
Workplace whistleblowing post-Brexit

A panel of experts has called for UK whistleblowers to be given greater protection from potential retaliation, to keep pace with post-Brexit measures in the European Union

At one point the UK was regarded as a world leader when it came to the regulatory protections afforded to whistleblowers.

Introduction of the Public Interest Disclosure Act in 1998 was lauded as a pioneering piece of legislation that put the UK way ahead of the curve. But more than 20 years later, with the legislation widely viewed as needing reform, that position looks doubtful.

While organisations and individuals across European Union member states will benefit from the introduction of the EU Whistleblowing Directive in December 2021, Brexit means the UK must set out its own regulatory path. And there are now calls for the creation of an Office of the Whistleblower.

But exactly how could this legislation provide a better way forward for UK whistleblowers?

Experiences of a UK whistleblower

For all that the Public Interest Disclosure Act was designed to protect whistleblowers from harm or mistreatment, it's clear in many cases this is exactly what UK whistleblowers in both the public and private sector continue to experience.

When Amjad Rihan, part of an audit team with global accounting firm EY, discovered the organisation had covered up alleged evidence of smuggling by an organised crime gang in 2012, his reward for

£25bn

Cabinet Office estimate of the annual cost of undetected fraud and error in the public sector, outside the tax and benefits systems

HOUSE OF COMMONS, 2021



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Mary Robinson MP,
Chair of the All-Party
Parliamentary Group for Whistleblowing

blowing the whistle was to lose his job. It was only eight years later that Rihan was awarded £8.6m in damages by the High Court in London.

"In the meantime, his family nearly broke up, he couldn't find any work and the protections that were there in this international case didn't work for him," explained Andy Verity, BBC economics correspondent and chair of a recent NAVEX panel on workplace whistleblowing.

For MP Mary Robinson, chair of the All-Party Parliamentary Group for Whistleblowing, it's an all too familiar outcome. "We hear stories like this on a regular basis," she told the panel. "Very often they're ordinary people in society, in work, who have this experience of doing the right thing as they see it and blowing the whistle, but being harassed out of employment and work."

In one case, Robinson recalled, a woman who had reported sexual misconduct in an organisation found herself subject to continued harassment by colleagues who refused to speak to her and even subjected her and others to gaslighting tactics. As Robinson summed up: "That is something we have to tackle." But how?

Transforming culture around workplace bullying

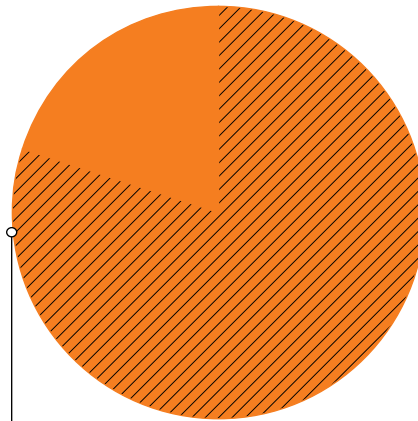
Though regulation will have a part to play in challenging such treatment of whistleblowers, it is workplace culture that is most significant.

As Lloydette Bai-Marrow, founding partner at Parametric Global Consulting and fellow panelist, explained: "Culture is at the crux of any effective change we are going to make; the law is a starting point, but it is just the beginning."

Central to that culture shift is the need for organisations to realise the positive power of whistleblowing where managed correctly and the fallout where it's not. "If organisations don't deal with these issues, and don't deal with whistleblowers in the correct way, the reputational damage is huge," added Bai-Marrow. "The consequence for their bottom line is significant."

This was echoed by Robinson: "We need to highlight the reasons why it is good for organisations to change their culture." Too often companies are concerned with the value of the organisation itself, rather than exposing wrongdoings that may be happening within. "We need to have organisations that fully understand the reasoning behind exposing wrongdoing and can then embrace that as a positive," said Robinson.

The NHS is one such example of a shift in approach. Following a 2015 report that highlighted how NHS culture did not always



80%

of UK workers agree employers should be sanctioned or fined for breaking existing whistleblowing policies

YOUNGOV, 2021

encourage speaking up, the National Guardian's Office was created. The office now leads, trains and supports a network of more than 700 so-called Freedom to Speak Up Guardians across England and conducts case reviews where it appears that speaking up within the NHS has not been handled according to best practice.

It's this kind of cultural change that will make the most meaningful difference for whistleblowers in the UK.

Role of the Office of the Whistleblower Bill

But for all that a change in both organisational and societal culture will be instrumental, there is also a role for regulation to play. That's the idea behind

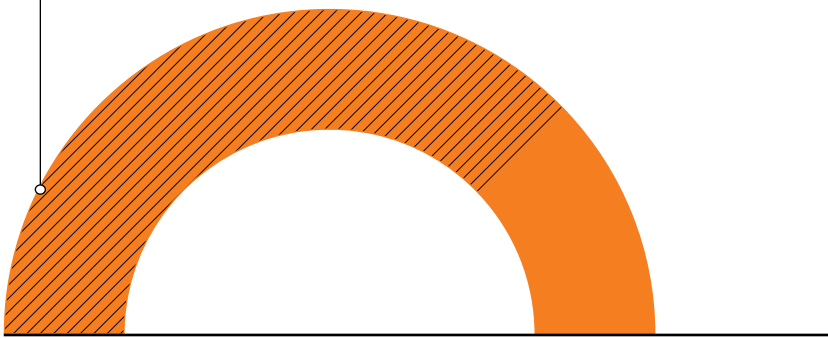


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76%

of UK workers want a legal duty on employers to investigate whistleblowing concerns raised by employees

YOUNGOV, 2021



They may have to move out of where they live, they may have their lives threatened; we have to provide a safety net

the Office of the Whistleblower Bill, which aims to bring the UK up to EU standards and even to exceed them in some areas.

Having already been introduced to the House of Lords, it's hoped the bill could soon make its way for debate in the House of Commons. On the one hand, Robinson recommended cautious optimism. "We have to be realistic that private members bills very rarely make their way into legislation," she said. On the other, there are signs of a change in attitude in government, with "increasingly supportive" conversations with politicians on the need for some form of change.

Were it to be introduced, Georgina Halford-Hall, chief executive of Whistleblowers UK, who also joined the NAVEX panel, insisted it would be a game-changer. "This is going to be the single most significant piece of legislation that we've had for years, because it is going to recalibrate not only how we think about whistleblowers, but how we treat those people who retaliate against them."

But what exactly are the changes proposed? Broadly speaking, it would follow all international best standards, said Halford-Hall, including those set out by the International Bar Association. More particularly, it would create an offence relating to the mistreatment of whistleblowers, holding to account those managers who receive complaints, but fail to take relevant actions.

It would also go one step further than the protections set to be introduced by the EU directive, by providing protection to those who witness wrongdoing and face retaliation too.

Critically, it would be independent of government and regulators, according to Robinson. "The bottom line is an Office of the Whistleblower will not be effective unless measures are in place to reassure people it is entirely independent and operating in a way that evokes and reflects the highest standards. This has to be people first and issues second," she said.

In so doing it would seek to share the sometimes heavy burden of speaking out, added Bai-Marrow. "The idea there is a body responsible for being a central hub for setting standards, for ensuring best practice is followed, for providing guidance and support, will help to share the load," she said. "Especially if you're taking on the might of a multinational organisation."

Done right, it will signal a culture change at the highest echelons of society: the government, Halford-Hall pointed out. "This office has to be open and responsive, and demonstrate to the public that government is serious about identifying trends and acting on early alerts," she said.

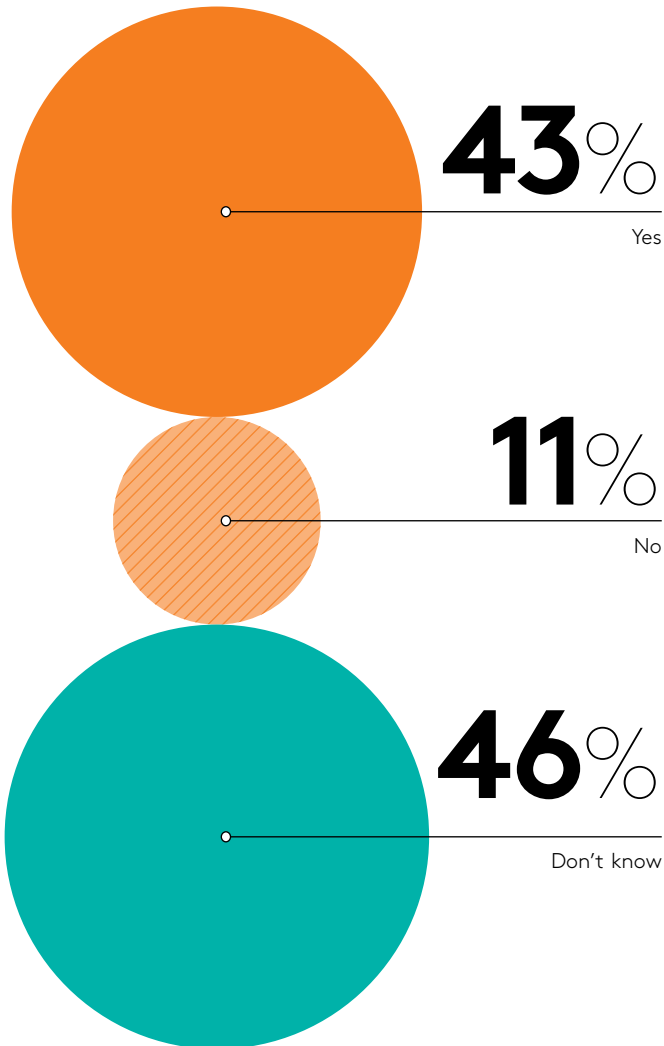
Rewards and NDAs: other potential changes after Brexit

Now outside the EU, there are other broader opportunities for the UK to rethink the way they protect and support whistleblowers. Take the question of rewards: should the UK consider financial rewards to encourage people to speak out?

"It's not seen as a very British thing to do," said Bai-Marrow. But it's common practice in many other countries. In the United States, for example, the Securities and Exchange Commission just surpassed \$1bn in payments.

UK employees are often unaware of their workplace's whistleblowing policies

Does your employer have a whistleblowing policy?



YOUNG & RUBICAM, 2021

In looking at the pros and cons of such a move, we need to consider the risk whistleblowers face, she added. "Let's look at what they potentially risk, which is career suicide in most cases. They may have to move out of where they live, they may have their lives threatened; we have to provide a safety net."

There are also complex considerations at play with non-disclosure agreements (NDAs), the use and abuse of which came to light during the Me-Too scandal and that have been subject to increased scrutiny both in America and elsewhere internationally since. California, for example, recently signed into law the Silenced No More Act that empowers workers subject to discrimination and harassment to speak out.

Should the UK go one step further and look to ban NDAs? For Halford-Hall, it's an easy "yes". She said: "We have to ban them. The hiding of wrongdoing, the silencing and the mental health issues of people who are trying to speak up: it's just another obstacle."

Takeaways for organisations going forward

So, what key things should organisations bear in mind with whistleblowing?

- ① Where allegations of wrongdoing occur, organisations should support what Bai-Marrow called a "good faith investigation". This means providing access to the very top level of an organisation and allowing investigators a broad scope to pursue all reasonable lines of inquiry.
- ② Use this opportunity, ahead of legislation, "as an MOT test for your own policies and procedures", Halford-Hall added. "Look at whether or not they work. Be honest with yourselves."
- ③ Finally, consider supporting the work of the All-Party Parliamentary Group for Whistleblowing. "Help make the policy of the future, rather than having it imposed," said Halford-Hall.

[Find out more on NAVEX's Year of the Whistleblower content hub](#)

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