



National Audit Office

Report

by the Comptroller
and Auditor General

The role of prescribed persons

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National Audit Office

The role of prescribed persons

Report by the Comptroller and Auditor General

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National Audit Act 1983 for presentation to the House of
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

23 February 2015

In this report we examine the system of prescribed persons, looking at contacting a prescribed person; how a concern is handled; and how the system works for whistleblowers.

Investigations

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

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Summary

1 Whistleblowing is when an employee raises a concern in the workplace that has a public interest aspect to it. Officially, this is called ‘making a disclosure in the public interest’. Concerns can relate to a range of issues, such as social care and clinical failings, financial mismanagement and environmental damage.

2 A whistleblower will usually approach their employer to raise a concern, but in some cases this will not be appropriate. Potential whistleblowers may be concerned that they will suffer some form of detriment from their employer or co-workers as a result of raising a concern. In such instances, an option for a whistleblower is to approach a prescribed person. A prescribed person is someone who is independent of the employee’s organisation, but usually has an authoritative relationship with the organisation, such as a regulatory or legislative body.

3 The Department for Business, Innovation & Skills (the Department) is responsible for the legislation that denotes prescribed persons and has begun to provide support to the network of prescribed persons. However, individual prescribed persons play an important role in ensuring that whistleblowing arrangements across government operate effectively and as intended.

Scope of this investigation

4 This is our third report on whistleblowing. In our first report, we evaluated the whistleblowing policies of 39 government bodies and highlighted good practice. In our second report we reviewed how a number of these policies translated into practice. In this report we examine the system of prescribed persons, looking at:

- contacting a prescribed person;
- how a concern is handled; and
- how the system works for whistleblowers.

5 This report is aimed at the prescribed person community. It shows how prescribed persons can improve whistleblowing arrangements to better support and encourage whistleblowing and make better use of intelligence that they provide. Some prescribed persons choose not to categorise whistleblowing concerns from other types of concern, but our report is relevant to the handling of all concerns raised, of which whistleblowing is a subset.

6 The National Audit Office, as part of the prescribed person community, is committed to working alongside the Department and other prescribed persons to implement these recommendations, share knowledge and experience and embed a culture of continuous improvement.

7 As part of this report, we assessed the activity of 5 prescribed persons, as well as examining our own activities under the Comptroller and Auditor General's role as a prescribed person. However, the findings and recommendations are for consideration by all prescribed persons. We also met a range of stakeholders and drew on the experience of whistleblowers directly.

Key findings

8 It is not clear what is expected from the prescribed persons community.

The Department is responsible for the legislation that enables whistleblowers to claim compensation for detriment or dismissal. This legislation includes the list of prescribed persons. However, it does not specify the expectations of the role. For example, prescribed persons are not required to investigate every concern or to give feedback. The Department has recognised the need to act and has recently established a working group to develop best practice for prescribed persons.

9 Prescribed persons and the Department could do more to explain their remit.

It is important that whistleblowers contact the correct prescribed person. Raising a concern with the 'wrong' prescribed person could leave the whistleblower less likely to be protected under the legislation. We assessed the websites of our sample of prescribed persons. We found overall that prescribed persons could do more to explain the roles and responsibilities to potential whistleblowers. Generally, staff working for a prescribed person do not know much about a prescribed person's role and responsibilities.

10 Prescribed persons could do more to manage whistleblowers' expectations.

Of the 17 whistleblowers who spoke on the issue, 10 said their expectations were not met. This was most commonly because they believed the prescribed person did not investigate the concern they raised. A prescribed person's decision of what action to take can be complex, depending on factors such as the prescribed person's remit, the gravity of the concerns raised and other intelligence held about similar concerns. Prescribed persons could do more to explain how they make a decision on what further action to take. For example, websites could give more information on how concerns raised with them will be handled.

11 Prescribed persons are well prepared to handle concerns. We found our sample of prescribed persons had a central team in place for handling concerns. Each prescribed person had a defined set of procedures. The staff most likely to handle a concern had a good level of knowledge of the responsibilities associated with working for a prescribed person and had high levels of confidence in handling such concerns. Complaints about the way prescribed persons handle concerns are rare.

12 There is widespread activity to improve procedures. All prescribed persons we examined have recently carried out, or are in the process of carrying out, some review of their activity or guidance. Some of these reviews are routine assessments, others are a response to operational difficulties or previous weakness in performance. The Care Quality Commission is reviewing its procedures for handling whistleblowing as part of a wide-ranging review of its regulatory role. However, there are opportunities for sharing good practice across the system that are being missed.

13 Contacting a prescribed person does not in itself prevent the whistleblower suffering detriment or dismissal. While prescribed persons have an important role to play in encouraging and supporting whistleblowers, an employment tribunal determines whether an employee has suffered detriment. The Department understands that whistleblowers may feel the balance of power is in favour of the employer, given the financial resources available to an employer, and that the burden is on the whistleblower to enforce their legal rights. However, the Department's view is that the law is designed to strike a balance between employer and employee. Public Concern at Work monitors and analyses all judgments and has concluded that, in its opinion, the legislation is too complex and not always interpreted consistently. The Whistleblowing Commission, established by Public Concern at Work, recommended that the law be reviewed and simplified.

14 Whistleblowers can experience negative outcomes but the government does not monitor how whistleblowers are treated. The government aims to ensure that whistleblowers are protected from suffering any detriment, but for individual whistleblowers all redress is retrospective. However, the government is unable to collect the data it needs to know how well it is achieving this. Of the 28 whistleblowers we spoke to, 9 were suspended or asked to leave, 3 were placed on extended leave and 3 remained in the organisation despite experiencing detriment. The remaining 13 left voluntarily or experienced no change in their status. In all, 10 took their concerns to an employment tribunal. Without robust and consistent information the Department will find it difficult to know how well the system is working. It will not be able to create a system where employers are held to account if an employee experiences detriment after raising a concern, which is essential to the integrity of the system and protection for future whistleblowers. Neither will it be able to understand where concerns are adequately acted on.

Concluding remarks

15 Our case study organisations have demonstrated a sound commitment to improving their procedures for handling concerns raised. This includes working with staff to raise awareness of the role of a prescribed person. Prescribed persons could do more to work together to share best practice and improve. However, it is fair to say that a gap remains between whistleblowers' expectations and the actions of prescribed persons, and it is unlikely that it will ever be fully closed. Whistleblowers will, on occasions, continue to feel let down by the arrangements in place and this will not encourage potential whistleblowers to raise concerns with confidence.

16 The Department has an important role to play to support the prescribed persons community in implementing these actions. In addition, wider government has a role to play – in policy development, removing barriers, understanding the experience of whistleblowers and acting where detriment is suffered.

Recommendations

17 To provide more confidence in the system, prescribed persons should work together to:

- a** publish more information to help reassure potential whistleblowers. This information could include details of their procedures, factors considered when deciding whether to investigate and details of how whistleblowers' information is used. Simply publishing volumes of cases alone will not be sufficient to increase confidence. However, it is important that prescribed persons publish examples of where the system has worked to improve confidence;
- b** manage whistleblowers' expectations by clearly communicating the prescribed person's powers, remit and responsibilities;
- c** explain to all staff who work for a prescribed person how they are expected to handle concerns; and
- d** share expectations of what good whistleblowing policies and procedures look like with the bodies they oversee.

18 The Department can support the network of prescribed persons by:

- a** ensuring that prescribed persons understand their responsibilities within the legislation;
- b** working with existing bodies to oversee and develop a set of good practice guidance. This should set out what a prescribed person should do in handling a concern and promoting their role. It should include procedures, remit, communication, guidance and a feedback mechanism to help reduce any gap in expectations;
- c** reviewing whether prescribed person status should apply to all bodies capable of handling a concern, and/or make the legislation apply to all cases involving detriment or dismissal; and
- d** working with other bodies to collect more accurate data on employment tribunal outcomes for whistleblower cases. It should also assess how well organisations are tackling the causes of the detriment or dismissal, including the sanctions applied to individuals. In assessing this, it should consider whether there is a need for greater powers to enforce sanctions on those who have been found to have subjected a whistleblower to detriment or dismissal.

Part One

Context

“Whistleblowing is an important source of intelligence to help government identify wrongdoing and risks to public service delivery. A positive approach to whistleblowing should exist wherever the taxpayer’s pound is spent.”

HC Committee of Public Accounts, *Whistleblowing*, Ninth Report of Session 2014-15, HC 593, August 2014

1.1 Whistleblowing occurs when an employee raises a concern about wrongdoing or malpractice in the workplace that has a public interest aspect to it.¹ People may blow the whistle because they have a strong belief that something they have seen or heard in their workplace is not right, ethical or compliant with regulations. Whistleblowing is different from a personal complaint or grievance, which is a dispute about an employee’s own position. However, disclosures to prescribed persons can often be complex, spanning a range of issues and, particularly where whistleblowers have approached management in the first instance but have been dissatisfied with the response, the disclosure may be linked to a personal grievance.

The role of prescribed persons

1.2 A whistleblower will usually approach their employer to raise a concern. However, whistleblowers may experience little or no response to their concern (see ‘Whistleblower case studies: Getting no response from the employer’).

Whistleblower case studies

Getting no response from the employer

Of the whistleblowers we spoke to, many told us that they received no response from their employer. One whistleblower said they raised a concern with the contractor, the line manager, the project manager, the director, human resources and finally the chief executive. Each time the whistleblower was told the issue was nothing to do with him and management were managing the risk, but the whistleblower saw the risk reoccurring. Another whistleblower raised a concern with their line manager, who was fully supportive. But on approaching middle management the whistleblower was told to keep quiet.

Source: National Audit Office interviews

¹ In this report we use the term ‘employee’ to refer to individuals who are protected by the Public Interest Disclosure Act 1998 (as amended). This includes contractors, trainees and agency staff as well as individuals under a contract of employment.

1.3 A potential whistleblower may also feel it is not appropriate for them to raise a concern with their employer. They may worry that they will suffer some form of detriment from their employer or co-workers as a result of raising an issue (see ‘Whistleblower case study: Suffering detriment’).

Whistleblower case study

Suffering detriment

A whistleblower had concerns that advice given to customers was negligent. The whistleblower raised these concerns with his director but was unwilling to take the matter any further while he was still employed. He found a new job but the employer made it difficult for him to leave and withheld money owed. As soon as the whistleblower left the organisation, he contacted the relevant prescribed person with his concerns.

Source: National Audit Office interviews

1.4 If the whistleblower does not wish to approach their employer, they can approach a prescribed person (**Figure 1** overleaf). A prescribed person is someone who is independent of the employee’s organisation, but has an authoritative relationship with them, such as a regulatory or legislative body. If a concern is raised with a prescribed person, it often indicates the whistleblower feels their organisation’s response is inadequate or they have been badly treated already. In such cases it is not uncommon for grievances to exist alongside the concern, requiring the prescribed person to differentiate the concern from the grievance in deciding whether to investigate the concern.

1.5 Prescribed persons can investigate a concern and recommend how an organisation should rectify any problems it finds. Some can take enforcement action against employers. The route of reporting to a prescribed person is important. Research by Public Concern at Work found that 60% of whistleblowers receive no response – either negative or positive – from management.²

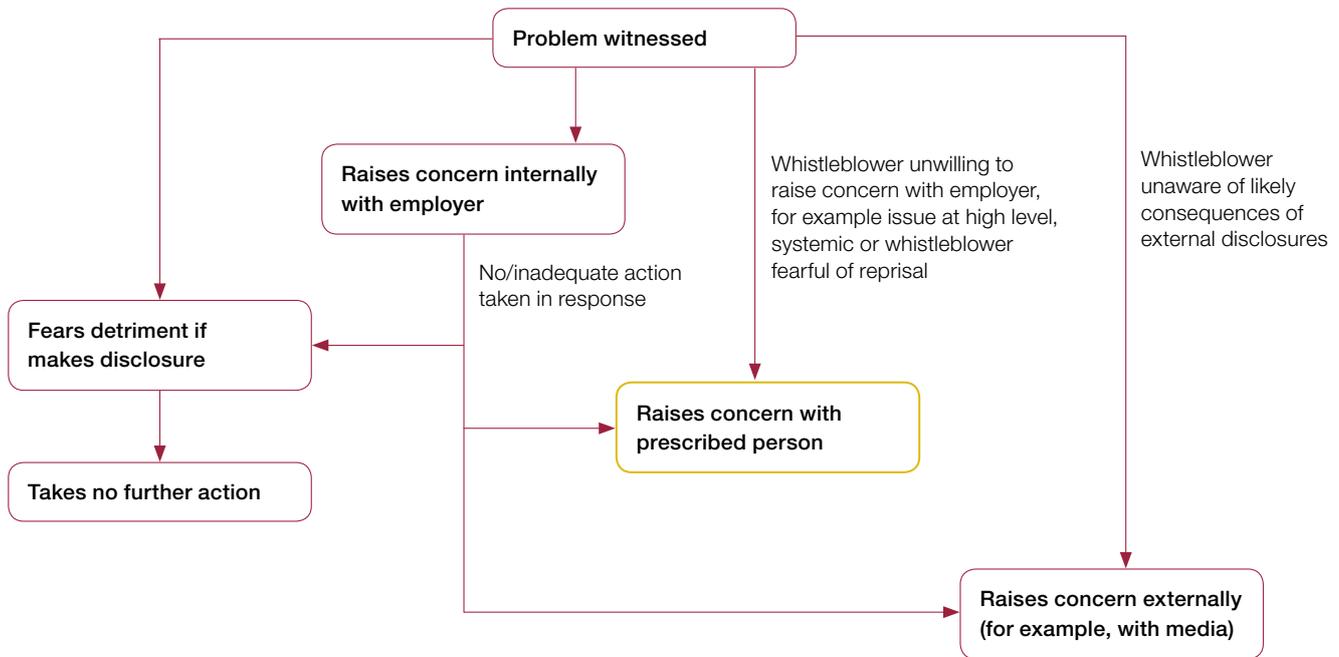
Legislation

1.6 Prescribed persons are prescribed under the Public Interest Disclosure Act 1998 (commonly known as PIDA). The legislation offers a legal remedy in employment tribunals for whistleblowers who experience detriment or dismissal. The Department for Business, Innovation & Skills (the Department) has overall responsibility for implementation of the Act. It defines 64 prescribed persons plus the 468 local authorities in the UK and all members of Parliament (MPs). Prescribed persons can be central government departments, arm’s-length bodies or charities. As of 1 April 2014, MPs were added to the prescribed persons list.³

² Public Concern at Work and the University of Greenwich, *Whistleblowing: the inside story – a study of the experiences of 1,000 whistleblowers*, May 2013. This report was based on experiences from both the public and private sector. This percentage refers to the experiences of 1,000 whistleblowers who contacted the Public Concern at Work advice line between 20 August 2009 and 30 December 2010.

³ The Department for Business, Innovation & Skills, *Blowing the whistle to a prescribed person. List of prescribed persons and bodies*, October 2014.

Figure 1
Reporting to a prescribed person



Note

1 This diagram simplifies the options for whistleblowers. In reality whistleblowers may make several attempts to raise a concern with their employer before contacting a prescribed person.

Source: National Audit Office summary of journeys shown in Department for Business, Innovation & Skills, *Whistleblowing framework call for evidence: Government response*, June 2014

1.7 Prescribed persons have a remit for which they are prescribed. For example, the Comptroller and Auditor General of the National Audit Office is prescribed for matters related to ‘proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services’.

Oversight of prescribed persons

1.8 The Department is responsible for the legislation whistleblowers can use if they suffer detriment or dismissal. This legislation defines the list of prescribed persons. To change the list of prescribed persons requires an update of the existing legislation through Parliament. The Department usually relies on other central government departments to notify it of an organisation that should be included on the list. However, in some cases organisations have contacted the Department directly and asked to be included. The Department told us it considers the statutory powers available to an organisation, and the other prescribed persons available in that sector, before agreeing a body should be prescribed. However, it could not give an example of when it has rejected a request.

1.9 In March 2015 the Department intends to publish guidance to explain the role and expectations of prescribed persons, and has established a working group to develop the guidance. Prescribed persons will be among the main users of this guidance, and are likely to have important views to contribute, but currently the working group only includes one prescribed person.

Whistleblowing framework

1.10 In autumn 2013 the Department consulted on how whistleblowing processes support those who blow the whistle. The government's response in June 2014 drew the following conclusions:

- the whistleblowing legislation is a remedy, not a protection;
- the legislation deals with the workplace dispute that follows raising a concern rather than the malpractice reported in the concern;
- there are negative attitudes ingrained in organisational culture that form barriers to whistleblowing working effectively; and
- the way some employers and prescribed persons respond to a concern reinforces some negative cultural attitudes, such as assuming a whistleblower is using their concern as a threat against the employer.⁴

Scope of this investigation

1.11 This report is designed to support the prescribed persons community in improving the experience of whistleblowers and to encourage better use of intelligence provided by whistleblowers. It is intended to build on the recent work of the Department. Alongside the report, we intend to work with the Department and prescribed persons community in implementing our recommendations, sharing knowledge and experiences and embedding a culture of continuous improvement. We have examined the process for appointing and supporting prescribed persons, the information provided by prescribed persons to potential whistleblowers from outside their organisation, and how they handle concerns (**Figure 2** overleaf).

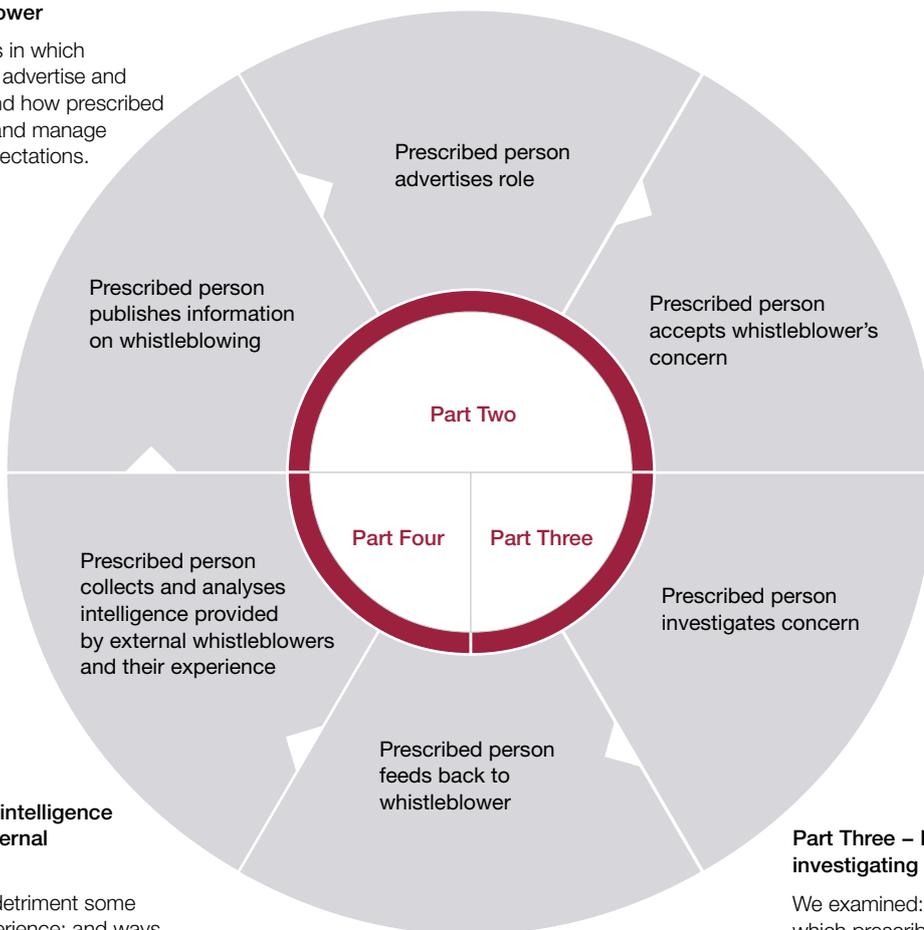
1.12 We selected 5 prescribed persons as case studies to assess how the responsibilities are working in practice (**Figure 3** on page 13). As part of this work, we also looked at our own procedures. Appendix One sets out our methodology in more detail. Appendix Two explains how our case study organisations handle concerns. Appendix Three summarises the staff survey results.

⁴ The Department for Business, Innovation & Skills, *Whistleblowing framework call for evidence: Government response*, June 2014.

Figure 2
Report structure

Part Two – Contact from an external whistleblower

We examined: ways in which prescribed persons advertise and explain their role; and how prescribed persons can meet and manage whistleblowers’ expectations.



Part Four – Using intelligence collected from external whistleblowers

We examined: the detriment some whistleblowers experience; and ways government can use intelligence to understand the level of detriment.

Part Three – Receiving and investigating a concern

We examined: the process by which prescribed persons handle concerns; and staff confidence in dealing with whistleblowers.

Source: National Audit Office

Figure 3

Prescribed person case studies

Prescribed person	Summary of remit	Examples of concerns that may be raised
Care Quality Commission (CQC)	Matters relating to the regulation and provision of health and social care.	A nurse has concerns that there are too few staff on duty in a care home to allow them to adequately respond to the residents' needs.
Financial Conduct Authority (FCA)	The conduct of funds, markets, firms and individuals subject to Financial Services and Markets Act 2000, including banks, building societies, investment or insurance businesses and about the operation of mutual societies registered by the FCA under relevant legislation.	A financial institution mis-sells policies to customers, which results in them losing money.
Health and Safety Executive (HSE)	Health or safety of individuals at work or the health and safety of the public that is work-related, in connection with those industries and work activities for which HSE is the enforcing authority.	To increase productivity, waste disposal staff are encouraged not to follow procedures when disposing of hazardous waste. A road accident leads to the release of hazardous substances.
Independent Police Complaints Commission (IPCC)	Matters relating to the conduct of a person serving with the police.	A police officer sees a colleague manipulating crime statistics to meet targets. This results in a false declaration of performance.
Office of Rail Regulation (ORR)	The provision and supply of railway services.	A rail worker has concerns that controls are not being correctly followed, which presents a safety risk to passengers.

Note

1 ORR's role as a prescribed person for railway-related health and safety issues was not clarified until the prescribed persons list was amended in January 2015.

Source: Legislation.gov.uk, accessed January 2015

Part Two

Contact from an external whistleblower

Prescribed persons could do more to explain roles and remits

2.1 It can be difficult for whistleblowers to identify the most appropriate prescribed person to contact (see 'Whistleblower case studies: Finding the right prescribed person'). It is important that whistleblowers contact the correct prescribed person as raising a concern with the 'wrong' prescribed person could leave the whistleblower less likely to be protected under PIDA:

"The Public Interest Disclosure (Prescribed Persons) Order 1999 (PIDA) is often unclear regarding the scope of prescription, unless the whistleblower is also aware of the statutory functions of the regulator. In particular, whistleblowers are unlikely to be aware of the division of responsibility for health and safety between the Health and Safety Executive and local authorities, or between county and district-level local authorities."⁵

The difficulties in identifying the right prescribed person are compounded because some regulators who could reasonably be contacted with a concern (as they are capable of investigating the issue) are not prescribed persons.

Whistleblower case studies

Finding the right prescribed person

Three whistleblowers we spoke to who had contacted the Care Quality Commission were uncertain of the best regulator to contact. This was because of the multitude of bodies that regulate the health sector. The employer's whistleblowing policies were not helpful on this point. However, once each individual identified the Care Quality Commission as the best organisation to approach, they found it clear how to contact them by phone or email.

Source: National Audit Office interviews

2.2 Raising a concern with the wrong prescribed person can have consequences for the whistleblower. 'Scenario: raising a concern with the wrong prescribed person' illustrates the potential confusion for a whistleblower where a range of bodies could reasonably be contacted, but only one is prescribed by PIDA. It may be more difficult for a whistleblower to be successful at an employment tribunal if they raise the concern with a prescribed person whose remit does not cover the issue.

⁵ Ashley Savage and Richard Hyde. *The Response to Whistleblowing by Regulators: A Practical Perspective*, Legal Studies, Imperial College London, November 2014. Available at: dx.doi.org/10.1111/lest.12066, accessed 22 December 2014.

Scenario

Raising a concern with the wrong prescribed person

A dock worker sees a colleague storing explosive material improperly. This poses a safety risk. They could reasonably report such concerns externally to the police, the Maritime and Coastguard Agency or the Health and Safety Executive. Each has the capacity to investigate these concerns. But only the Health and Safety Executive is a prescribed person. As such, it would be the only body the worker could contact and then apply section 43F PIDA at an employment tribunal if they suffered detriment.

Source: National Audit Office interviews

2.3 Given the potential consequences, it is vital that prescribed persons explain what falls within their remit. We examined the websites of prescribed persons and found more could be done to explain roles and responsibilities to potential whistleblowers. Some could also give more information about the steps they take once a concern is raised and how PIDA legislation applies to them (**Figure 4** overleaf).

2.4 Other research has found that prescribed persons often do not display information on whistleblowing prominently on their websites. In their research paper, *The Response to Whistleblowing by Regulators: A Practical Perspective*, Hyde and Savage found that even though national regulators tend to display better information than the local authorities, for national regulators “instructions regarding whistleblowing are not directly linked from the regulator’s front page, often requiring a search, or a detailed exploration”.⁶ The paper goes on to state that the difficulties in finding information may influence a whistleblower to “either say nothing or to make a disclosure to a body without the regulatory competence to address the concern”.

2.5 The phrase ‘prescribed persons’ is not well understood – not just by whistleblowers but by staff employed by the prescribed persons we examined. In our survey, 42% of staff overall had heard the term, although 17% of these gave an incorrect description (see Appendix Three). Awareness of the term was higher for staff who were more likely to receive a whistleblowing concern, such as staff who answer the organisation’s whistleblowing hotline (**Figure 5** overleaf).

2.6 The need to explain remit is particularly important for the Independent Police Complaints Commission, which is unable to investigate any concern unless it has first been recorded by a police force either as a public complaint, a ‘conduct matter’, or a death or serious injury. When the Independent Police Complaints Commission receives a concern, its only recourse is to forward the intelligence to the relevant police force to be assessed and recorded as appropriate. It must then wait until (or if) the police force decides to resend the information to the Independent Police Complaints Commission for investigation.⁷

⁶ See footnote 5.

⁷ The police force is required to refer the most serious matters to the Independent Police Complaints Commission for consideration as to whether they should be investigated by the Independent Police Complaints Commission or by the force.

Figure 4

Ways prescribed persons can explain their role

Prescribed persons websites should contain the following information	Which will address the whistleblower's questions	CQC	FCA	HSE	IPCC	NAO	ORR
A dedicated area of the website is linked to directly from the homepage	My employer is ignoring me, who else can I contact?	✓	✓	X	X	✓	X
The website makes it easy for an individual to find all the information they need	What do I need to know about raising a concern?	✓	✓	✓	✓	✓	✓
The website explains the remit of the prescribed person, which helps an individual to choose the correct organisation	Who is the best prescribed person to contact?	✓	✓	✓	✓	✓	✓
Setting out how the legislation will or will not protect an individual allows them to make an informed choice on whether/how to proceed	If I report a concern, would I be able to claim for any detriment I suffer?	✓	✓	X	X	✓	X
Explaining what a prescribed person can and cannot do for the individual will help them to know what to expect	If I report this, what will happen?	✓	✓	✓	X	X ¹	✓
Specific whistleblowing or 'raising a concern' contact details will reassure an individual their concern will be directed to the most appropriate team	How do I go about reporting my concern?	X	✓	✓	X	✓	✓

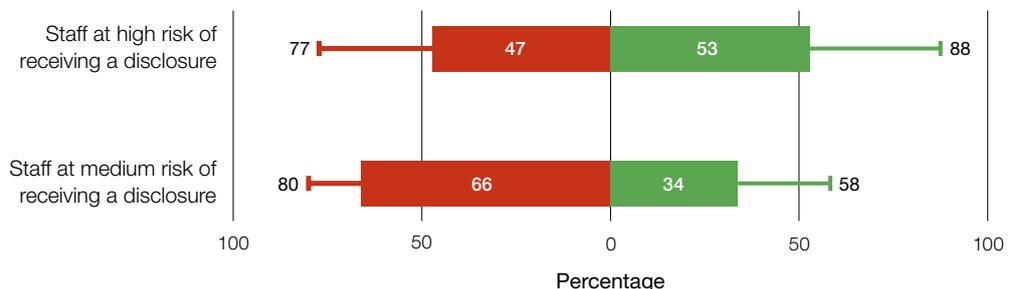
Notes

- 1 The NAO publishes details on its external website as to how it deals with concerns, however this currently is not linked to the section on whistleblowing.
- 2 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).

Source: National Audit Office analysis of websites of prescribed persons, accessed December 2014

Figure 5

Survey results: do you know what is meant by a prescribed person?



- Average percentage of staff across all prescribed persons responding 'no'
- Average percentage of staff across all prescribed persons responding 'yes'
- Maximum percentage of staff responding 'no' for an individual prescribed person
- Maximum percentage of staff responding 'yes' for an individual prescribed person

Note

- 1 Survey of 190 staff from our case study organisations, excluding the National Audit Office.

Source: National Audit Office

Prescribed persons need to better manage whistleblowers' expectations

2.7 The Department acknowledges that “the expectation of the prescribed persons’ role is often not lived up to, leading to a lack of confidence in the role of these bodies”.⁸ There can often be a gap between whistleblowers’ expectations and the reality of raising a concern with a prescribed person (see ‘Whistleblower case studies: The expectation gap’). We asked the whistleblowers we spoke to whether the actions from the prescribed person met their expectations. Of the 17 whistleblowers who spoke on the issue, 10 said their expectations were not met, usually because the prescribed person did not investigate their concern.

Whistleblower case studies

The expectation gap

Lack of investigation

A whistleblower we spoke to raised a concern with the relevant prescribed person and was told the concern would be passed to the relevant team to consider. However, the whistleblower understands that the prescribed person chose not to investigate and is disappointed with this lack of action.

Different statutory powers

Several whistleblowers we spoke to identified the Independent Police Complaints Commission as the appropriate prescribed person. However, they were disappointed that it could not investigate the concern as it was the case of a police officer raising a concern about their own police force.

Source: National Audit Office interviews

2.8 Prescribed persons should clearly state powers and responsibilities to manage whistleblowers’ expectations. Some aspects of the system can undermine a whistleblower’s confidence (**Figure 6** overleaf). Whistleblowers also need to know that there are proper procedures in place to deal with their concerns and what will happen if they raise a concern.

Staff working for prescribed persons are aware of their responsibilities to whistleblowers

2.9 Our survey found that 86% of staff overall were aware of their responsibilities towards whistleblowers (see Appendix Three), and awareness was higher (91%) among those staff who are more likely to receive a concern (**Figure 7** overleaf). This most commonly related to keeping details confidential and explaining the process to whistleblowers, including whether they had raised the concern internally before approaching them.

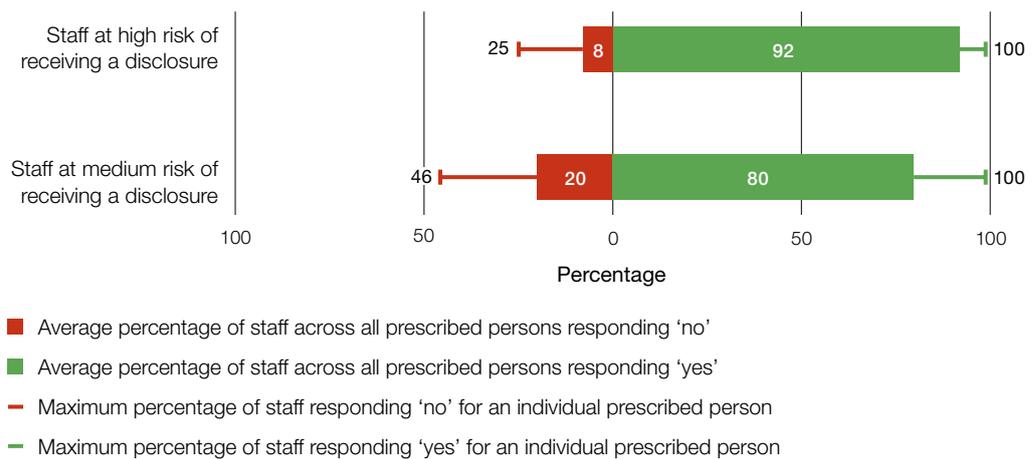
⁸ The Department for Business, Innovation & Skills, *Whistleblowing framework call for evidence: Government response*, June 2014.

Figure 6
Factors which can result in an expectation gap

<p>Prescribed persons can have different statutory powers</p>	<p>Most, but not all, are regulators, and have the ability to act on a concern by taking enforcement action against those who commit wrongdoing. Others, such as the National Society for the Prevention of Cruelty to Children and members of Parliament, do not have a regulatory role and cannot prosecute. This means that while they can investigate concerns, they may not be able to secure the desired remedial action. The Independent Police Complaints Commission is constrained by legislation. It is unable to investigate a concern that is made directly to it: the information must come from a police force.</p>
<p>Prescribed persons are not legally required to investigate every concern made to them</p>	<p>Prescribed persons will determine which concerns to investigate further. They do not have to respond to every concern they receive. This means the whistleblower may not get the outcome they expect.</p>
<p>Prescribed persons may receive several ‘similar’ cases. This might mean an individual’s actions are not specifically addressed</p>	<p>Prescribed persons may act on information they receive with a broader response. For example, they may add a new area to their routine inspection programme rather than following up a specific concern. This may result in the whistleblower feeling that nothing has been done.</p>
<p>Prescribed persons are not able to protect whistleblowers against detriment or dismissal</p>	<p>Any decision as to whether or not a concern is protected under PIDA is taken by an employment tribunal, not by the prescribed person. To arrive at this stage, the whistleblower will usually have experienced some form of detriment by the employer (for example, being disciplined or sacked). As such, contacting a prescribed person does not protect against detriment or dismissal. Prescribed persons are not providers of legal advice.</p>

Source: National Audit Office

Figure 7
Survey results: do you know your organisation’s responsibilities regarding whistleblowers?



Note
1 Survey of 190 staff from our case study organisations, excluding the National Audit Office.

Source: National Audit Office survey

Part Three

Receiving and investigating a concern

Prescribed persons are well prepared to handle concerns

3.1 We examined how prescribed persons act on whistleblowing concerns. We found all have a defined set of procedures for handling concerns and most use a case management system to store responses, evidence collected and correspondence with the whistleblower. Because of the way some prescribed persons are set up, they choose not to categorise whistleblowing concerns from other types of concern. For example, the Office of Rail Regulation uses the term “vulnerable person” for any person raising a concern who believes they may be victimised or otherwise disadvantaged if they make a complaint in person. The Care Quality Commission is considering adopting an approach which will not distinguish between whistleblowers and other concerns.

3.2 All prescribed persons we examined had a central team for whistleblowers to contact. These teams receive the majority of concerns raised, but there are other routes. Any member of staff could receive a concern from an external whistleblower. Contact may come in the form of a phone call or email, but also, for example, through an informal conversation when inspecting an organisation. **Figure 8** overleaf describes the process used by the Health and Safety Executive. This is similar to that used by other prescribed persons we reviewed. Appendix Two gives details of the procedures used by the prescribed persons we examined.

3.3 While each body is set up to focus on its own remit and goals, we found there are opportunities for best practice to be shared within the prescribed person community. For example:

- the Office of Rail Regulation is also responsible for approving, monitoring and enforcing train operators’ procedures for handling complaints. This does not apply to other prescribed persons we examined;
- the Office of Rail Regulation inspectors and Health and Safety Executive inspectors will meet with trade union representatives as part of their routine inspection to collect information on any concerns raised;
- at the first point of contact, the Care Quality Commission uses a route map to categorise concerns and determine whether they are whistleblowers or not;

- the Office of Rail Regulation has recently set up a link on its website to a ‘consumer’ website for complainants. This has reduced the number of inappropriate concerns;
- the Financial Conduct Authority is producing a document which will explain its role and remit to whistleblowers. It will also analyse the whistleblowing information it receives and highlight success stories; and
- the Independent Police Complaints Commission issues statutory guidance (for police forces) on how to handle complaints and conduct matters.

3.4 We found a positive approach to continuously improving procedures. All the prescribed persons we assessed have recently carried out, or are in the process of carrying out, some review of their activity or guidance. Some of these reviews are routine assessments. Others are a response to operational difficulties or previous weakness in performance. For example, the Health and Safety Executive did not achieve its target for clearing concerns within 21 days, so it increased the number of staff handling concerns. The Financial Conduct Authority has introduced an e-learning package for all staff. This followed a review of whistleblowing handling that found there could be a higher level of awareness of practices. The National Audit Office has recently updated its guidance to whistleblowers. This explains the value it places on information from whistleblowers and how it will handle concerns.

Figure 8
Process of receiving a concern at the Health and Safety Executive

	Whistleblower contacts prescribed person via		
1 Initial contact	Online form, telephone, email or in person	Central concerns team Inspector	} Concern logged on system and triaged to determine response, eg assign to an inspector or write back with explanation
2 Handling the concern	High risk to public – assigned to an inspector within 24 hours. Timescales for completion will reflect complexity. Medium risk – handled by central concerns team, acted on within 5 days of receipt. Target 70% completed within 21 days. Low risk – response provided within 3 days (these include cases outside remit). Monitoring – progress reviewed after 21 days by caseworker’s manager and again at 4 months.		
3 Outcome	Where contact details provided, feedback given. Outcome could be enforcement action or no case to answer.		
4 Appeals process	If whistleblower is dissatisfied, they can appeal. This process will involve independent assessment as to whether procedures were followed/relevant evidence was collected.		

Source: National Audit Office analysis

3.5 Following high-profile weaknesses at the Care Quality Commission, it is currently reviewing procedures for handling whistleblowing as part of its comprehensive review of its role as a regulator.

The majority of staff in prescribed persons are confident in handling a concern

3.6 In our survey of staff who work for prescribed persons, we found that the vast majority (90%) are confident in handling a concern raised directly with them (see Appendix Three). Confidence was higher among staff who have regular responsibilities for whistleblowers' concerns (staff at high risk of receiving a concern) (**Figure 9** overleaf). While this is a very positive finding, knowledge of the Public Interest Disclosure Act 1998 (PIDA) legislation was generally low, so there are opportunities to improve staff understanding of the legislation. Confidence was higher for those staff who had received training on how to handle a whistleblower: 99% of staff who had received training were confident or very confident, compared with 79% of staff who had not had training.

Staff in prescribed persons are aware of the need to protect the identity of the whistleblower

3.7 Prescribed persons have a duty to respect the confidentiality of a whistleblower as far as possible. A whistleblower's identity may be deduced by the employer during the prescribed person's investigation. It should be made clear to whistleblowers what can and cannot be promised with regard to confidentiality. We found those handling calls on the central teams knew to explain risks of revealing identity (see 'Whistleblower case studies: Remaining confidential (or not)').

Whistleblower case studies

Remaining confidential (or not)

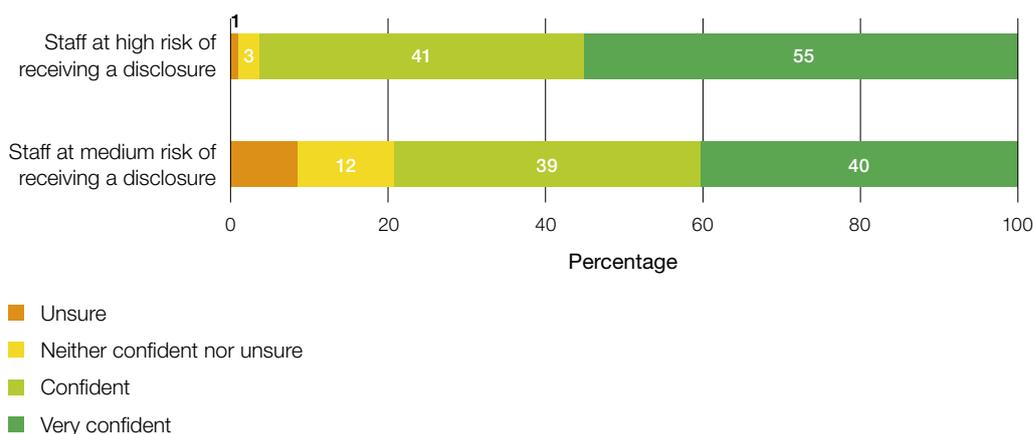
A whistleblower we spoke to described how the prescribed person they contacted discussed whether the whistleblower wanted to keep their identity confidential. The whistleblower would have liked to have kept their identity from the employer. However, they had already raised the issues with the employer so it would be obvious to the employer who had contacted the prescribed person.

Another whistleblower we spoke to raised concerns internally but these were ignored so the whistleblower approached the appropriate prescribed person. The prescribed person discussed the whistleblower's desire to remain confidential. As far as the whistleblower knows, the employer is unaware that they raised a concern with the prescribed person.

Source: National Audit Office interviews

Figure 9
Survey results

If a whistleblower from outside your organisation approached you today, which of these best describes how you would feel about treating the whistleblower appropriately?



Note

1 Survey of 190 staff from our case study organisations, excluding the National Audit Office.

Source: National Audit Office

3.8 Our survey found 86% of staff were aware of their organisation’s responsibilities with regard to handling whistleblower concerns (see Appendix Three). Virtually all knew the importance of confidentiality and respecting requests for anonymity. Many, though not all, said they could not guarantee anonymity.

Training could help staff to be better equipped to handle concerns

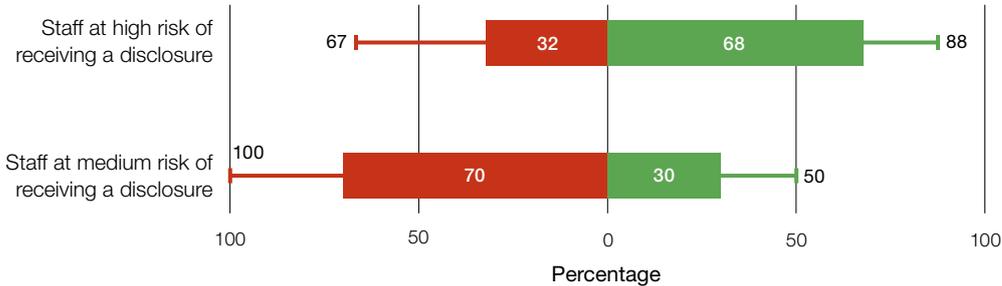
3.9 Prescribed persons could give staff more training in what to do if a whistleblower contacts them. Our survey found 50% had been trained in handling a concern, with more staff who are at high risk of receiving a concern having received training (**Figure 10**). For some this training was several years ago, and focused on procedures rather than handling sensitivities associated with whistleblower’s concerns. For others, such as the Independent Police Complaints Commission, staff who work on the reporting line spoke about regular formal and informal training on whistleblowing. The Care Quality Commission introduced whistleblowing into its corporate induction programme in July 2014.

Prescribed persons have few performance metrics

3.10 Reporting against performance metrics varies across prescribed persons. Most prescribed persons we reviewed must decide how to respond to a concern within 24 hours (including assigning to an inspector in this time). However, they do not record their performance against this requirement. The Financial Conduct Authority has an equivalent 5-day requirement. Some (such as the Health and Safety Executive and Office of Rail Regulation) record progress against time targets. The Care Quality Commission records progress against the number of concerns received and the outcomes to such cases. Both the Financial Conduct Authority and Care Quality Commission are reviewing their performance metrics for handling cases. The Care Quality Commission is developing strategic measures and performance indicators that it will include in reports to the board and executive team. Details of recorded performance are given in **Figure 11** overleaf.

Figure 10
Survey results

Have you received any training on how to handle a concern raised by whistleblowers?



- Average percentage of staff across all prescribed persons responding 'no'
- Average percentage of staff across all prescribed persons responding 'yes'
- Maximum percentage of staff responding 'no' for an individual prescribed person
- Maximum percentage of staff responding 'yes' for an individual prescribed person

Note
1 Survey of 190 staff from our case study organisations, excluding the National Audit Office.

Source: National Audit Office

Figure 11
Recorded performance

Prescribed person	Performance	Target
Care Quality Commission	Outcome recorded in 99.9% of concerns received since April 2014.	None.
Financial Conduct Authority	Unable to report performance.	
Health and Safety Executive	Completed 62% of all concerns raised within 21 days.	Complete 70% of concerns raised within 21 days.
Independent Police Complaints Commission	Unable to report performance.	
Office of Rail Regulation	Completed 94% of cases within 20 working days.	Complete 95% of concerns within 20 working days.
National Audit Office	For members of Parliament, sent an initial response to 62% within 10 working days, and an initial response to 82% within 15 working days. For all other correspondents, sent an initial response to 77% within 20 working days.	For members of Parliament, to send 80% an initial response within 10 working days, and 100% an initial response within 15 working days. For all other correspondents, to send an initial response within 20 working days.

Notes

- 1 The Health and Safety Executive has reacted to its performance measure by assigning additional resource to follow up work and it is reviewing the follow-up process after receipt of a concern to highlight efficiencies.
- 2 Although the Independent Police Complaints Commission does not report performance on responding to concerns, it does have a target to acknowledge and record all concerns received within 48 hours.

Source: National Audit Office analysis

Prescribed persons do not provide consistent feedback

3.11 In its report *Whistleblowing*,⁹ the Committee of Public Accounts said whistleblowers need to know that they will be kept informed about the progress of their concerns. They also need to be told about any changes or improvements made because of the concerns they raised. Few of our sample of prescribed persons give a commitment to provide feedback to whistleblowers at set stages, because feedback depends on how much progress is made. However, this does not prevent prescribed persons giving interim feedback. We found that prescribed persons often did not provide this.

9 HC Committee of Public Accounts, *Whistleblowing*, Ninth Report of Session 2014-15, HC 593, August 2014.

3.12 The Care Quality Commission recognises the need to improve feedback, but is limited by the number of anonymous concerns it receives. The Financial Conduct Authority is limited by legislation that restricts the amount of information it can share with individuals. However, it is trying to standardise feedback at the closure of cases. For investigations it takes on itself (rather than refers to a police force), the Independent Police Complaints Commission follows the feedback criteria set out in the Police Reform Act 2002. This says it must give feedback every 28 days or as appropriate, even though whistleblowers are not covered by this act. We spoke to whistleblowers and found variable feedback is given by prescribed persons to keep the whistleblower up to date (see ‘Whistleblower case studies: Keeping in contact with whistleblowers’).

Whistleblower case studies

Keeping in contact with whistleblowers

Lack of feedback

Whistleblowers we spoke to were often dissatisfied with the amount of feedback they received. For example, a whistleblower we spoke to reported a concern to a prescribed person in January 2014, but did not receive any feedback until October 2014. Another described how they were disappointed that they provided evidence regularly to the prescribed person but never had any feedback from them.

Do not want or expect feedback

A whistleblower we spoke to was content that they did not receive any feedback from the Financial Conduct Authority. This was because they accepted that the Authority is bound by legal restrictions on what it can disclose about its investigations.

Source: National Audit Office interviews

The Department for Business, Innovation & Skills and prescribed persons could do more to reassure whistleblowers

3.13 One way prescribed persons can improve confidence in arrangements and manage expectations is to publish information on how concerns are handled. This will help potential whistleblowers see how the prescribed person will deal with their concerns. This in turn may encourage others to come forward. We found the information on whistleblowing concerns published by prescribed persons inconsistent (**Figure 12** overleaf).

Figure 12

Published whistleblowing data

Published information	CQC	FCA	HSE	IPCC	NAO	ORR
Process for dealing with concerns	Yes	Yes	Yes	No	No	Yes
Number of cases received	Annual report includes the number of whistleblowing contacts received	Annual report includes the number of whistleblowing contacts received	Publish total number concerns received ¹	No	Publish number of correspondence cases responded to	Publish total number of enquiries received ¹
Performance statistics	CQC are in the process of developing performance reporting templates	FCA are in the process of developing performance reporting templates	No	No	No	Yes
Outcomes of concerns etc	Individual inspection reports detail findings and whether a concern initiated an inspection but no overall figure	Annual report contains number of cases raised and reports disseminated following whistleblowing concerns	No	No	No	No

Notes

- 1 Not distinguishing between whistleblowing and other concerns.
- 2 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).
- 3 The Independent Police Complaints Commission does not publish information specifically related to whistleblowing concerns because of the very small numbers involved.
- 4 The NAO publishes details on its external website as to how it deals with concerns, however this currently is not linked to the section on whistleblowing.

Source: National Audit Office analysis

Prescribed persons find it difficult to assess the experience of whistleblowers

3.14 Whistleblowers can be disappointed with the experience of blowing the whistle to a prescribed person. In some cases this is because the outcome is not as they hoped, for others because their experience of the process is poor. This can partly be addressed through clearly stating powers and responsibilities to manage the whistleblowers' expectations (as described in paragraph 2.8). In addition, capturing a whistleblower's satisfaction with the process will identify areas for improvement, yet none of our sample of prescribed persons directly measured customer satisfaction. The Care Quality Commission and Financial Conduct Authority are considering how to measure customer satisfaction. The prescribed persons can use the number of complaints received about their handling as a way of measuring customer satisfaction. Against the number of concerns received, the number of complaints made is small (**Figure 13**).

Figure 13

Number of complaints made against a prescribed person

	CQC	FCA	HSE	IPCC	NAO	ORR
Number of complaints made against prescribed person (see note)	2 between 1 April 2014 and 24 September 2014 5 made to Ombudsman in 2013-14	2	8 (2 with HSE, 6 to Ombudsman)	None	6 from April to December 2014	None
Outcome of investigation to complaint	All upheld in CQC favour	1 partially upheld, 1 withdrawn	All upheld in HSE favour	N/A	3 not upheld, 2 ongoing, 1 not pursued	N/A
Number of contacts: enquiries, concerns or complaints	4,581 (1 April 2014 to 24 September 2014)	933 (2013)	50,000 (2013-14)	13,104 (2013-14)	470 (April to December 2014)	1,797 (2013-14)

Notes

- 1 For CQC and FCA, the number of contacts is the number of whistleblowing concerns raised. For HSE, IPCC, ORR and the NAO, the number of concerns includes all complaints, concerns and enquiries (whistleblowing is a subset of this figure).
- 2 The number of cases referred to the Ombudsman are indicative as they have limited ability to categorise whistleblower cases from other types of cases raised.
- 3 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).

Source: National Audit Office analysis

Part Four

Using intelligence from an external whistleblower

Prescribed persons make use of the intelligence provided by whistleblowers

4.1 Whistleblowing is an important source of information to help identify wrongdoing and risks to public service delivery. In their research paper *The Response to Whistleblowing by Regulators: A Practical Perspective*, Hyde and Savage describe how regulators can make use of whistleblowing information: “they can collate information from a variety of sources to build up a picture of regulatory compliance or non-compliance”.¹⁰ Prescribed persons we examined use intelligence received in a number of ways:

- to define areas to examine during an inspection (for example, the Care Quality Commission raises the risk rating of a provider if it receives more than one whistleblowing concern from its staff, and the National Audit Office uses whistleblowing intelligence when identifying future work);
- to change labelling and advice to consumers (for example, the Health and Safety Executive received information about the dangers of burning skin when using concrete); and
- the Financial Conduct Authority makes good use of whistleblowing to inform its reviews of businesses and themes, for example it analysed the types of concern raised about a particular institution, which led to changes in the areas of focus within routine inspection.

Government has committed to protecting whistleblowers

4.2 The government’s vision is to ensure that whistleblowers are protected from suffering any detriment or dismissal. In its report *Whistleblowing*, the Committee of Public Accounts recommended that strong leadership within central government is needed to lead changes to improve whistleblowing arrangements.¹¹

¹⁰ Ashley Savage and Richard Hyde. *The Response to Whistleblowing by Regulators: A Practical Perspective*, Legal Studies, Imperial College London, November 2014. Available at: dx.doi.org/10.1111/lest.12066, accessed 22 December 2014.

¹¹ HC Committee of Public Accounts, *Whistleblowing*, Ninth Report of Session 2014-15, HC 593, August 2014.

4.3 The Department for Business, Innovation & Skills (the Department) is responsible for the Public Interest Disclosure Act 1998 (PIDA) legislation. This gives whistleblowers a route for claiming compensation for detriment or dismissal. The Department runs a network for whistleblowing policy leads in central government but it has no regular interaction with prescribed persons. It does not provide any support in terms of its expectations of the role. The Department told us that it previously relied on prescribed persons to interpret the law themselves and to establish procedures to fulfil their role. The Department has now begun work to support prescribed persons to better understand their responsibilities.

4.4 The Department needs to make clear how existing legislation for whistleblowers should be used in practice. The legislation gives a list of prescribed persons but it does not set out any action that they should take. It does not set out the level of evidence that they might expect to be available before they take any action. Prescribed persons do not always clearly state this, which may contribute to the gap between whistleblowers' expectations and those of prescribed persons (Figures 6 and 7).

4.5 The number of whistleblowing concerns raised with prescribed persons is an indicator of the effectiveness of public service delivery. A concern is usually raised first with the employer. In such cases, where appropriately handled, no further stages of reporting would be necessary. The number of concerns raised externally, and how they vary over time, is an indicator of how effectively the system is working. The need for prescribed persons will always exist. But in a well-performing system reporting to them should be the exception, not the rule.

4.6 The existing system is not set up to allow the Department to collect the data it needs to understand the scale and nature of whistleblowing or how those blowing the whistle are treated. Without robust consistent information, the Department will find it difficult to understand the scale of whistleblowing, and to identify trends and hold bodies to account if whistleblowers suffer detriment or dismissal after raising a concern.

Whistleblowers can experience negative outcomes from their employer

4.7 The focus of this report is on prescribed persons. It is clear that this is one important component of the overall system in place to encourage and support whistleblowers. But as we described in Part Two, contacting a prescribed person does not in itself prevent a whistleblower suffering detriment or dismissal as a result of raising a concern in the public interest. On the matter of detriment, the Committee of Public Accounts said:

“Departments have sometimes failed to protect some whistleblowers from being victimised. We have heard of too many instances of appalling treatment of whistleblowers by their colleagues, but departments were unable to tell us if those who have threatened or victimised whistleblowers had been sanctioned.”

“It is essential that employees have... confidence that they will be taken seriously, protected and supported by their organisations if they blow the whistle... However, far too often whistleblowers have been shockingly treated, and whistleblowers who have come forward have had to show remarkable bravery.”

HC Committee of Public Accounts, *Whistleblowing*, Ninth Report of Session 2014-15, HC 593, August 2014

4.8 To tackle this, the Committee recommended that departments monitor trends such as the number of whistleblowing concerns and the timeliness of investigations. It also suggested they consider how to improve their support for whistleblowers through measures such as tracking employment skills and career progression.

4.9 Where a negative outcome is experienced by whistleblowers, it is not likely to encourage others to come forward. Of the 28 whistleblowers we spoke to, 6 left their organisation voluntarily, 9 were suspended or asked to leave, 3 were on extended leave and 3 remained in the organisation despite experiencing detriment (see 'Whistleblower case studies: Experiencing detriment or dismissal'). The remaining 7 did not experience any negative consequences after raising the concern.

Whistleblower case studies

Experiencing detriment or dismissal

Whistleblowers we spoke to often told us that they experienced negative consequences as a result of raising a concern:

- One whistleblower was dismissed shortly after raising her concerns with the prescribed person and escorted out of the building.
- One whistleblower was told they were aggressive and threatening. They left work on stress grounds and have been blocked from returning.
- Since raising a concern internally, a whistleblower has been subject to 12 internal investigations including allegations of inappropriate mileage expense claims and mortgage fraud.
- One whistleblower was bullied, subject to spurious allegations from other staff and forced into redundancy. The whistleblower believes she has been blacklisted and is unable to find another job.

Source: National Audit Office interviews

4.10 Public Concern at Work collects information from people who contacted their advice line to find out the outcomes after they raised a concern. The profile is similar to the one we found: one-third of whistleblowers were dismissed, over one-fifth were victimised or disciplined and one-fifth resigned. The remaining quarter experienced no consequences or positive outcomes.¹² Of the whistleblowers we asked, 74% said they would blow the whistle again. This was mainly because they recognised the moral imperative to do the right thing. Those who told us they were unlikely to blow the whistle again explained this was because of the perceived lack of action taken.

4.11 We sought evidence from several organisations about how whistleblowers have been treated, and where sanctions have been applied to those orchestrating mistreatment. We found the organisations did not collect these data. Our interviews with whistleblowers indicate that detriment is an ongoing issue. Public Concern at Work was aware of only one case where staff who caused detriment or dismissal had been sanctioned.

¹² This is based on 1,632 whistleblowers who called the Public Concern at Work helpline in 2012.

It is difficult to understand the extent of whistleblowing, or the numbers of whistleblowers suffering detriment

4.12 It is difficult to understand the scale of whistleblowing concerns, given the lack of central data collected. The 5 prescribed persons we examined received a total of around 75,000 concerns or enquiries in 2013-14.¹³ In 2013-14, 2,032 PIDA cases (5% of all tribunal cases) were brought to an employment tribunal where the claimant indicated there was a whistleblowing aspect to the case. This represents all cases across public, private and third sectors. The Enterprise and Regulatory Reform Act, introduced in 2013, encourages parties to come together to settle their dispute before an employment tribunal claim is lodged.¹⁴ They can do this through the Advisory, Conciliation and Arbitration Service and greater use of settlement agreements. Out-of-court settlements by ACAS mediation are the most common outcome (**Figure 14**).

4.13 Public Concern at Work analyses all PIDA judgments and has concluded that, in its opinion, the act is not always interpreted consistently. Most respondents to the whistleblowing commission's consultation thought there should be a degree of specialism in the employment tribunal service. This already exists in discrimination and equal pay cases where judges who have been trained are 'ticketed' to deal with the more complex discrimination cases. The Whistleblowing Commission, established by Public Concern at Work, also concluded that PIDA was too complex and needed review. They have recommended the simplification of PIDA.

Figure 14

Outcomes of PIDA cases at employment tribunals¹

Outcome	Percentage
Settled (by ACAS mediation)	51
Withdrawn by claimant	26
Determined at hearing	17
Claim struck out	6
Default judgment	1

Note

¹ The data on PIDA should be treated cautiously as an individual is free to declare a PIDA link in their case. This decision is not validated, so it is not known whether such cases are actually whistleblower cases. This means it is difficult for the court to decide whether PIDA applies. Because of the technical nature of cases brought under PIDA legislation, and the fact that it allows claims to progress that might otherwise be out of its scope, the plaintiff may declare a PIDA link for strategic reasons.

Source: Advisory, Conciliation and Arbitration Service analysis of cases since 2011-12

¹³ This number is made up of concerns, enquiries and complaints.

¹⁴ Conciliation and settlement agreements were used before the Enterprise and Regulatory Reform Act was enacted: the act further encouraged the use of agreements.

Appendix One

Our evidence base

1 We selected 5 prescribed persons to examine in detail:

- Care Quality Commission;
- Financial Conduct Authority;
- Health and Safety Executive;
- Independent Police Complaints Commission; and
- Office of Rail Regulation.

We also examined our own activities at the National Audit Office.

2 For these prescribed persons we:

- examined websites to determine the information published on whistleblowing;
- looked through cases to examine how the prescribed persons record, triage and investigate concerns;
- spoke to whistleblowers who had contacted the prescribed persons to understand how they found the experience of whistleblowing;
- surveyed staff in the organisations to investigate the level of knowledge of staff of the role of a prescribed person and the responsibilities this entails; and
- interviewed staff to discuss how whistleblowing intelligence is used.

3 We spoke to the Department for Business, Innovation & Skills (the Department) to understand its role with regard to the legislation, supporting prescribed persons and encouraging whistleblowing.

4 We also spoke to relevant stakeholders, including:

- the Advisory, Conciliation and Arbitration Service (ACAS);
- HM Courts & Tribunals Service;
- Unite, the Union; and
- the Civil Service Commission.

5 We reviewed relevant literature such as academic papers, charity reports and departmental documents.

Appendix Two

Procedures used by prescribed persons

Figure 15

Procedures used by prescribed persons

Stage	CQC	FCA	HSE
On receiving a concern	Assigned to an inspector within 24 hours.	Whistleblowing team triage concern and send to appropriate team.	Risk rated within 24 hours.
Handling confidentiality	Record contact details (explain anonymity and confidentiality), the organisation, nature of concern, whether raised with employer (would advise to do this). Mostly anonymous.	Do not confirm the existence of a whistleblower to an organisation unless whistleblower has given consent. Before sending information to team will anonymise the information to protect the identity of the whistleblower.	Generally will not investigate anonymous concerns. Will ask the whistleblower whether they wish to remain anonymous to their employer. However, risk will always override confidentiality – would disclose their identify if need to (to avoid serious incident).
Feedback	Not recorded. This is recognised as in need of improving.	Tell whistleblowers whether their information will not be acted on or will be considered further. Additional information may be available on a case-by-case basis, or at a later date if a public announcement is made.	80% request feedback. Will not give feedback at set stages – depends on progress made, whether need more information, etc. No targets for 'feeding back'.

Note

- 1 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).

IPCC	NAO	ORR
Hotline team assess the concern and pass to the intelligence unit if it is a whistleblowing concern.	Record concern and allocate to team for response.	If received directly by operation team dealt with following complaints handling process. If via central correspondence team, immediate review and assigned to an inspector.
Require consent of a whistleblower before forwarding to police. Sanitise all information before sending to the police for recording and assessing.	Do not confirm the existence of a whistleblower to an organisation. Will protect the identity of a whistleblower wherever possible although warn the whistleblower their identity might be deduced by the investigation itself.	Record contact details (explain anonymity and confidentiality), the organisation, nature of concern, whether raised with employer (would advise to do this). Few are anonymous.
Provide feedback where possible every 28 days or when appropriate.	Provide feedback every 28 days.	On receipt, explain what it will do (usually send to an inspector for decision). Inspectors will send interim response after 20 days if still investigating. Most cases are dealt with over the phone – no visit needed.

Figure 15 *continued*

Procedures used by prescribed persons

Stage	CQC	FCA	HSE
Performance metrics	The results of quality assurance in the last 12 months: 8,052 checked, 7,265 passed quality assurance (90.2%). This is a validation of the data in the system rather than considering whether the right course of action was taken, and any failures are corrected.	Currently defining a set of metrics that will form part of the FCA's future publications of 'The FCA Approach to Whistleblowers'.	<p>Cleared 62.3% of concerns within 21 days (target of 70%). The 62.3% relates to all concerns, regardless of level of risk.</p> <p>Of concerns assigned to inspector to investigate, 72.1% were completed within 4 months.</p> <p>Plans to improve performance include:</p> <ul style="list-style-type: none"> ● assignment of additional resource to follow up work; ● additional focus by concerns advisory team management on cases nearing the 21-day target; ● reviewing the follow-up process to highlight efficiencies; ● improving the information collected at the outset of a new concern to help with assessment of the actual risk; ● highlighting the appeal mechanism in feedback to whistleblowers so they know of this option if they believe HSE has not made the correct decision in dealing with their concern; <p>Reds – these need to be assigned to an inspector within 24 hours of receipt; target 80% completed within 4 months (timescales reflect complexity);</p> <p>Ambers – start casework within 5 days of logging it on the system; target 70% completed within 21 days; and</p> <p>Greens – 100% response within 3 days (including those not in their remit).</p>

Note

- 1 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).

IPCC

Do not currently have any performance metrics.

NAO

Monitor feedback time.

ORR

Performance target is responding to 95% of complaints and general enquiries within 20 working days of receipt. From April to August 2014, 517 out of 550 (94%) of complaints and general enquiries were cleared within 20 days (note: not split out for whistleblowers).

Figure 15 *continued*

Procedures used by prescribed persons

Stage	CQC	FCA	HSE
Appeals process		In 2013-14 received 2 complaints on how whistleblowing cases were handled.	When responding, give line manager's name. HSE received 8 appeals against a decision. Such cases were investigated by an independent member of staff, which found that correct procedures were followed and the evidence collected was adequate.
Quality assurance		Have recently introduced quality assurance processes.	Only monitor feedback/time involved, not the case handling/evidence collected. All concerns reviewed for progress after 21 days by caseworker's manager (alerts) and again at 4 months.

Note

1 Care Quality Commission (CQC), Financial Conduct Authority (FCA), Health and Safety Executive (HSE), Independent Police Complaints Commission (IPCC), National Audit Office (NAO), Office of Rail Regulation (ORR).

Source: National Audit Office analysis of prescribed persons data

IPCC

No complaints on handling received in 2013-14 regarding whistleblowing concerns.

NAO

Whistleblowers who are dissatisfied can access the complaints procedure. The NAO has received 2 complaints from whistleblowers in 2013-14.

ORR

ORR received 6 complaints in 2013-14. If unhappy, formal procedure – write to senior executive on Customer Correspondence Team, who refers to director of respective directorate (eg Rail Safety Directorate) who will investigate.

Intends to carry out quality assurance for all investigations it undertakes, although in 2013-14 it did not complete any investigations into concerns raised by a whistleblower.

No routine quality assurance.

No quality assurance of individual handling of cases; do an annual review of procedures.

Appendix Three

Survey results

1 We interviewed 190 staff from our 5 case study organisations (**Figure 16**).

Figure 16

Results of survey of staff in prescribed organisations

Question	Response	Staff at high risk of receiving a concern (n=107) (%)	Staff at medium risk of receiving a concern (n=83) (%)	All staff (n=190) (%)
Do you know what is meant by a prescribed person?	Yes	49	35	42
	No	51	65	58
Do you know your organisation's responsibilities regarding whistleblowers from outside the organisation?	Yes	91	81	86
	No	9	19	14
Have you received any training for how to handle a concern raised by a whistleblower?	Yes	63	34	50
	No	33	64	46
	Don't know	4	2	4
If a whistleblower from outside your organisation approached you today, which of these best describes how you would feel about treating the whistleblower appropriately?	Very unsure	0	0	0
	Unsure	1	9	4
	Neither confident nor unsure	3	12	6
	Confident	41	39	40
	Very confident	55	40	50

Note

1 The NAO results are not included in the overall survey results as it was run under different conditions to the other surveys.

Source: National Audit Office analysis

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