

## EMPLOYMENT & INCENTIVES

### UK whistleblowing laws under review

March 2023

The UK government has announced that it will conduct a review of the whistleblowing framework introduced under the Public Interest Disclosure Act 1998. The announcement follows calls for reform of the law to enhance the protections available and to bring more whistleblowers within its scope. Will a change in the law follow?

A review of the whistleblowing framework was **announced** by the government on 27 March 2023. The purpose of the review is to examine the effectiveness of the whistleblowing framework in meeting the original objectives of the Public Interest Disclosure Act 1998 (**PIDA**). Introduced 25 years ago, PIDA was intended to create an avenue for workers to make whistleblowing disclosures, offer protection against detriment and dismissal and provide a route for redress. It was also intended to support wider cultural change in which whistleblowers would be valued and their concerns acted upon.

The review will consider how the whistleblowing framework operates and will look at five core questions (see *Core questions for the review*). Its focus will be whistleblowing in the workplace, rather than disclosures made by journalists or third parties or in the context of business transactions. Evidence will be sought from whistleblowers, key charities, employers and regulators.

The review is expected to conclude in Autumn 2023.

#### Core questions for the review

- > How has the whistleblowing framework facilitated disclosures?
- > How has the whistleblowing framework protected workers?
- > Is whistleblowing information available and accessible for workers, employers, prescribed persons and others?
- > What have been the wider benefits and impacts of the whistleblowing framework on employers, prescribed persons and others?
- > What does best practice look like in responding to disclosures?

#### Context for the review

The announcement follows a commitment made by the government in early 2021 to review whistleblowing protections. This was prompted by research from **Protect**, the whistleblowing charity, which found that one in four Covid-19 whistleblowers had been dismissed during a six-month period in 2020-21.

Although PIDA has been in force for 25 years, stories of retaliation and mistreatment of whistleblowers continue to be commonplace. Minor changes were made to PIDA in 2013, including the addition of a requirement that workers reasonably believe that they are making a disclosure in the public interest, the creation of vicarious liability where a whistleblower is subjected to a detriment by a colleague, and the power for a tribunal to reduce compensation where it finds a claimant's disclosure was not made in good faith. However, no substantive change has been made to the protections offered to whistleblowers.

Calls to strengthen the whistleblowing framework have been widespread. These have targeted both changes to the existing provisions and the introduction of complementary measures, such as the creation of an independent whistleblowing commission and a penalty regime for organisations which fail to handle a protected disclosure appropriately.

Most recently, the concept of an office for whistleblowers was proposed as an amendment to the Economic Crime and Corporate Transparency Bill. Under the proposals, the office would have responsibility to protect whistleblowers, ensure their disclosures are investigated and escalate information and evidence of wrongdoing to other agencies, where appropriate.

## What aspects of whistleblowing law should we expect the review to focus on?

**Who is covered?** Currently whistleblowing legislation protects workers and employees. However, under the existing framework self-employed contractors, non-executive directors, job applicants, volunteers and interns are all unlikely to be protected when they raise whistleblowing concerns in a workplace context. This is likely to be considered as part of the review.

**What protection is available?** The review is likely to evaluate whether current protections for whistleblowers against dismissal and detriment are adequate. It may consider issues such as separability between a worker's conduct and their protected disclosure, which allows employers to argue that they have dismissed not because of the disclosure itself but as a result of the way in which the disclosure was made. It may also consider whether employers should be under a proactive duty to prevent victimisation of whistleblowers.

**How should employers respond to disclosures?** PIDA contains no mandatory standards or procedures for employers to follow when a whistleblowing report is made. The timing of the UK's departure from the EU meant that the UK was not obliged to implement the EU Whistleblowing Directive (the **Directive**). UK employers are therefore not held to the same standards as those in the EU where a specified timeline must be followed once a whistleblowing report has been made, including acknowledging receipt of the report within seven days and providing feedback to the whistleblower within three months.

**What constitutes best practice?** A key requirement of the Directive is that employers with 50 or more workers must establish internal reporting channels for protected disclosures. These must be designed and operated in a way that ensures that a whistleblower's identity remains anonymous. Given that whistleblowing channels are mandatory in the UK financial services sector, it is likely that the review will consider whether the requirement should be applied more widely.

## Whistleblowing legislation: possible areas for reform

<b>Who is protected?</b>	Extension of protection to self-employed contractors, non-executive directors, job applicants, volunteers and interns.
<b>Whistleblowing channels and reporting procedures</b>	Requiring employers to have internal channels and official procedures for the reporting and management of whistleblowing disclosures.
<b>Independent whistleblowing commission</b>	Establishing an independent body to set and monitor standards, support whistleblowers and provide compensation.
<b>Penalties and sanctions</b>	Introducing a penalty regime including fines linked to an organisation's turnover.

## Will the review lead to a change in the law?

Once at the forefront of protecting whistleblowers, the UK is arguably now falling behind other jurisdictions. The government has recognised that whistleblowers play an increasingly important role in society and acknowledged that whistleblowing is a crucial source of evidence, particularly in cases of fraud, corruption and other economic crime. While the review makes no promises as to legislative reform, change could well be on the way.



For more information about effective whistleblowing management, see our **ListenUp!** page.

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