



Change in the air? Proposals for whistleblowing reform in the UK

The current whistleblowing legislation in the UK, the Public Interest Disclosure Act 1998 (“**PIDA**”), provides protection to certain individuals only after they have blown the whistle and if they can prove they have suffered as a result. Three draft bills have recently been presented in Parliament proposing reform to the law on whistleblowing in the UK. While all three bills share some common elements there are also a number of key differences. Here we summarise the key elements of each of these bills.

| | A Bill to Strengthen Whistleblowing Protection (“ Protect Bill ”) | Baroness Kramer’s All Party Parliamentary Group Office of the Whistleblower bill (“ APPG Bill ”) | Doctor Whitford MP’s Public Interest Disclosure Protection bill (“ Dr Whitford’s Bill ”) |
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| Whistleblowing Commission/ Office of the Whistleblower | <p>The Protect Bill was launched in October 2019 by the whistleblowing charity, Protect.</p> <ul style="list-style-type: none"> > The Protect Bill proposes the establishment of a Whistleblowing Commission, an independent body responsible for setting standards expected of employers and regulatory bodies. > The Whistleblowing Commission would have the power to investigate complaints where an employer or prescribed person has failed to investigate properly or otherwise breached their responsibilities under the bill. | <p>The APPG Bill was presented to the House of Lords on 28 January 2020 by Baroness Kramer, Liberal Democrat spokesperson for the treasury.</p> <ul style="list-style-type: none"> > The APPG Bill proposes an Office of the Whistleblower, an independent office. > The Office will fund legal support for whistleblowers and provide compensation for those whose employment, reputation or career has been harmed as a result of making a disclosure. > The powers of the Office would include: <ul style="list-style-type: none"> > acting as a point of contact for individuals who wish to make a disclosure; > maintaining a fund to support whistleblowers; and > providing compensation where an individual’s disclosure is deemed to have harmed their employment, reputation or career. | <p>Dr Whitford’s Bill was presented to the House of Commons on 5 February 2020 by Dr Philippa Whitford, Scottish National Party health spokesperson.</p> <ul style="list-style-type: none"> > Dr Whitford’s Bill introduces a Whistleblowing Commission, an independent body with the power to advise, investigate and provide compensation if whistleblowers are victimised. > The objectives of the Whistleblowing Commission would include: <ul style="list-style-type: none"> > ensuring that concerns raised by whistleblowers are acted upon; > promoting good corporate governance; and > promoting the normalisation of whistleblowing. > The Whistleblowing Commission would also set and monitor standards for employers and regulators and enforce compliance. |
| PIDA reform | <ul style="list-style-type: none"> > The Protect Bill reforms PIDA, rather than repealing it. Proposals for reform include: <ul style="list-style-type: none"> > imposing a requirement for certain employers to have internal channels and procedures for reporting and managing disclosures; > extending the category of those who are protected; and > broadening the categories of wrongdoing. > The Protect Bill also introduces a duty on employers to take reasonable steps to prevent discrimination and detrimental treatment. | <ul style="list-style-type: none"> > The APPG Bill does not propose amending PIDA. > The focus of the APPG Bill is on the new Office of the Whistleblower providing support within the scope of the current law. | <ul style="list-style-type: none"> > Dr Whitford’s Bill calls for the repeal of PIDA entirely and would replace it with the Whistleblowing Commission. > The Whistleblowing Commission would have responsibility for dealing with claims. |
| Who can be a whistleblower? | <ul style="list-style-type: none"> > The Protect Bill would extend protection under PIDA to groups such as job applicants, non-executive directors and trustees. > The Protect Bill does not extend the scope of who is protected beyond the workplace but includes a separate legal action for third parties affected by a whistleblowing disclosure. > The Protect Bill introduces immunity from civil proceedings for those who make a protected disclosure (an Irish law concept). | <ul style="list-style-type: none"> > Currently under PIDA, the scope of protection is determined using an extended “worker” definition. > As the APPG Bill does not amend PIDA, this position would remain unchanged. | <ul style="list-style-type: none"> > Within the workplace, Dr Whitford’s Bill would expand the scope of who is protected by including a non-exhaustive list of protected groups. This would extend protection to individuals such as job applicants, non-executive directors and trustees. > Dr Whitford’s Bill would extend protection beyond the workplace, covering parents, customers, observers and “any other person” who has made a protected disclosure, has been identified as a whistleblower or is considering making a protected disclosure. |
| What is a protected disclosure? | <ul style="list-style-type: none"> > The Protect Bill extends the range of wrongdoing for the purposes of determining whether a disclosure is protected to include gross waste or mismanagement of public funds and serious misuse or abuse of authority. > The Protect Bill also protects disclosures relating to breaches of employer policies or procedures and behavior that harms an employer’s reputation or financial wellbeing, reflecting the reportable concerns included in the FCA’s chapter on whistleblowing. | <ul style="list-style-type: none"> > Currently under PIDA, disclosures must relate to the past, present or future occurrence of a criminal offence, breach of a legal obligation, miscarriage of justice, danger to the health and safety of an individual, damage to the environment or deliberate concealment of information relating to any of the above. > As the APPG Bill does not amend PIDA, it does not extend the scope of what a whistleblower can raise. | <ul style="list-style-type: none"> > Dr Whitford’s Bill extends the scope of wrongdoing to include reckless financial speculation, the gross waste or mismanagement of public funds and a serious misuse or abuse of authority. > Dr Whitford’s Bill also recognises the concept of “moral harassment” (mobbing or workplace bullying) as an example of a detriment (an EU law concept). |

Penalties and sanctions

- > The Protect Bill gives the Secretary of State the power to create civil penalties.
- > Where considered appropriate, the Commission would then enforce these penalties against the employer or the regulator.
- > It is proposed that fines would be linked to the organisation's turnover.
- > No criminal sanctions are proposed.
- > The Protect Bill does not change the position in respect of civil penalties under PIDA.

- > The APPG Bill does not change the position in respect of civil penalties under PIDA. However, it proposes that the Office of the Whistleblower should be able to provide financial redress to whistleblowers.
- > The APPG Bill would introduce two new criminal offences of:
 - > subjecting a person to a detriment because that person is a whistleblower or a close relative of a whistleblower; and
 - > failing to handle a protected disclosure adequately.
- > Individuals would be subject to a fine or imprisonment (for a term not exceeding 18 months), or both.

- > Dr Whitford's Bill would give the Whistleblowing Commission the power to issue civil penalties for breach of its requirements.
- > The maximum fine payable would be £5,000 for an individual; and £50,000 in any other case.
- > No criminal sanctions are proposed.

What is the progress of each bill?

| 11 October 2019 | 1 December 2019 | 28 January 2020 | 5 February 2020 | 25 September 2020 | 5 February 2021 |
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| Protect's Bill was drafted. | Protect wrote to all new MPs with a draft of the Protect Bill seeking their support. | The APPG Bill was presented to the House of Lords. The date of the second reading has not yet been announced. | Dr Whitford's Bill had its first reading in the House of Commons. | Dr Whitford's Bill had its second reading in the House of Commons. | The second reading of Dr Whitford's Bill will resume. |

EU Whistleblowing Directive

- > Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (the “**EU Whistleblowing Directive**”) came into force on 17 December 2019. The Directive is intended to protect individuals who blow the whistle in respect of their employers' breaches of EU law.
- > The Directive contains a number of provisions which extend the scope of protection for whistleblowers beyond those provided under PIDA. These include (i) extending of the category of who is protected to include volunteers, non-executive directors and job applicants; and (ii) reversing the burden of proof in court proceedings so that, if it is established that an individual has made a disclosure and suffered a detriment, it will be for the employer to show that this action was taken on “duly justified grounds”.
- > The Directive must be implemented by member states before 17 December 2021. Its requirements are relevant for both businesses based in the EU and global businesses with some EU presence who wish to maintain a single whistleblowing framework.
- > The British government is not required to implement the Directive, as the deadline for implementation (17 December 2021) falls after the end of the Brexit transition period (31 December 2020).
- > The Directive provides interesting context to the introduction of the three proposals for whistleblowing reform in the UK, perhaps reflecting the pressure faced by the government to ensure whistleblowing protection in the UK does not fall below this new standard of best practice in the EU.

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For practical guidance to support you in navigating the significant issues which affect your organisation, your employees and workers in light of the Covid-19 pandemic, please see our [Covid-19 resource hub](#).

For more information about effective whistleblowing management, see our [ListenUp!](#) page.

