Welcome to the fifth Wales Audit Office Whistleblowing Update

In this issue we bring you up to date with the latest developments in the field of whistleblowing both inside and outside of the Wales Audit Office. As always it’s been a busy year and this newsletter highlights the key issues relevant to your role as an auditor or a worker employed by the Wales Audit Office.

Following the restructuring of Corporate Services in July 2015 the responsibility for whistleblowing has now transferred to the new Law and Ethics team, with your first point of contact being Ian Phillips (ian.phillips@audit.wales) on extension 0678. This includes both support for dealing with a disclosure from outside the Wales Audit Office and also any assistance you may need in respect of the Wales Audit Office’s own Whistleblowing Policy.

Updated Wales Audit Office policies and procedures

The Law and Ethics team have been busy reinvigorating our whistleblowing policies and procedures. An updated Wales Audit Office Whistleblowing Policy can now be found within the Corporate Handbook. A revised outward facing Whistleblowing leaflet has been produced and can be downloaded from our website. Our Public Interest Disclosure Act 1998 (PIDA) Procedure Document has been updated which provides help and guidance to auditors in dealing effectively with an external PIDA disclosure.

Collaboration with Inspection Wales

Over the past twelve months we have continued to work in collaboration with colleagues in Estyn, CSSIW and HIW which make up Inspection Wales. In the context of whistleblowing we have continued to share our policies, procedures and working practices and produced a whistleblowing leaflet which guides workers to the most appropriate member organisation which can look into their concern. A copy of this leaflet will shortly be available on the Inspection Wales website.

Whistleblowing – Good Practice Exchange

In the autumn of 2015 two Good Practice Exchange events were held on the topic of whistleblowing. The hook line for the events was ‘Neglect whistleblowing at your own peril – how to get the most from staff who care enough to raise a concern’.

The plenary for both days was a whistleblowing role play based on the concerns raised by a senior environmental health officer about the conduct of a colleague, which included the tipping off of unannounced food hygiene inspections and improper acceptance of hospitality from restaurant owners. The role play explored the challenges faced by the employee in raising concerns with their manager, the need for appropriate training for managers and the important role played by the Prescribed Person.

After the role play delegates had the choice of attending two out of three workshops:

• What is whistleblowing and why does it matter? Cathy James, Public Concern at Work;
• How confident are you that your organisation would do the right thing when an employee wants to blow the whistle? Neil Gray, Northern Ireland Audit Office and Duncan Warmington, The European Institute for Combatting Corruption And Fraud; and
• A Manager’s Perspective to Whistleblowing, Ian Hughes, Wales Audit Office.
The events in Cardiff and Llanrwst were very well attended and feedback from delegates was very positive. In fact 100 per cent of attendees who provided feedback said the events were either useful or very useful.

Please visit the Good Practice Exchange page if you would like to access the resources made available in conjunction with the whistleblowing events.

A round up of external whistleblowing news and developments

Legislative changes

The Small Business, Enterprise and Employment Act 2015 (SBBE) finally gained Royal Assent on 26 March 2015, the last day of the year’s parliamentary session. The Act encompasses a broad range of issues from pubs to childcare. However, a large part of the new statute is made up of key changes to employment law to include whistleblowing.

The SBBE allows regulations to be made requiring Prescribed Persons to produce and publish annual reports of protected whistleblowing disclosures. The aim is to increase transparency in the way that whistleblowing disclosures are dealt with and to raise confidence among whistleblowers that their disclosures are taken seriously. Producing reports highlighting the number of disclosures received and how they were taken forward should hopefully go some way to assure individuals who blow the whistle that action is taken regarding their disclosures. The exact timing of when these regulations will be published is not yet known.

At the same time the SBBE 2015 was enacted there were a number of other important whistleblowing events taking place.

In March 2015 the Department for Business Innovation and Skills published two good practice guides on whistleblowing; one for employees and one for Prescribed Persons. These can be downloaded from the gov.uk website.

New initiatives in the NHS

There have been a number of interesting developments in relation to whistleblowing in the NHS in England. The Francis ‘Freedom to Speak Up’ review was published in February 2015, in response to the concerns about the effectiveness of whistleblowing arrangements at Mid Staffordshire NHS Trust a couple of years previously.

Sir Robert Francis came up with some interesting recommendations about how to make whistleblowing in the NHS more effective. Two of these, which have been adopted by UK government, are the appointment of Freedom to Speak Up Guardians at each local NHS body in England and the establishment of a National Guardian to champion whistleblowing.

Dame Eileen Sills was appointed as National Guardian in January 2016.

There are also comparable developments in the private sector. The Financial Conduct Authority (FCA), alongside the Prudential Regulation Authority (PRA), have accepted recommendations made in 2013 by the Parliamentary Commission on Banking Standards (PCBS) that banks put in place mechanisms to allow their employees to whistleblow and that they appoint a senior person to take responsibility for the effectiveness of these arrangements.

It will be interesting to see how these new national and local roles develop and what impact they have on the effectiveness of whistleblowing in the NHS in England. It will also be interesting to see if such initiatives become more widespread across the devolved administrations within the UK.
Claims to employment tribunals – the latest analysis

In previous editions of this newsletter we have looked at the developing impact of changes to the employment tribunal system, in particular the introduction of fees by claimants, to include those lodging claims for detriment under PIDA.

PIDA allows workers to pursue claims against their employer for any detriment arising in consequence of their raising a valid concern. Claims must be made to an employment tribunal and there is no cap on the compensation that can be awarded.

In early 2013 fees were introduced for claimants at employment tribunal. Public Concern at Work has been monitoring the impact of these changes as part of a wider review of the effectiveness of the whistleblowing law. It examined the findings of a review of employment tribunal judgments handed down between 2011-2013 which involved a whistleblowing claim. According to their report “Is the law protecting whistleblowers?”, there has been a 20 per cent drop in the number of whistleblowing claims lodged with an employment tribunal following the introduction of fees.

Sixty-eight per cent of PIDA claims that were disposed of between 1 April 2010 and 31 April 2014 were withdrawn or settled through ACAS or by the parties. This reflects an ongoing pattern with PIDA cases – the vast majority are withdrawn or settled. A much smaller fraction of the cases have a detailed judgment on a whistleblowing claim.

Of the 1,260 PIDA claims that proceeded to a final judgement, 12 per cent were successful on PIDA grounds, 26 per cent were won on other grounds, and the remainder were lost or struck out. This was in line with previous research on case outcomes.

The total amount of damages awarded to successful claimants was over £7.3 million. This represents the small number of claims that reach final hearing. As most claims are settled before this stage, Public Concern at Work contends that it must be the case that this figure represents but a fraction of the total amounts received in settlement of PIDA claims out of court.

The highest award was given in Best v Medical Marketing International Group plc. In this case, a company director who was unfairly dismissed for raising concerns about his fellow directors’ activities was awarded £3.4 million in compensation.

Whistleblowing communications to the Wales Audit Office in 2015

Under PIDA the Auditor General is a ‘Prescribed Person’ who can receive disclosures about ‘the proper conduct of public business; value for money, fraud and corruption in relation to the provision of public services’. The Wales Audit Office’s staff receive, and help to investigate, disclosures made to the Auditor General.

A dedicated helpline has been installed at the Wales Audit Office which is 02920 320522. An email address also exists: whistleblowing@audit.wales. These contact points are also publicised on the Wales Audit Office website.

Between January and December 2015 we received a total of 36 communications via our whistleblowing arrangements. Of these 24 were considered to fall within the Auditor General’s remit. There are no particular themes or trends arising from the communications received that we believe should be shared with auditors.
Wales Audit Office Whistleblowing Policy

As mentioned earlier, we have updated our internal Whistleblowing Policy and a copy can be found in the Corporate Handbook. As the Wales Audit Office Staff Code of Conduct makes clear, all Wales Audit Office staff are encouraged to raise issues of concern about misconduct or wrongdoing that come to their attention while at work. The Auditor General and Wales Audit Office Board regard the internal identification of wrongdoing as an important contribution to managing corporate risk and ensuring good governance.

This update also serves as a means of reporting to our non-executive members how many internal whistleblowing disclosures have been received and what action was taken in general terms to address the issues raised. In the calendar year 2015 no internal disclosures were received under the remit of our Whistleblowing Policy. As usual, care must be taken to interpret low caseload data.

Comments and feedback

We hope you found this latest Whistleblowing Update interesting and helpful. If you would like to know more about whistleblowing and the Wales Audit Office, how we can support improvement or have any comments or feedback about this update, please get in touch at whistleblowing@audit.wales or contact our Whistleblowing Lead, Ian Phillips, on 02920 320 678.