

arrangements, including:

- a) the number and types of concerns raised;
- b) any relevant litigation; and
- c) staff awareness, trust and confidence in the arrangements.

should also sanction those who subject an individual to detriment. Subjecting a worker to a detriment means subjecting the worker to “any disadvantage” because they blew the whistle. This could include (but is not limited to) any of the following:

- a) failure to promote;
- b) denial of training;
- c) closer monitoring;
- d) ostracism;
- e) blocking access to resources;
- f) unrequested re-assignment or re-location;
- g) demotion;
- h) suspension;
- i) disciplinary sanction;
- j) bullying or harassment;
- k) victimisation;
- l) dismissal;
- m) failure to provide an appropriate reference; or
- n) failing to investigate a subsequent concern.

#### **Part IV of the Employment Rights Act 1996 – The Public Interest Disclosure Act**

12. PIDA sets out a framework for a worker to make disclosures about the following categories of wrongdoing, provided that they reasonably believe it to be in the public interest to do so:

- a) criminal offences,
- b) failure to comply with legal obligations,
- c) miscarriages of justice,
- d) dangers to health or safety,
- e) dangers to the environment,
- f) deliberate concealment of any of the above categories.

13. This disclosure will be protected if the workers discloses:

- a) in course of obtaining legal advice;
- b) to the employer;
- c) in certain circumstances, to a Minister of the Crown;
- d) to a ‘prescribed person’, reasonably believing that the information and any allegation contained within it are substantially true. The Secretary of State (in practice the Secretary of State for Business, Innovation and Skills) prescribes by list both the identity of the prescribed person (usually regulatory body) and its remit;
- e) to any person or body

provided that a number of detailed conditions are satisfied. Those conditions include a requirement that the worker does not make the disclosure for purposes of personal gain and a requirement that it is reasonable to make the disclosure in the circumstances. A further section makes provision for a disclosure of an exceptionally serious failure to any person or body.

14. The Act makes it unlawful for an employer to dismiss or subject a worker to a detriment for having made a ‘protected disclosure’ of information. The protection provided by the Act is not subject to any qualifying period of employment and so is referred to as a ‘day one’ right in employment law. By contrast under ordinary unfair dismissal, there is a two year qualifying period.

#### **Settlement agreements**

15. In the light of section 43J ERA 1996 (anti-gagging provisions in PIDA) employers drafting settlement agreements should not include a clause which precludes a worker from making a protected disclosure.

#### **Further information**

If you want to learn more about the Code of Practice and how Public Concern at Work can help you please contact [services@pcaw.org.uk](mailto:services@pcaw.org.uk) or **020 3117 2520**.

The report of the Whistleblowing Commission can be found here: [www.pcaw.org.uk/whistleblowing-commission](http://www.pcaw.org.uk/whistleblowing-commission).

# The Whistleblowing Commission

## Code of Practice

The Whistleblowing Commission, established in 2013 by whistleblowing charity

Public Concern at Work, developed a Code of Practice for effective whistleblowing arrangements. The Commission recommended that this is rooted in statute, can be taken into account in court cases and by regulators.

To find out more about the code, contact Public Concern at Work on 020 3117 2520.

## The Code of Practice

Every employer faces the risk that something will go badly wrong in their organisation and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises the first people to know of such a risk will usually be “workers”<sup>[1]</sup> yet while these are the people best placed to speak up before damage is done, they often fear they have the most to lose if they do (otherwise known as “whistleblowing”).

This Code of Practice provides practical guidance to employers, workers and their representatives and sets out recommendations for raising, handling, training and reviewing whistleblowing in the workplace.

[1] Worker is defined in section 230 of the Employment Relations Act 1996

1. This Code sets out standards for effective whistleblowing arrangements. It is designed to help employers, workers and their representatives deal with whistleblowing.
2. Whistleblowing is the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing which affects others.
3. When developing whistleblowing arrangements employers should consult staff and their representatives.

### Written Procedures

4. As part of the whistleblowing arrangements, there should be written procedures covering the raising and handling of concerns. These procedures should be clear, readily available, well-publicised and easily understandable.
5. The written procedures for raising and handling concerns:
  - a) should identify the types of concerns to which the procedure relates, giving examples relevant to the employer;
  - b) should include a list of the persons and bodies with whom workers can raise concerns, this list should be sufficiently broad to permit the worker, according to the

circumstances<sup>[2]</sup> to raise concerns with:

- i. the worker's line manager;
  - ii. more senior managers;
  - iii. an identified senior executive and /or board member; and
  - v. relevant external organisations (such as regulators);
- c) should require an assurance to be given to the worker that he/she will not suffer detriment for having raised a concern, unless it is later proved that the information provided by the worker was false to his or her knowledge;
- d) should require an assurance to be given to the worker that his or her identity will be kept confidential if the worker so requests unless disclosure is required by law;
- e) should require that a worker raising a concern:
- i. be told how and by whom the concern will be handled;
  - ii. be given an estimate of how long the investigation will take;
  - iii. be told, where appropriate, the outcome of the investigation<sup>[3]</sup>

[2] By “according to the circumstances” we mean workers should be able bypass their manager, where they fear that they will suffer a detriment or that their concern will not be listened to.

[3] The Data Protection Act, on-going investigations, or the rights of third parties may impact the ability to provide feedback.

- iv. be told that if the worker believes that he/she is suffering a detriment for having raised a concern, he/she should report this; and
- v. be told that he/she is entitled to independent advice.

6. The employer should not only comply with these procedures but should also sanction those who subject an individual to detriment because he/she has raised a concern and should inform all workers accordingly.

### Training, Review and Oversight

7. In addition to the written procedure for raising and handling concerns, the employer should:
  - a) identify how and when concerns should be recorded;
  - b) ensure, through training at all levels, the effective implementation of the whistleblowing arrangements;
  - c) identify the person with overall responsibility for the effective implementation of the whistleblowing arrangements;
  - d) conduct periodic audits of the effectiveness of the whistleblowing arrangements, to include at least:
    - i. a record of the number and types of concerns
8. Where an organisation publishes an annual report, that report should include information about the effectiveness of the whistleblowing

raised and the outcomes of investigations;

- ii. feedback from individuals who have used the arrangements;
  - iii. any complaints of victimisation;
  - iv. any complaints of failures to maintain confidentiality;
  - v. a review of other existing reporting mechanisms, such as fraud, incident reporting or health and safety reports;
  - vi. a review of other adverse incidents that could have been identified by staff (e.g. consumer complaints, publicity or wrongdoing identified by third parties);
  - vii. a review of any relevant litigation; and
  - viii. a review of staff awareness, trust and confidence in the arrangements.
- e) make provision for the independent oversight and review of the whistleblowing arrangements by the Board, the Audit or Risk Committee or equivalent body. This body should set the terms of reference for the periodic audits set out in 7(d) and should review the reports.