open day for the media. When a BBC journalist asked KD if anything interesting came through the project, she mentioned this incident. The journalist got very excited and leant on KD to show him the remaining records, emphasising the public interest. This and a promise of confidentiality overcame KD's reluctance and the journalist copied the few remaining records and ran the story on the evening news. Shamed, the hospital publicly apologised for the incident and asked the journalist for the records back. In breach of his professional rules and his promise, the journalist revealed that KD had them. The hospital complained to the

Council. When KD was suspended for gross misconduct, her immediate response was to deny her involvement. Distraught, she then rang us.

KD, who had a fine work record, liked her job and desperately feared losing it. Although she had a sound claim against the BBC and the Council if she lost her job, the strategy was to make this unnecessary. We advised her to come clean with the Council and helped write them a letter. With the support of her union and our help, the Council understood what had happened and allowed KD to keep her job.

HELP FOR EMPLOYERS

The main thrust of our efforts to promote legitimate whistleblowing is our work with employers. By helping them to instil the right attitude in the workplace, not only does the organisation itself benefit but staff better understand the purpose and benefits of such a policy. We also work with regulators, unions, professional bodies and advice agencies on complying with the new law to help those they work with. For further information about these services, please call on 020 7404 6609 or contact services@pcaw.co.uk

THE POLICY PACK

Our Policy Pack is a compliance toolkit which is seen by many as a benchmark for whistleblowing. The National Health Service has supplied it to over 500 Trusts and health authorities in England and Wales. In the private sector, the Pack has been used by organisations such as BAe, British Gas, Camelot, Clifford Chance, HSBC, Nuffield Hospitals, PriceWaterhouseCoopers, Rio Tinto, Rolls Royce, Shell, Standard Life, Unigate and Whitbread. Over two hundred and fifty public authorities such as the Audit Commission, the Department for Education & Employment and the Financial Services Authority use it to guide their own work in this area. Through the offices of CIPFA, the Pack has been widely distributed in local government.

TALKS AND CONFERENCES

Our staff have spoken at conferences organised for the banking and insurance industries, the medical, legal and accountancy professions, unions, co-operatives, auditors, personnel societies, scientific associations, law firms, academic institutions, royal societies, voluntary groups and for individual businesses. Central government departments - including the Treasury and the DTI – also use these services.



On **THE POLICY PACK**

“An excellent guide – all other sources of information seem to be looking at this topic entirely from a legal point of view”

PERSONNEL MANAGER, NHS TRUST

“Gave assistance in writing a policy in plain English that could be understood by all levels of staff”

COMPLIANCE MANAGER, HSBC

“The Pack is extremely useful and will help ensure that good practice is followed”

HEAD OF CENTRAL SERVICES, LONDON BOROUGH OF EALING

On **OUR TALKS & CONFERENCES**

“Excellent. Highly relevant. A number of profound thoughts and insightful concepts were put forward by the speaker”

HEAD OF INTERNAL AUDIT, CABLE & WIRELESS

“All in all a most successful morning, and we as an industry are now much wiser”

ASSOCIATION OF BRITISH INSURERS

TRAINING

We have provided in-house training for the Audit Commission, the Financial Services Authority and for several NHS Trusts. We have also provided open training courses for regulators on how the Act affects their work, and for public authorities and businesses across the UK. These courses range from help on how to introduce and implement effective whistleblowing policies to intensive workshops on how to handle whistleblowing concerns.

CONSULTANCY

We produced a Boardroom Brief for clients of AIG, the world's largest insurer. We were appointed special advisers to the European Commission on its new staff rules on whistleblowing. We helped the public service union, Unison, draft *Speaking Out Without Fear*, a practical guide for their members and representatives on the Public Interest Disclosure Act. We were commissioned by Abbey National, Argos, the British Council and the National Lottery Charities Board to help with substantial reviews of their policies on governance, transparency and whistleblowing. Following anonymous disclosures at NIREX and Royal Brompton Hospital, we were asked to review their procedures and make recommendations on how such incidents may best be avoided.

On **OUR TRAINING**

“Thoroughly enjoyed it. Will certainly be better equipped to undertake my duties”

SENIOR PERSONNEL MANAGER, INTERVENTION BOARD

“The training was excellent and has proved very useful back in the workplace”

POLICY OFFICER, OCCUPATIONAL PENSIONS REGULATORY AUTHORITY

“The highest ratings we have ever had at any event”

CAPITA CONFERENCES

On **OUR CONSULTANCY**

“We chose PCaW because their approach fits our emphasis on internal communication and openness. We believe their practical help and confidential advice is exactly what is needed to reassure everyone at Argos of our commitment to ethical conduct”

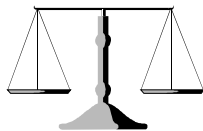
COMPANY SECURITY MANAGER, ARGOS

“I would like to record our appreciation for your very valuable advice on this particularly sensitive project. I feel that your overall approach, concentrating on lessons to be learned but without glossing over any findings has been very helpful.”

MANAGING DIRECTOR, NIREX



PIDA CASES



Legal Decisions Under The Public Interest Disclosure Act

A) TAKING CARE

Within months of starting a new job at a care home A, an experienced nurse, had genuine concerns about the standards of care. When he tried to raise them with the Managing Director's PA, he was asked to put them in writing and told they would be dealt with on return from holiday. As the problems continued, A rang the Social Services Inspectorate (SSI) 9 days later. They inspected the home and found most of his concerns substantiated. A was then disciplined and sacked for breach of his professional duties. A brought a PIDA claim. The tribunal held that A's internal and external whistleblowing were both protected. Even though a short time had elapsed before he contacted SSI, his actions were reasonable because of the nature of the concerns and as the home had no whistleblowing policy. A, who had found another job, was awarded £23,000.

B) NO RELIEF

B, a care assistant, was dismissed shortly after contacting Social Services Inspectorate (SSI) with concerns about the treatment of a resident. She had not raised her concern internally because it had simply not occurred to her. B brought an urgent claim for reinstatement under PIDA. The tribunal held her claim failed as she had not raised the concern internally and had no good reason for not doing so. (NB If the SSI had been prescribed under PIDA, the result could have been different)

C) DOUBLE STANDARDS

C was finance officer for a subsidiary of a US telecoms company. In 1997 when C had told his contact in the US about large and suspect expenses claims made by his Managing Director, he was told to turn a blind eye. In late 1999 when the Managing Director's expenses had exceeded £300,000, C raised his concerns with the US Board. He immediately found himself under pressure to leave and when C refused to resign, he was disciplined and dismissed for authorising the MD's expenses. C brought a PIDA claim. The Managing Director remained in post until C had won his claim for interim relief. At the full hearing the tribunal decided that complaints about C were a smokescreen and that he had been sacked for whistleblowing. As C was 58 and unable to secure similar work, he was compensated for his losses of £293,000.

D) POOR SHOW

D was on probation as operations manager at a freight company. After his boss warned him about growing operational problems, D went to the regional director. D was sacked the next day after his previous employers had detailed their problems with him. D then wrote to his Managing Director saying he had been sacked after telling the regional director about dishonest and corrupt practices. The regional director denied this had been discussed. D brought a PIDA claim. The tribunal found D was sacked for poor performance and made a £500 costs order against him.

E) NOT TAKING STOCK

E was a tyre fitter. He was responsible for stock at another depot. After a break-in at that depot, E believed no stock had been taken. E then heard that his boss planned to set some other losses off against the break-in. E gave compelling evidence of this to his regional director, who told E's boss about his concerns. After he was cold-shouldered by colleagues and ignored by managers, E resigned. He brought a PIDA claim. The tribunal found for E as the regional director had failed to show him support. It stressed employers must make it clear to staff that there are no adverse repercussions for bona fide whistleblowing. Compensation to be agreed or decided.

PIDA AT WORK

LEGAL DECISIONS

In the previous section, we summarise five of the early PIDA decisions. So far the Act appears to be being applied in tribunals as Parliament had intended. More information about PIDA cases can be found on our website: www.pcaw.co.uk/news

OPEN JUSTICE, CLOSED GOVERNMENT

Decisions under PIDA, however, are a misleading indication of how the Act is working in practice. Tribunals only hear cases where whistleblowing has gone wrong and where the parties have been unable to settle their differences. For this reason we were and are keen to monitor the nature of claims being brought under PIDA. This provides valuable information about the nature of the wrongdoing, whether the employee had raised the matter internally, whether the claimant alleged breach of other employment rights and about the nature of the victimisation.

As our request for access to public records about PIDA claims was denied by the authorities, we challenged their decision in the High Court. Applying the rules that governed employment tribunals, the Court found in our favour concluding that “it has always been the policy of the law that, so far as possible, litigation should be conducted under the public gaze and the critical scrutiny of all who wish to report legal proceedings.” The Government’s response to this decision was in our view regrettable. Without consulting interested parties and without any public announcement, it changed the relevant statutory rules while Parliament was in recess. Details of this episode can be found on our website (address above). As our view remains that this secretive approach conflicts with public policy, we will press for it to be changed - be it by Government, Parliament or the courts.

“PCaW needs more publicity, whistleblowing needs to be socially acceptable”

Job tribunal register must give details

Law Report

QUEEN'S BENCH DIVISION
 Published May 9, 2000
Regina v Secretary of the Central Office of the Employment Tribunals, Ex parte Public Concern at Work
 Approved April 25, 2000

The recording of particulars in the register of applications, appeals and decisions at the Central Office of the Employment Tribunals (COTET) led to the disclosure of the register to the press and to the public. The court found that the Secretary of State (S) had failed to take sufficient steps to prevent the disclosure of the register. The court ordered S to take steps to prevent the disclosure of the register.

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REVERSED BY

EMPLOYMENT TRIBUNALS (Amendment) Regulations 2000

Made
 Laid before Parliament
 Came into force
 The Secretary of State, in exercise of the powers conferred on him by sections 7(1), 11(1A) and 41(4) of the Employment Tribunals Act 1996, and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Regulations:

24th July 2000
 26th July 2000
 17th August 2000

*who had responded that "the regulations do not seem a very attractive way of proceeding."

RESEARCHING PIDA

As the Department of Trade & Industry has not been able to include PIDA in its research programme into employment laws, it has largely been left to us to research the way the Act is operating. This task has been and will remain all the more difficult if public records of the details of PIDA claims are to be unavailable.

PROMOTING PIDA

While the National Health Service and the Audit Commission have done much to promote the legislation in their own areas, few steps have been taken by Government to advise employers and the public about the Act and its implications. We believe that Government can and should play a more active role in informing people about the Act. Our concern is that without such an initiative, employees may be unaware that there is a safe alternative to silence and employers (particularly small and medium sized ones) may unwittingly leave themselves exposed to claims. The potential value of such an initiative was clear after the Ladbroke Grove train crash when politicians, pundits and the press called for whistleblower protection, apparently unaware that such laws had been in force for several months.

“Should publicise yourselves better, ACAS did not know about you”

Health Service Circular



Series number: HSC 1999/198
Issue date: 27th August 1999
Review date: 27th August 2002
Category: Human Resources
Status: Action

See also a specific notice on the part of the recipient with a deadline where appropriate

The Public Interest Disclosure Act 1998

Whistleblowing in the NHS

For action by: Health Authorities (England) - Chairman
Health Authorities (England) - Chief Executives
NHS Trusts - Chairman
NHS Trusts - Chief Executives
Special Health Authorities

What should YOU DO if you suspect FRAUD or CORRUPTION?
How should you react if you suspect fraud or corruption in the workplace?

How will the new PUBLIC INTEREST disclosure act PROTECT YOU if you do?

How should you react to suspected FRAUD or CORRUPTION?

How will the new PUBLIC INTEREST disclosure act PROTECT YOU if you do?

Who should read this leaflet?
Employees of...
• Local authorities
• NHS

Who should read this leaflet?
Managers of...
• Local authorities
• NHS

Who should read this leaflet?
Managers of...
• Local authorities
• NHS

POLICY

We believe firmly that employers should encourage - and the law should protect - bona fide whistleblowing. With the passing of the Public Interest Disclosure Act, this principle has become an accepted, if not widely publicised, part of public policy in the UK. Over the past two years, we have focussed on encouraging domestic policy makers to heed and build on this approach and on exporting this message overseas.

ABROAD

With the global economy and with the influence of the European Commission and other international bodies, we have welcomed the growth in overseas interest in this issue and our work. We helped devise, draft and promote South Africa's Protected Disclosures Act and are delighted that a sister organisation (Open Democracy Advice Centre) has been launched there. We provided guidance on whistleblowing legislation for Thailand, Belgium and Nigeria. We acted as consultants to the OECD where the UK's legislation was commended by all key interests. The new OECD Guidelines for Multi-National Enterprises include whistleblower provisions and forthcoming amendments to the Anti-Bribery Convention are also expected to address this issue. We were consulted by officials in the Netherlands on its new whistleblower law and we met with judges, politicians and NGOs in Germany who appear keen to introduce UK-style legislation. Along with American colleagues, we addressed an international seminar in Sweden on whistleblowing and ethics and in the Czech Republic we worked with Transparency International on promoting this issue. Finally we were appointed special advisers to the European Commission on how its own staff regulations should be reformed to deal with internal and external whistleblowing.

“Without people like you, people like me would be lost”



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

PREAMBLE

Recognising that—
• the Bill of Rights in the Constitution of the Republic of South Africa affirms the dignity, equality and freedom of all people in the Republic and provides for the protection of those rights; and
• section 8 of the Bill of Rights provides for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

OECD LABOUR/MANAGEMENT PROGRAMME

Whistleblowing to Combat Corruption

Report on a meeting of management and trade union experts held under the OECD Labour/Management Programme (Paris, 10th December 1999)



- And bearing in mind that—
 - neither the South African common law nor the procedures in terms of which employees may disclose information relating to irregular conduct by their employers, or
 - every employer and employee has a responsibility to take steps to ensure that irregular conduct in the workplace; and
 - every employer has a responsibility to take steps to ensure that employees who disclose such information are not disadvantaged;
- And in order to—
 - create a culture which will facilitate the disclosure of information relating to criminal and other irregular conduct in the workplace;
 - promote the eradication of criminal and other irregular conduct in the workplace;

IT THEREFORE EN-ACTED by the Parliament of the Republic of South Africa, as follows:—

... which
... of state and

AT HOME

The proposed new statutory Code on Grievance Procedures appeared to us to wrongly describe the implications of whistleblowing for employers and failed to take account of the views of Parliament and the terms of PIDA. ACAS moved swiftly to remedy these points before the Code was finalised, so reducing the risk that employers and employees would misunderstand the role of the Act. Our efforts to persuade the DTI to address this problem were less successful. As the only DTI Guidance on the Act was distributed to job centres and advice agencies it is far more likely to help people bring legal claims, than raise concerns in the first place. Equally our suggestions that the DTI should make available practical guidance to small and medium sized employers have so far gone unheeded.

Elsewhere in Government, the DETR was keen to see how whistleblowing was working in local government and to discuss the recommendation of the North Wales Child Abuse Inquiry that council workers should be under a legal duty to blow the whistle. We expressed our misgivings about this proposal, cautioning that a duty would do little to create a more ethical environment and that in practice it would likely cause more problems that it would solve.

Our papers on the impact of the Human Rights Act on whistleblowing in the UK, and our briefings on the Freedom of Information Bill are available on our website at www.pcaw.co.uk/publications. Our response to the Home Office proposals on Corporate Killing, which is also on our website, explains our fears that the proposals could weaken the laws which presently deter directors from acting recklessly and that, if implemented as they are, they will lead to lengthy and unnecessarily complex prosecutions.

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Rt Hon Jack Straw MP
Home Secretary
Home Office
50 Queen Anne's Gate
London
SW1 9AT

5 September 2000

Dear Home Secretary,
Reforming the Law on Involuntary Manslaughter

Please find enclosed our response to the proposals insofar as they relate to the issue of corporate killing. This issue was considered by our Board and Advisory Council at some length as the origins of Public Concern at Work go back to some of the disasters cited in the consultation paper. As you will see from our response we have a number of comments which we hope you and your officials will find helpful.

We do ask you for an assurance that under the new law, the Government will ensure that the company involved in the Lyme Bay disaster and its managing director, Peter Kite, could both be convicted of an offence for which a custodial sentence was available for an individual. As the Court of Appeal confirmed that such a custodial sentence was appropriate in those circumstances, we would be most concerned if the new law were to weaken the protection of the public or the principles of accountability and deterrence in this area.

We are also concerned that the breadth and generality of the proposed offence of corporate killing may well lead to lengthy, complex and expensive investigations and trials. To reduce this risk and to provide companies and their directors with some certainty about the application of the offence, we recommend that a defence is available where reasonable care and due diligence was exercised to be aware of and to address any serious risk to health and safety.

While we look forward to your assurance, we are happy to meet with you or your officials to

Making whistleblowing work

Chairman: Michael Dwyer QC. **Director:** Guy Dinn. **Trustees:** Fergus Adams, Maurice Frankel, Rosale Langley Ltd, Michael Moses OBE, James Tickle & Mervyn Wifford OBE. **Patrons:** Lord Borne QC, Rt Hon Lord Oliver of Aylmerton, Sir John Garham & Rt Hon Sir Ralph Gibson. Limited company 0449833. Charity no. 1022557. VAT 026 7125 17

PUBLIC EDUCATION

SCHOOLS

We ran a pilot project in four schools to discuss the perceptions of sixth formers toward whistleblowing. This proved very successful, with excellent feedback from both pupils and staff. As one master wrote afterwards “It is clear that a whole group of young people was challenged and provoked...it will have a real and long-lasting influence on all the pupils here.”

THE MEDIA

The media can and do play a key role in influencing and informing the public debate about whistleblowing and opposite we reproduce some of the editorials that have addressed this issue over the past two years.

While there remains a keen interest in the helpline cases, journalists understand that due to the confidentiality of the lawyer-client relationship the information is not ours to disclose. The potential implications of whistleblowing in a range of fields mean that on most days people from the media contact us to discuss issues of accountability, helpline data, the impact of the new legislation or stories breaking in the news.

SPREADING THE WORD

We speak to a wide range of audiences to explain our work and approach. In the past two years these have included community associations, colleges and professionals. It has been particularly reassuring to discover during our talks to various religious faiths that their core texts recognise and reflect both the principle and practice we espouse.

Our reports on how the legislation is working and on the latest cases have been well received by the legal and personnel professions. And in our policy work (detailed in the previous section), we try to explain why a practical approach toward whistleblowing is relevant in a number of different contexts.



THE EXPRESS

Disclosure law works to arrest a cover-up culture

FOR all the mass of legislation passed by Parliament, it is rare indeed to see a new law working precisely as intended. So our exclusive revelation today that Her Majesty's Inspectorate of Constabulary is investigating the alleged hushing up of bullying and drug-taking in the Cleveland police force is welcome news.

The investigation is a direct result of the new Public Interest Disclosure Act which was passed to end the culture of cover-up inside too many organisations. Even if allegations turn out to be untrue, the Act provides protection for whistleblowers and they acted in good faith.



Evening Standard

Monday, 2 August, 1999

Blowing the whistle

THE NEWS that a London hospital is to be the subject of an inquiry into the death rates among its child patients is, of course, a matter of great concern. It is right that such serious allegations be investigated thoroughly. We should not, at this stage, jump to any conclusions about what might be the conclusions of the two independent surgeons who have been appointed to look into what has been happening at the Royal Brompton Hospital, Chelsea. There can be many reasons for differing death rates at different hospitals — not least the levels of sickness of the patients when they enter for surgery. However, even at this early stage, there is one aspect of this affair which is disconcerting: the method by which the allegations came to light. It was only because a concerned individual — most probably an insider at the hospital — wrote an anonymous letter to another inquiry (that into death rates at the Bristol Royal Infirmary) that this investigation is happening at all. This is a sad reflection on the new openness that has continuously been promised by the Government. In a democracy, "whistle-blowers" should not need to be frightened about coming forward. Yet only a few weeks ago, a consultant radiologist who had spoken out about the quality of breast screening at another hospital found himself suspended. Serious allegations should not have to be scribbled on the back of brown envelopes. That is a charter for people with grudges. Anonymous tip-offs are for paranoid grasses, not worried health officials. We need to build a system in which whistle-blowers can come forward openly with any concerns they have, so they can be properly investigated at once.

Accountancy Age

A law to whet your whistle

When business people demand that accountants should be more corporate they sometimes mean that they should be less principled. Being told you are now part of the team is often code for telling you to swallow your scruples and turn a blind eye. At its best, corporate responsibility means that you have to stand by the management team's decisions, whether you like them or no.

Of course, no-one would argue that accountants are not key corporate players. But the business world needs to remember that accountability is the cor of good accountancy. And, in most cases, that means the accountants are the awkward squad. Who else will tell the chief executive that the figures from sales are bogus? Who, but the accountant, can tell the client that, financially speaking, the wheels are coming off her business plan?

Which is why the profession should welcome the announcement of a wide-ranging new law to protect whistleblowers. Instead of seeing them as dangerous mavericks, companies need to value whistleblowers as part of their system of business assurance. If staff are given a safe route to raise concerns, whistleblowing can benefit everyone. Of course, this will increase the pressure on financial managers to stick to the rules and on auditors to make sure they have spotted wrongdoing. But that is a price worth paying for a powerful new tool in the fight against fraud and complacency.

Lone voice

FOR 15 years Alison Taylor was the lone voice in the wilderness.

Only she dared to speak out against the perverts who preyed on hundreds of care home kids.

What did her bosses do? They sacked her.

Corruption was so rife in the children's care service, even the man in charge was an abuser.

No wonder this, the greatest scandal in the welfare state's history, went undetected so long.

At least 12 youngsters committed suicide. Hundreds will carry the

MONEY & SUPPORT

EXPENDITURE

Our expenditure over each of the past two years has been some £250,000 pa. Two-thirds of this has been on the salaries of the staff (who are listed overleaf). The first bar chart opposite shows the breakdown of this expenditure by core activity over the last two years.

INCOME

During 1999 and 2000 our income averaged some £350,000 pa, of which we earned nearly one half as the second chart opposite illustrates. Full details are available on request, in our audited reports.

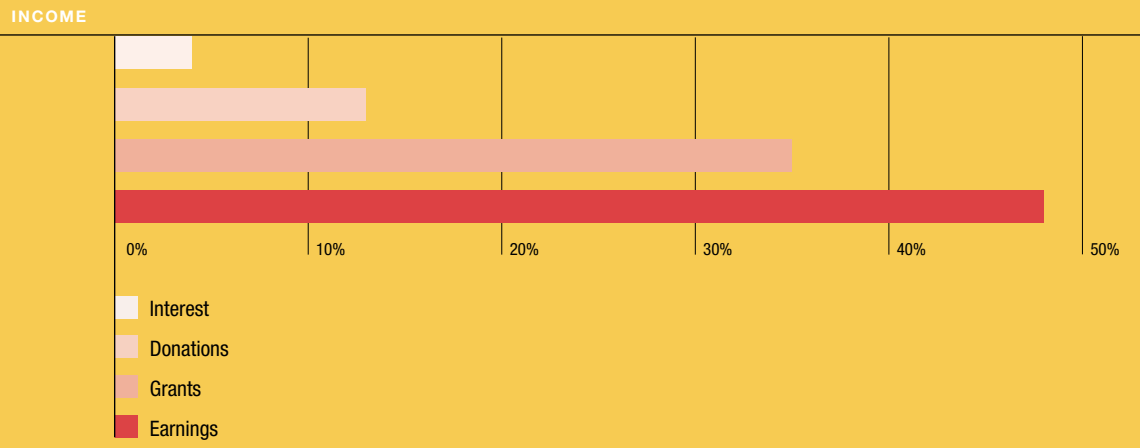
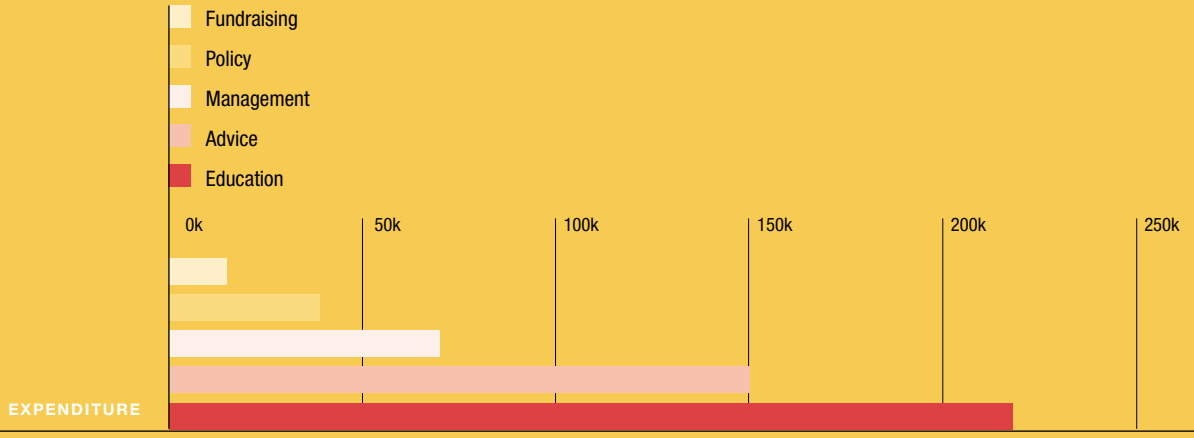
THANKS

We thank the trusts, individuals, employers and unions which support us. Without their backing, we would have been unable to get this far. We record especial thanks to the Esmée Fairbairn Foundation, Joseph Rowntree Charitable Trust and Leigh Trust which provided essential funding to the end of 2000. While it is our intention to fund as much of our work as we can from earnings, we will continue to need donations and support over the coming years.

SUPPORT

If you know of any individual, organisation or trust which you think might support our work, please send them this report or ask us (support@pcaw.co.uk) to send them one. If you are able to help please do.

“Invaluable, completely objective - I wished I had known about you sooner”



WHO'S WHO?

THE TRUSTEES

Michael Brindle QC, Chairman of the Board, has a legal practice which focuses on commercial, financial and professional issues. Maurice Frankel, the deputy, is the Director of the Campaign for Freedom of Information. Farzana Aslam is a practising barrister; Rosalie Langley Judd is a manager of Intelligence & Records at the Financial Services Authority; Martin Le Jeune is a director of Fishburn Hedges; Michael Moore CBE chairs a number of quoted companies and Which?; James Tickell is the Assistant Chief Executive of the National Housing Federation and Marlene Winfield OBE is Head of Patient and Client Records at the NHS Information Authority.

THE PATRONS

Our four patrons have all been closely involved in our work. From 1992-96 Lord Borrie QC (chairman of the Advertising Standards Authority) was the Chairman of the Trustees and Lord Oliver of Aylmerton (a former law lord) was Chairman of the Council. When Director-General of the CBI, Sir John Banham was closely involved in the preparatory research on whistleblowing. Sir Ralph Gibson (a past chairman of the Law Commission) chaired the Council from 1996 to 1999.

THE COUNCIL

The members of our advisory Council are our patrons and Gerald Bowden, John Bowers QC (Hon Legal Adviser), Steve Burkeman, Tony Close CBE, Dr Yvonne Cripps, Jo Cutmore, Baroness Dean, Zerbanoo Gifford, Lord Gladwin CBE, Edwin Glasgow QC, Lord Goldsmith QC, Roger Jefferies, Graham Melmoth, David Owen, Chris Price, Anthony Sampson, Dr Elaine Sternberg, Dr Marie Stewart and David Wellings.

THE STAFF

Guy Dehn, the Director, is a practising barrister. Our legal officer, Anna Myers, is a practising solicitor and Caroline Millar, our company secretary also runs our administration and services. Lynne MacMillan is managing our Scottish pilot project. Florence Adams is office administrator. The legal caseworkers (all have been part-time) are Georgina Brown, Emma Phillips, Ben Urdang and Josh Winfield. We have two volunteers: Caroline Khazai-Nejad and Jean Brown.

THANKS

We offer our best wishes to the following who have moved on from the charity during these two years and we thank them for their help. John Healey MP and Ole Henriksen from the Council. We record our thanks to Deborah Annetts, Andrea Eaves, Giles Desforges, Karen D’Rozario, Philip Ells, Chidi King, Kathy MacMahon, Wyn Pyper and Nicola Walker.

“I would wholeheartedly recommend your services – you deserve further support from your sponsors”.



YOUR ROLE

Public Concern at Work receives no state aid. We cannot operate without your help. Please promote our message, refer to our helpline and use our services:

services@pcaw.co.uk

If you can make a donation or leave a legacy, you will help us to make a lasting difference:

support@pcaw.co.uk

Never doubt ^{THAT A SMALL} Group of
thoughtful, Committed
citizens ^{can} change ^{the} World
indeed ^{IT'S THE} Only thing
^{THAT} eVer Does • MARGARET MEAD

This card from a grateful client records an anthropologist's view of the role whistleblowers and their like have played and continue to play in securing progress.

STRATEGY IN ACTION

LAUNCH STRATEGY SET EARLY 1993

To promote the positive role of whistleblowing and counter its pejorative meaning.

To encourage people – particularly those at work – to question or challenge dangers or threats to others in a constructive way.

To give free confidential help to people concerned about serious malpractice at work.

To promote legislation to protect public interest whistleblowers.

To encourage business to view whistleblowing as welcome and positive.

To persuade employers to set up safe whistleblowing policies and to promote them actively to their workforce

To establish Public Concern at Work (PCaW) as independent experts and an authority in this area.

To encourage insurers to offer discounts to organisations which implement effective whistleblowing policies.

PROGRESS REPORT AS AT EARLY 2001

Whistleblowing increasingly seen as benign or a necessary fail-safe. Pejorative meaning has been checked in the public sector.

Over two-thirds of clients say they follow our advice. More generally some progress but difficult to quantify impact as other factors involved.

We have handled some 2200 serious concerns, with 89% of clients recommending us.

Achieved with the Public Interest Disclosure Act.

Good progress, evidenced by business support for and present lack of criticism of the Act.

Fair progress in private and vol. sectors, and good results among public bodies (through Nolan). Many policies are minimally compliant and promotion poor.

Welcome recognition of PCaW among policy makers at home and abroad is outweighed by low public awareness.

First signs of progress in 2000 as major insurer, AIG, promotes the issue to its clients.

PLANS AND PRIORITIES TO 2005

The issue now speaks for itself. Media use of the word still can cause some discomfort but this appears to be easing.

Explain impact of issue in and outside of workplace. Also take initiative to small firms, schools, colleges and local groups.

Try to maintain quality of helpline. Promote it in workplaces for use as early warning/dispute avoidance.

Monitor the Act in practice and review its terms. Support those promoting the issue overseas.

Be alert to any problems in practice. Emphasise Act's wider self-regulatory potential to HMG and all relevant interests.

Offer three levels of practical, valuable support so employers of all sizes can promote and sustain the right attitude across their organisation.

Must be creative and opportunistic to raise levels of public awareness. Establish office in Scotland.

Build on this interest and encourage others across the industry.