

Department for Business,
Innovation & Skills consultation
'Prescribed persons: annual reporting
requirements on whistleblowing'



STANDING UP FOR YOU

IA. Do you agree with the proposed content of the report?

No

IB. What are your reasons?

Whistleblowers are faced with two primary concerns. The first is how to best disclose the issue they deem to be in the public interest; and the second is fear of the consequences that face them once they have made the disclosure. The fact the government is undertaking this consultation in the first place suggests that it believes that it is a challenging environment for whistleblowers. It is absolutely vital that any changes to the whistleblowing policy framework are centred on giving greater confidence to potential whistleblowers to come forward and make protected disclosures in the public interest.

Providing greater reassurance to the whistleblower is the stated aim of this consultation, yet we are concerned that there is nothing within it that would seriously address this need. Merely reporting on the extent to which there is whistleblowing in organisations does absolutely nothing to change how organisations approach the issue. We therefore feel strongly that the government should alternatively be looking at serious practical measures to reform the external disclosures framework, which remains too complex and deters potential whistleblowers who are understandably fearful of jeopardising their careers.

Confidentiality and transparency

Our primary concern is that there will be no information in the reports on the identity of the organisations who have had a public interest disclosure made against them. We are told by the government that the whistleblowing framework exists to protect the public interest, but how is the public interest protected when organisations with a poor track record in upholding the rights of whistleblowers are able to hide behind confidentiality? The appalling case of the treatment of whistleblowers at Mid-Staffordshire NHS Foundation Trust should serve as a prime example of why it is vital for offending organisations' whistleblowing track record to be publicly known.

We therefore question what motivation will exist for an organisation to improve their internal procedures (which currently form the majority of disclosures) if their identity is not publicly revealed. Given this, we challenge the government to 'name and shame' those organisations which fail / have failed to take adequate measures to protect whistleblowers, or at the very least, explain why it does not deem this action appropriate.

Protected disclosures

The proposals envisage that the report will reveal the number of disclosures that qualify as protected public interest disclosures under Section 17 of the Enterprise and Regulatory Reform Act 2013 (ERRA). However, the whistleblowing framework as it currently stands presents a legal minefield to potential whistleblowers which leads to many potential disclosures failing to qualify, with often detrimental consequences to the whistleblower involved. If the reports are to improve transparency in the whistleblowing process then why not also include in the reports details of those disclosures which failed to qualify?

Moreover, the consultation document proposed that the reports will include details of the number of cases where the issue was resolved after first contact with the employer, and the number of cases that led to action being taken. A potential whistleblower is unlikely to be given the confidence to make a disclosure against their employer, and put their career at risk after being inundated with numbers. They will want to know what specific actions were taken and what results arose out of whistleblowing cases in their organisation.

We therefore support the inclusion of the category of action that was taken, (e.g. a revised policy, raised awareness of staff, disciplinary action etc.) We would also suggest including a requirement on organisations to have an audit trail of whistleblowing cases that could be inspected by a regulator if required.

2. Who should the duty to report apply to?

For the reasons given in the answer to Question 1 (B) we do not feel the need to answer this question.

3A. Should any other information be included in the report?

Yes

3B. If Yes, what information?

As suggested in Question 1B, we believe that in order to provide the intended reassurance to potential whistleblowers, a report must include information on the category of action taken in whistleblowing, as well as an audit trail record of individual cases.

4A. We propose that the report should be published on each organisation's websites along with general annual reports (such as accounts and performance). Do you agree?

Yes

4B. What are your reasons?

If potential whistleblowers are to be reassured, then it is absolutely vital that such information is easily accessible and that it is presented in a clear and transparent way.

The consultation proposals only suggest various types of information that the government envisages will be in any given organisation's report, but are relatively light on how the government will guarantee that this information would be made easily accessible and presented in a clear and fully transparent manner.

While many organisations' websites and annual reports are user friendly and simple to navigate, others are not, and this leaves opportunities for organisations to misreport and conceal facts from the public.

We would suggest that the information on whistleblowing is clearly identified as a standalone section of any report, so that it is not hidden by euphemisms and is easily and quickly accessible.

5. Should this report be contained within existing annual reports of your organisations / the organisation concerned?

The information should be contained in a free standing section to ensure that the information is easily accessible.

6. Should this information be reported to Parliament?

For the reasons given in the answer to Question 1 (B) we do not feel the need to answer this question.

7. At what point of the year would it be most practical and appropriate to publish such information? (for example end of the financial year).

We support a reporting period of no more than 12 months. Anything older than this would send a message to potential whistleblowers that public interest disclosures are a low priority for the organisation, and is as such contrary to the intended aim of these measures.

10. Do you believe that providing information in an annual report will:

A. Increase confidence that reports of wrong doing are handled correctly?

No

B. Dispel the belief that the whistleblowing framework is failing whistleblowers?

No

C. Improve the consistency of information across prescribed persons?

No

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