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Whistleblowing: the UK perspective

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Why whistleblowing matters

The whistle was blown, but Enron never heard it

EC clears whistleblower who exposed Brussels fraud

Canoe death firm 'had been warned over safety'

Maxwell may have transferred £400 million without authority

Fraud office inquiry into pension fund

Ferry firm admits doors were open

Why I had to blow the whistle on heart unit

...the tragedy of Zeebrugge

Public Concern at Work

PCaW is an independent charity, founded in 1993.

- provide free confidential advice to people concerned about wrongdoing in the workplace who are unsure whether or how to raise their concern
- train organisations on whistleblowing, accountability and risk management
- campaign on public policy, and
- promote public interest whistleblowing laws.

Public Interest Disclosure Act 1998

The UK approach

UK's Public Interest Disclosure Act 1998 (PIDA), praised by Lord Nolan for '*so skilfully achieving the essential but delicate balance between the public interest and the interest of employers*'

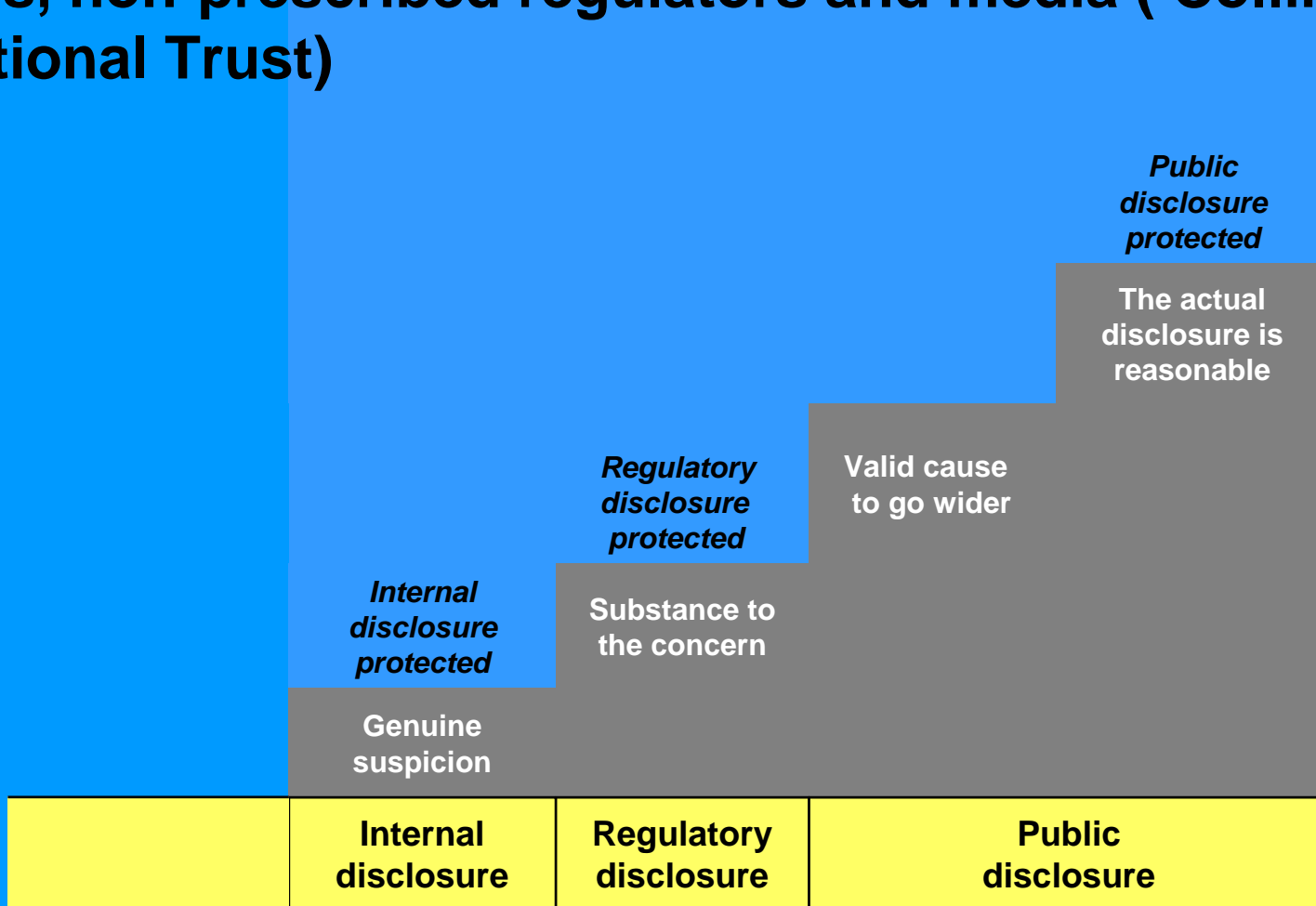
- signalled a change in culture
- applies to public, private and voluntary sectors
- promotes & protects public interest whistleblowing,
- encourages open rather than anonymous whistleblowing
- has a stepped disclosure regime that emphasises internal accountability, strengthens regulatory oversight and recognises public accountability

The Scope of PIDA

- Covers almost every worker- there is no minimum qualifying period for protection
- Wide definition of malpractice:
 - o criminal offence
 - o breach of legal obligations
 - o health and safety
 - o environmental damage
 - o miscarriages to justice
 - o And attempts to conceal any of the above
- All disclosures must be made in good faith (Street v Derbyshire)

The Scope of PIDA

Covers internal, regulatory and wider disclosures to MPs, non-prescribed regulators and media (*Collins v National Trust*)



The Scope of PIDA

- Reverses the burden of proof on reprisal- employers have to show the reason for dismissal
- Outlaws both victimisation and dismissal. Has been extended to cover post-employment detriment (*Woodward v Abbey National*)
- Provides uncapped damages
- Impacts on gagging clauses and secrecy clauses

Practical benefits

As to purpose and effect, the legislation

- reassures workers there is a safe alternative to silence
- sees the whistleblower as a witness not a complainant
- encourages all good organisations to solicit and address concerns
- protects justifiable and reasonable media disclosures
- promotes the public interest, and
- seems to work in practice.

Is PIDA working?

- 1497 PIDA claims made at employment tribunals in 2007/8 (4% of all unfair dismissal claims)
- 74% of PIDA claims settle or are withdrawn
- Of those that go to a full tribunal hearing, whistleblowers win 28%
- Highest tribunal award £5 million, and
- PIDA retains support of business, union and regulatory interests.

Is PIDA working?

2007 YouGov Survey

- 85% said they would blow the whistle internally. 32% said not sure what they would do if felt unable to raise internally. Only 12% said they would not raise externally.
- High number of respondents thought the word whistleblower was praiseworthy

2007 Ernst & Young Survey

- 1300 senior executives in 13 European countries asked questions about attitudes to whistleblowing. 86% of UK respondents said staff would feel able to blow the whistle compared with 54% across Europe.

Best Practice: selection of UK sources

- Committee on Standards in Public Life
 - Nolan Committee (1995)
 - 10th Report, Getting the Balance Right (2005)
- Combined Code on Corporate Governance (2003)
- BSI Code of Practice on Whistleblowing Arrangements (2008)

PCaW's approach

Whistleblowing
demonstrates
and reminds us

