

# Evaluation report

## BSI Whistleblowing Workshop

2 July 2014, Church House, Westminster

The Workshop and this Evaluation Report were enabled by the Department for Business, Innovation and Skills as part of its on-going commitment to supporting innovation in the UK.

## Context of this report

This report summarizes some focussed research carried out by BSI, together with assistance from the whistleblowing charity, Public Concern at Work, who facilitated the workshop and wrote this report.

The research explored opinions and experiences of those with relevant interest and/or responsibilities for ensuring whistleblowing arrangements within their organizations (and others), with specific reference to the use of *PAS 1998: 2008 Whistleblowing Arrangements Code of Practice*, and the need to revise or replace this particular standard.

The research took the form of a workshop in London to provide some qualitative background to help aid a decision on next steps for the revision of the PAS and/or the development of any further standard solution in this area, looking at users' needs and also any potential gaps in guidance. The participants of the group were also made aware of some support for the development of a potential national statute.

BSI invited a number of stakeholders to take part from relevant professional bodies and associations and from a variety of different sectors (eg NHS and healthcare, financial institutions, legal firms and consultancy, large retail and FMCG businesses, charities and interest groups, academia and regulators.)

Almost 100 people attended the workshop in London in July 2014, and there is a [highlights film](#) from the day available to view [here](#)

## Contents

<b>Evaluation report: BSI whistleblowing workshop July 2014</b> .....	4
<b>Introduction</b> .....	4
<b>Reviewing the PAS 1998</b> .....	4
<b>Workshop</b> .....	6
<b>Themes from the workshop</b> .....	6
<b>WBC Code of Practice</b> .....	7
<b>Conclusions - What next for the PAS 1998?</b> .....	8
<b>Annex A: Summary of workshops</b> .....	9
<b>Summary of recommendations</b> .....	Error! Bookmark not defined.

# Evaluation report: BSI whistleblowing workshop July 2014

## Introduction

This report considers the current political, legislative and guidance landscape on whistleblowing in order to assist BSI in considering what next for whistleblowing guidance in the UK. It follows a workshop in July 2014 the outcomes of which are set out in detail in this short report. Public Concern at Work (PCaW), the whistleblowing charity and legal advice centre has been engaged by the British Standards Institution (BSI) to assist in evaluating the current PAS 1998 Code of Practice ('the PAS 1998').

PCaW<sup>1</sup>, as experts on whistleblowing issues, worked with BSI to produce the PAS 1998 in 2008. At the time, the Department of Trade and Industry, as it was then named, provided funding for this project. The PAS 1998 is available for free download via the PCaW and BSI websites. There have been in excess of 2,000 downloads of the PAS 1998.

Since its publication in 2008, the PAS 1998 has not been revised. During that time the law in the UK relating to whistleblowing (the Public Interest Disclosure Act 1998) has changed making the PAS 1998 out of date. In addition, there have been a number of high profile scandals and inquiries where questions have been asked about whistleblowing, which include LIBOR rate fixing, phone hacking, the revelations involving Jimmy Savile and the Mid Staffordshire Public Inquiry, to name but a few.

Notable inquiries and reviews of whistleblowing have also taken place including the Parliamentary Commission on Banking Standards, the independent Whistleblowing Commission established by Public Concern at Work and the Government's review of the Whistleblowing Framework. All of these reviews have expressed the need for organizations to have good whistleblowing arrangements in place. The Whistleblowing Commission has produced a Code of Practice (the WBC Code) and the Government's review states that it will be producing guidance before May 2015. All of these developments lead us to conclude that the PAS 1998 should be revised in order to take current best practice into account.

Whether the revised document should be in the form of:

- a full British Standard
- a revised PAS
- or an International Standard

is to be decided by BSI.

## Reviewing the PAS 1998

The current PAS 1998 has 7 sections and in its 40 pages sets out an A-Z guide for organisations considering the implementation and management of whistleblowing arrangements.

---

<sup>1</sup> Public Concern at Work is the UK's whistleblowing charity providing a confidential advice line to workers across the UK who are concerned about wrongdoing and are unsure whether or how to raise their concerns. The charity has advised over 17,000 whistleblowers since it was established over 20 years ago. The charity also works with employers, regulators, international organisations and governments to advise on whistleblowing best practice.

The introduction provides a useful summary of the reasons organisations should have effective whistleblowing arrangements.

As mentioned earlier, the section detailing the Public Interest Disclosure Act (PIDA) is out of date and needs to be revised.

In 2013 the Enterprise and Regulatory Reform Act (ERRA) introduced a public interest test into the legislation and removed the good faith requirement for raising a concern from the liability to the remedy stage in whistleblowing cases. There are likely to be further amendments to the legislation as proposals are being put forward in the Small Business, Enterprise and Employment Bill (SBEEB) introduced to Parliament in June 2014. There are also a number of consultations involving whistleblowing taking place at the time of writing, including:

- the Department of Business, Innovation and Skills' consultation on the role of prescribed persons as part of the whistleblowing framework;
- the Francis review of whistleblowing in the NHS;
- the Financial Conduct Authority and Prudential Regulation Authority reviews into the senior approved persons regimes;
- consultation by the Care Quality Commission into its inspection regime;
- and further reports from the National Audit Office commissioned by the Public Accounts Committee<sup>2</sup>.

The Scope and applicability of PAS 1998 makes it clear that it is informed but not dictated by the UK whistleblowing law. Additional questions are raised about whether it is possible to make guidance that is silent on the legal frameworks but focusses on the key principles for whistleblowing from an organizational perspective. Could there be international guidance on this? Current examples include guidance created by the International Chambers of Commerce and the OECD handbook on anti-corruption practices. The Code of Practice produced by the Whistleblowing Commission, while written with the intention for it to be adopted in UK statute books, sets out principles which could be translated into any jurisdiction. There is international interest in this area and we understand that standards organisations in Canada and Australia are considering developing whistleblowing guidance.

The terms and definitions section of the PAS 1998 could be extended to include: grievance. From the experience of PCaW and in light of a survey carried out by PCaW, EY and the Chartered Institute of Internal Auditors, it is clear that many organisations confuse whistleblowing concerns with grievances and help with this concept would be a useful addition to the PAS 1998.

In the remaining sections of the PAS 1998, there are discussions on the approach of arrangements. While there is nothing specifically to address in those sections, there is a need to consider guidance in the following areas:

- Investigations
- Training
- Leadership- the need for non-executive and board oversight.

---

<sup>2</sup> The current climate of consultation and possible changes that could be taking place does pose a question about timing for the production of guidance if we are following the UK framework. It also shows the opportunities that may exist. In particular, attention will need to be paid to the Government's response to the whistleblowing framework consultations, where they have agreed to produce guidance and even a model policy in this area.

All of the above were identified during the July workshop (detailed below). Finally, the checklist which is included at Appendix 1 is, from our experience, a useful tool and we would suggest that any review of the guidance considers how best to create additional practical tools to help with the implementation and review of any organisation's whistleblowing arrangements.

## Workshop

PCaW and BSI carried out a workshop on 2 July 2014 in order to gauge whether or not there was an appetite for producing more guidance in this area and also to seek input on what such guidance should contain. The workshop was well attended with 97 attendees who came from all sectors and included many businesses, professional and regulatory organisations.

The workshop included presentations from Carol Sergeant CBE, chair of Public Concern at Work and Anne Hayes of the BSI, the NHS whistleblower and former Chief Executive, Gary Walker and Anna Myers, Director of the Whistleblowing International Network. Each presentation discussed the emerging themes in whistleblowing, the imperatives for organisations to make whistleblowing work and included a personal perspective on the potential cost that any one of us may face in considering whether and how to blow the whistle.

During the workshop, we split the audience into a number of groups to consider key issues for whistleblowing arrangements. The issues mirrored PAS 1998 and we provide commentary on the discussions arising from the workshops in the key findings section of this report. Details of these groups and summaries of their discussions can be found at Annex A.

## Themes from the workshop

As the summary at Annex A shows, the workshops proved lively and there was a great deal of discussion and enthusiastic comments from participants. It is not the purpose of this paper to analyse each of the findings from the workshop but it is clear that there is an appetite for guidance and that any further work should use the findings as a starting point for review. During the workshop participants were able to share experiences and lessons learned.

Many of the themes that were raised by participants are already covered by the PAS 1998 and included the need for definitions, ownership, communications, contents of whistleblowing policies, managing concerns and reviewing concerns. Participants identified that in some sectors whistleblowing is viewed as more of an issue than others and that the need for formal arrangements depends on the size of the organization. The PAS 1998 allows for different types and sizes of organizations across all sectors.

Group 1 examined the issue of written procedures in whistleblowing policies. The discussions acknowledged the difficulties that workers can face when speaking up. Comments included the need for the written procedures to contain a clear message from employers that victimization is not tolerated and that speaking up is encouraged.

Group 2 examined whistleblowing arrangements from the perspective of the Board and Audit Committee. The Group was asked to identify questions that Board and Audit Committees can ask to

...making excellence a habit.™

identify whether the arrangements are working in practice. The Group agreed that the Board should be asking questions regarding the arrangements but suggested that different sized organizations and different sectors may have differing requirements. The Group identified a number of factors including assessing trust, confidence, use and risk factors affecting whistleblowing arrangements.

Group 3 examined the issue of communications. Discussions included identifying some of the different audiences and stakeholders within organizations ranging from the Board, Management, new recruits, longstanding employees, staff associations, contractors, suppliers and organizations. The Group identified a range of tools for communications including: the intranet, newsletters, case studies, annual reports, training, e-learning, exit interviews and surveys.

Group 4 considered the issue of training. The Group identified that there are various training streams: staff, whistleblowing contacts and investigators. All training needs to be tailored to these groups.

Group 5 examined the issue of investigation. The overwhelming conclusion of the Group was that there needs to be an investigation standard. The Group discussed some of the elements of a good investigation scheme, which included making sure that investigators are well-trained, independent and have a clear set of procedures to follow.

Group 6 considered the over-arching process of the whistleblowing arrangements. Key themes in the discussion included developing a speaking up culture within the organization and leadership.

From the discussions of participants it was also clear that the PAS 1998 is silent on areas such as:

- training
- investigations
- communications
- and auditing arrangements.

It seems clear that these areas should be included in any new guidance.

## **WBC Code of Practice**

During the session reference was made to the WBC Code of Practice which provides practical guidance to employers, workers and their representatives and sets out 15 recommendations for raising, handling, training and reviewing whistleblowing in the workplace.

The Code expounds the principles by which courts and tribunals should deal with whistleblowing cases and the Whistleblowing Commission has recommended that this Code should be rooted in statute. Key elements of the Code include that it calls for greater oversight by non-executive directors and for whistleblowing reviews to be included in the annual reports of listed companies. Moreover the Whistleblowing Commission was keen that industry regulators will be tasked to use the Code when assessing those they regulate and the Commission requests that the license or registration of organizations which fail to have effective whistleblowing arrangements in place should be put at risk.

## **Conclusions - What next for the PAS 1998?**

There is an appetite for guidance amongst all organizations. The participants in the workshop came from a broad range of organizations including multinationals, regulators, charities and government. The content of the PAS 1998, with the exception of the law, is still recognized as best practice. However, there is a growing appetite for more guidance on whistleblowing.

The importance of getting whistleblowing right is likely to continue to be a high priority on the corporate governance agenda.

The ongoing inquiries and consultations show that there is much attention on this area. Given the number of consultations that are taking place in the Autumn/Winter 2014, it may be worth waiting to see their outcomes before reaching a decision in this area.

Additionally, as the Government intends to produce whistleblowing guidance, it may make sense to meet with officials to see how the BSI process could be used as the starting point for next steps with the guidance.

In terms of the contents of the guidance, consideration could be given as to whether or not there should be a standard in place. Throughout the workshop, it was clear that there should not be a one size fits all approach and this needs to be considered. If going down the standard route, there needs to be consideration of whether or not it could be an international standard. A good basis to start from could be the Whistleblowing Commission's Code of Practice.

### **Public Concern at Work**

**September 2014**



## Annex A: Summary of workshops

We summarise the contents of the workshops which identify the scope that guidance for whistleblowing arrangements must consider. For ease, we provide the questions given to each Group and a bullet point summary of the themes that the Groups discussed.

### Group 1

You need to prepare the written procedures for whistleblowing. What do you include? Your considerations should include and need not be limited to the following:

- Who the policy should cover?
  - What is the scope of the policy?
  - What are the ways in which concerns can be raised?
  - What assurances should there be?
  - Can whistleblowers access independent advice and support? How?
  - How should the policy deal with the issue of reprisals?
  - Should there be any sanctions in the policy?
- Issue of reprisal should be a priority when an organisation approaches whistleblowing. There should be a senior support for whistleblowing, emphasising that whistleblowing is a good thing and it should be normalized. It should be clear that there will be sanctions for those who victimise a whistleblower and clarification that all staff will be treated in accordance with the organisation's whistleblowing arrangements.
  - The policy should be aspirational, visible to everyone and applicable to everyone.
  - Details of the policy should be published and communicated across the organisation. Examples of quarterly newsletters and successful cases. The Financial Conduct Authority has posters throughout the organisation
  - The policy should recognise that it can sometimes be difficult to blow the whistle for larger and/or multinational organisations the policy needs to work across jurisdictions.
  - The policy needs to build trust and confidence for staff within the organisation.
  - The policy needs to include audit and reviews of the arrangements.
  - The document should be open and have clear and transparent language.
  - The policy should be shared externally
  - The policy needs to identify clear roles and responsibilities for whistleblowers and managers.
  - The policy needs to be cradle to grave and start with encouraging individuals to speak up, the steps to be taken, support and expectations.
  - An organisation should encourage and solicit concerns. An example of the police notices at crime scenes was given.
  - Feedback should be given.
  - The arrangements should provide options for raising the concern beyond the line management procedure. The arrangements should include every single mechanism for the raising of a concern including anonymous reporting and reporting to an external body. For a small organisation, it may be difficult to report internally.
  - The messages within the policy need to be tempered with reality. They should be realistic, pragmatic, include promises for the organisation to do their best and be as transparent as they possibly can.
  - The advice of PCaW should be part of policy. Unions and support groups should be included.

## Group 2

The Board has asked you to prepare a report on your current whistleblowing arrangements and their efficacy.

Consider the following:

- What information does the Board/Audit Committee need to see to be able to ask probing questions and to be able to satisfy itself that the whistleblowing arrangements in the organization are working well?
- Consider if there are any limits to the information.
- How often should they review this information?
- How do you ensure that the Board gets a fair and independent view and reliable data and information?

- Different sized organizations may have different requirements. There may be a difference between charities and PLCs.
- The general principles and considerations include:
  - Reflections on the organization's culture. This should include an employee survey that considers awareness and confidence in the whistleblowing arrangements. The following question was suggested: "How would you feel if X came to you?"
  - Details of outcomes and this should not be limited to the allegations. This should include effect on whistleblower (i.e. sick leave), the result of investigations, lessons learned and policy changes.
  - There needs to be consistency in investigations. Should HR/ Audit take the lead?
  - The steps taken by a whistleblower to raise their concern.
  - The numbers of anonymous vs open concerns.
  - Details of any industry and/or regional benchmarks.
  - Risk factors should be included.
  - Have there been third party engagement- volunteers, suppliers and agents. Information about complaints about the whistleblowing process.
  - Information about grievances raised through the whistleblowing process.
  - Where are the reports coming from?
  - The arrangements should be reviewed annually. For PLCs there was a suggestion that the arrangements should be reviewed 6 monthly and publicized quarterly.
  - Details of training given at various levels.
  - Details for the costs of implementation.
  - The review should be done by Board or by the person with responsibility. Audit needs to be commonplace.

### Group 3

You are working on staff communications. You need to develop a staff wide programme of engagement and awareness raising.

Consider the following:

- What resources do you require?
- What would you like to include?
- Have you any examples of communication tools that have worked in your own organizations?
- How do you sustain staff engagement?
- How do you know if the communication is effective?

All comments were made with the assumption that a whistleblowing policy is in place.

- First you need to know who you are communicating to and identify all stakeholders i.e., Board, Management, Staff, Named regulators, staff councils
- In some cases outsourced staff and volunteers can give better information than employed staff so there needs to be routes for them to raise concerns
- At induction new starters receive the latest and current training. What happens to longer term staff needs to be considered? Do the longer serving staff get the latest training like the new starters?
- Intranet, newsletters, case studies and annual reports are useful tools for communication.
- Have details of named individuals within the policy and could they be involved in the communication.
- E-learning should take place on a regular basis – every 12/24 months
- Communications should challenge the negative connotations of whistleblowing and demonstrate the positives in coming forward.
- Consider how to make communications more interesting? For example offers, challenges and interactive training could be used.
- Directors and Boards should consider training and education.
- Messages need to be from senior management (i.e. the Board and Directors of the organization). Staff need to realize that Directors take this issue seriously.
- Whistleblowing could be part of performance review i.e. a question about how many concerns raised could be asked.
- Surveys to assess efficacy of whistleblowing arrangements.
- Exit interviews could include questions about whistleblowing.
- Feedback should be solicited from whistleblowers post investigations

### Group 4

You are developing staff training for whistleblowing.

Consider the following:

- Who needs to be trained in recognizing whistleblowing reports, understanding how to deal with them, and supporting the people who make these reports?
- What should be covered in this training?
- What would you include?
- How do you tailor your messages for different groups?

- There are various training streams: all staff, whistleblowing filters (i.e. named/ designated contacts) and investigators
- Non Executive Directors (NEDs), as champions of the arrangements, should attend training and reinforces the message that concerns should be taken seriously.
- For everyone, the training should include: where to start, how to raise their concern and persistence.
- For the whistleblowing filters and those triaging concerns:
  - How to distinguish between whistleblowing concerns and grievances
  - What should be communicated to the whistleblower? I.e. is this a whistleblowing concern? The process for raising a concern?
  - Where to escalate the concern once received?
- Investigators- important to invest in skills.
  - Do not take things at face value.
  - Should be trained in digging deep- complaints/ FOI skills
  - Consider cognitive biases and what role they play.
  - Consider sector specific training
  - Publish examples of common themes and outcomes of investigations.
- Regulator
  - Seen as safety net
  - Last stop for what to do with concerns
  - There should be a requirement for organizations to report training.
  - An example of the CQC's conversation with whistleblowers motivated to make a difference

## Group 5

You need to design a process for investigation.

Consider the following:

- How do you gather information? What should be included in the information gathering exercise?
- Who should handle the investigation?
- Can you/should you preserve the confidentiality of the report and/or the anonymity of the whistleblower, if they have requested this?
- What happens if the whistleblower suffers a reprisal?
- What records should be kept?
- Who do you report to?
- Should you provide feedback to the whistleblower?

- There needs to be a standard for investigation which would create more consistency and will protect investigators as well.
- Investigators should be professional and well-trained.
- Independence is crucial. At executive level, there should be someone who is trusted and a non-executive should be involved in monitoring and asking questions about investigations.
- External review is healthy
- Feedback to whistleblower within 5 days of process being started. Feedback should be available

...making excellence a habit.™

28 days within the process and should include as much information as possible but recognizing the limits of data protection and employment issues. Prudential Regulation Authority may require senior approved persons to provide feedback to them.

- Tackle the issue of anonymous concerns by changing the perception of staff regarding the workplace culture. This can be done by having a professional investigations process which is supported.
- Internally managers should send investigations back if not done properly.
- Include process for investigations in communications.
- Wherever possible concerns should be managed locally. There should be training for local managers and this could include where issues need to be escalated.
- When investigating, it is important to understand wider team dynamics, confidentiality and changing workplace, team and access to psychological support for the whistleblower where required.
- There are close links between whistleblowing and bullying. It needs to be clearer in whistleblowing arrangements that bullying the whistleblower will result in disciplinary action.
- The investigator should take professional records and be careful when note-taking.
- Investigators should report up to board level (senior managers and non-executive).
- Check with whistleblower throughout the process.
- Investigation needs independence and problems can occur if going down the line management route.
- There needs to be a consideration of the criteria for external investigations and who should that be.
- There needs to be transparency. The NHS experience: shows a reduction in investigation and may have gone externally for their concerns to be bounced back.
- Need to consider who sees the investigation report. Is it public? Can the whistleblower have access?
- There may need to be an external Whistleblowing Commissioners Office - there needs to be something early and sooner for whistleblowers to access when they are ignored and/or victimized.

## Group 6

You are considering the over-arching process for whistleblowing arrangements

Consider the following:

- Which part or parts of the business should have ownership?
- Who should have overall oversight?
- Should staff be incentivized to raise concerns? How?
- Can you relate whistleblowing to code of conduct and values and remuneration within the organization?

- Ownership of the policy and responsibilities for it should lie with the Board or very senior management and examples from the NHS and local government were used.
- Who has ownership depends on the size of company. Examples of who could have ownership included: HR, Internal Audit, Company Secretary, Chief Executive, Ethics & Compliance, Audit

Committee. The arrangements should have a reference to PCaW.

- There should be access to a non-executive director.
- Changing and improving culture should target mainstream culture
- The role of insurance and its influence should be researched
- Regulators need to take a lead and share learning across the sectors and beyond.
- There could also be an alternative dispute and mediation role for regulators. This will need some research
- It should be clear that both organizations and regulators need to focus on the message and not the whistleblower.
- Staff surveys and positive case studies in newsletters can help stress the importance of whistleblowing. It is important all communications about the arrangements are meaningful, sensitive and true.
- It is difficult to target culture and talking about whistleblowing more could be a way of improving culture. Include research about successful examples.
- Incentivization in the public sector and understanding in public interest differs from private sector.
- Incentivization need not be financial.
- Disincentives need to be targeted and the absence of these will encourage whistleblowing.
- There needs to be a removal of the blame culture. The response of the employer should be respectful to the employee. Organizations should be willing to say sorry and learn lessons from their failures.
- Whistleblowing arrangement should be about measuring outcomes and not just compliance.
- Whistleblowing can be costly for individuals – home insurance policies for legal cover; and a government level fund should be considered.

## Summary of recommendations

In consideration of the successful workshop and this evaluation report from Public Concern at Work, the following key items were highlighted in the report:

“The importance of getting whistleblowing right is likely to continue to be a high priority on the corporate governance agenda. ”

“There is an appetite for guidance amongst all organizations”

“The content of the PAS 1998, with the exception of the law, is still recognized as best practice. However, there is a growing appetite for more guidance on whistleblowing.”

“The Scope and applicability of PAS 1998 makes it clear that it is informed but not dictated by the UK whistleblowing law.... Could there be international guidance on this?”

“From ... experience ..., it is clear that many organizations confuse whistleblowing concerns with grievances and help with this concept would be a useful addition to the PAS 1998 [or other standard]”.

As a result, the following are areas of focus when considering further standardization activity:

- Potential for international proposal for a whistleblowing standard, around guidance and with a view to the importance of good governance as a driver
- The UK already has well regarded documents to refer to as base documents for a proposal i.e. PAS 1998, the Whistleblowing Commission’s CoP: also others exist internationally – eg guidance created by the International Chambers of Commerce and the OECD handbook on anti-corruption practices (and potentially other national guidance from different Standards Member Bodies)
- Themes for inclusion in further guidance:
  - training
  - investigations
  - communications
  - leadership
  - and auditing arrangements.

**November 2014**