In its latest report, the Committee on Standards in Public Life has stressed that whistleblowing is “both an instrument of good governance and a manifestation of a more open culture” and that “here, more than in any other area we have considered, the principle of leadership is paramount”.

In *Getting the Balance Right*, the Committee has revisited key recommendations made during its first decade to assess how they are working. On whistleblowing, it is clear that more must be done and it calls on all public bodies to ensure that staff are aware of whistleblowing avenues, that they have access to advice and that the policy is regularly promoted and reviewed. To this end, the Committee has updated and expanded its widely recognised good practice guidelines on whistleblowing, drawing on recommendations made by Public Concern at Work. These are reproduced on the back page of this newsletter.

The Committee, now chaired by Sir Alistair Graham, has also recommended that all regulators review the way they use whistleblowing in their various sectors to promote compliance and pick up early warnings. In doing this, they are urged to draw on the initiatives of the Financial Services Authority and the Audit Commission. Recognising the damaging fall-out that can follow a case under the Public Interest Disclosure Act or a high profile media disclosure, the Committee says that in both situations a well-run organisation will review and refresh its whistleblowing arrangements to ensure staff have the confidence to raise concerns and to maintain public trust.

The Government will formally respond to these recommendations by January 2006. The report can be found at [www.pcaw.co.uk/news](http://www.pcaw.co.uk/news).

In this issue

**Page 2**
- PIDA – Shipman proposals
- Good faith
- Law matters

**Page 3**
- Who funds PCaW?
- Helpline news
- People

**Page 4**
- ‘Speak Up or Pay Up’ Law to be scrapped
- Whistleblowing - getting it right new good practice guidelines

“I believe that the willingness of one healthcare professional to take responsibility for raising concerns about the conduct, performance or health of another could make a greater potential contribution to patient safety than any other single factor.”

Dame Janet Smith, from the Introduction to the Report of the Public Inquiry into Dr Harold Shipman (Dec. 2004)

---

International interest in the UK’s approach to whistleblowing continues. Since the last issue, we addressed a seminar at the American Bar Association in Atlanta for multinationals, briefed journalists from China and trained Iraq’s Inspectors-General. Closer to home, we began some ground-breaking work in Ireland where several leading companies are introducing whistleblowing schemes, in the absence of any legislation. This work includes policy implementation, training, staff briefing and helpline services. Finally, the British Council took our UK and Scottish directors, Guy Dehn and Harry Templeton, to Japan which has just enacted legislation based on the UK’s PIDA. We addressed a symposium of academics, government, employers, lawyers, the media, NGOs and policy makers and also gave a training session for leading businesses.

Guy Dehn giving the keynote speech at a symposium at Meiji University, Tokyo.

---

**News from elsewhere**

I believe that the willingness of one healthcare professional to take responsibility for raising concerns about the conduct, performance or health of another could make a greater potential contribution to patient safety than any other single factor.”

Dame Janet Smith, from the Introduction to the Report of the Public Inquiry into Dr Harold Shipman (Dec. 2004)
The Shipman Inquiry has proposed a number of significant amendments to PIDA so it can further strengthen a culture where concerns are properly raised and addressed. Aimed at the NHS many of these proposals would have a wider application. In brief, these would:

- give PIDA a clearer purpose clause emphasising the public interest in tackling wrongdoing;
- confirm the protection for internal and regulatory disclosures covers a reasonable suspicion of wrongdoing;
- drop the ‘good faith’ test and align PIDA protection more closely with privileges and defences in libel law;
- provide incentives for employers to identify and promote an external body for staff concerns;
- ensure staff in the private healthcare sector have comparable protections to NHS staff; and
- replace the term ‘disclose’ with ‘report’ to counter any suggestion the concern should have to be true.

While we have put our review of the Act on hold, pending the Government’s response to the Report’s recommendations, we would welcome any comments you have on these proposals or any other changes to PIDA you think may be desirable. Please email us at review@pcaw.co.uk.

Police officers, accountants and compliance officers have jobs that are all about reporting suspected wrongdoing. We are sometimes asked whether this means that workers with such jobs make protected disclosures every day and so can invoke PIDA’s strong protection whenever their employers do something they object to.

The simple answer is, as common sense suggests, no - PIDA does not introduce tenure for such workers. Apart from the important issue of whether the whistleblowing or some other issue caused the employer’s action, tribunals have said that such workers should neither pretend nor assume that every routine report they make as part of their normal job can be held to be a protected disclosure.

‘...best training in anything I’ve had in a long time.’

Peter Clarke, Children’s Commissioner for Wales
Who funds PCaW?

Public Concern at Work could never have begun in the early 1990s without the financial backing of several enlightened foundations, starting with the Joseph Rowntree Charitable Trust. Over the past decade, year on year, we have gradually increased the money we earn from the training and guidance we provide employers, unions and regulators. In the last two years, leading employers have also taken out modest subscriptions to our helpline. These subscriptions help ensure their policy is well promoted, that they keep abreast of best practice and that their staff have the confidence to use the policy and have access to confidential independent advice.

The demand for these services has been such that in 2004 the income they generated more than met the costs of all our activities - our public helpline, public policy, services and educational work - and our overheads. This is a welcome position for any charity to find itself in and one that presents real opportunities for a public interest group. We will build on this position as more organisations see whistleblowing as being in their enlightened self-interest and a key way to improve management accountability and performance. This shift in our funding will present challenges as well as opportunities, but three issues are non-negotiable - the independence of our work; our approach to accountability and the public interest; and the free advice provided by our confidential helpline for people who are concerned about wrongdoing, but unsure whether or how to raise the matter.

The various developments reported in this newsletter give an indication of the changing lie of the land for whistleblowing. In addition, the Shipman Report has called for a greater awareness of whistleblowing and wider access to independent advice. While it states that Public Concern at Work is well placed and able to fulfil this role, it suggests that if we are unable to secure the additional funds for such an increase in work or are unwilling to take up such a wider role, the Government should set up a public body for this purpose. PCaW is ready to take on a wider role provided the funding arrangements do not compromise our independence or our particular contribution to the public interest.

People

We welcome two new trustees – Derek Elliott (a district auditor who has helped lead the work of the Audit Commission on organisational culture) and Chidi King (a former colleague at PCaW, now a rights officer at the TUC).

On the staff side, we are delighted to welcome back Kirsten Trott who will be covering for our deputy director, Anna Myers, who is on maternity leave. Congratulations and best wishes to Anna and her family.

Many thanks to our volunteer Jean Brown (pictured right) for ten years of loyal support.

Finally, we are sad to report the death of Anthony Sampson, a founding member of PCaW’s Advisory Council. Best known for his books on who runs Britain and his biography of Nelson Mandela, Anthony was also a source of wise and gentle advice to PCaW and other charities, which is sadly missed. Our condolences go to his family.

helpline news

The following are examples from the last six months on our helpline:

• The results of medical research being distorted to support the interests of a large funder.
• Technicians accessing customers’ computers and distributing information without their consent.
• A nurse in a care home who was told by the regulator that if she did not give formal evidence against her boss, she would be reported to her professional body for disciplinary action.
• An employee in a position of trust who concealed a dodgy past.
• Misuse of a whistleblowing procedure.
• Human remains being removed from graves without licences and workers playing football with skulls.
• A gas fitter who was not CORGI registered and who did substandard work.
• A charity sending incorrect financial returns to its funders.
• Unsafe driving by an ambulance driver.
• Fuel going missing from a development project in an African country.
• Bogus fire alarm certificates being issued to make it look like the alarms had been inspected and serviced by an engineer.
• A store manager on the take.
The Health and Safety Commission (HSC) has agreed to scrap a new whistleblowing law which put employees centre stage after every accident. The law, passed in October 2003, meant employees were strictly liable to compensate any member of the public injured or killed in work-related accidents where they had failed to report a risk they had seen or should have seen.

When we first heard about the new law early in 2004 we were amazed, and double-checked its effects and the background papers. It seemed clear that either the policy was a mistake or that its effects had not been thought through. Would such a change lead to an explosion in reports by nervous employees? Would it embed a scapegoating culture across workplaces? Would it turn lawyers into freelance factory inspectors? Would it be the employer or the employee who would foot the bill for any compensation awarded? If it was the employee, should they take out insurance? Our research also showed that Parliament had not been told that the new law would impose any new liability on employees.

The HSC and ministers considered our report urgently over the summer, obtaining their own QC’s Opinion. This agreed that our concerns were right and the HSC confirmed that these far-reaching effects had not been intended. Their QC took the view that the courts would most probably hold that the costs of this new liability would be passed to employers. This meant that, while the law put employees centre stage after every accident, employers would be left facing a big rise in insurance premiums – undermining pledges the Government had given that the new law would not make employers strictly liable to the public for accidents.

The HSC, which deserves praise for owning up to this mistake, is now consulting urgently on amending the legislation this October. See www.hse.gov.uk/consult/letters/manregs.htm

The Committee on Standards in Public Life has “emphatically endorsed” the following four key elements of good practice –

(i) Ensuring that staff are aware of and trust the whistleblowing avenues. Successful promotion of awareness and trust depend upon the simplicity and practicality of the options available, and also on the ability to demonstrate that a senior officer inside the organisation is accessible for the expression of concerns about wrongdoing, and that where this fails, there is recourse to effective external and independent oversight.

(ii) Provision of realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity. While requests for confidentiality and anonymity should be respected, there may be cases where a public body might not be able to act on a concern without the whistleblower’s open evidence. Even where the whistleblower’s identity is not disclosed, this is no guarantee that it will not be deduced by those implicated or by colleagues.

(iii) Continual review of how the procedures work in practice. This is a key feature of the revised Code on Corporate Governance, which now places an obligation on the audit committees of listed companies to review how whistleblowing policies operate in practice. The advantage of this approach is that it ensures a review of action taken in response to the expression of concerns about wrongdoing; it allows a look at whether confidentiality issues have been handled effectively and whether staff have been treated fairly as a result of raising concerns.

(iv) Regular communication to staff about the avenues open to them. Creative approaches to this include the use of payslips, newsletters, management briefings and Intranets, and use too of Public Concern’s helpline, to which employers can now subscribe.

Getting the Balance Right, (Jan 2005)

‘The longer I worked the more certain I felt that, as improbable as it might seem, there were moments when an individual conscience was all that could keep a world from falling.’

Arthur Miller (1915-2005)