

02.06.2021

To the Public Accounts Committee,

This letter is Protect's submission of evidence for the Committee's inquiry on the 'Initial lessons from the government's response to the COVID-19 pandemic'.

I write to you as the Parliamentary Officer for Protect – the UK whistleblowing charity. Since 1993, Protect has operated its free, legal Advice Line offering specialist whistleblowing advice to over 3,000 workers a year. We provide consultancy and training services for employers to improve their whistleblowing arrangements which benefits the working lives of 1.3 million people. These experiences inform our policy work in campaigning for better whistleblowing laws.

The National Audit Office's report<sup>1</sup>, on which this inquiry is based, states that, "*The government's response to the COVID-19 pandemic aims to ... mitigate damage to the economy. As well as ongoing risks, such as those related to exiting the EU, government has had to manage the risks generated by the pandemic and the risks associated with its own response measures*". In light of our experience on Protect's Advice Line, the government did not do enough to manage risks associated with the Coronavirus Job Retention Scheme ('furlough scheme'). There are two ways in which the government could have done better: (a) introduce legal standards on employers and (b) opened HMRC's fraud reporting line throughout the pandemic, with proper assurances for whistleblowers.

### **(a) Legal standards on employers**

Our report, 'The Best Warning System: Whistleblowing During Covid-19' (October 2020)<sup>2</sup>, analysed Covid-19 cases to our Advice Line during the first six months of the pandemic. 62% of cases related to furlough fraud which became the fastest emerging issue Protect has dealt with in its history. The majority of these cases involved an employer fraudulently abusing the scheme by, for example, informing an employee that they were furloughed but requiring them still to work, or failing to inform the employee altogether that they were furloughed and still requiring that employee to work. The employee only later suspected they had been furloughed when they reviewed their monthly pay statement.

Our research found that 90% of whistleblowers raised concerns about furlough fraud with their employer before going to the regulator. This is encouraging as it demonstrated that whistleblowers understood that mis-use of the scheme amounted to a fraud on tax payers and gave their employers an opportunity to correct it. However, what is far more worrying is that 41% of all Covid-19 whistleblowers were ignored by their employer. Where employers fail to engage with whistleblowing concerns in this way, there is a risk that the wrongdoing continues and/or escalates. We also found that 20% of whistleblowers were dismissed, showing that too many individuals lost their jobs for speaking up.

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<sup>1</sup> <https://www.nao.org.uk/wp-content/uploads/2021/05/Initial-learning-from-the-governments-response-to-the-COVID-19-pandemic.pdf>

<sup>2</sup> <https://protect-advice.org.uk/the-best-warning-system-whistleblowing-during-covid-19/>

The government could rectify this by introducing minimum legal standards for employers with respect to whistleblowing. These standards would compel employers to implement whistleblowing arrangements, provide feedback, and train staff. The advantage of standards is that they minimise the likelihood of whistleblowers being ignored because employers have the arrangements in place to handle and investigate concerns. This is beneficial for the whistleblower because it gives them a clear route to raise concerns, the employer as it gives them a competitive advantage by detecting wrongdoing early so as to correct it, and the public purse as it reduces the risk of fraud going unchecked. Whistleblowers are the cheapest form of risk management for an organisation but our research demonstrates that employers are not properly utilising the intelligence from them.

In addition, our proposals for legal reform would give employment tribunal judges powers to make recommendations that an employer take steps to reduce detriment. This may include a breach of standards and, where an employer fails to comply with a recommendation, the judge can award compensation. This acts as an enforcement mechanism for the standards.

Our research found that sectors that do not typically contact our Advice Line, such as retail, leisure, hospitality and food/beverage, made up 31% of Covid-19 calls in the time period surveyed, demonstrating that furlough fraud was a ubiquitous issue. In early 2021 we commissioned a YouGov survey of 2005 people which found that knowledge of whistleblowing was lowest in these sectors. For example, in retail only 16% knew how to raise a whistleblowing concern at work and only 33% knew there was a law protecting whistleblowers.

### **(b) HMRC's fraud reporting line**

At the start of the pandemic until early August 2020, HMRC closed its confidential fraud reporting line. This was a major barrier for whistleblowers because many of the cases Protect received concerned small employers where it is harder to raise concerns safely as the wrongdoing more likely involves senior managers and there are few, if any, internal reporting options. For that reason, it is vital that regulators are open and accessible to whistleblowers.

By closing its phone lines, HMRC possibly lost vital whistleblowing intelligence. This is particularly disappointing given that Jim Harra, Chief Executive of HMRC, told the Financial Times that whistleblowers formed a part of HMRC's defence against fraud.<sup>3</sup>

HMRC did make available an online reporting form. In our view, however, this was insufficient. Many callers to our Advice Line were very worried about their personal liability for working whilst on furlough. Whilst many understood that this was against the rules, they found themselves in an impossible position: work on furlough knowingly contrary to the scheme or refuse to work and be dismissed. Whistleblowers wanted reassurance that they would not face liability, as well as clarity on the investigation process and possible sanctions for the employer. These reassurances could only have been sought by speaking to an HMRC adviser directly, and not through the impersonal online form. These assurances are important to provide because, without them, whistleblowers may decide not to raise their concerns at all.

Our *Betters Regulators Guide*<sup>4</sup> - which explains effective whistleblowing practices for regulatory bodies - states that regulators should have multiple access points for

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<sup>3</sup> <https://www.ft.com/content/55c2a53d-009a-4731-91f0-4d68739233e7>

<sup>4</sup> <https://protect-advice.org.uk/better-regulators-guide/>

whistleblowers as purely online forms can be burdensome and intimidating (please see Annex A for a list of the principles). A set of legal standards for regulators – akin to the idea of standards for employers described earlier – would also help to ensure consistency amongst regulators. Those standards should include, amongst other things, offering feedback, following-up on disclosures, and preserving confidentiality. Protect's whistleblowing bill<sup>5</sup> includes provisions to that end. We encourage the Committee in its final report to recommend that the government review whistleblowing law so that the proposals described here can be fully considered. In our view, if these measures were taken by the government, it would have been better placed to identify and manage the risks with the furlough scheme.

Kind regards,

Kyran Kanda

Parliamentary Officer

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<sup>5</sup> <https://protect-advice.org.uk/protect-campaign-help-fix-uk-whistleblowing-law/>

**Annex A – Better Regulators: Principles for Recommended Practice**

The six principles for handling a whistleblower are:

- Principle 1 – Accessibility and Awareness
- Principle 2 – The Importance of Confidentiality
- Principle 3 – Feedback
- Principle 4 – Addressing Victimisation
- Principle 5 – Requirements for Regulated Entities
- Principle 6 – Whistleblowing and Professional Duties