



**LET'S FIX UK
WHISTLEBLOWING
LAW**



WORKPLACE WHISTLEBLOWING: WHY WE NEED A LEGAL DUTY ON EMPLOYERS

September 2021

WHO WE ARE

Protect is the UK's whistleblowing charity. Since 1993, our free, confidential Advice Line has been supporting whistleblowers who wish to speak up about workplace wrongdoing. Each year our advisers handle more than 3,000 cases, and to date, we have supported around 45,000 whistleblowers.

In addition to our Advice Line, we work with many diverse organisations offering training and consultancy to help them realise the benefits of a good whistleblowing culture.

WHAT WE DO

Protect aims to make whistleblowing work for individuals, organisations and society in the following three ways:



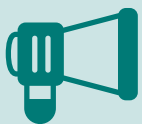
ADVICE LINE

Provides free and confidential information and advice to around 3,000 whistleblowers each year



TRAINING AND CONSULTANCY

We work with organisations to instill best practice



CAMPAIGNING

We campaign for legal and policy reform to better protect whistleblowers

INTRODUCTION

Protect is campaigning for reform of the UK's whistleblowing law, the Public Interest Disclosure Act 1998 (PIDA). Protect's campaign, Let's Fix UK Whistleblowing Law, calls on the Government to amend PIDA, to bring it up to date to make it fit for purpose for workers and the way we work today.

The Government have committed to review PIDA but we, like many others, were disappointed not to see an Employment Bill in this year's Queen's Speech.

Once revolutionary, some 23 years on, PIDA has not kept pace with the modern workplace and needs reform. Too many people are not being protected by PIDA, too many whistleblowers continue to be victimised, and too little is expected of employers. Across Europe, member states are implementing a new EU Directive on Whistleblowing, leaving the UK and its workers at serious risk of being left behind, when once we led the way in whistleblowing rights.

A key area where the EU Directive on Whistleblowing has moved beyond PIDA is the recognition that the law should impose legal standards on employers in terms of their whistleblowing arrangements. Rather than leave it to individual employers – or their regulators – to decide whether whistleblowing is important, minimum standards should be introduced for all employers.

Currently, PIDA is silent on what employers must do around whistleblowing rules. PIDA provides an after-the-event remedy via compensation through the Employment Tribunal if a whistleblower is victimised, dismissed or forced out of their job for raising public interest concerns – and can prove this to the Tribunal. This means that many employers are not required to establish systems to receive whistleblowers' concerns, investigate or provide feedback and can ignore the concerns brought to them with impunity.

Yet this isn't in the interests of employers either. Employers who listen to whistleblowers have a vital early warning system, allowing them to detect and stop harm and wrongdoing before it becomes serious. Effective whistleblowing arrangements can protect employers' finances and reputation and demonstrates good corporate governance. Where employers have a good speak-up culture, they reap the rewards of higher engagement from their workforce: positive cultures can improve innovation and productivity as well as staff wellbeing and loyalty.

The time has come for the law to do the necessary levelling-up. We want to see minimum standards imposed on employers, along with a positive duty to protect whistleblowers from detrimental treatment. The UK public support this reform, with 76% surveyed as part of our YouGov research saying they support a legal requirement for employers to investigate whistleblowing concerns raised by their employees and 80% agreeing employers should be being sanctioned or fined for breaking such duties.

This short report focuses on our call for legal standards on employers drawing on polling research we commissioned with YouGov.



Elizabeth Gardiner
Protect Chief Executive

METHODOLOGY

All figures unless otherwise stated, are from YouGov Plc.

The figures have been weighted and are representative of all GB adults (aged 18+).



SAMPLE SIZE

Total sample size was **2005 adults**, of which **1097 were workers**.



SAMPLE PERIOD

Fieldwork was undertaken between **April 13-14 2021**.



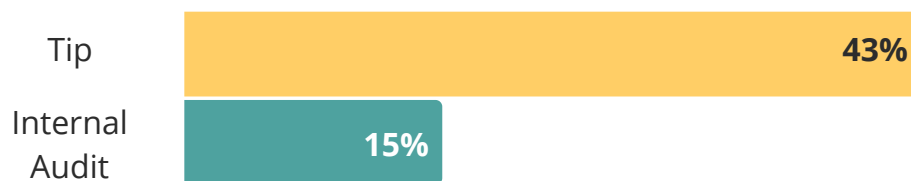
SURVEY TYPE

The survey was carried out **online**.

GOOD FOR WORKERS, GOOD FOR BUSINESS

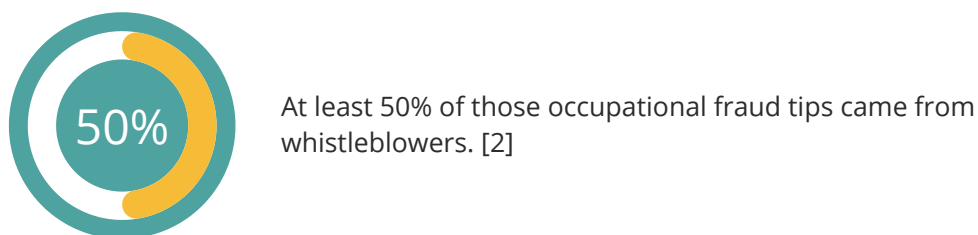
Whistleblowing arrangements are good for organisations. Workers are the eyes and ears of an organisation and are most likely to be the first to identify risks of harm and wrongdoing be it poor quality products, unfair or illegal practices, and breaches of conduct or other rules.

How is occupational fraud initially detected?



Research found 43% of all occupational fraud is detected via a tip, compared with just 15% detected through internal audit. [1]

Who reports occupational fraud?



This is backed up by research from the US, which showed a high volume of internal whistleblowing disclosures leads to fewer and lower fines and lawsuits. [3]

[1] Association of Certified Fraud Examiners (ACFE), in its [Report to the Nations 2020](#).

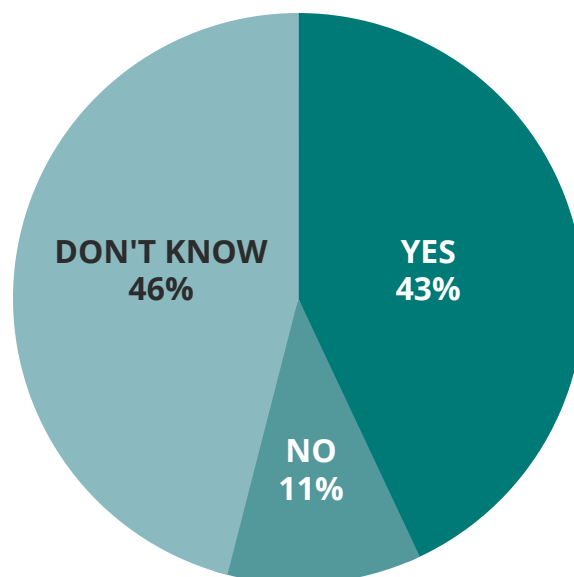
[2] *ibid*

[3] [Evidence on the Use and Efficacy of Internal Whistleblowing Systems](#), Stubben and Welch, 2020

Only 43% of UK workers know if their employer has a whistleblowing policy

Poor communication of employer whistleblowing arrangements is something we see a lot at Protect. This is a risk to the public interest, as the most effective way to handle malpractice or wrongdoing is for the employer to deal with concerns in the first instance.

Does your employer have a whistleblowing policy?



Sample size: 1113

Unsurprisingly, within this figure, we see more encouraging results from our YouGov research for those sectors that have whistleblowing rules.



In the financial sector, **73%** of respondents were aware that their employer has a whistleblowing policy.

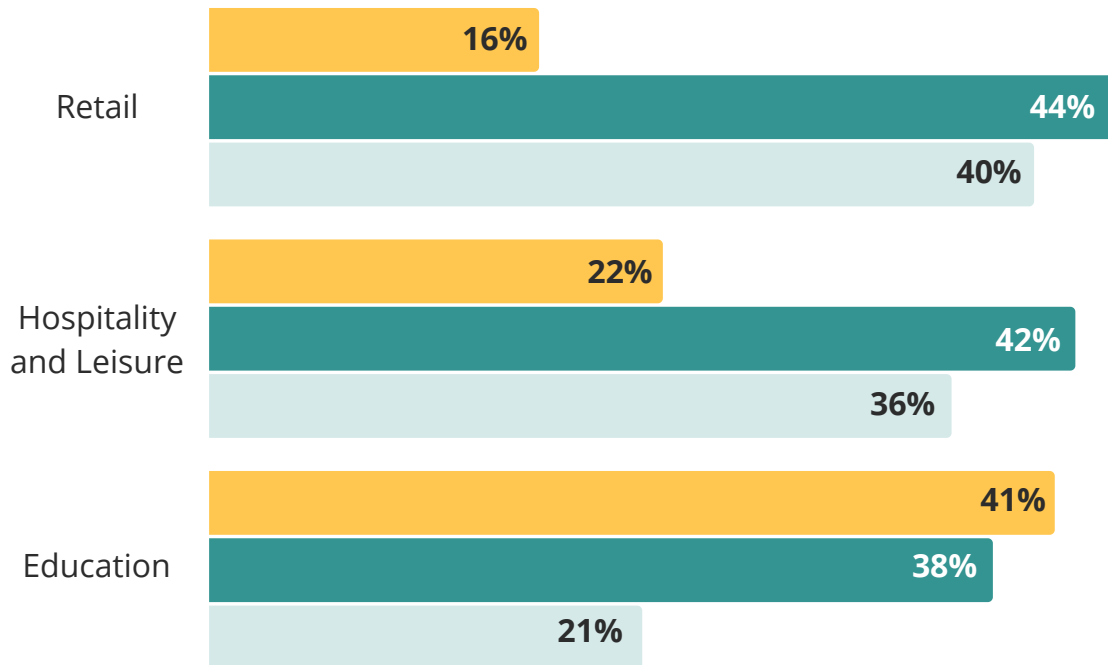


65% of those working in the health and medical services sector were aware.

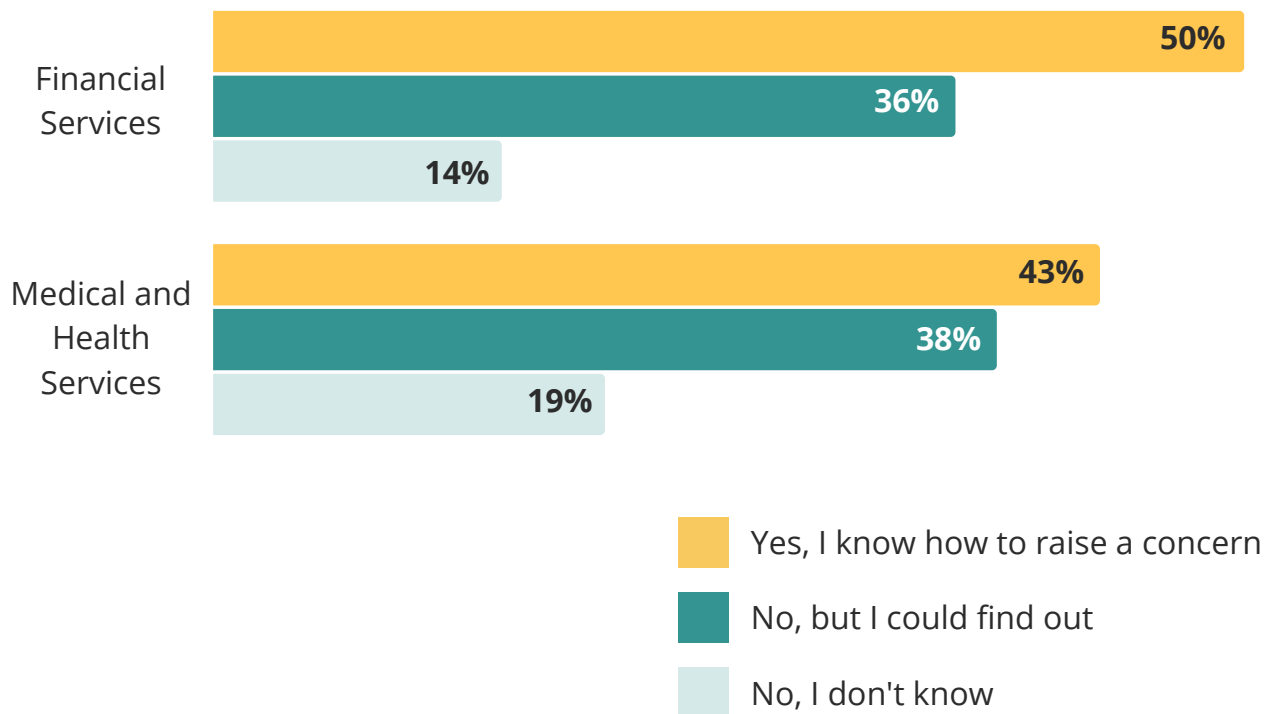
"There should be a better organisational structure to deal with the whistleblowing complaint and clearer guidance on the employer's whistleblowing policy. A lot of information on the Whistleblowing policy was out-of-date, the speak up contact was wrong and out-of-date."*

*from Protect Advice Line survey, 2021
Sample size: 101

Only 31% of UK workers know how to raise a whistleblowing concern at work but this is higher in sectors where rules are in existence already



Sectors with strong whistleblowing rules:



Sample size: 471 (Breakdown of sample: financial services 53, retail 97, hospitality and leisure 58, medical and health services 58 education 143.)

Having a policy is only the first step – this needs to be communicated to staff, and training is important. Our YouGov research found that 31% of workers said they knew how to raise a whistleblowing concern at work, this figure rose to 50% in financial services and 43% in the medical and health sector where whistleblowing rules and training has been done to drive up standards.

This chimes with Protect's own research on the impact of whistleblowing rules in the financial sector. We examined where whistleblowers raised their concerns before and after the introduction of whistleblowing rules in 2016. Our Silence in the City 2 research in 2020, found a 15% increase in the number of whistleblowers raising their concerns about wrongdoing or malpractice with their employer, compared with our 2012 research. [4] This shows an increased use and possible trust in those internal procedures.

Building on the EU whistleblowing requirements and the rules already in place in the financial sector, Protect's draft Whistleblowing Bill would require all employers with 50 or more employees or with a turnover of £10 million to have the following:

- ✓ A whistleblowing policy or procedure for staff to raise concerns internally
- ✓ A designated 'senior person' responsible for the effectiveness of reporting channels and following up on disclosures with this person contact details available to staff
- ✓ Timeframes for responding to disclosures and providing feedback to whistleblowers
- ✓ Duties to ensure the confidentiality of whistleblowers
- ✓ A requirement to train staff on how to raise concerns



[4] Silence in the City 2, published by Protect in June 2020, the report examined the experiences of 352 whistleblowers from the financial services sector contacting Protect for advice between January 2017-December 2019. The report wanted to examine the lived experience of Protect clients raising concerns in the financial sector once the whistleblowing rules were implemented.

WHY THE LAW NEEDS TO ASK EMPLOYERS TO DO MORE

There continues to be a gap between what whistleblowing policies promise to workers, and the experience of those that raise concerns. From the emergence of Covid-19 in Wuhan to Grenfell Tower – we all know the dangers of ignoring whistleblowers who tried to raise genuine, public interest concerns.

Too many whistleblowers continue to be ignored or victimised. Protect research shows 41% of whistleblowers raising concerns related to Covid-19 were ignored by their employer. Shockingly, 20% of whistleblowers speaking up about Covid concerns went on to be dismissed by their employer.

Silence in the City 2 revealed an uglier side to the financial sector where 70% of whistleblowers who contacted Protect for advice were either victimised, dismissed or resigned. This research has shown that whistleblowing rules on their own cannot guarantee standards will improve.

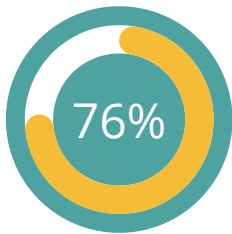
Protect's draft Whistleblowing Bill would also introduce:

- ✓ A requirement on employers to be proactive when it comes to protecting whistleblowers, by imposing a positive legal duty on them to prevent victimisation. This should include a risk assessment of victimisation once a disclosure has been made, and the provision of a designated contact for the whistleblower to report any detrimental treatment.
- ✓ A legal requirement for organisations to document and review their whistleblowing arrangements to ensure they work effectively in practice.
- ✓ Sanctions against an organisation and senior managers where they have breached legal requirements on whistleblowing arrangements.
- ✓ Powers for Employment Tribunal Judges to make recommendations in cases where they believe an employer should be making improvements to their whistleblowing arrangements.



Employers who fail to comply with this legal duty could be fined or sanctioned by their regulators, or by the Whistleblowing Commission (a new statutory body created by Protect's draft Whistleblowing Bill). This would provide a much-needed alternative to the only – and very limited – legal remedy available now (a detriment or dismissal claim by an individual worker in the employment tribunal).

UK workers back Protect's call for a legal duty on employers.



Our YouGov survey found 76% of UK workers want a legal duty on employers to investigate whistleblowing concerns raised by employees.



80% of UK workers agreed employers should be sanctioned or fined for breaking existing whistleblowing policies.

Sample size: 2005

Protect's draft Whistleblowing Bill also imposes standards on regulators to establish confidential reporting channels, protect whistleblowers and provide feedback on their investigations within timeframes. Our Bill introduces a Whistleblowing Commission to set and uphold legal standards for employers and regulators. The Commission would also be able to investigate and sanction either a regulator or an employer found to have breached these standards.

"I felt like my employer went through the motions. I would like action to have been taken and dedicated individual support for my case rather than numerous people doing bits and pieces. Going to the Employment Appeal Tribunal didn't change anything and my health was adversely affected. There was never a proper apology and acknowledgement of what happened."*

*from Protect Advice Line survey, 2021
Sample size: 101

NEXT STEPS...

Whistleblowing protection is at a crossroads and in danger of slipping behind international best practice. Our research demonstrates the value to business and to the public interest when employers are in a position to be able to act early on wrongdoing and malpractice. It remains to be seen what the impact will be on UK companies if they slip behind their EU competitors in this area. There is a risk that, in the future, businesses across Europe will expect all those they contract with and in their supply chains to meet the EU minimum standards. UK businesses should not wait for these risks to be realised, but implement good practice now.

The current law is inadequate and falls short of Parliament's intention to protect workers who report public interest concerns. The ability to blow the whistle is not just an integral part of the freedom of expression that all workers should enjoy - but research shows whistleblowing arrangements also have a positive impact on employers. While good employers recognise the benefits that whistleblowing arrangements bring, there needs to be a levelling-up. All employers should put in place whistleblowing arrangements and ensure that they are effective. Where they fail to do so, or where they treat whistleblowers badly, they should face fines or other sanctions, whether from regulators or a new Whistleblowing Commission. This would help reduce the heavy burden that falls on whistleblowers themselves to hold employers to account via costly and complex employment tribunal claims. Our research has demonstrated strong public support for change too with the majority of UK workers backing our campaign for a legal duty on all employers.

We will continue to engage with Government and other stakeholders making the case for whistleblowing law reform.

[Support our campaign Let's Fix UK Whistleblowing law by visiting our website campaign pages, attending future webinars and by writing to your MP.](#)





#LetsFixUKwhistleblowingLaw

protect-advice.org.uk

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