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.**
Public Concern at Work

Helpline - statistics

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

Breakdown of types of wrongdoing

Source: Whistleblowing: beyond the law; PCaW October 2011

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**The dilemma**

- Keep quiet?
- Go Outside?
- Raise internally?

A concern about malpractice

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**The stepped disclosure regime**
The tiered disclosure regime

- Genuine suspicion
- Internal disclosure
- Substance to the concern
- Regulatory disclosure
- Valid cause to go wider
- Public disclosure
- The actual disclosure is reasonable

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

The scope of PIDA

- Applies to almost every worker
- Wide definition of wrongdoing
- Application overseas
- Burden of proof reversal
- Full compensation
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

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
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%.

Negative media portrayal of whistleblowers is virtually nil now compared to 1997.

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

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

Public Concern at Work

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

Source: Whistleblowing: beyond the law, PCaW October 2011
Types of wrongdoing in PIDA judgments 2009 - 2010

Source: Whistleblowing: beyond the law, PCaW October 2011
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

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

5.3 ….Another 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...
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

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**Grievances and concerns**

<table>
<thead>
<tr>
<th>Grievances</th>
<th>Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>risk is to self</td>
<td>risk is to others</td>
</tr>
<tr>
<td>need to prove case</td>
<td>tip off or witness</td>
</tr>
<tr>
<td>rigid process</td>
<td>pragmatic approach</td>
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<tr>
<td>legal determination</td>
<td>accountability</td>
</tr>
<tr>
<td>private redress</td>
<td>public interest</td>
</tr>
</tbody>
</table>

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Handling a **concern**

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

whistleblowing demonstrates

who is accountable
for what to whom