



Making whistleblowing work



Wales Audit Office

Overview



- ❑ Whistleblowing – what it is and why it matters
- ❑ PCaW and our approach
- ❑ Myth busting – the real experience of whistleblowing
- ❑ Policy considerations
- ❑ The law and practice
- ❑ Promotion and training

What is whistleblowing?

A worker raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and/or externally (i.e. regulators, media, MSPs/MPs)

Source: PCaW

Grievances and concerns

Grievances

risk is to self

need to prove case

rigid process

legal determination

private redress

Concerns

risk is to others

tip off or witness

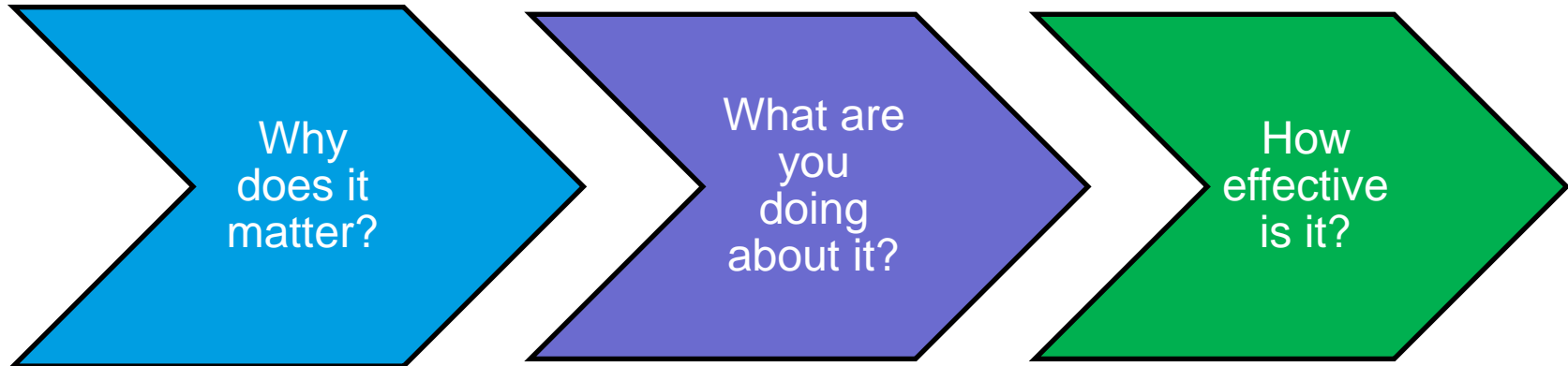
pragmatic approach

accountability

public interest

Group work:

Whistleblowing **in your organisation**



Whistleblowing headlines

The whistle was blown, but Enron never heard it

EC clears whistleblower who exposed Brussels fraud

Maxwell may have transferred £400 million without authority

Fraud office inquiry into pension fund

Canoe death firm 'had been warned over safety'

Why I had to blow the whistle on heart unit

Ferry firm admits doors were open

...the tragedy of Zeebrugge

Mid Staffs: Helene Donnelly & Julie Bailey honoured

Two women who led the fight against one of the most shocking failings in NHS history. have been recognised in the New Year honours list.

30 December 2013
BBC News

Ryanair sacks pilot over Channel 4 Dispatches Programme

Ryanair has sacked a senior pilot and is preparing legal action against him over "defamatory" comments he made about the airline's safety policy in a Channel 4 documentary.

15 August 2013
The Telegraph

NSA whistleblower Edward Snowden is nominated for Nobel Peace Prize

Former government contractor could join President Obama, Henry Kissinger and Nelson Mandela in historic list.

29 January 2014
The Independent



Public Concern **at Work**

PCaW is an independent charity, founded in 1993.

We provide:

- free confidential advice** to people concerned about wrongdoing in the workplace who are unsure whether or how to **raise their concern**;
- training** to organisations on policy and law of whistleblowing;
- campaign on **public policy**; and
- promote **public interest whistleblowing** laws.

Advice line

We have advised over **18,000** whistleblowers to date.

Top sectors:
health, care, education, charities, financial services.

Top concerns:
financial malpractice, public safety and patient safety.



Public Concern at Work - Advice

- Key questions:
 - Who or what is at risk?
 - Who knows?
 - What is stopping you from raising this?
- Legally privileged
- Practical and solution focussed
- Empowering individuals
- Working together with unions



Is it a **dilemma** **Whistleblowing**
for your staff?

The dilemma

Keep quiet?



A concern
about
malpractice

It's only a suspicion
No-one else can be bothered
It'll only cause trouble
It suits me
I don't want to be a sneak

The dilemma

Keep quiet?



Raise internally?

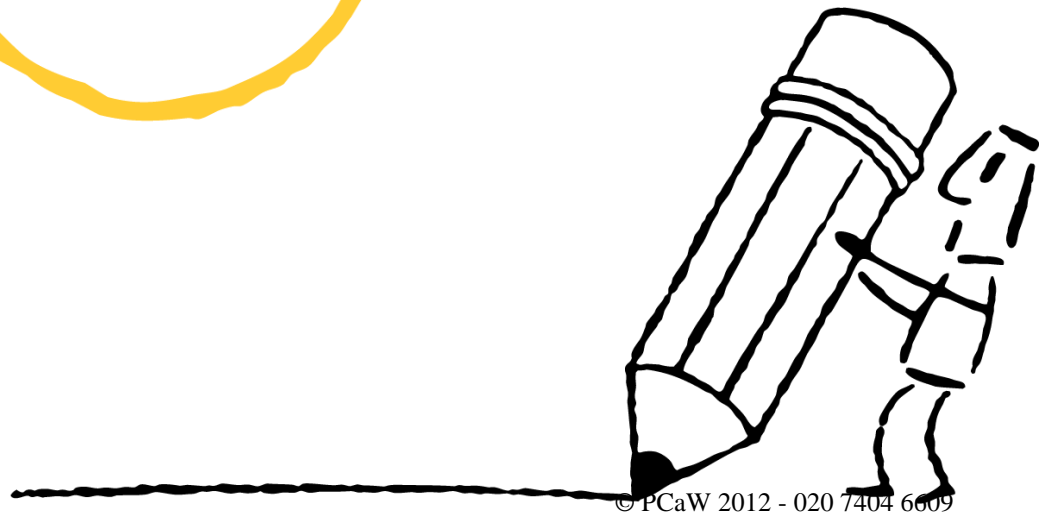
I'm worried about telling my manager?
Who can I trust?
What if I'm required to prove it?
What if my colleagues find out it was me?
It won't make a difference



The dilemma



Who?
How?
What will they do?
What about me?





UNIVERSITY
of
GREENWICH

**public
concern**
at work

the whistleblowing charity

WHISTLEBLOWING: THE INSIDE STORY

A study of the experiences of 1,000 whistleblowers

Myth 1: Whistleblowers are persistent

- ❑ Most commonly whistleblowers raise a concern only **once (44%)** and a further **39%** go on to raise their concern a **second time**. Majority (83%) will only try internal options once or twice and then give up
 - Small window of opportunity to address wrongdoing
 - Importance of front line and middle management training
- ❑ Very few persist - **only 22** individuals from our research went on to raise their concern **4 or more times**.
- ❑ Worryingly **74%** say their **concern was ignored**

Myth 2: Whistleblowing is always going outside

- ❑ 83% of whistleblowers blow the whistle internally.**
- ❑ Only 0.5% first raise their concern with the media.**
- ❑ 81%* of workers would raise the information with their employers if they had a concern about possible corruption, danger or serious malpractice at work**

**Survey of working age adults undertaken between 13th - 14th July 2015 by YouGov Plc.*

Myth 3: Whistleblowers are always trashed

- ❑ **60% of whistleblowers did not report any response from management** (either negative or positive)
- ❑ **Of the 40% who told us of a response, the most common action is formal action short of discipline and 15% were dismissed**
- ❑ **An overwhelming majority of British workers 74%* view the term whistleblower as positive or neutral**

**Survey of working age adults undertaken between 13th - 14th July 2015 by YouGov Plc.*

Myth 4: Whistleblowers are junior employees

- ❑ **53%** are **skilled or professional** workers
- ❑ **39%** had been working for their employer for **less than two years**
- ❑ **Junior** employees who raise concerns are more likely to be **ignored**
- ❑ **Senior** employees are more likely to be **dismissed**

Myth 5: Whistleblowing is unusual

- ❑ **1 in 10** workers said they had a concern*
- ❑ **Two thirds** of workers raised their concern
- ❑ Of those that **felt unable** to raise their concern, most common barriers are fear:
 - **nothing will be done**
 - **reprisal**

**Survey of working age adults undertaken between 13th - 14th July 2015 by YouGov Plc.*

Public Interest Disclosure Act



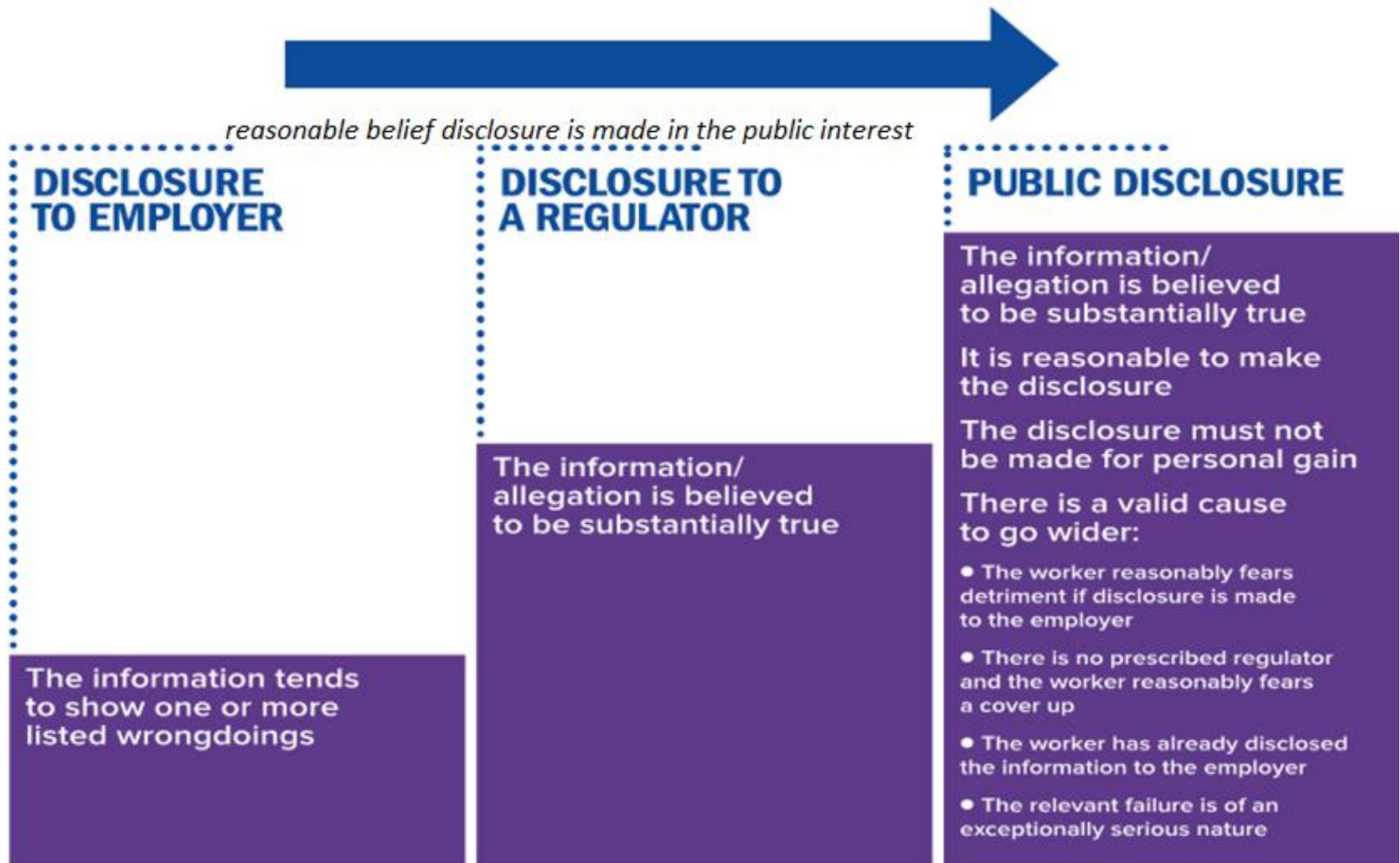
Public Interest **Disclosure Act**

- Promote and protect **open** whistleblowing
- Tiered disclosure regime, which emphasises **internal whistleblowing**, regulatory oversight and recognises **wider accountability**
- Signals a **change in the culture**
- International **benchmark**

Scope of the **protection**

- Applies to almost **every worker**
- Wide definition of **wrongdoing**
- Application **overseas**
- **Compensation is unlimited**
- Impacts on **gagging clauses** and secrecy offences

The Public Interest Disclosure Act 1998



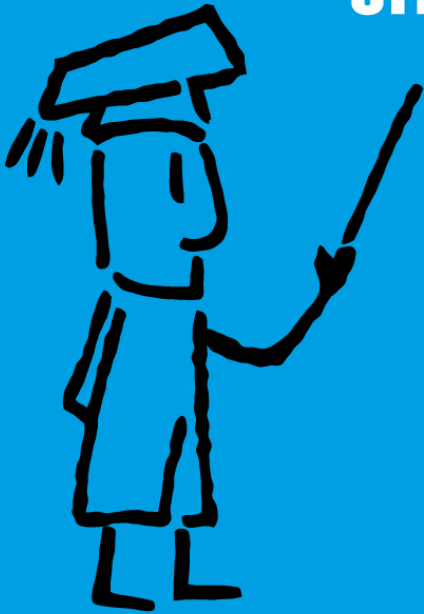
Lord Nolan's praise for 'so skilfully achieving the essential but delicate balance between the public interest and the interest of the employers'.

Changes to PIDA

- ❑ **Good faith only relevant to compensation** when a claim is won (the tribunal **may** deduct **up to 25%** of the compensation if found the claimant made the disclosure in bad faith)
- ❑ **Liability for co-workers who victimise whistleblowers.**
 - Employers can be held vicariously liable for these employees.
 - Reasonable steps defence for employers.
- ❑ **MPs are now prescribed persons under PIDA** (i.e. same legal tests for disclosure to a regulator)
- ❑ **Job applicants**

Policy and practice

effective whistleblowing arrangements



Where we need to be

our people need to know that there is a **safe alternative** to silence

we need to make clear that **whistleblowing concerns** differ from **grievances**

ideally our **managers should solicit** and be open to whistleblowing concerns

we need to demonstrate that stakeholders and regulators can have **confidence** in our **good governance**

Policy checklist

scope – people & whistleblowing **concerns**

option to raise outside line management

sanctions **against reprisal** and **abuse**

access to **independent advice**

external disclosures

Key issues

raising concerns with **whom**?

- line managers / senior officers / hotline

raising concerns **how**?

- openly / confidentially / anonymously

raising concerns **when**?

- when a suspicion or proof?

Practicalities

demonstrating **leadership commitment**

which **function should lead** and be involved?

what about **subcontractors**?

consultation/communication/**awareness**

management **briefing/training**



Whistleblowing arrangements
Practice and audit

Group work

You have been asked to review your whistleblowing arrangements and report to the Audit Committee on its effectiveness.

What information do you **need** and **why**?

Code of Practice **Audit and Oversight**

Conduct periodic audits of effectiveness of whistleblowing arrangements:

- The number and types of concerns raised and outcomes of investigations
- Feedback from individuals who have used the arrangements
- Complaints of victimisation
- Complaints of failure to maintain confidentiality
- Other existing reporting mechanisms
- Adverse incidents that could have been identified by staff (e.g. consumer complaints, publicity or wrongdoing identified by third parties)
- Any relevant litigation
- Staff awareness, trust and confidence in arrangements



Contact us

Cathy James

cj@pcaw.org.uk

+ 44 20 7 404 6609

Further information at www.pcaw.org.uk

**More information on
whistleblowing can be found at
www.pcaaw.co.uk**

