

The Campaign for Freedom of Information

Public Interest Disclosure Bill

Summary of Responses to the Consultation Paper issued by Public Concern at Work on behalf of Mr Richard Shepherd MP

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Public Interest Disclosure Bill - Compensation Options

Respondents favouring the Shepherd approach

1. Confederation of British Industry
2. Institute of Directors [1]
3. Trades Union Congress
4. Union of Independent Companies
5. Engineering Employers Association - Northern Association
6. Consumers Association
7. Standard Chartered plc
8. Diageo plc
9. GPMU, union
10. NIPSA, union
11. MPSA, union
12. Institute of Chartered Accountants in England & Wales
13. Association of Chartered Certified Accountants
14. British Medical Association
15. Royal College of Midwives
16. English National Board of Nursing, Midwifery & Health Visitors
17. Law Society of Scotland

18. Association of Community Health Councils
19. Employment Law Bar Association
20. ELA
21. Free Representation Unit (+ basic)
22. Freedom to Care
23. Slough Borough Council Liberal Group
24. S. Lakha, Barrister
25. John Bowers, Barrister
26. Alan Merkel, solicitor (+ basic)
27. Lucy Vickers
28. David Lewis
29. R Low
30. E Feldman
31. K Schroder
32. Dr G Burston
33. Dr E Sternberg
34. Lynne Dawson

Respondents favouring the HMG variant :

1. Royal College of Nursing (special & basic & all financial losses)
2. Dr P Tomlin (2 or 3 years salary without cap)

Respondents favouring the HMG approach, as is

1. CoOp Wholesale Society (but raise the max sum for weekly pay)
2. Institute of Personnel Development
3. Legal and General plc
4. Labour Relations Agency (NI)
5. Slough Borough Council
6. Mr David Roberts

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1. If not normal awards, IoD says Shepherd approach as HMG proposal is 'wholly inappropriate'.

Public Interest Disclosure Bill - Comments

SCOPE

Include the police

Association of Chief Police Officers
Police Complaints Authority
Health & Safety Executive (& Home Office as to h&s issues)
Justice
Employment Law Bar Association
Union of Independent Companies
Prof Ian Kennedy
Standing Advisory Committee on Human Rights (Northern Ireland)
Mr R Low, internal auditor
Mr D Roberts
Mr D G Birch

Cover other individuals

George Staple QC		
CF Dehn QC		
Mr Birch		
Dr Burston	*make extent through NHS very clear*	
Association of Community Health Councils		*make extent through NHS very clear*
Councillor Liz Mammatt	*councillors and volunteers*	
Institute of Chartered Accountants for England & Wales		
CoOp Wholesale Society		
Community Service Volunteers	*volunteers*	

Extend to workers outside the UK

TUC
Shabbir Lakha

Extend to victimisation of not getting a job

CF Dehn QC
Lucy Vickers

Secrecy offences, bring into Bill

Prof Ian Kennedy
John Guy

Exclude / limit malpractice overseas

Standard Chartered	
CBI	
NatWest	
CF Dehn QC	*restrict to an offence under English law*

INFORMATION COVERED

All illegality

Dr Dieseroth	*remove 'a person etc' in 43B(1)(b)*

Confidentiality, problems

BMA	*(medical matter raise first with doctor)*
NatWest	*inward investment risk*
Employment Lawyers Association	*trade secrets and public disclosures*

Malpractice, definition too narrow

Freedom to Care	
David Davies, Fraud investigator	
KPMG	
Burnley Borough Council	*add maladministration and breach of Codes*
Assoc of Community Health Councils	*dignity and privacy of patients*
TUC	*add self reg codes and public welfare /*

	interest
David Lewis	*danger to welfare*
Lucy Vickers	*gross mismanagement*
LIFFE	*clarify regulatory and self-regulatory breaches*

Malpractice, definition too wide / loose

BMA	
Dr E Sternberg	*qualify by serious*
Institute of Personnel Development	*as to environment*
Employment Lawyers Association	*likely to cover up;* and *miscarriage of justice;*
Legal & General	*any legal obligation too wide*

Inherently dangerous activities, review or delete 43B(3)

HSE
TUC
Dr Dieseroth
Linda Dawson
Standing Advisory Committee on Human Rights (Northern Ireland)
Employment Lawyers Association

LEVEL OF CONCERN

Draft level of belief appropriate in each subsequent clause

Employment Lawyers Association

Reasonable belief for internal reports, unnecessary

Employment Law Bar Association

Reasonable belief test, too weak

Association of Chartered Certified Accountants

Time limit for employer to respond, desirable

Employment Law Bar Association

MOTIVES

Good faith requirement, remove

D Lewis
Dr E Sternberg
Freedom to Care
Management & Professional Staff Association
TUC

L Vickers	*review combination with reasonableness*
CF Dehn QC	*clarify*

Personal gain test, remove or narrow

Freedom to Care
Dr E Sternberg
Institute of Chartered Accountants in England & Wales

Dr Dieseroth	*amend to 'only for the purposes of personal gain and has not sold the info'*
Roberts Croston	*ditto*

Personal gain test, too narrow

Employment Lawyers Association	*Does it catch payments to families?*

PARTICULAR PERSONS

Union officials and safety reps, equate with lawyers

TUC
GPMU
Standard Chartered plc (strong inference)
Dr P Tomlin
NB use obtaining not seeking in line 49 - TUC

Auditors, treat like internal disclosures in a new clause

Institute of Chartered Accountants in England & Wales

MPs, protect disclosures to

Dr P Tomlin
Northern Ireland Public Service Association

PROTECTED DISCLOSURES

Clause 43G(2)(a), superfluous

Confidential response

Exceptional serious provision,

Confidential response	*go first to regulator*
Legal & General	*too uncertain*
Employment Law Bar Association	*serious & imminent*
CBI	*subject to a reasonableness test*

Internal first in all cases, unless very good reason

LIFFE

PRESCRIBED PERSONS

Include the following

Association of Community Health Councils	*all health regulators*
FSA	*FSA*
FSA	*SROs pro tem*
LIFFE	*SROs pro tem*
HSE	*HSE*

Add or 'any body reasonably thought to be prescribed'

Institute of Chartered Accountants in England & Wales

GAGGING CLAUSES

Effect on settlements, unreasonable, needs clarification

CBI	
Employment Lawyers Asssociation	*unworkable so use precedent of s221(2) TULRA*

Extend clause to all individuals,

Institute of Chartered Accountants in England & Wales

Extend

CF Dehn QC	*after disclosure 'or attaches conditions / limits thereto going beyond this Act'*

REMEDIES

Reemployment orders the norm

TUC
NIPSA (union)

LEGAL ISSUES

Burden of proof / Causation, hard to prove

Diageo
Dr Dieseroth
Freedom to Care

Interim relief, 7 day period too short

Employment Law Bar Association *at least give a discretion*
Kate Schroder

Protected disclosures should be privileged in libel

David Lewis
David Davies, Fraud Investigator, KPMG

CRIMINAL SANCTIONS

Make victimisation a crime

Institute of Chartered Accountants in England & Wales

Require reference to Act in all worker contracts

John Guy

POLICY ISSUES

Discrimination model preferable

Many repondents made this comment or analogy

Insurance, make void

Dr Dieseroth

Insurance, make compulsory

Association of Chartered Certified Accountants

Statutory Code of Practice needed

CWS

Confidential advice service needed

CWS
ACAS
Dr Burston
Association of Community Health Councils
Management & Professional Staff Association

Repeal ERA sub sales 44(1)(c) and 100(1)(c)

HSE

Requirement to publish data on company scheme

R Low, internal auditor 3i

Impact on benefit claims, consider

Kate Schroder
D Birch

Money, please

Council on Tribunals
ACAS