

31 May 2022

Response to the Labour Market Enforcement Strategy 2023 to 2024: call for evidence

1. This letter is Protect's response to the call for evidence by Margaret Beels, the Director of the Labour Market Enforcement, on the Labour Enforcement Strategy.
2. Protect will focus our response on questions around 'Business Engagement' i.e., mechanisms that could be initiated or supported by the enforcement bodies to encourage, influence and embed good practice. We will use examples from across the regulatory landscape.

PROTECT – THE UK WHISTLEBLOWING CHARITY

3. Protect is the UK's whistleblowing charity and has the aim of protecting the public interest by helping workers to speak up to stop harm and wrongdoing. We support whistleblowers by providing free and confidential legal advice. We support employers to implement effective whistleblowing arrangements. We campaign for legal and policy reform to better protect whistleblowers. We want a world where no whistleblower goes unheard or unprotected.

REASON FOR SUBMITTING EVIDENCE

4. A fundamental aspect of the work that we do is to offer workers free and confidential advice on how to raise their concerns about wrongdoing, risk or malpractice to their employer, or externally to a prescribed person, regulator or wider (i.e., to the media). We also advise workers on their rights under the Public Interest Disclosure Act 1998 (PIDA), the law that gives legal protection to workers who are treated detrimentally or dismissed for raising public interest concerns.
5. To date, we have advised approximately 45,000 whistleblowers across all sectors, professions and seniorities in the UK. Since our creation in 1993, we have seen how changes caused by economic and political challenges, technological change, and change in policy have influenced the types of concerns people are raising, the ability of employers/regulators to deal with those concerns, and, crucially, the failure of the law to keep up with the changing nature of the labour market and protect those in employment relationships.

Business Engagement

6. Whistleblowers are a vital source of information for regulators. As a prescribed person under the Public Interest Disclosure (Prescribed Persons) Order 2014, HMRC reported that it received 13,640 reports from whistleblowers in the reporting period 2020-21. 8,151 of those reports required further action. Of course, not all these reports will have related to NMW, with furlough fraud¹ and other misconduct related to tax relief provided in the wake of Covid-19 likely to have been a significant issue in this year. However, the numbers nevertheless demonstrate the importance whistleblowers have in providing regulators with actionable insight to the industry. Since neither GLAA nor EAS are prescribed, there is no specific data on how many disclosures from whistleblowers are made to them.
7. As the eyes and ears of an organisation, workers are usually the first to witness or experience wrongdoing, risk or malpractice, including labour exploitation, and are well situated to raise the concerns with either their employer or a regulator, like the prospective Single Enforcement Body.
8. Despite this, many workers do not know how to raise concerns. Only 43% of UK workers know if their employer has a whistleblowing policy and only 31% know how to raise a whistleblowing concern at work.² Those who do raise concerns are often ignored, with 41% of whistleblowers raising concerns about Covid-19 being ignored by their employer.³ Further, 65% of whistleblowers contacting Protect for advice in the last five years have received negative treatment for raising their concerns.⁴ This poses a real risk to the public; if workers do not know how to speak up, they are ignored or fear retaliation if they do so, wrongdoing will go unaddressed.
9. **Therefore, any consideration on how to improve compliance and enforcement must consider how to improve whistleblowing processes to ensure that workers are encouraged to speak up and raise their concerns.**
10. A regulator with strong enforcement powers can help to deter wrongdoing; businesses and its staff members are less likely to commit wrongdoing if they know that they are likely to be held accountable for their actions. It also helps to detect wrongdoing at an early stage before it escalates to become a serious incident or a widespread issue. Finally, strong enforcement

¹ Furlough fraud, a new form of concern for Protect Advisers, proved to be the fastest emerging new issue we have had to respond to on our Advice Line in our 27-year history. [The Best Warning System | Protect - Speak up stop harm \(protect-advice.org.uk\)](#)

² [Protect commissioned YouGov survey of 2,005 people in March-April 2021](#)

³ [The Best Warning System | Protect - Speak up stop harm \(protect-advice.org.uk\)](#)

⁴ Negative treatment: victimisation from managers, bullying from co-workers, suspension, dismissal, and resignation. Sample running from January 2017-December 2021

powers can improve transparency and accountability within an organisation, which will help organisations and the regulator to maintain a good reputation. This would have a positive impact on confidence on the labour market as a whole, as well as the individual interests of workers, thus serving a wider public interest.

11. The Financial Conduct Authority (FCA) demonstrates the positive value that implementing strong whistleblowing rules can have on a sector. The FCA imposed whistleblowing standards on the firms it regulates in 2016 which were designed “to build on and formalise examples of good practice already found in parts of the financial services industry and aim to encourage a culture in which individuals working in the industry feel comfortable raising concerns and challenge poor practice and behaviour.”⁵
12. As a result of these standards, we have seen positive results for whistleblowing in the financial sector. For example, there is an increased awareness amongst workers in the sector of processes to raise concerns. 73% of workers in the financial sector were aware that their employer had a whistleblowing policy, with 50% knowing how to raise a concern at work (compared to 43% and 31% respectively across all sectors in the UK).⁶
13. 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 research⁷. This shows an increased use and possible trust in those internal procedures.
14. We have published a report highlighting why we need a legal duty on all employers to have whistleblowing channels in place and to investigate whistleblowing concerns. You can read our report [here](#). Taking inspiration from the EU whistleblowing requirements and the rules already in place in the financial sector, Protect have also devised standards in our Draft Whistleblowing Bill⁸ which the Single Enforcement Body should build on when applying standards to the organisations it regulates.
15. The SEB should require that all employers with 50 or more employees, or with a turnover of £10 million, have the following:
 - a. A whistleblowing policy or procedure for staff to raise concerns internally

⁵ [Protect commissioned YouGov survey of 2,005 people in March-April 2021](#)

⁶ [Protect commissioned YouGov survey of 2,005 people in March-April 2021](#)

⁷ [Protect Silence in the City 2 Report, 2020](#)

⁸ [Protect Draft Whistleblowing Bill](#)

- b. A designated 'senior person' responsible for the effectiveness of reporting channels and following up on disclosures, with this person's contact details being available to staff
 - c. Timeframes for responding to disclosures and providing feedback to whistleblowers
 - d. Duties to ensure the confidentiality of whistleblowers
 - e. A requirement to train staff on how to raise concerns.
16. These standards would ensure that employers would have in place whistleblowing arrangements that would go beyond just having a policy in place to also include supporting actions, such as training and periodic reviews of the arrangements to ensure that the system worked well in practice. These are standards that represent best practice and are deployed by many successful organisations so could not be seen as a piece of overburdensome regulation.

Other issues

17. Another way labour enforcement could be improved is by ensuring that the Single Enforcement Body is prescribed under the Public Interest Disclosure (Prescribed Persons) Order 2014. Until then, the GLAA and the EAS should also be prescribed. This will encourage more workers to come forward with intel falling under the regulators' remit.
18. Prescribed persons provide workers with a mechanism to make their whistleblowing disclosure to an independent body where the worker does not feel able to disclose directly to their employer, or as a route of escalation where the workers feel their concerns have been ignored or no action has been taken by the employer.
19. The ability to blow the whistle to a prescribed person provides workers with a safer alternative to making a wider disclosure, i.e. to a non-prescribed regulator or to the media. This is because a worker only needs to satisfy the same legal tests to qualify for legal protection under the Public Interest Disclosure Act 1998 as if they had made a disclosure to their employer (as opposed to the more stringent tests required for a wider disclosure).
20. There are also consequences of not being prescribed. The reality of the situation is that whistleblowers can (and often will) approach a regulator with concerns whether that regulator is prescribed or not. Workers may choose to use your complaints process, but their legal rights would be less certain, and they would be more at risk if they do so. This may deter whistleblowers from speaking up, meaning concerns about exploitation are neither raised nor addressed. It could also lead to many anonymous disclosures which are more difficult to investigate, making your job as a regulator much harder.