

# Whistleblowing

July 2013

Committee on  
Standards in  
Public Life

**Interim Chair: David Prince CBE**

## RESPONSE FROM THE COMMITTEE ON STANDARDS IN PUBLIC LIFE TO THE CONSULTATION DOCUMENT BY THE WHISTLEBLOWING COMMISSION ON STRENGTHENING LAW AND POLICY

1. The Committee on Standards in Public Life is pleased to have an opportunity to comment on the Whistleblowing Commission's consultation document on strengthening law and policy on workplace whistleblowing.

### Background

2. This Committee, then chaired by Lord Nolan, first recommended in the late 1990s that all local authorities, government departments, non departmental public bodies and NHS organisations should institute codes of practice on whistleblowing to enable concerns to be raised confidentially inside, and if necessary, outside organisations<sup>1</sup>. Since then there has been a welcome recognition of the need for such whistleblowing policies as a necessary component of good governance.
3. Worryingly, inappropriate behaviour continues to be revealed on a regular basis, often on the part of those in leadership positions. Many instances have involved deliberate attempts to get around codes of practice and conduct, and in some cases there are allegations involving covering up, concealment and even criminal activity. This makes the need to maintain an effective whistleblowing system all the more important. It is essential, both for the organisation and society more widely, that all organisations ensure that there is the ability to raise concerns internally, widespread confidence about the internal procedures and assurance, that concerns will be properly investigated and, where appropriate, necessary action taken. This is an important aspect of effective corporate governance.
4. A culture of openness needs to be encouraged and codes of practice on whistleblowing must be instituted and regularly reviewed to enable concerns to be raised. Staff must feel able to discuss potential or actual ethical issues and play an effective role in identifying problems without needing to escalate concerns formally. They need to know exactly whom they can go to with concerns and that feel they will be listened to and supported if they do. Recent reports on the health and banking sector have illustrated the risks when such a culture is not present<sup>2</sup>.
5. As noted in the Committee's Tenth report:

*"Effective whistleblowing is therefore a key component in any strategy to challenge inappropriate behaviour at all levels of an organisation. It is both an instrument in support of good governance and a manifestation of a more open organisational culture."*<sup>3</sup>

6. The Committee's response to the consultation therefore focuses primarily on the first question: **How can we embed good practice whistleblowing arrangements in all sectors of the UK. For example, should they be mandatory?**

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<sup>1</sup> See Committee's *Second Report Local Public Spending Bodies Cm 3270 May 1996* recommendation 2 and its *Fourth Report Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies November 1997*

<sup>2</sup> Francis Report on Mid Staffordshire NHS Foundation Trust HC 375-1, February 2010 and Winterbourne View Hospital Serious Case Review July 2012

<sup>3</sup> Tenth Report *Getting the Balance Right Implementing Standards of Conduct in Public Life Cm 6407 January 2005*

## Public attitudes

7. The Committee has commissioned independent quantitative surveys every two years to track changes in the public's understanding of and attitudes towards the seven principles of public life in order to:
  - a. Establish what the public sees as acceptable and unacceptable behaviour on the part of holders of public office;
  - b. Assess how far the public believes that the behaviour of holders of public office conforms to these standards; and
  - c. Assess public confidence that holders of public office are effectively held responsible and accountable for any unacceptable conduct.
8. The most recent survey was carried out in 2012 and the full findings will be published shortly. We thought it would be helpful to share some of the relevant emerging messages here.
9. The survey explored, amongst other things, which measures for ensuring good standards of conduct in public life elicit the most public support. The questions were informed by a common distinction drawn between 'compliance-based' and 'integrity-based' behaviour: that is, between good behaviour resulting from a well-designed and systematically enforced external set of rules, and good behaviour that is internally driven and the result of strong ethical character. Respondents were asked to choose up to three policies they thought important in ensuring probity in large public and private organisations.
10. Findings suggest that members of the public favour adopting elements from both the compliance and integrity models in ensuring public probity. They do not endorse ascertaining people's morals at interview (19% in favour for both sectors), internal self-regulation, or a culture of financial incentives for those doing a job (26% for large public sector organisations and 22% for private sector). They do favour senior managers setting a good example, (38% for large public sector organisations and 51% for private sector) and training people in a code of conduct (63% for large public sector organisations and 60% for private sector), but they also want protection for 'whistleblowing' and external regulators for organisations (whether public or private sector). Encouraging a culture where people are not afraid to report wrongdoing (66% for large public sector organisations and 53% for private sector) was seen as particularly important for promoting probity.
11. The responses of different groups of respondents - as distinguished by trust in public office holders, perceptions of standards, party-political preferences, social grade, ethnicity, age and gender - were compared to see if there were any clear differences found in how various segments of the public think that probity should be promoted. In fact, none of these comparisons yielded significant differences.
12. There is therefore very wide agreement in all segments of the British general public about the ways in which probity in both the public and the private sector can be promoted. In that shared view, the ways seen as most important are the promotion of a culture in which people are not afraid to report wrongdoing, the use of codes of proper conduct in which staff are trained, and the setting of a good example by senior managers.

## Standards Matter

13. In our most recent report *Standards Matter A review of best practice in promoting good behaviour in public life*<sup>4</sup> we concluded that whilst the basic elements of a strong ethical framework are in place, such as the seven principles of public life, codes of conduct and independent scrutiny, the most pressing need now is for ethical standards to be addressed actively at organisational level. Personal behaviour is shaped by organisational culture. Whilst high standards should be seen as a matter of personal responsibility, it needs to be positively driven by leadership and example.

14. The recent report of the Parliamentary Commission on Banking Standards highlighted the failures of governance in the banking sector where there was *“the appearance of effective control and oversight without the reality. Non executive directors lacked the capacity or incentives to challenge the executives”*. The lack of proper governance and controls was, the Commission said, illustrated by the rarity of whistleblowing in the sector. High ethical standards should be embedded in governance in the policies, practices and cultures of each organisation and reinforced by peer pressure and leadership. For that reason, the Committee welcomes the Commission’s recommendation for:

*“individual responsibility for a named non-executive director, usually the Chairman, to oversee fair and effective whistle-blowing procedures, and to be held accountable when an individual suffers detriment in consequence of blowing the whistle.”*<sup>5</sup>

15. The Committee fears that, in practice, many whistleblowers still experience negative consequences. Whilst the Public Interest Disclosure Act 1998 (“PIDA”) provides whistleblowers with statutory protection against dismissal and victimisation, it should be seen as a statutory “backstop” to ensure that employees who follow prescribed procedures for raising concerns are not victimised and do not suffer detriment as a result. Equally, employees have an individual responsibility not to abuse these protections, for example by making spurious claims, such as in the context of a dispute in relation to private employment rights; or by making an authorised disclosure of information directly to the press and not raising concerns internally.

16. It is also important that when individuals raise concerns they are not prevented or inhibited from speaking out on issues in the public interest. There have been recent allegations, particularly in the health sector, of compromise agreements being used to restrict employees raising concerns publicly about patient safety and care quality. We were pleased to see the Secretary of State for Health confirm in March that such “gagging” clauses in the NHS would not be tolerated.

17. We note that in a recent National Audit Office (NAO) investigation into the use of compromise agreements<sup>6</sup> none of the 50 agreements they reviewed would have restricted a persons’ right to disclosure under the PIDA. However some individuals the NAO spoke to who had been offered or accepted compromise agreements had felt gagged in part because of the organisation’s culture and events leading up to the person being offered an agreement.

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<sup>4</sup> Fourteenth Report Cm 8519 January 2013

<sup>5</sup> Changing banking for good Report of the Parliamentary Commission on Banking Standards HL Paper 27-1 HC 175-1 pages 10-11

<sup>6</sup> Confidentiality clauses and special severance payments Report by the Comptroller and Audit General HC 30 21 June 2013

18. A culture that encourages the challenge of inappropriate behaviour at all levels requires visible, robust and effective leadership in order to ensure that high ethical standards are taken seriously. In Standards Matter we made various best practice recommendations as to how active governance might be achieved. The Committee considers that these are illustrative of how good practice whistleblowing arrangements might be embedded:

- Organisations should actively review how well they measure up to best practice in ethical governance as a matter of routine;
- Ethical issues should feature regularly on the agendas of the boards of public bodies and, where appropriate, on risk registers. All such boards should as a matter of course monitor standards of behaviour throughout their organisation, either directly or through their audit and risk committees;
- Permanent secretaries and chief executives of all organisations delivering public services should take personal responsibility for ethical standards in their organisations and certify annually in their annual report or equivalent document that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards.

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