Whistleblowers in Their Own Words

What's wrong with UK whistleblowing law

& how it needs to change

18 October 2018

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What's wrong with UK whistleblowing law and how it needs to change

By Minh Alexander and Clare Sardari, NHS whistleblowers 18 October 2018 (updated 22.10.2018)

"PIDA provided protection not for me but for my then employer"

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INTRODUCTION

UK whistleblowing law, the Public Interest Disclosure Act 1998 (PIDA) was an innovation when it was first introduced, but it has fallen far behind international best practice. PIDA is wholly ineffective and needs to be replaced.[1]

A comparative study by Blueprint for Free Speech in 2016[2] which set PIDA against international best practice standards of whistleblowing legislation found the Act sorely lacking.

[1] Replacing the Public Interest Disclosure Act https://minhalexander.com/2018/07/18/replacing-the-public-interest-disclosure-act-pida/

[2] Protecting whistleblowers in the UK https://minhalexander.files.wordpress.com/2018/01/blueprint-protecting-whistleblowers-in-the-uk-a-new-blueprint.pdf

This paper tells the story of PIDA's failings in UK whistleblowers' own voices, and is part of an initiative on law reform led by whistleblowers who were members of the National Guardian's advisory working party for a fixed term 2017-2018. The initiative has been conducted independently of the National Guardian's Office. It seeks to present evidence from various sources on the vital need for new, radically improved UK whistleblowing law.

SUMMARY

Thirty one whistleblowers who have litigated under PIDA gave first-hand accounts of the problems with the law. Their individual accounts and ideas for change are listed individually below.

Whistleblowers were invited through an open process to submit brief testimony. The process did not include examination of individual cases and facts, but most individuals were known to the authors or to other whistleblowers.

The whistleblowers came from a range of sectors, public and private, including policing, education, industry, local government, health and social care.

Their accounts collectively reveal failures under PIDA to investigate whistleblowers' concerns, protect them or hold wrongdoers to account. Whistleblowers' feedback and suggestions amount to a call for replacement of the existing framework. A range of suggestions are made for levelling the playing field, which currently is hopelessly slanted against whistleblowers.

PIDA's failure to ensure that whistleblowers' concerns are addressed

A prime concern was PIDA's disinterest in whistleblowers' disclosures:

> ***'…the most astonishing thing to me was that no one is obliged to investigate the concerns raised'. (whistleblower 15)***

Deaths, abuse, theft and gross governance failures are of no interest to a law that focuses only on the employment relationship:

> ***"The ET had no interest in my employer's failures regarding POVA or in not following policies." (whistleblower 6).***
>
> ***"The home's mortality rate quadrupled. Only a fraction of my complaints were investigated by the local Care Trust" (whistleblower 12)***
>
> ***"Theft, abuse, poor care is not an employment issue." (whistleblower 2)***
>
> ***"…the ET judge is only interested in employment issues and can disregard protected disclosures" (whistleblower 20)***

Lack of protection and detriment due to the litigation process itself

The lack of protection from the law was another key feature. Detriment occurs easily and is not corrected under PIDA.

It is arguable that PIDA protects employers, not whistleblowers:

> ***"PIDA provided protection not for me but for my then employer" (whistleblower 9)***

The litigation process itself is a source of detriment:

> ***"Litigation is exhausting, soul destroying, wasteful and bad for all involved. It is often a serious trauma in itself." (whistleblower 1)***
>
> ***"I won at tribunal but it didn't feel like a win I felt battered and left with little confidence about myself." (whistleblower 2)***

PIDA's prejudicial complexity, which disadvantages ordinary people seeking justice, was noted:

> ***"The burden of proof is on the claimant to prove that each disclosure meets a number of legal tests and is therefore "qualifying". This assumes that claimants have an understanding of the law (PIDA) at the time at which those concerns were raised. Most claimants have no knowledge of this highly complex area of law" (whistleblower 9)***

The highly distressing, often futile nature of legal proceedings under PIDA is described in these first-hand accounts. Character assassination and various other tactics by employers to intimidate and punish are recurring issues.

For example, dragging out proceedings, intimidating witnesses, gagging under duress, threatened and actual vexatious cost orders, aggressive appeals to deplete whistleblowers' resources, concealment of evidence, conspiracy and misleading the Court. Whistleblowers expressed concern that frank lies under oath and defamation are tolerated in proceedings.

As an example of fabricated allegations being used as a bargaining tool to remove whistleblowers from organisations, whistleblower 16 gave this report:

> ***"There was a "settlement" on the second day of the Tribunal proceedings…. Incredulously, based on my fight, every single complaint against me (albeit all false) were withdrawn and quashed; which proves they were all false and fabricated"***

Grotesque inequality of arms was reported in some cases, such as the matching of an employer's QC against a care home worker (whistleblower 2). The fact that some whistleblowers might be disadvantaged by illness by the time cases are heard was flagged: ***'…a claimant at tribunal who might be ill or stressed' (whistleblower 24).***

Whistleblowers thought the extreme stress of litigation should be avoided: "*Litigation should be a last resort"* (whistleblower 5). The sense of personal burden upon whistleblowers under PIDA was described. For example:

> ***"The employer was an accountant who covered up. I reported him to the ICAEW and he got a fine. I got a solicitors' bill." (whistleblower 2)***

Highlighting how vulnerable whistleblowers can be, and how dependent they currently are on a complex chain of events, one whistleblower's claim failed because their adviser failed to tick the box on the Employment Tribunal claim form for whistleblowing. (whistleblower 21).

There were indications that Employment Tribunals were not expert enough on whistleblowing. For example, whistleblower 5 was penalised for not accepting a trial return to work related to a loss of trust, when trust is critical to a whistleblower's safety and well-being:

> ***"My remedy hearing failed to account for loss of future earnings because under employment law I had not accepted a trial return to work with my previous employer because of a breakdown in trust."***

There was incredulity from some whistleblowers that despite being accepted as a whistleblower, the Court found reasons to deny any link with detriment:

> ***"At my ET the judge forced my employer to admit that 15 of my 22 allegations were protected disclosures. But said he was not interested in the facts of these allegations, only in whether my employer had a valid reason to dismiss me. The reason accepted for my dismissal 'A breakdown in the relationship.' No consideration as to who was at fault for the breakdown!" (whistleblower 20)***

Failed duty of care and collusion between bodies

A concern was expressed that as long as the law was allowed to be perverted, law reform may be in vain:

> ***"As long as the courts allow them to maintain this state no legal refinement will be effective, but rather, will perpetuate even more complicated legal processes ruled by unaccountable institutions with access to unlimited public funds." (whistleblower 21).***

Many of the whistleblowers reported concerted inaction or collusion between bodies, and regulatory complicity in cover ups and reprisal:

> ***"I went to the local clinical commissioning group, NHS Monitor, the CQC and the Parliamentary Health Service Ombudsman. I then went to the police, the CPS and the Crown Court on every occasion I was ignored. Wherever I turn I found that there was no organisation that would listened to me or able to offer any constructive advice or support." (whistleblower 4)***

"My professional regulator failed to protect me or to hold to account those who made false allegations" (whistleblower 12)

"My concerns were not addressed. I believe there was collusion between managers and between bodies, including ministers and regulators, who breached my anonymity and closed ranks." (whistleblower 15, who discovered collusion and breach of their anonymity through a request under the Data Protection Act)

…Nor do I have any confidence in regulators. They also all let me down." (whistleblower 10)

Some whistleblowers reported seemingly very odd decisions by the Employment Tribunal itself. A police whistleblower who raised concerns about false arrests reported:

"I lost my claim as the employer would not accept my concerns were raised as a whistleblower which the ET panel went along with." (whistleblower 17)

Another whistleblower was devastated by this completely unexpected ruling:

"The Tribunal made a shock, illegal finding against me. It erred in law and held that I whistleblew in bad faith. This allowed my employer to pursue me for £100,000 costs which would have ruined me. I thought about suicide." (whistleblower 22)

Some whistleblowers reported being let down or even coerced by their unions:

"My complaint was investigated under bullying and harassment, my unison rep threatened me into accepting this." (whistleblower 25)

"The union advised drawing a line under the complaint & were not supportive." (whistleblower 6)

There were mixed perceptions about the organisation Protect (formerly Public Concern at Work) which many employers advise workers to contact for advice on whistleblowing. Some whistleblowers did not feel supported:

"I contacted Public Concern at Work (PCAW) but they were frankly hopeless and did nothing to help me" (whistleblower 4)

"I was advised by ACAS and PCAW. They said to let it go, settle for a paltry sum. It was not about money but abuse." (whistleblower 2)

Some whistleblowers reported that the National Guardian's Office and or their local trust Guardian had ignored and let them down:

"I have no confidence in the Freedom To Speak Up project. It failed me completely. Indeed, the non-exec' director with responsibility for whistleblowing has still to contact me… after my dismissal." (whistleblower 10)

"I was sacked following a sham disciplinary, not supported by my Union not supported by Trust Guardian nor by the National Guardian despite there being adequate time to prevent my sacking or at least to have reviewed the spurious evidence the Trust was using to sack me" (whistleblower 3)

Poor outcome and remedy

Whistleblowers highlighted the wastefulness of litigation under PIDA, PIDA's inefficiency in terms of the high cost of litigation relative to compensation and a sense of being exploited:

"I conservatively estimate that my case cost the NHS over £250K and I know of other cases that have cost considerably more." (whistleblower 4)

"The standard compensation that I received for ordinary dismissal does not reflect my real loss at all, and it was consumed by legal costs. The litigation was also a waste of public money." (whistleblower 15)

"I 'won' my case at ET but my concerns were buried and my compensation was swallowed up by legal fees. I was led a merry dance by lawyers who did not have my best interests at heart or care about the public interest." (whistleblower 11)

The insufficient calculation under PIDA of loss, and PIDA's failure to recognise human rights such as the right to family life, and other intangible losses was flagged:

"ET's should be able to award compensation for intangible losses" (whistleblower 10)

Blacklisting was reported, and in relation to this, the pyrrhic nature of 'winning' a case under PIDA was noted:

"After taking legal action I was given compensation which mainly covered my legal fee and apology letter from DH. But I stayed black listed and never allowed to work in NHS again." (whistleblower 13)

Long term unemployment was reported:

"My employer tried their best to destroy me. In the long-term, they have. I lost everything, including my home and have not worked since. The school I worked at, having denied everything I reported, eventually changed most of the systems I reported and eventually got rid of the Head." (whistleblower 20)

Lack of accountability for wrongdoing and reprisal

A serious recurring criticism by whistleblowers was that PIDA has not ensured accountability:

> ***"The wrong doers who were involved in my case were promoted." (whistleblower 13)***
>
> ***"Those responsible for the detriment I experienced were not personally held to account and were later feted by CQC." (whistleblower 5)***
>
> ***"Over the years, I watched those who lied and who victimised me promoted." (whistleblower 11)***
>
> ***"….most of the offenders remaining free to carry on to work with vulnerable patients" (whistleblower 19)***

Miscellaneous issues from non-litigated cases

The core respondents to the exercise were whistleblowers who had litigated.

Several whistleblowers who had not litigated contacted us to share concerns about problems of access to the legal process. These primarily related to problems with union support and unfavourable merits assessment by union lawyers.

An example of such an account is given in Annex 1.

Gagged whistleblowers are another significant group.

Whistleblowers know that gagging continues on a widespread basis and is tool of fear that prevents full transparency.

Settlements which prevent signatory from even revealing the existence of a settlement are particularly intimidating and arguably exist only to subvert the public interest.

Additionally, it is known that several local authorities and NHS employers have seriously overstepped by coercing whistleblowers into accepting gags which questionably sign away rights to make Freedom of Information requests and requests for personal data.

A former NHS medical director who has supported whistleblowers who had been silenced shared a report describing systematic collusion by bodies to silence whistleblowers and protect institutional reputations. The medical director reported huge costs to the public in terms of the destruction of clinical units which took decades to build and were hubs of clinical excellence, research and data, as part of the collateral damage of suppression. These type of costs due to poor whistleblowing governance are very serious, but often overlooked.

Lastly, highlighting important gaps in the list of protected groups, a former NHS non executive director has given an account of the resistance and reprisal that they encountered when raising concerns.

"Non-Executive Directors are among several groups not covered by the Public Interest Disclosure Act. Despite recommendations to the contrary, the Government has refused to extend the limited protection PIDA offers to employees to such groups. I became aware of this after raising questions in my role as a Primary Care Trust Non-Executive Director, described by the Chair of the Strategic Health Authority as causing "disruption". I wrote to the SHA Chair, explaining my concerns about "risk management, governance and public confidence", adding that if he genuinely believed I caused disruption he could "use the procedure available to you to have me removed as a Non-Executive Director from the NHS". He initiated an inquiry which he told me found my concerns to be "completely unfounded". I submitted a complaint to the SHA about the inadequate investigation, which was dismissed."

The full account can be found in Annex 2

This is a critical matter because part of the NED role is to provide balance and challenge. In many organisations, a NED is the designated Board lead for whistleblowing. If the person to whom all whistleblowers in the organisation are supposed to turn for help is not protected, this makes a sham of the whole system.

What changes to the law are needed?

The following is a broad overview which captures the broad gist of the suggestions from whistleblowers who contributed.

Whistleblowers ask for a statutory requirement for their concerns to be investigated, and for a statutory duty upon bodies to protect them and their anonymity, from the point at which they whistleblow.

Whistleblowers ask for an element of independence in investigations about their concerns, and for an independent body to enforce statutory protections.

Whistleblowers also ask that the law ensures greater accountability for and deterrence of wrongdoing and reprisal, by providing penalties against individuals.

There is an overall view that employment law is far too narrow to deal with the complexity of whistleblowing, and that fundamental reform of the framework is needed, to allow appropriate handling of concerns, provide criminal sanctions and other mechanisms.

Whistleblowers stress the importance of dealing with wrongdoing, for example:

"Therefore, the legislation should:

1. Focus on wrongdoing, and
2. Not on the employment relationship"

(whistleblower 9)

There is a suggestion to add whistleblowing to the Equality Act:

> ***"Whistleblowing should be a protected characteristic under the Equality Act. (Whistleblower 10)"***

Some whistleblowers suggest that the way the law views whistleblowers should fundamentally shift, for example from plaintiff to *'victim of crime'* (whistleblower 29).

It follows that the State should take therefore greater responsibility for protecting such a witness:

> ***"We need new law that recognises whistleblowing is centrally about public safety and fundamental rights, not some trivial, unedifying employment spat. The law needs to powerfully protect the public interest by creating conditions in which it is easier to speak up, and much harder to persecute those who do. Whistleblowers shouldn't be bullied by the government by being left to defend themselves against overwhelming force of arms from employers, but actively shielded and lifted out of detriment. Litigation should be avoided where possible" (whistleblower 1)***

There are suggestions for earlier intervention:

> ***"The law should be strong enough to prevent serious detriment in most cases" (whistleblower 1)***

There are suggestions for revising the causation test which links detriment to whistleblowing, to reduce what is currently too high a hurdle. For example, the law should be changed so that failures to investigate and process a whistleblower's concerns properly are taken "*taken into account by the ET Panel." (whistleblower 16)*

> ***"An ET must look at the concerns raised and how they were handled as well as any detriment suffered by claimant." (whistleblower 6)***
>
> ***"An employer's failure to follow its own policies concerning whistleblowing, disciplinary investigations etc. & safeguarding the public interest should also be taken into account at ET in all claims." (whistleblower 6)***

Another proposal for tipping the scales more fairly towards whistleblowers is to make other detrimental acts against whistleblowers, besides dismissal, automatically unfair. For example, exclusion. (whistleblower 21)

There are suggestions that concealment and causing serious detriment to a whistleblower should be classified as a crime, for example, under Misconduct In Public Office.

> ***"Would-be abusers should know that they risk heavy fines, disbarment and jail time if they indulge in serious misconduct and cover ups." (whistleblower 1)***
>
> ***"Substantial fines for poorly investigated cases. Substantial fines for keeping whistleblowers from work" (whistleblower 25)***

Specifically, it is suggested that not only should employers be held to account, but that other parties who harm or fail whistleblowers should be liable. For example:

> ***"…criminal liability for serious whistle-blower retaliation and for obstructing/perverting the proper functioning of the legal process, and it should hold regulators, other officials and government departments to account for failing whistleblowers." (whistleblower 10)***

There are suggestions for improving remedies to ensure that all loss is fairly accounted for, including intangible loss such as disruption to family life.

Mechanisms for addressing legal inequality of arms are suggested, for example:

> ***"Legal fees should be waived for all whistleblowing cases." (whistleblower 25)***
>
> ***"The law should make legal aid provision for the whistle blower, but also insist that the organisation involved is limited to one legal team" (whistleblower 28)***

Special training for lawyers, judges and union representatives who deal with whistleblowing cases is suggested.

The information from non-litigated cases raises the following issues for any law reform project:

- Access to trade union support
- Addressing gaps in protected groups, such as non executive directors

The use of gags in settlements, especially clauses which hide even the existence of settlements or which flagrantly breach rights by prohibiting access to data under FOIA and DPA, also needs to be addressed by any new whistleblowing law.

WHISTLEBLOWER 1

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I've whistleblown on serious matters several times in my career, before and after PIDA came into force. I've been vindicated in my concerns. There's never been reliable protection nor full investigation of all concerns. It's just happenstance, depending what individuals were in the mix. I've known both honest and crooked bosses. Diligent and collusive regulators. Ministers who took some action and others who deflected everything. PIDA is a bed of nails for whistleblowers, especially first time flyers with high hopes. The language of PIDA is dishonest:

the word ‘protect’ crops up everywhere. Governments repeat it ad nauseam. Yet PIDA is only a poor remedy after the event, if you’re very lucky. It’s easy for employers to attack you under PIDA. Its worst feature is that it ignores your concerns. Litigation is exhausting, soul destroying, wasteful and bad for all involved. It is often a serious trauma in itself.

How I think the law should change:

We need new law that recognises whistleblowing is centrally about public safety and fundamental rights, not some trivial, unedifying employment spat. The law needs to powerfully protect the public interest by creating conditions in which it is easier to speak up, and much harder to persecute those who do. Whistleblowers shouldn’t be bullied by the government by being left to defend themselves against overwhelming force of arms from employers, but actively shielded and lifted out of detriment. Litigation should be avoided where possible. The law should be strong enough to prevent serious detriment in most cases, and it should restore all loss. It should be compulsory to investigate whistleblowers’ concerns and there should be a fully independent agency to ensure compliance and protection. Would-be abusers should know that they risk heavy fines, disbarment and jail time if they indulge in serious misconduct and cover ups.

WHISTLEBLOWER 2

Difficulties that I have experienced in using the Public Interest Disclosure Act:

First time: I asked for anonymity, I did my duty, then left my job. Second time: My anonymity was breached from the first time. I was told I had whistle blown before and threatened out of my job. I was advised by ACAS and PCAW. They said to let it go, settle for a paltry sum. It was not about money but abuse. Third time: a manager sent texts about theft of vulnerable adults’ money. I was told about a cover up. They tried to gag me. I was dismissed via a letter in the post. I won at tribunal but it didn’t feel like a win I felt battered and left with little confidence about myself. Their barrister made comments about how I had “baggage”. The employer was an accountant who covered up. I reported him to the ICAEW and he got a fine. I got a solicitors’ bill.

How I think the law should change:

The concerns raised should be investigated thoroughly & the wb kept informed and supported Anonymity should be honoured after the event. Theft, abuse, poor care is not an employment issue. Its hard to get a job after, you have to declare you have been dismissed. Trust is lost, that needs to change. It will follow you, the label is stuck. Change that. I do not believe in rewards for whistle blowing. Just your job

WHISTLEBLOWER 3

Difficulties that I have experienced in using the Public Interest Disclosure Act:

As a Senior Community Nurse / Staff Governor and Union Activist raising valid accountability concerns regarding ligature points and other issues not rectified despite CQC raising this as a failing within my NHS Trust, I was sacked following a sham disciplinary, not supported by my Union not supported by Trust Guardian nor by the National Guardian despite there being adequate time to prevent my sacking or at least to have reviewed the spurious evidence the Trust was using to sack me, I started the ET Route and attended a number of court appearances but decided it would be too stressful and costly too pursue further, the evidence was so weak my Trust declined to refer me to the NMC despite me being sacked for Gross Misconduct!!

How I think the law should change:

I feel the law should be changed to protect people such as myself, As it is not until Staff who report misgivings at work as I did are then subjected to closed room disciplinary what can only be described as Kangaroo Trials, And the real perpetrators walking away and not being held to account, these were very senior Directors involved in this, had there been transparency and open accountability none of this could have occurred or certainly could have been avoided, my life and career has be destroyed there is a need for Whistleblowers to be protected and this protection needs to be embedded in law.

WHISTLEBLOWER 4

Difficulties I have experienced in using PIDA

In 2013 I made my NHS employers aware that I believed that they had deliberately broken the criminal law by attempting to pervert the course of justice. In their eyes I became the offender and was suspended for more than 19 months before being dismissed in 2014. Before turning to PIDA I tried to use my employer's internal Whistleblowing procedures, initially to the chief executive, then to a non-executive member of the board of directors then the chair of the board. I went to the local clinical commissioning group, NHS Monitor, the CQC and the Parliamentary Health Service Ombudsman. I then went to the police, the CPS and the Crown Court on every occasion I was ignored. Wherever I turn I found that there was no organisation that would listened to me or able to offer any constructive advice or support.

How I think the law should be changed

My limited understanding of the PIDA essentially came from the ACAS website and I had to take legal advice to protect myself at my own expense. Although there was a lot on information on the web and I contacted Public Concern at Work (PCAW) but they were frankly hopeless and did nothing to help me. I believe that the Act should be changed to ensure that all whistleblowers should be listened to independently and fairly, initially by their employers and all employers, particularly public bodies, should be under a statutory duty to ensure whistleblowers are listened to. So as to ensure this is made a statutory obligation an independent body such be established to oversee employers comply with that obligation. I accept this would involve a cost but I conservatively estimate that my case cost the NHS over £250K and I know of other cases that have cost considerably more.

WHISTLEBLOWER 5

Difficulties that I have experienced in using PIDA.

PIDA is entwined in employment law; from the moment I raised concerns and experienced detriment I had no recall to due process to prevent further harassment or the loss of my job. PIDA didn't ensure an appropriate investigation of my concerns and an interim investigation report was covered up. I had to resign and claim constructive dismissal which was not found at ET because I had failed in meeting one of the employment law grievance steps despite winning my detriment case. My remedy hearing failed to account for loss of future earnings because under employment law I had not accepted a trial return to work with my previous employer because of a breakdown in trust. Although I had legal representation, the Trust used public funds to employ representation from a QC. Those responsible for the detriment I experienced were not personally held to account and were later feted by CQC.

How I think the law should change:

In the first instance: Whistleblowing legislation must be separate to ERA. Whistleblowers must be protected from detriment from the moment of raising a concern. Whistleblowers must be protected from harm caused by their employers, regulators and others. A whistleblowing agency must be established to uphold and enforce the public interest. Whistleblowers concerns must be investigated fairly and transparently. The whistleblowing agency in protecting whistleblowers, will also have powers to undertake and/or review investigations, where necessary. Those who do harm to whistleblowers must be personally held to account. Litigation should be a last resort. ET Judges must be trained in the application of whistleblowing law so that it is not confused with ERA. New legislation will provide the incentive for cultural and behavioural change.

WHISTLEBLOWER 6

Difficulties that I have experienced in using the Public Interest DisclosureAct:

I was a night carer in a LA run care home for the elderly. I reported a number of concerns to management & was ignored. I & several other night carers wrote out our concerns & sent them to higher management. We were finally interviewed not as whistleblowers but as witnesses in a disciplinary investigation. Further whistleblowing got me suspended. We made an internal complaint about the way our concerns were handled & how we'd suffered detriment. The LA had good robust policies for whistleblowing, complaints, disciplinary investigation etc. & the Protection of Vulnerable Adults (POVA) but none were followed. The union advised drawing a line under the complaint & were not supportive. I was finally dismissed as trust and confidence had broken down. I represented myself at ET. The ET had no interest in my employer's failures regarding POVA or in not following policies. I lost my claim.

How I think the law should change:

All concerns raised by an employee (whistleblower) need to be investigated as a matter of course. PIDA should take an employer's failure to investigate concerns into account at an ET.

An employer's failure to follow it's own policies concerning whistleblowing, disciplinary investigations etc. & safeguarding the public interest should also be taken into account at ET in all claims. Regulators who fail to hold wrongdoing employers to account should also be held accountable & an ET should be under a duty to inform the constabulary of the need to investigate both the employer and the regulators if lives have been lost or put at risk due to concerns being ignored. An ET must look at the concerns raised and how they were handled as well as any detriment suffered by claimant.

WHISTLEBLOWER 7

Difficulties that I have experienced in using the Public Interest Disclosure Act:

PIDA's definitions of protected disclosures (concerns raised) aren't broad enough. Concerns about breaches of regulatory standards, whistleblowing suppression and withholding information from legal proceedings weren't covered. You have to be certain that wrongdoing occurred and not just that it *may have* occurred (for example a criminal offence – before ever a court has decided upon it). You have to prove it's reasonable by legal standards to hold your concerns, not just that you honestly hold them.

It provides no resource or consequence if a prospective employer withdraws a job offer because you're a whistleblower.

How I think the law should change:

Whistleblowing is difficult because you're raising concerns to those most directly responsible for the wrongdoing, who often prioritize protecting themselves. If we want to avoid future disasters akin to Shipman, Grenfell and Mid Staffs, we must make it easier to whistleblow without fear, and place an onus on those responsible to act on the information.

WHISTLEBLOWER 8

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I worked successfully in IT for 27 years before joining the NHS as a contractor, for only 5 months. I witnessed theft and behaviour that could affect patient care, but I was ignored. Unbeknown to me, the Trust were network snooping on my account and plotting my removal from the Trust. As a contractor this was easily achieved. I haven't worked since within my industry. This is due in part to underhanded activity by the Trust. The ET process appears to be more about getting individuals to end their claim, not truth and justice. The Trust had unlimited access to the public purse, without due diligence or an honest assessment of my case. They drag proceedings out because individuals cannot afford this. They called me deceitful, dishonest and disingenuous for challenging their authority. Nobody should be under any illusions about the damage this does to someone's career, especially one within IT.

How I think the law should change:

The general use of contractors seems to present a sinister opportunity that allows managers to easily remove people that object to what they witness. Throughout my ET case, I mentioned how easy it would be to avoid situations such as mine. I suggested an induction process, but was told it's only available for permanent staff, and even then it does not always cover how, when and where staff would make a disclosure. There are certainly no records of inductions taking place within [name of organisation redacted], which staff sign. This approach seems to leave staff, but particularly contractors, vulnerable by managers wishing to exploit the system.

WHISTLEBLOWER 9

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I have over forty years nursing experience in the NHS, the Army and in the private acute hospital sector. When a Lead Endoscopy Nursing Sister, in a large private provider of acute care, I raised patient safety and financial probity concerns, eighteen of which were upheld as "qualifying" following a seven-day Employment Tribunal hearing. Despite this, my credibility as a witness was questioned by the Judge because of my alleged knowledge of action taken independently of me by my husband involving the Police. Consequently, the Judge determined that my constructive dismissal was the result of my actions alone, not my whistleblowing. All my claims were dismissed. My lawyers advised me against appealing because the Judge considered I was not a credible witness despite no such concerns in relation to my "protected" disclosures. Wrongdoing was proven but I lost. PIDA provided protection not for me but for my then employer.

How I think the Law should change:

The burden of proof is on the claimant to prove that each disclosure meets a number of legal tests and is therefore "qualifying". This assumes that claimants have an understanding of the law (PIDA) at the time at which those concerns were raised. Most claimants have no knowledge of this highly complex area of law, nor the finances to obtain specialist legal support. Employers are likely to be very knowledgeable on employment law matters and often seek to use considerable resources (money, people) to treat whistleblowing as a personal grievance (as my then employer did with me by attacking my character and focussing on me). Therefore, the legislation should: 1. Focus on wrongdoing, and 2. Not on the employment relationship. Many qualifying PIDA disclosures under current legislation definitions can relate to criminal wrongdoing. The legislation should change to move hearings from employment tribunals to criminal courts to reflect this.

WHISTLEBLOWER 10

Difficulties that I have experienced in using the Public Interest Disclosure Act:

The ET found constructive unfair dismissal but rejected any causal link between dismissal and whistle-blowing. I believe this was due to bullying/threatening legal tactics including with-holding and redaction of written evidence, intimidation of potential witnesses.

How I think the law should change:

The law should include pre-detriment protection and criminal liability for serious whistle-blower retaliation and for obstructing/perverting the proper functioning of the legal process, and it should hold regulators, other officials and government departments to account for failing whistleblowers. Whistleblowing should be a protected characteristic under the Equality Act. ET's should be able to award compensation for intangible losses [section redacted]. I have no confidence in the Freedom To Speak Up project. It failed me completely. Indeed, the non-exec' director with responsibility for whistleblowing has still to contact me after my dismissal. Nor do I have any confidence in regulators. They also all let me down. There should be a regulatory body for the regulation of hospital managers with the power and authority to strike off the registration of incompetent individuals.

WHISTLEBLOWER 11

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I was a very senior public sector manager. I whistleblew about corruption. I lost my job. I have never worked again. I 'won' my case at ET but my concerns were buried and my compensation was swallowed up by legal fees. I was led a merry dance by lawyers who did not have my best interests at heart or care about the public interest. Over the years, I watched those who lied and who victimised me promoted.

How I think the law should change:

The law should include pre-detriment protection and it should mandate investigation of concerns. There should be criminal liability for serious whistleblower retaliation. The law should hold not just employers but regulators, other officials and government departments to account for failing whistleblowers. There needs to be a body independent of the government to enforce new law. I think the Freedom To Speak Up project is a travesty of justice and a serious risk to patient safety.

WHISTLEBLOWER 12

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I managed a Care Home for 16 years until it went into administration. I raised Safeguarding concerns about vulnerable residents because of unsafe actions by a management accountancy that took over as the administrator. I made disclosures to a regulator and the local authority. The home's mortality rate quadrupled. Only a fraction of my complaints were investigated by the local Care Trust but this ceased after my dismissal. I was then subjected to counter-allegations of bullying, dismissed and vexatiously referred to my professional regulator. An ET claim against the administrator failed because I was not a worker under PIDA. I won an ET claim for unfair dismissal against the home owners but they had no funds. I was a litigant in person and did all this without help. My professional regulator failed to protect me or to hold to account

those who made false allegations. I have been diagnosed with PTSD, agoraphobia and depression. I take antidepressant medication.

How I think the law should change

The Insolvency Act 1986 para 99(5) & (6) needs to be reviewed to ensure employees/ workers retain this title as opposed to being deemed as unsecured creditors. Bank administrators must accept liability when they have unfairly dismissed a whistle-blower (W/b). Section 47(B) ERA, s.43(K)(1) ERA and s.230(3) ERA and sections 43(A)- 43(L) of PIDA collectively only protects workers and employees. This does not extend to unsecured creditors. PIDA & FTSU Guardians should investigate all W/b concerns in the private arena and bearing in mind thousands of Care Homes face administration annually. Professional regulators are exempt from defamation law suits due to parliamentary absolute privilege irrespective of intentional malice.

WHISTLEBLOWER 13

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I was a very senior manager in NHS, I did some protected disclosure in 2012 (reporting a GP taking control drugs from his surgery drug cabinet and attempting suicide to the GM. Also reporting a pharmacist who intentionally put patient care at risk by circulating the wrong drug protocol to promote a specific drug). I was sacked and black listed. After taking legal action I was given compensation which mainly covered my legal fee and apology letter from DH . But I stayed black listed and never allowed to work in NHS again. The wrong doers who were involved in my case were promoted. No action was taken against them and my concerns were never investigated. Also none of professional regulator did not take action against the wrong doers.

How I think the law should change:

The law show change so that the whistle blower get protected from the point that they speak up. The concerns must be investigated immediately . The individual who victimise whistle blowers should be accountable and not just the organisation. The regulators must be obliged to investigate the concerns of the whistle blower and not just act and victimised further on the say so of the NHS organisation .

WHISTLEBLOWER 14

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I whistleblew in local government after a long career. I was threatened and my performance was questioned for the first time. It was a nightmare, even though I was experienced and normally well able to cope. The organisation closed ranks and no one listened. I was made redundant. An ET claim was made by my union, but the union was not supportive. Neither was my MP. I settled with my employer and accepted a gag. I didn't feel good about this but I felt I had done all I could. I wasn't well, my family had had enough. They suffered as much as I did.

Looking back, I was just a lamb to the slaughter and I think my employers knew exactly how to silence me. The law didn't do anything for me.

How I think the law should change:

There has to be protection. Too many lives are ruined. People speak up hoping someone somewhere will be honest, and it is appalling to be let down. I wasn't a troublemaker but that is how I was dealt with. I still live with the consequences. The law should not allow that, and it should not allow silence.

WHISTLEBLOWER 15

Difficulties that I have experienced in using the Public Interest Disclosure Act:

The law did not protect me nor ensure that my concerns were dealt with. I whistleblew as a senior NHS surgeon and was subjected to vexatious counter allegations and disciplinary process. My concerns were not addressed. I believe there was collusion between managers and between bodies, including ministers and regulators, who breached my anonymity and closed ranks. I found evidence of collusion from disclosed personal data. I believe that I have been subject to blacklisting. I very nearly lost my licence to practice because I was unable to revalidate, until the eleventh hour. The causation test for PIDA is too difficult. I made protected disclosures but the Tribunal did not accept that this was the reason for my dismissal. The standard compensation that I received for ordinary dismissal does not reflect my real loss at all, and it was consumed by legal costs. The litigation was also a waste of public money.

How I think the law should change:

I think the law should provide protection from the moment you raise a concern about anything, no matter how trivial and even if it turns out to be wrong…and proper redress if you end up having to go to court. But the most astonishing thing to me was that no one is obliged to investigate the concerns raised. This part must change.

WHISTLEBLOWER 16

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I am a senior midwife with an impeccable midwifery career who raised genuine patient safety concerns. The Trust alongside my then manager made it their mission to ruin my career, after I raised these concerns. Numerous spurious, fabricated and false counter-allegations were trumped up against me in their attempts to discredit me. I fought these allegations and I commenced a claim against the Trust in the Employment Tribunal. Most profoundly, babies and a mother subsequently died in circumstances very similar to what I had raised concerns about. There was a "settlement" on the second day of the Tribunal proceedings. I received no monetary benefit whatsoever. I resigned from my job as a part of this settlement and found it incredibly difficult to find employment afterwards. Incredulously, based on my fight, every single complaint against me (albeit all false) were withdrawn and quashed; which proves they were all false and fabricated.

How I think the law should change:

I assert that the law should change dramatically to include criminal sanctions against those who retaliate against whistleblowers. These law reforms should be stringent and include criminal sanctions not only against the individuals who directly caused the detriment but also the employers. This will undoubtedly set a precedent and serve as a deterrent to employers and employees who make it their life's work to ruin those who raise concerns.

A matter of great importance is that the concerns raised should be thoroughly investigated by a truly and genuinely independent body/organisation that has no link to the employer. I am acutely aware that true and complete independence is difficult to find in this current climate. However, this is an area that needs to be urgently addressed.

WHISTLEBLOWER 17

Difficulties that I have experienced in using the Public Interest DisclosureAct:

I was a probationary police officer after being a Special Constable and Police Community Police Officer to ensure this was the career change I wanted. I whistleblew to several different superiors, one being a Federation Representative (FR)regarding false arrests (Rodney King type incidents) to meet targets. I felt the FR was wearing two hats as emails seen showed this and he was unsupportive. I was seen as a problem my work criticised, changes continually asked for by my Sergeant, I got sent to Coventry often being sent out on patrol on my own at night. I took them to ET for constructive dismissal and suffered a breakdown and was diagnosed with PTSD. I lost my claim as the employer would not accept my concerns were raised as a whistleblower which the ET panel went along with.

How I think the law should change:

All concerns raised by employees must be classed as whistleblowing and PIDA must contain a mandate that employers fully investigate those concerns and ensure they abide honestly by their own policies and procedures. A failure to do this should be taken into account by the ET Panel. Employers need to be held to account through criminal law for serious detriments caused to an employee who's health and financial security has been drastically harmed through their actions. During training we were encouraged not to acquiesce if encouraged to participate in wrongful actions by colleagues and to speak up.

WHISTLEBLOWER 18

Difficulties that I have experienced using the Public Interest Disclosure Act:

PIDA provided no duty to investigate my concerns about patient safety by the employer or prescribed persons. The most politically sensitive protected disclosure has to my knowledge not been investigated and I fear this has led to other incidents where patients have died. I fear

I cannot continue to raise this matter for fear of being labelled vexatious. A regulator informed me that my protection as a whistleblower was via PIDA. Some involved in the detriment to me, who also did not investigate all my protected disclosures, held registered roles specifically involved in patient protection. PIDA allowed sustained disability discrimination against me as a whistleblower. My Union began the litigation on my behalf whilst I was still certified unfit for work, before, during and post dismissal. The process of litigation was creating more detriment to my mental well being as it only looked at my employment not patient safety.

How I think the law should be changed:

The law should be changed, so that the whistleblower receives protection at the point of disclosure. There should be a mechanism to ensure investigation of all concerns raised by the whistleblower which is independent of government. There should be independent panels which can review whistleblower cases. It should be a criminal offence to not investigate a whistleblower's protected disclosures and sentencing should consider a prison sentence. It should be a criminal offence to cause detriment to a whistleblower and sentencing should consider a prison sentence.

WHISTLEBLOWER 19

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I raised concerns in the NHS, Private and charity sectors, that related to health and safety under PIDA Law. All of my concerns were raised in mental health services. During my whistleblowing disclosures, I was faced with bullying, I was treated very badly by employers who eventually, over some years, apologised for their inaction and treatment towards me and accepted I was raising concerns in the public interest. However, none of my whistleblowing disclosures were adequately investigated or looked into with real purpose, with most of the offenders remaining free to carry on to work with vulnerable patients. Although I accepted the apologies, I have never accepted that those who committed obstructions and offences still remain working with vulnerable patients today.

How I think the law should change:

This is why I am supporting a change in law for whistleblowing. A change is necessary to ensure the public is fully protected, it is clear the present law (PIDA) is not protecting vulnerable patients, the evidence is overwhelming and more has yet to surface into the public arena. A definition of criminality should be firmly placed in law to protect whistleblowers.

WHISTLEBLOWER 20

Difficulties that I have experienced in using the Public Interest Disclosure Act:
I was twice suspended from my teaching role, on false allegations made by the Head Teacher (HT). The first time to stop me becoming a Teacher Governor. The second time because I had reported the HT to the Local Authority Head of Education. I did not know the two of them were very close personal friends. She informed my HT of the allegations I had made. PCaW

told me they could not help me because I had already whistleblown and been identified. At my ET the judge forced my employer to admit that 15 of my 22 allegations were protected disclosures. But said he was not interested in the facts of these allegations, only in whether my employer had a valid reason to dismiss me. The reason accepted for my dismissal 'A breakdown in the relationship.' No consideration as to who was at fault for the breakdown!

How I think the law should change:

There should be a truly independent body, away from any institutions involved, where a whistleblower can report, in complete confidence, any concerns they have. My employer never investigated any of my protected disclosures, I would hope that an independent body would. From the moment a report is made, a whistleblower should have legal representation by a person with whistleblowing expertise. These cases should not be held at an ET because, as I was told, the ET judge is only interested in employment issues and can disregard protected disclosures. The atrocious 'starvation' tactics used against whistleblowers should be scrutinised and dealt with appropriately. My employer tried their best to destroy me. In the long-term, they have. I lost everything, including my home and have not worked since. The school I worked at, having denied everything I reported, eventually changed most of the systems I reported and eventually got rid of the Head.

WHISTLEBLOWER 21

Difficulties that I have experienced in using the Public Interest Disclosure Act

In 2012 I was dismissed from my position as a consultant cardiologist following a trumped up disciplinary procedure. This was because I refused to make a false statement to the coroner, acted to prevent bullying and the presentation of false information to patients and their relatives. Although my employee contested my assertions an employment tribunal found in my favor, in every respect. My employer willfully and knowingly, presented false evidence to the coroner, the employment tribunal, and not willing to accept the judgments of theses courts pursued the matter to Employment Appeal Tribunal and the Supreme Court. Even now the trust and their solicitors refuse to make a reasonable settlement and are happy to continue hemorrhaging taxpayers' money.

I have been exceptionally fortunate in having been represented pro bono by an excellent legal team. I could not have won multiple court hearings without this assistance.

How I think the law should change

It is a criminal offense to give false evidence to the courts, under oath, but it appears that NHS officials are above the law. As long as the courts allow them to maintain this state no legal refinement will be effective, but rather, will perpetuate even more complicated legal processes ruled by unaccountable institutions with access to unlimited public funds.

WHISTLEBLOWER 22

Difficulties that I have experienced in using the Public Interest Disclosure Act

PIDA failed to protect me. I raised patient safety concerns as a very senior NHS manager. Specialist lawyers were unaffordable, especially as NHS trusts deliberately drive up your costs as a tactic. At Tribunal, I was not legally represented and up against a bottomless public purse. The Tribunal made a shock, illegal finding against me. It erred in law and held that I whistleblew in bad faith. This allowed my employer to pursue me for £100,000 costs which would have ruined me. I thought about suicide. I was supported on a pro bono basis to successfully fight the judgment. I signed away any rights to compensation because I wanted only to clear my name and to end the conflict with my employer, to make a clean break. WB's do not WB for money – they speak up because they CARE about what is going on; they care about their patients.

How I think the law should change

The law must be changed to ensure that WB are free from being pursued by employers who wish to seek retribution against those who have spoken up against them. WB should be entitled to the SAME legal representation as those they have spoken up against, particularly when in respect to the public sector. The public sector should be held accountable for what they spend legally defending their actions and should have to publish their accounts publically.

WHISTLEBLOWER 23

Difficulties that I have experienced in using the Public Interest Disclosure Act:

My advisers did not add whistle blowing to ET claim form because there was no specific box to tick for whistle blowing (as there was for other discriminations such as age). If there had of been a box for whistle blowing I would have insisted that the box was ticked . I tried to add a whistle blowing claim later. The Judge stated that I was a whistle blower but would not allow me to claim on grounds that it would be more prejudicial against my employer to add it late than it would have been prejudicial towards me for not adding it at all. My disclosure did qualify for protection. If my right not to suffer detriment had been honoured I would not have been excluded. If I had not been excluded the Polkey speculation at The Employment Tribunal which was perverse would have been seen to be perverse.

How I think the law should change:

In the interest of justice adding whistle blowing at anytime must not be seen as prejudicial to anybody. The problem is about exclusion not being seen as a detriment. Exclusion is legally neutral. Everybody knows it is not legally neutral but in law that is what it is. The only way around this is to show that the exclusion is maintained out of corporate malice. Apparently this is very difficult and lawyers do not bother to try to prove malice. Exclusion of a whistle blower like dismissal of a whistle blower should also be automatically unfair. Employers who exclude whistle blowers with corporate malice should be charged with Misconduct in Public Office for doing so.

WHISTLEBLOWER 24

Difficulties I have experienced using the public interest disclosure act

Lack of money. Lack of legal knowledge. Flawed tests set down by the legal system to prove a case. Lack of insight/knowledge into the bigger pictures by tribunal judges who only apply a flawed law to cases they do not comprehend the bigger picture on. Overcoming numerous legal hurdles as a litigant in person when the employer has a barrister in tow. The burden of proof on a claimant at tribunal who might be ill or stressed and not able to afford legal representation. Complicit behaviour supportive of employers by the regulators which cause detriment.

How I think the law should change

Replace PIDA with something current and relevant. The following would be a start

https://www.change.org/p/protect-the-protectors-with-edna-s-law-need-one-law-for-all-whistleblowers

WHISTLEBLOWER 25

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I worked in clinical audit and raised a complaint about a surgeon I worked with 3 years ago. My employer consistently denied this was whistleblowing, including the Chair who lied in a letter to an MSP. My complaint was investigated under bullying and harassment, my unison rep threatened me into accepting this. The investigation lost evidence, never validated evidence against me, only interviewed one witness who lied, medical director lied to GMC shutting down investigation into probity against surgeon and outcome was I was to be removed from my post. Surgeon was let off hook before a review was completed. PCAW intervened after 1year and it was accepted as whistleblowing but no subsequent investigation took place. I have to date raised two ET claims under PIDA, both settled out of court. I am about to raise a third as the last COT3 was breached as soon as it was signed.

How I think the law should change:

Vento bands for injury to feelings should be expanded upon to include lost wages and loss of future earnings, including pension contributions, up to pension age or Help returning to work if wanted. Backdated compensation for whistleblowers. Devolved parliaments should have a regulator in place. Legal fees should be waived for all whistleblowing cases. Specialist solicitors and union reps should be available. A whistleblowing minister appointed in all parliaments to assist and listen to concerns and act. The Scottish government should not be allowed to bend the Freedom to speak up review into a system which makes a mockery of the intentions. ET's are not the place to settle claims, a specialist unit should be created. The law should apply in all parts of the U.K. Substantial fines for poorly investigated cases.

Substantial fines for keeping whistleblowers from work Chairs should be removed if substantial concerns are proven in any organisation

WHISTLEBLOWER 26

Difficulties that I have experienced in using the Public Interest Disclosure Act:

I made a protected disclosure of sex discrimination within a police force. Following this, colleagues made unsolicited visits to at least 15 of my neighbours inviting them to make complaints against me. Two oversight bodies refused to investigate my complaint against 9 senior officers despite having a remit to do so. I waited over 2 years for the police force to investigate itself, but it found in its own favour. Without personal funds to instruct a solicitor I would have been unable to pursue a case or defend myself against further victimisation. Many people can't afford legal counsel and give up before their case is heard.

2. **How I think the law should change:**

There is a desperate need for an independent body to assist whistleblowers as the NHS, police etc are protected by an unlimited public purse while people trying to make a difference are effectively abandoned. It's simply bizarre that public money is used to keep that same public in the dark about public bodies. I'm still learning how the law fails WB's however we should have that status as soon as a protected disclosure is made.

WHISTLEBLOWER 27

Difficulties that I have experienced in using the Public Interest Disclosure Act:

As a Detective Sergeant in a Forced Marriage criminal trial, I whistle-blew against the [name of organisation redacted] regarding their criminality/corruption. However, my employer [redacted] discriminated against my whistleblowing for purported 'confidentiality' disciplinary breaches & investigated me for 2 years, disciplining me with a 12 month Written Warning sanction. I have a 'stayed' ET claim for whistleblowing, reliant upon PIDA, however, statutory lawyers are defending the ET due to PIDA, in that they argue that I did a protected disclosure, but they do not accept that it was a qualifying disclosure. Also, the issue of 'perception' of being a whistleblower maybe tested, as I whistle-blew against another organisation primarily and not my own. Whilst I was received support from the PCaW, there was no external organisation that could properly assist or intervene to redress detriment or clarify whether I was acting in accordance with PIDA.

2) How I think the law should change:

There needs to be an early external legal assessment, by the ET(?), whether a person is a WB. If they are, organisations/personnel who discriminated against them for whistleblowing should be externally investigated and held personally responsible. Need for legislation to

make it a criminal offence to discriminate against WB's. Organisations shouldn't be allowed to investigate their own allegations of whistleblowing - especially in the public sector - whereby the concern of organisations is their reputation. ET's should be expedited, so that WB's don't have to suffer elongated stress, awaiting for hearings. ET judges should have the power to reinstate WB's back into their employment despite dismissal. The definition of a WB, needs to be made simpler so that individuals are not deterred from whistleblowing. Currently, public sector personnel are highly unlikely to whistleblow due to the detriment to not only employment, but the impact on private life.

WHISTLEBLOWER 28

Difficulties that I have experienced in using the Public Interest Disclosure Act:

The PIDA 1998 is 20 years old this year it clearly has not done what its suppose to do (protect whistle blowers) for example look at section 43e disclosure to Minister of the crown. Many whistle blowers in a final act of desperation, having gone through all the various steps of whistle blowing have written to the Secretary of state for health, only to receive an email back stating it's an employment issue and they cannot get involved. 47B A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure – ask any whistle blower, did they feel protected, did they keep their job? Then ask yourself is PIDA really working?

How I think the law should change:

The law should make legal aid provision for the whistle blower, but also insist that the organisation involved is limited to one legal team. There have been instances in the past where whistle blowers have managed to secure good legal representation only to find their employer has tooled up with additional legal teams in order to intimidate and bully for early settlement. There needs to be less David Vs Goliath, A fairer system so concerns can be raised safely without detriment.

WHISTLEBLOWER 29

Difficulties that I have experienced in using the Public Interest Disclosure Act:

Even though the ET confirmed I'd been unfairly dismissed, they refused reinstatement/ reengagement on grounds of deterioration of relations. Given unfair dismissal and adversarial nature of ET process, how can relations do other than deteriorate? The judge, in 'calculating' quantum, **speculated** I'd have left the trust within 6 months. Other views confidently expressed by the judge on relevant NHS matters were incorrect. Trust managers lied under oath, yet the judge merely described these as "inconsistencies". The tribunal seemed uninterested in truth/context, giving more weight to low-grade opinion (e.g. respondent witness assertion that I lack insight) than facts (e.g. CQC corroboration of the concerns I'd raised). The judge mocked me for seeking *"truth and reconciliation"*, misquoting my written reference to this as *"peace and reconciliation"*. There was a discernible frisson of disapproval from the judge

when one of my witnesses described herself as an NHS whistleblower. The tribunal was a hostile environment.

How I think the law should change:

If claimants who have made protected disclosures are unfairly dismissed they should be automatically reinstated. I understand that '*reinstatement'* and '*reengagement'* remedies are hardly ever applied in practice. '*Compensation*', which in practice seems to mean '*financial compensation*', is frequently anything but. Quite apart from being typically swallowed up in legal fees (and no real deterrent anyway to public sector employers), to apply a monetary value to a person's wrecked career is a crass example of Oscar Wilde's description of the behaviour of a cynic who knows the price of everything, and the value of nothing. Judgments should be based on solid evidence, not uncritical recitation of respondent opinion, nor speculation about future events. Deliberate "inconsistencies" under oath should be treated as perjury. Cases such as mine should never have to reach tribunals. They should be nipped-in-the-bud through relatively informal investigation by independent experts who properly understand the issues and context.

WHISTLEBLOWER 30

Difficulties that I have experienced in using the Public Interest Disclosure Act:

2006: PID about agency-locums as it was leading to misdiagnosis in young patients. PID was covered-up and I was hounded out. 2010: when I applied for re-employment I was blocked. I raised ET-claim (victimisation/discrimination) and only then PID was recognised/admitted. Claims settled. 2012: when I re-applied for re-employment board shortlisted me and then withdrew post. 2nd ET-claim lodged. Mediation to gag me again failed. ET ruled 'unlawful victimisation', but concluded '10% chance of re-employment' to reduce quantum, although I had secured *several* permanent jobs elsewhere. 2013: when current employer found out about above, permanent contract denied for >3 years, despite post had funding. I alerted the CEO of quarterly contracts and malpractices. I was made permanent. Soon after I was hounded out. 2016: 3rd ET-claim (constructive dismissal) lodged. ET ruled whistleblower 'affirmed' while seeking jobs, and no evidence of 'poor performance'/'manipulation', which outcome of his formal complaint stated. PID-claims 'dismissed'.

How I think the law should change:

ET judges are scared to apply the existing law vigorously against the 2nd largest *public* sector in the world. They are nervous to rule against senior clinicians who may then be subject to regulatory sanctions, if not criminality. Panel consisting of a legally qualified judge and two laypersons is not equipped in their knowledge about complex NHS management and specialised clinical areas. It is easily swayed, by what high-ranking managers and clinicians claim to cover-up PID against a lone whistleblower. No attempt is seriously made to pierce the 'corporate veil'. Determination/deliberations do not happen in the public. ET's distortion of 'facts' or 'sequence of facts' cannot be appealed. Clear gap in the law allows covert victimisation, blacklisting and discrimination within the publicly funded health care system/employers. The

concept of ‘victim-of -crime’ is absent. Instance of ‘miscarriage of justice’ because of previous ‘gag’ is buried. Addressing above for solutions…

WHISTLEBLOWER 31

Difficulties that I have experienced in using the Public Interest Disclosure Act:

Whistleblowers who use The PIDA need to understand that there are innumerable number of caveats and even the best lawyers have failed as a consequence to protect WB from dismissal by their employers. In The UK, you whistleblow at your peril and your employers will use PIDA to dismiss you. Good luck!!

ANNEX 1

Testimony from a whistleblower who reported their union would not support them with a whistleblowing claim

Difficulties that I have experienced in using the Public Interest Disclosure

I was a staff nurse whistleblower at a NHS trust. It involved the failure of the trust to share critical incident reports of harm to patients with staff so that no lessons were learned from these sometimes fatal incidents and the same types of incidents went on repeating in the trust. Due to the pressures, strain and stress of a six year battle to publicly reveal the truth of this story I took voluntary early retirement at an early age. I approached my union to pursue my case using PIDA but they refused to do so, although there could not have been a more ‘text book’ case of a situation that fitted the template for a PIDA case! I still have no explanation of why the union would not fight a PIDA case on my behalf.

How I think the law should change:

Special Courts should be set up to deal specifically with whistleblowing cases. This may help prevent the cover-ups and injustice that is still so prevalent in whistleblowing cases. In cases of damages and compensation for whistleblowers then whistleblowers should be given an amount comparable to their full wages up until the official government age of retirement. At the moment financial awards given are paltry – and if the person has to pay court/legal costs then these costs can be equal or much more than any compensation paid out. It makes a mockery of justice.
Whistleblowers should have their full legal costs paid back. There should be the same level playing field of legal aid for the whistleblower comparable to the bottomless pit of public money health trusts have access to in taking whistleblowers to court.

ANNEX 2

Testimony from a former NHS non executive director who raised concerns

“Non-Executive Directors are among several groups not covered by the Public Interest Disclosure Act. Despite recommendations to the contrary, the Government has refused to extend the limited protection PIDA offers to employees to such groups. I became aware of this after raising questions in my role as a Primary Care Trust Non-Executive Director, described by the Chair of the Strategic Health Authority as causing “disruption”. I wrote to the SHA Chair, explaining my concerns about “risk management, governance and public confidence”, adding that if he genuinely believed I caused disruption he could “use the procedure available to you to have me removed as a Non-Executive Director from the NHS”. He initiated an inquiry which he told me found my concerns to be “completely unfounded”. I submitted a complaint to the SHA about the inadequate investigation, which was dismissed. Subsequent disclosures in response to Freedom of Information requests indicated there were legitimate grounds for my questions, and I complained about the SHA’s handling of my concerns to the Parliamentary & Health Service Ombudsman. The PHSO replied: ‘We have taken legal advice as to whether we can look at your complaint. We consider that raising concerns about NHS appointments falls within the functions of your role as Non Executive Director and the substance of your complaint relates to action taken in respect of personnel matters. We are unable to consider such matters and the handling of a complaint about these issues is also excluded from our consideration.’ (PHSO, 21st September 2012). I sought disclosure of a letter written by the SHA Chair to the Appointments Commission (the body responsible for appointing Non-Executive Directors) at the time I raised concerns. I received a heavily redacted version in response to a Freedom of Information request. A complaint to the Information Commissioner, and an appeal to the Information Rights Tribunal resulted in this judgment on one issue, relating to a redacted comment made about me by the SHA Chair: “FOIA s.40(1) provides an absolute exemption for information of which the applicant (here MS) is the data subject. That is because the DPA 1998 s.7 makes provision for a subject access request, which is the appropriate route for disclosure.” I submitted a subject access request to the Department of Health, seeking disclosure of the information the SHA Chair had sent to the Appointments Commission about me. The Department replied: “The DPA prevents us from disclosing to you any personal data which is not yours. It also prevents us from breaching any duty of confidentiality owed to any other individuals involved. . . The first bullet point expresses a viewpoint held by another individual at the time of writing and therefore is also their personal data. The Department cannot disclose this without breaching the confidentiality of the individual concerned and consequently disclosure is refused.” In summary, the Data Protection Act prevented me knowing what the SHA Chair advised the Appointments Commission about me. Because it concerned a NHS Non-Executive appointment it was not within the remit of the PHSO to investigate as a NHS complaint. And as I was a Non-Executive Director, concerns I raised were not covered by PIDA.”

END