Welcome to the latest Whistleblowing Update

Our last update (in May 2012) observed that whistleblowing is often headline news and that disclosures to the WAO were increasing. Little did we know at the time of writing that edition that whistleblowing would continue to dominate the media headlines with stories such as the release of US Government intelligence information by Edward Snowden and more pertinent to our work, the publication of the Francis report following the inquiry into the Mid Staffordshire NHS Foundation Trust on 6 February 2013.

The governance of health bodies has been a hot topic since then and our own work in Wales has shown the scale of the challenges facing our Local Health Boards and Health Trusts.

Our joint review with Healthcare Inspectorate Wales of governance at Betsi Cadwaladr LHB culminated in the publication of a report in June 2013 which identified significant opportunities for improvement. As part of our structured assessment work in the NHS since then we have been looking at the effectiveness of whistleblowing arrangements in the context of safeguarding. We look at our emerging findings later on in this update alongside other topical updates.

Whistleblowing law has changed

The Public Interest Disclosure Act (PIDA) was introduced in 1998 to protect employees who want to raise a concern about something happening in work in a responsible manner.

An employee who suffers a detriment because they raise a concern can bring a claim to an Employment Tribunal. Damages that may be awarded under PIDA are uncapped. One single award was for just less than £4 million. In the public sector the highest single award to date is just under £0.5 million; a substantial penalty to the employer.

The Enterprise and Regulatory Reform Act came into force on 25 June 2013 and brought about a number of changes which impact on whistleblowing. The three key changes are:

- Only disclosures made ‘in the public interest’ will be protected. Employees now have to show that they ‘reasonably believe’ that the disclosure they are making is in the ‘public interest’.
- The removal of the requirement for disclosures to be made in ‘good faith’ in order to be protected. Good faith will remain relevant, but only if the whistleblower wins at an Employment Tribunal as in such cases the compensation granted can now be reduced by 25 per cent if it is determined that the claim was not made in good faith.
- Making employers liable for the acts of employees (such as harassing a colleague who has raised a concern) and making employees personally liable.

We have updated our own Whistleblowers Charter to reflect these important changes and these feature in a programme of mandatory whistleblowing training currently being rolled out to all WAO staff. Feedback from the training provided to date has been very positive.

It is vital that public bodies in Wales review their policies and ensure staff are aware of these key changes.
Our caseload

Under PIDA the Auditor General is recognised in law as a ‘Prescribed Person’ who can receive disclosures from individuals employed by our audited bodies. The disclosure must be about:

- The Auditor General’s staff receive and help to investigate disclosures received by the WAO.
- A dedicated helpline has been installed at the WAO which is 01244 525980. An e-mail account also exists: whistleblowing@wao.gov.uk. These contact points are also publicised on the WAO website.

Between January and end of December 2013 we have received a total of 34 communications via our whistleblowing arrangements. Of these 12 were considered to fall within the scope of PIDA and the remainder general or audit related correspondence. Appropriate responses were provided to all those individuals who raised a concern with us.

The number of communications this year is higher than average and coincides with the greater prominence of whistleblowing in the media together with the positive publicity associated with a number of WAO reports e.g. the review of Chief Officers pay at Caerphilly CBC and the joint inspection of Betsi Cadwaladr LHB with HIW.

Our caseload data for the last seven years is shown in the next exhibit.

Communications received 2006-2013

The issues being raised with us this year typically included:

- awarding of contracts and concerns over suspected private relationships between officers and the contractors used; and
- probity of decisions relating to payments to senior officers.

Local Government Whistleblowing Case Study

In the last three years the WAO was contacted by officers from a local authority raising separate concerns but all expressing a preference to raise their concerns with us rather than use the Council’s own whistleblowing policy.

Our findings on the specific issues of concern have been reported to the Council but we have also looked at the effectiveness of the Council’s internal arrangements to see if the officer’s reservations about using them could be better understood.

The Council’s whistleblowing policy was over 10 years old and had not been reviewed since it was introduced. It had not been updated for recent legislative changes. It was not readily accessible to staff and there was nothing being done to promote awareness to include staff training. Whilst the policy referred to oversight arrangements by elected members, nothing was implemented in practice.

We have provided the Council with examples of good practice upon which it can strengthen its own arrangements and gain its employee’s confidence in raising concerns internally rather than going outside of the Council as a first resort.

As the leading public sector regulator in Wales, we have an important role to play in promoting responsible whistleblowing as part of good stewardship and governance.

This year we have incorporated a review of whistleblowing arrangements within the structured assessment audit methodology for safeguarding followed at our LHBs and NHS Trusts. Similar work is also underway at our Local Government bodies. When the work is complete in 2014 we will have a much better picture of how good arrangements are at a local level for responding to staff concerns.

We are able to share some of the emerging findings from our NHS work in this update.
Findings from our early work in the NHS

There is a growing focus in Wales on the values and culture which need to be in place to support the raising of concerns in the workplace. In 2013, NHS Wales introduced an all-Wales ‘Raising Concerns (Whistleblowing)’ policy, replacing earlier policies in Health Boards and NHS Trusts. An addendum to the policy reflected legislative changes which came into effect 25 June 201. A full review of the policy is planned for 2014.

The policy encourages employees to report any issues of concern and advocates a culture of openness. Whilst the numbers of disclosures being formally channelled through the Raising Concerns policy are generally low, staff are reporting concerns through line management arrangements and through other policies. However, this makes it difficult for NHS bodies to collate concerns, analyse trends or protect individuals under the law from detriment.

There is scope to increase awareness of the new policy within local NHS bodies in Wales. This will promote its use and demonstrate top management’s commitment to addressing staff concerns. There is also scope to improve training for those charged with investigating concerns and providing effective feedback to concerned staff members.

The NAO has recently reviewed the quality of whistleblowing policies in government departments and has found opportunities for improvement which are set out in its January 2014 report. The focus of the NAO’s work will in due course will look at how organizations provide the best conditions to encourage people to come forward to raise a concern.

Over the last year, we continued to work closely with the three main inspection and regulation bodies in Wales – Estyn, the Care and Social Services Inspectorate Wales and Healthcare Inspectorate Wales. Our Joint Inspectorate website gives more information about our collaboration. In late 2013 we established a small task and finish group to look at how we can work more closely on whistleblowing. We will share our findings and actions with you in the next WAO Whistleblowing Update.

We have also exchanged examples of working practices with the Northern Ireland Audit Office and will look to improve joint working with other Public Audit Forum members in 2014.

The future for Whistleblowing

Earlier this year the UK’s leading body on Whistleblowing, Public Concern at Work established a Whistleblowing Commission to examine the existing arrangements for workplace whistleblowing and make recommendations for change. The Commission gathered evidence on five key aspects of whistleblowing:

- Attitudes to whistleblowing: From individuals, organisations and wider society;
- Law and policy: Is it adequate and effective?
- Regulators: Should they be doing more?
- Rewards: How can whistleblowing be incentivised?
- Tribunals: Are they protecting whistleblowers and society at large?

The WAO submitted its views to the Commission. The Commission published its findings on 27 November 2013; a copy of the full report can be accessed here at Public Concern at Work’s website. Our blog on the launch event is available to read here.

The Commission’s short report is well worth a read. The WAO gets a mention in paragraph 41.

41 ‘Respondents to our consultation (including the Bank of England, the Civil Aviation Authority, the Financial Conduct Authority and the Wales Audit Office) were overwhelmingly supportive of regulators taking more of an interest in the arrangements of the organisations they regulate’.
So what has the Whistleblowing Commission come up with after six months of evidence gathering and deliberation?

The government is asked to adopt the Commission’s Code of Practice for whistleblowing in the workplace. It is recommended that this Code should be taken into account by the courts and tribunals when whistleblowing issues arise.

From our perspective alongside other regulators, we encourage the adoption of the Code at our audited/regulated bodies. Regulators should also be more transparent in how they handle whistleblowing disclosures.

Other recommendations are aimed to:

- prevent the blacklisting of whistleblowers;
- strengthen anti-gagging provisions in the law;
- improve training for tribunal members to handle whistleblowing claims effectively; and
- strengthen and clarify the legal protection for whistleblowers.

Concerned about something happening in the WAO?

Our Whistleblowers Charter hosted on our intranet (the ‘Hub’), sets out how, as an employee of the WAO, you can raise a concern about something happening at work. The Charter has been updated for recent legal changes – remember to make a protected disclosure your concern must be in the public interest.

The numbers of concerns raised have traditionally been very low. A small number of issues have been raised in 2013 in relation to potential conflicts of interest and income recognition arrangements which have been followed up and reported upon by appropriate means. Those staff coming forward and raising their concerns responsibly about these matters have made a valuable contribution to improving the governance of the WAO.

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 WAO, how we can support improvement or have any comments or feedback about this update please get in touch at whistleblowing@wao.gov.uk or contact Ian Hughes on 07976 315933.