



Making whistleblowing work



London – 18 November 2011

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Public Concern **at Work**

PCaW is an **independent** charity, founded in 1993. We provide:

free confidential advice to people concerned about wrongdoing in the workplace who are unsure whether or how to **raise their concern**

support organisations to implement robust arrangements and handle whistleblowing sensibly and in the public interest

train employers, government and other stakeholders on policy and law of whistleblowing

campaign on **public policy**, and

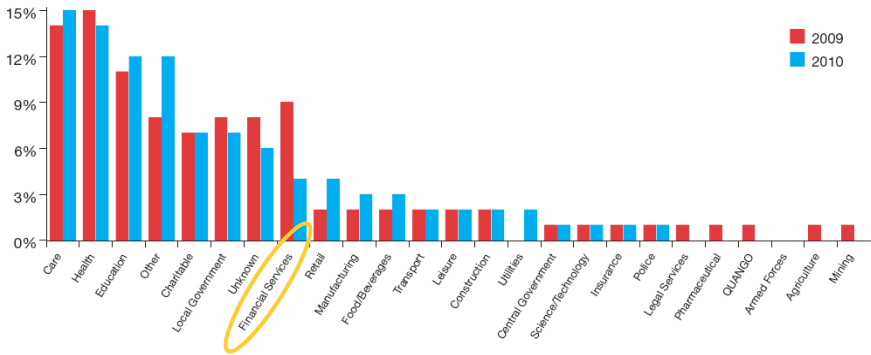
promote **public interest whistleblowing** laws.

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Public Concern at Work

Helpline - statistics

Over 20,000 calls to date – significant drop in financial services in last 12 months



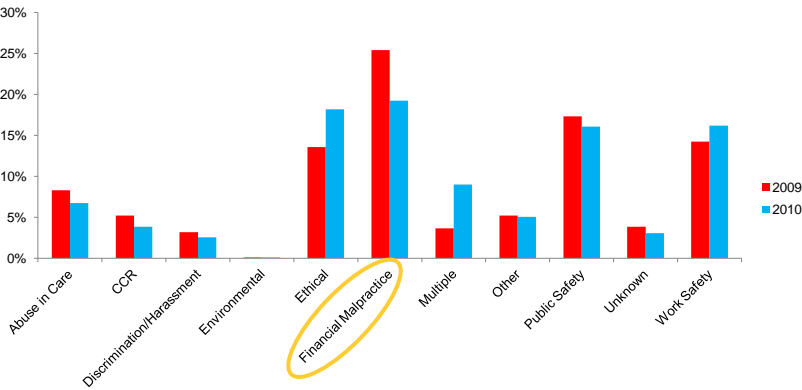
Source: Whistleblowing: beyond the law, PCaW October 2011

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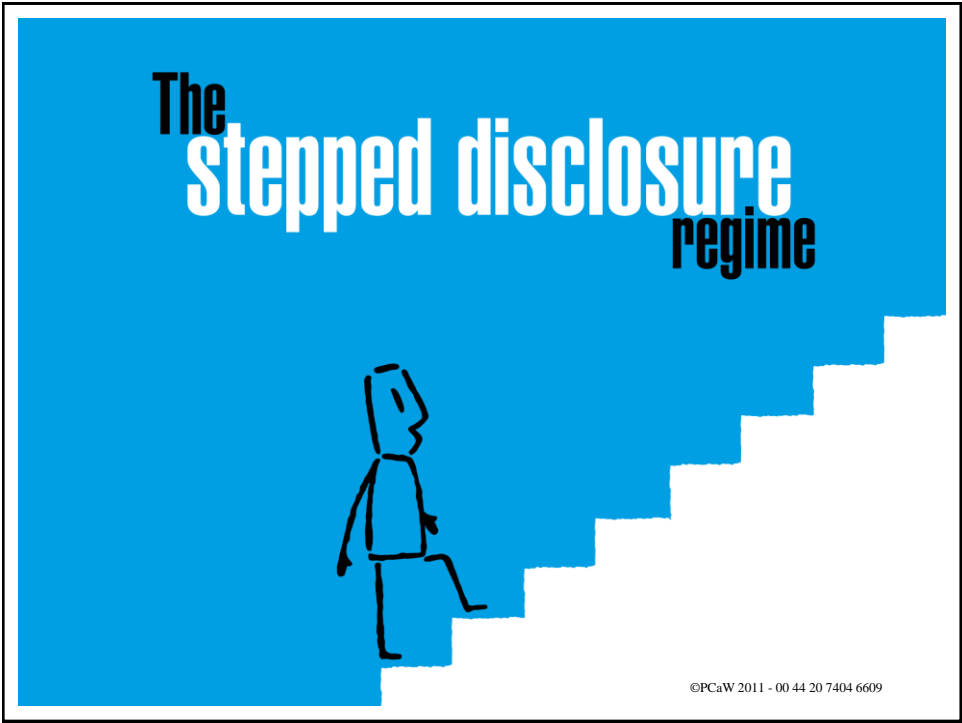
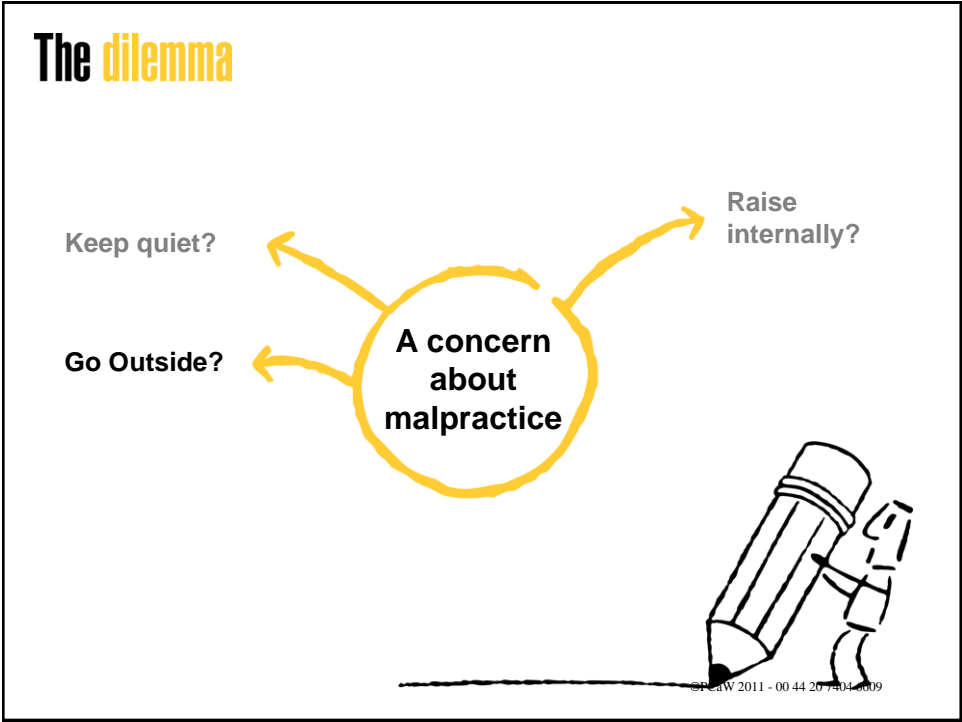
Helpline - statistics

Breakdown of types of wrongdoing

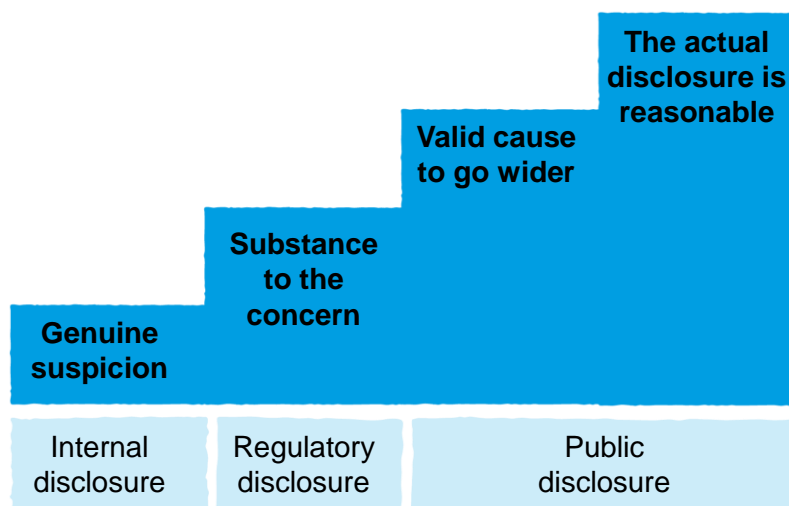


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The tiered disclosure regime



Lord Nolan's praise for 'so skillfully achieving the essential but delicate balance between the public interest and the interest of the employees'.

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The scope of PIDA

Applies to almost **every worker**

Wide definition of **wrongdoing**

Application **overseas**

Burden of **proof** reversal

Full **compensation**

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The scope of PIDA

Impact on gagging clauses

Section 43J PIDA:

(1) Any provision in **an agreement** to which this section applies **is void** in so far as it purports to **preclude** the worker from making a **protected disclosure**.

(2) This section applies to any agreement between a worker and his employer (whether a worker's contract or not), including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract.

Actuarial code – principle 1.2 and 4.4

Confidentiality, public interest, consent

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PIDA Statistics

Over 11,000 tribunal claims to date

The number of claims has increased from 157 in 1999/2000 to 2,000 in 2009/10

74% of PIDA claims settle

Of the remainder 78% were lost and 22% were won

Highest tribunal award is £5 million

PIDA retains support of business, union and regulatory interests

But surveys indicate only 23% of the British public are aware there is a law to protect whistleblowers.¹

1. YouGuv survey 2011, commissioned by Public Concern at Work

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Is PIDA working?

What the surveys say

86% of UK employees believe that people in their company feel free to report a case of suspected fraud, bribery or corruption. In Europe this figure is 57%¹

Negative media portrayal of whistleblowers is virtually nil now compared to 1997²

The term “whistleblowing” is increasingly seen in a neutral to positive frame³

1. Ernst & Young – Survey into Fraud Risk Mitigation – UK Report

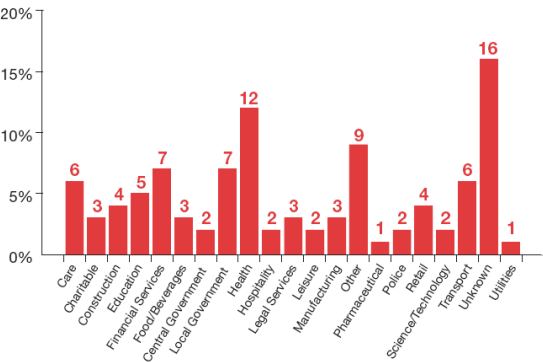
2. Karin Wahl-Jorgenson, Cardiff School of Journalism, Media and Cultural Studies – study commissioned by Public Concern at Work, *Where's whistleblowing now? 10 years of legal protection for whistleblowers*

3. YouGov survey 2007 & 2009, commissioned by Public Concern at Work, *Where's whistleblowing now? 10 years of legal protection for whistleblowers*

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Where do the cases come from? PIDA cases by sector 2009 - 2010

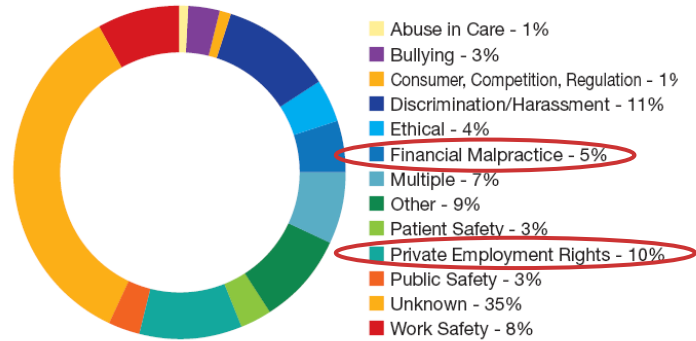


Source: *Whistleblowing: beyond the law*, PCaW October 2011

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Types of wrongdoing in PIDA judgments 2009 - 2010



Source: *Whistleblowing: beyond the law*, PCaW October 2011

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Whistleblowing The Bribery A



The Bribery Act 2010

The Bribery Act: the six principles

Risk assessment

Top level commitment

Due diligence

Clear, practical and accessible policies and procedures

Effective implementation

Monitoring and review

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The Bribery Act 2010

What does the Act say about whistleblowing?

Principle 1 – proportionate procedures

1.7 list of policies suggested include.... "The reporting of bribery including 'speak up' or 'whistle blowing' procedures."

Principle 2 – top level commitment

2.3 Internal communication: "reference to the range of bribery prevention procedures the commercial organisation has or is putting in place, including any protection and procedures for confidential reporting of bribery (whistle-blowing)"

Principle 5 – communication and training

5.3Another important aspect of internal communications is the establishment of a secure, confidential and accessible means for internal or external parties to raise concerns about bribery on the part of associated persons, to provide suggestions for improvement of bribery prevention procedures and controls and for **requesting advice**. These so called 'speak up' procedures can amount to a very helpful management tool for commercial organisations with diverse operations that may be in many countries. If these procedures are to be effective there **must be adequate protection for those reporting concerns**.

5.6 Consideration should also be given to tailoring **training** to the special needs of those involved in any 'speak up' procedures, and higher risk functions such as purchasing, contracting, distribution and marketing, and working in high risk countries. **Effective training is continuous, and regularly monitored and evaluated..**

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Good governance

Good whistleblowing arrangements provide staff with a clear message that there is a safe alternative to silence. They:

Deter wrongdoing

Detect wrongdoing early

Make **management** work

Demonstrate an **accountable** organisation

BSI code of practice

Status

The **policy**

Running a scheme

Reviewing and **evaluating** a scheme

Speak up for a **Healthy NHS**

BSI **Anti-Bribery** Management System

Key elements of good whistleblowing arrangements

1. Lead from the top – taking malpractice seriously and helpfully distinguishing a whistleblowing concern from a grievance.
2. Option to raise concerns outside of line management.
3. Access to confidential advice from an independent body.
4. Respect the confidentiality of a member of staff raising a concern when requested.
5. Clear about when and how concerns may properly be raised outside the organisation (e.g. with a regulator).
6. Victimisation of a bona fide whistleblower (even when mistaken) is a disciplinary offence as it is for someone to deliberately make a false allegation.

Policy messages

- Ask yourself if your policy
- Gives **employee confidence** on whether / how to raise a whistleblowing concern
- Is **helpful** to a **manager** confronted with a difficult whistleblowing concern
- Offers **Assurance** to **Board** / regulator that staff are encouraged to raise any significant issues

Grievances and concerns

Grievances	Concerns
risk is to self	risk is to others
need to prove case	tip off or witness
rigid process	pragmatic approach
legal determination	accountability
private redress	public interest

Handling a concern

- accessibility
- building trust
- confidentiality/anonymity
- knowing the ropes (investigations / outside agencies)
- feedback

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Whistleblowing arrangements
Practice and audit

BSI code of practice **checklist**

Policy conforms to good practice

Buy-in (those in charge)

The right start (practical implementation)

Communication & confidence (staff)

Briefing / Training (design. officers & managers)

Logging concerns (formal)

Reviewing the arrangements

Key issues

Internal audit and review:

Concerns - **volume**

Concerns – **substance**

Adverse incidents?

Assessing **trust** and **confidence**

Evidence of **appropriate handling** and **feedback**

Other information?

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Remember
whistleblowing demonstrates
who is accountable
for **what** to **whom**