

Public Concern at Work

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Public Concern at Work: Response to the Ministry of Justice consultation on guidance about commercial organisations preventing bribery (section 9 of the Bribery Act 2010)

Public Concern at Work, (PCaW) the whistleblowing charity, welcomes the consultation on the above guidance. We hope you find the enclosed British Standard Institution Publicly Available Specification *Whistleblowing Arrangements Code of Practice* (BSI CoP) of use in the development of the guidance. The BSI CoP was drafted in partnership with PCaW and published in 2008. Sections 4 – 6 are particularly relevant.

As with the establishment of robust anti-bribery procedures, the development of good whistleblowing arrangements is now widely seen as good for business, stakeholders and the wider public. In a recent survey it was found that 40.2% of frauds were detected by tip offs – at least 49.2% of which came from employees¹. This means employees are more effective at uncovering fraud than audit or any other control system.

Good whistleblowing arrangements are needed to enhance the likelihood of an employee speaking up, be it about fraud, bribery or other malpractice. Establishing an environment that supports good whistleblowing arrangements will be essential in any successful anti-bribery programme. To do this an organisation needs to consider a number of key issues as set out in the above BSI guidance. These principles are in keeping with the flexible and risk based approach adopted by the MOJ guidance.

We set out below two drafting suggestions which would make the MOJ guidance more helpful to commercial organisations when looking at their whistleblowing or ‘speak up’ arrangements. Under principle 4, the guidance suggests a commercial organisation could include in their policies and documentation “the organisation’s level of commitment to the Public Interest Disclosure Act 1998 (PIDA) and an explanation of the process”.

Our view is that this may not be as helpful as it could be, if the intention of this section is partly to give flexible guidance to encourage the development of a good whistleblowing or ‘speak up’ policy. PIDA outlines a framework for an individual to raise a concern and be protected. It is flexible and has no rigid “process”. In fact, focusing on the law, and the possibility of making a protected disclosure under PIDA, may mean the key purpose of the Act is missed. While we would certainly hope that organisations embrace the spirit of the legislation – that individuals should be able to speak up about wrongdoing

¹ Pg 17, *Report to the Nations on Occupational Fraud and Abuse*, Global Fraud Survey 2010, ACFE

without fear of reprisal – it would be better if the guidance avoided starting with a legal standpoint and this section could be rephrased to read “the organisation’s level of commitment to protecting workers who speak up about wrongdoing or malpractice, including bribery”.

Secondly, we would suggest that it would help if the guidance could outline the principles that a good whistleblowing policy should cover, in order to mirror the good intentions and framework of PIDA. We would suggest that the adoption of the six good practice principles, developed by the Committee on Standards in Public Life (CSPL)² on whistleblowing policies for public bodies would be helpful as guiding principles for any organisation looking to get whistleblowing right. We have summarised these below:

1. The organisation takes malpractice seriously, giving examples of the type of concerns to be raised, so distinguishing a whistleblowing concern from a grievance.
2. Staff have the option to raise concerns outside of line management.
3. Staff are enabled to access confidential advice from an independent body.
4. The organisation will, when requested, respect the confidentiality of a member of staff raising a concern.
5. When and how concerns may properly be raised outside the organisation (e.g. with a regulator).
6. It is a disciplinary matter both to victimise a bona fide whistleblower and for someone to maliciously make a false allegation.

We would recommend that these could be incorporated in the second section “support and operational procedures”, replacing the text in that paragraph after “speak up” procedures. We suggest the following wording:

“...and “speak up” procedures that give clear guidance to employees on how to raise a concern about malpractice or wrongdoing, giving appropriate assurances, confidential options, the option to bypass line management or management, how to access independent advice and the organisation’s reporting facilities, and how and when to use appropriate external avenues”

Recommendations:

1. The wording under the fifth bullet point of “policy and procedure documentation” be altered to read:
“The organisation’s level of commitment to protecting workers who speak up about wrongdoing or malpractice, including bribery”.

² Nolan Committee's Fourth Report on Standards in Public Life, Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies. The reports of the Committee on Standards in Public Life can be found at www.public-standards.gov.uk

2. To alter the wording in “support and operational procedures” to incorporate the above best practice principles of CSPL – our suggested wording is outlined below:
“...and “speak up” procedures that give clear guidance to employees on how to raise a concern about malpractice or wrongdoing, giving appropriate assurances, confidential options, the option to bypass line management or management, how to access independent advice and the organisation’s reporting facilities, and how and when to use appropriate external avenues”

We do hope that this response will prove useful to those undertaking the consultation and we would be happy to provide further information if necessary.

Yours sincerely

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Public Concern at Work is an independent, self-funding whistleblowing charity. Set up in 1993, it helped devise and promote the Public Interest Disclosure Act 1998. It runs a free confidential helpline on 020 7404 6609 for people with whistleblowing concerns; promotes the public interest through its policy work; and advises public bodies, business, regulators and unions in the UK on how to create more open and accountable cultures. The charity’s work has been commended by ministers, the Court of Appeal, leading newspapers, the Committee on Standards in Public Life and various public inquiries.