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## WBUK proposals for changes to the Law

We seek change because we see at first hand the failure of organisations and their regulatory bodies adequately to:

1. Encourage speaking out;
2. Support those who do speak out and;
3. Hold to account those who act unlawfully.

We also seek change because the legal system is heavily biased against whistleblowers in terms of financial resources and procedures.

We also seek change because crimes and wrong-doing go undetected and unpunished when people do not come forward to report them for fear of reprisals. Even when they are reported the original allegations are often ignored in favour of pursuing the whistleblower.

We propose five significant changes to address these problems.

### **1. The Office of the Whistleblower**

We believe that this is the key proposal that will drive real and long-lasting change. It will be an early warning system for government on emerging problems, trends, and regulatory deficits.

Existing regulatory bodies fail to adequately recognise and support whistleblowers, and are slow to hold wrong-doers to account. In our experience regulatory bodies, e.g. Police, Financial Conduct Authority, do not provide adequate support for whistleblowers nor do they hold those who act unlawfully against whistleblowers sufficiently to account.

The Office of the Whistleblower will be a self-sustaining independent organisation, reporting directly to government.

The OWB will have a full range statutory powers with real teeth to carry out its functions.

The Office for the Whistleblower will create transparency by publishing its activities and findings, enable the public to become aware of the problems faced by whistleblowers and the activities of those who seek to persecute them.

## **2. Specialist Tribunals**

Almost all whistleblowing cases are dealt with in Employment Tribunals as cases of wrongful dismissal. These tribunals do not have the specialist expertise and knowledge adequately to determine just outcomes in whistleblowing cases.

We propose independent Tribunals with specialist training and accreditation of lawyers and Tribunal members before they are allowed to sit in judgement of cases involving whistleblowing.

## **3. Additional damages**

Current levels of compensation disincentive people to come forward. Many whistleblowers experience severe financial hardship, deterring others from coming forward.

We propose that Tribunals should award exemplary damages additional to that reflecting loss of earnings and future opportunities, as recognition of the unlawful detriments caused.

## **4. Criminal sanctions for those who act unlawfully against whistleblowers**

Under the current law whistleblowers are entitled to present a complaint to an employment tribunal that they have been subjected to a detriment if they suffer detriment<sup>[1]</sup> as a result of making protected disclosures<sup>[2]</sup>. In practice this is often of little value as the costs of litigation are so high and the awards in tribunals relatively low.

There are no sanctions for those who cause the detriment other than the possibility of litigation costs and financial penalties imposed on the organisation at a tribunal. There is no personal responsibility for wrongdoing. Currently organisations act with impunity with no personal risk.

A new offence will be created for causing detriment to people who have made protected disclosures, punishable by a substantial fine or imprisonment and the power to order compensation be paid to the whistleblower. This compensation to be paid by the convicted person and is different from other compensation awarded to the whistleblower.

## **5. Compensation for whistleblowers**

Whistleblowers often suffer great hardship, financially and in their personal lives. It is very important that they should receive full compensation for this detriment.

We should also recognise that they have brought to light criminal activity or wrong-doing that will have resulted in benefits to individuals and society as a whole. For example, protection of the vulnerable from abuse, fraud prevention, tax recovery and exposing corrupt practices. These actions that benefit society should be encouraged and recognised by way of financial compensation, and other forms of recognition, separate from that awarded by the tribunals. The amount can be determined by the Office of the Whistleblower.

## **6. Legislation must include every citizen**

Speaking out is a normal activity, but too many people fall outside the existing legislation and can be persecuted as a result of raising concerns. It is essential that this legislation provides a safety net to all.

These proposals are intended to challenge the secrecy that obscures whistleblower cases; ban NDAs, ensure regulatory bodies do their jobs effectively, add expertise to relevant legal processes, bring to account those who persecute whistleblowers, and ensure whistleblowers are properly recognised for their selflessness and sacrifice in speaking up about crimes and injustice.

Transparency and accountability are cornerstones of a fair society.