

Government starts the ball rolling on reform of UK whistleblowing laws

On 27 March 2023 the Government announced the launch of a review of the current UK whistleblowing legal framework. In this briefing we take stock of what we know so far and what it means for employers.

The last of overhaul of the UK's whistleblowing framework took place in 2013, when a number of major changes were introduced, including:

- the requirement that disclosures would only qualify for protection where the worker reasonably believed the disclosure to be in the “public interest”;
- the removal of the requirement that disclosures had to be made in “good faith” (but with provision for reduced compensation if the disclosure was not made in good faith);
- employees and agents became personally liable for detriments against whistleblowers and, in turn, employers and principals could be vicariously liable for this; and
- the inclusion of various NHS contractors in the definition of “worker” for whistleblowing purposes (and a power to bring further categories of people within

that definition).

In the decade since these changes, there have been calls for further upgrades to the framework. In 2021, Protect, the whistleblowers' charity, launched the "Let's Fix Whistleblowing Law" campaign, in which it called for the expansion of the scope of whistleblowing protection to the self-employed, non-executive directors, trustees and governors, volunteers and job applicants. It also called for the introduction of a requirement for employers to have internal speak-up arrangements (currently only employers in certain regulated sectors are obliged to have such procedures) and the extension of time limits for whistleblowers to bring claims in the employment tribunal.

Also in 2021, the [Office of the Whistleblower Bill 2021-22](#) was introduced to Parliament. The Bill incorporated the recommendations made in a [2019 report](#) by the All Party Parliamentary Group on Whistleblowing. The Bill made provision for the creation of an "Office of the Whistleblower" which would have various powers including to maintain a fund to support whistleblowers and provide financial redress to individuals whose whistleblowing had harmed the individual's employment, reputation or career. However, as a Private Members' Bill, it did not complete its passage through Parliament. However, another Private Members' Bill – the [Protection for Whistleblowers Bill 2022 -23](#) – is currently on its passage through Parliament and seeks, amongst other things, to introduce an Office of the Whistleblower, and to make the mistreatment of whistleblowers a criminal offence.

What is the purpose and scope of the review?

The purpose of the review is to take stock of the existing whistleblowing framework and consider whether it is meeting its original objectives, namely to:

- provide a route for workers to blow the whistle about certain types of wrongdoing;
- protect those who have blown the whistle from detrimental treatment and/or dismissal, and provide a route of redress where it does happen; and
- support wider cultural change, in which the benefits of whistleblowing are recognised and promote action by employers and others.

The terms of reference of the review state that the review will look at the following core questions:

- How the whistleblowing framework facilitates disclosures.
- How the whistleblowing framework protects workers (and the review will also consider the definition of “worker” for whistleblowing purposes).
- Whether information about whistleblowing is available and accessible to workers, employers, prescribed persons and others.
- What have been the wider benefits and impacts of the

whistleblowing framework on employers, prescribed persons and others.

- What best practice looks like in terms of responding to disclosures.

To some extent, these questions dovetail with some of the calls for further reform, such as the extension of protection to further categories of people and the need for mandatory internal whistleblowing procedures. However, no mention is made of the introduction of an Office of the Whistleblower or the introduction of a new criminal offence.

What are the next steps?

It is said that the review will be led by the Department for Business and Trade (**DBT**) and will “investigate the roles and perspectives of the actors involved [in whistleblowing] such as workers, employers, regulators and tribunals”. This suggests that employers will be given the opportunity to submit their views on the core research questions, and their wider thoughts on the whistleblowing framework. However, it is not yet clear how the DBT intends to gather this information. Ordinarily, interested members of the public would be able to submit responses to the questions raised by way of an online form or by email. We will provide further updates about this in our future newsletters.

The findings of the review will provide an up-to-date evidence base to inform Government policy in this area. Yet no commitments are made regarding future legislative reforms. Indeed, it is uncertain whether any such reforms could be

achieved before the next election. The review is expected to conclude by Autumn 2023. It will then take several months to consider the findings and decide upon next steps. Before any new laws are introduced, it is highly likely that a public consultation on any proposed reforms would be needed, which could take anything from six to twelve months to conclude (judging by the Government's recent track record on responding to consultations on employment law matters).

Therefore, it seems unlikely that any new legislation would be presented to Parliament before Autumn 2024 at the earliest. With the next General Election taking place by no later than 28 January 2025 (and widely expected to take place earlier than this), it is not at all clear whether legal reforms could be achieved in time. That said, the findings may lead to reforms after the election, whichever party assumes power. For now, employers should monitor this development and consider submitting their views, but there is no need to change internal practices or procedures just yet.

[Review of the whistleblowing framework – terms of reference](#)

BDBF is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.