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Protect, whistleblowing charity, written submission to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council: “Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters”

The UK’s whistleblowing charity Protect

Since 1993, Protect has operated its free, legal Advice Line offering specialist whistleblowing advice to over 2,500 workers a year. We provide consultancy and training services for employers to improve their whistleblowing arrangements and in 2020 alone the employers we worked with had between them an estimated 1.3 million employees. These experiences inform our policy work in campaigning for better whistleblowing laws and public policy.

Protect have provided responses to question 1 and 7.

- 1. In your view, how does the right to freedom of opinion and expression contribute to the achievement of the SDGs? Please provide examples, where possible, with concrete data relating to impact. Please also mention relevant laws, policies and other measures.**

Whistleblowing can play a crucial role in advancing freedom of expression by allowing individuals to voice information and opinions that may otherwise be suppressed. Whistleblowers shed light on matters that are of public concern, such as unethical or illegal conduct within organisations - without their disclosures, this information may remain undisclosed, making it difficult for the public to access or even know about it. Thus, by uncovering such information, whistleblowers encourage transparency and accountability and foster freedom of expression. SDGs can only be met if governments and organisations are honest, transparent and accountable, and whistleblowers have an important role to play in ensuring this and calling out wrongdoing and corruption.

Moreover, whistleblowing can act as a deterrent against those who may otherwise engage in illicit or unscrupulous practices, as they know their actions may be exposed. This can create a culture of transparency and accountability, and a climate in which freedom of expression is valued and protected.

However, in some cases, whistleblowers may face retaliation for their actions, which can limit their freedom of expression. This highlights the importance of having legal protections for whistleblowers in place to ensure that they can freely express their opinions and information without fear of retaliation. Below we have provided an outline of the legislation that protects whistleblowers in the UK as well as the gaps within it.

7. What laws, policies and other institutional measures exist in your country to protect investigative journalism and whistleblowing? How effective are they and what further measures should be taken to protect journalists and whistleblowers? Where possible, please provide concrete examples of investigative journalism or whistleblowing related to sustainable development, e.g. exposure of corruption or misuse of natural resources.

What laws, policies and other institutional measures exist in your country to protect whistleblowing?

The UK [Public Interest Disclosure Act 1998](#) (PIDA) protects whistleblowers from negative treatment or unfair dismissal, it sits within the Employment Rights Act 1996 (ERA).

PIDA makes it unlawful to subject a [worker](#) to negative treatment or to dismiss them because they have raised a whistleblowing concern. Raising a whistleblowing concern is also known as a making a '*protected disclosure*' in law.

Whistleblowing rights under PIDA are day one rights. This means that the worker does not need the same two years' service that is needed for other employment rights.

Protected disclosures

To qualify for protection under PIDA you must

1. Be an [employee or worker](#);
2. Make a [disclosure of information](#);
3. [Reasonably believe](#) the concern to be in the [public interest](#);
4. Reasonably believe the concern tends to show a category of wrongdoing set out in the law:
 - a. Criminal offence;
 - b. Failure to comply with a legal obligation;
 - c. Miscarriage of justice;
 - d. Health and safety risks;
 - e. Environmental damage;
 - f. Cover up.

This is called making a "qualifying disclosure" (s43B of the ERA).

To be protected under the law you also need to [disclose to the right person in the right way](#). There are three places where you can raise your concerns and be protected:

1. Your employer or a relevant responsible person
2. A regulator on the "[Prescribed Persons](#)" List
3. Anyone else i.e., a wider disclosure

How effective are UK whistleblowing laws and what further measures should be taken to protect whistleblowers?

Key groups do not have protection

PIDA only protects those defined as 'workers' and 'employees. However, this leaves out many [types of people](#) who might make a protected disclosure and who could suffer detriment. Self-employed people, job-applicants, non-executive directors, trustees, volunteers, and trainees should be

protected by PIDA. The EU whistleblowing Directive has extended whistleblower protection to many other types of people across Europe. The UK should adopt a similar approach.

Limited access to justice for whistleblowers

There is no legal aid for employment tribunal. Many calling our advice line cannot afford legal fees and face tribunals as litigants in person. The employment tribunals are also experiencing extensive backlogs – it can take 18 months to 2 years for a complex whistleblowing case to be heard. Moreover, employment tribunal claims must be lodged within 3 months minus a day. The strict time limit means that some individuals who have made protected disclosure will not receive compensation for failure to comply with an administrative requirement that makes little sense considering the delays at the employment tribunal. Protect would like to see the limit extended to 6 months.

Reactive protection and a lack of requirements on employers

PIDA is only concerned with ‘after the event’ victimisation. Currently, there is no universal requirement for employers to have in place whistleblowing channels or to investigate serious public interest concerns raised by their staff. This is a major shortcoming of our law. Whilst some regulators, such as the FCA, have encouraged do require the organisations it regulates to have certain whistleblowing procedures in place this only applies to a few select industries. Most employers are under no obligation to investigate concerns raised with them. Many scandals reveal that workers inside the organisation had concerns but were either afraid to raise them or not listened to.

The lack of requirements on employers to introduce whistleblowing policies or processes is bad for everyone. An effective internal whistleblowing procedure is good for business: it allows concerns to be addressed swiftly and small risks prevented before they become major harms. Workers too benefit if they have safe workplace cultures and can raise concerns without fear. Finally, society benefits if wrongdoing is dealt with at an organisational level rather than being ignored or allowed to fester to the point where a regulator must get involved, the concerns are exposed via the media or public safety is put at risk.

There should be a legal duty so that every employer must put in place whistleblowing channels and investigate concerns. We propose that employers should have a pro-active duty to prevent victimisation, with sanctions or penalties if this duty is breached. YouGov research 2021 shows that workers support this proposal. Of UK workers 79% want to see all employers have whistleblowing standards in place and agreed employers should face sanctions for breaching those standards.

Inadequate whistleblowing arrangements in the civil service to hold government to account

Reforming the way central Government responds and treats whistleblowers is key to restoring standards in public life and ensuring that the governments in held accountable to SDG's. The report from senior civil servant Sue Gray into ‘party-gate’ revealed whistleblowers in 10 Downing Street were too scared to come forward, and support staff including security guards and cleaners were treated badly for raising concerns.

We believe that whistleblowers should have the option to raise a concern with someone outside the Civil Service and the Civil Service Commission. Each department should also appoint a Senior Civil Servant as the Whistleblowing Champion for the department, who would be responsible for leading the culture change and ensuring whistleblowing arrangements are working well in practice. Proper monitoring on whether the system is effective is crucial. Individual feedback should be sought from

whistleblowers who used the system and regular staff surveys should test staff awareness of and trust in the whistleblowing function. Further, training should be provided to all those who work in the civil service and in support roles in central government. Senior civil service leaders should convey a clear and consistent message that it is a duty to speak up about wrongdoing, anyone doing so will be protected from any retribution and that managers receiving such concerns have a duty to listen and respond to what has been raised.

Strategic lawsuits against public participation (SLAPPs)

SLAPPs, also referred to as intimidation lawsuits, are lawsuits designed to censor, intimidate, and silence critics by burdening them with legal fees until they abandon their criticisms. The claimant does not typically anticipate winning the SLAPP. If the defendant gives up their criticism due to fear, intimidation, exhaustion, or the extortionate costs of a legal defence, the claimant has will have achieved its goal. Occasionally, ongoing litigation against a defendant may also increase the cost of the defendant's liability insurance, effectively impairing the ability of an organisation to conduct business. SLAPPs have a chilling effect on freedom of expression because claimants' efforts to obfuscate their intent makes it difficult to filter out and penalise SLAPPs.

Protect believes that there are three conditions that any anti-SLAPP law must meet. First, it must ensure that SLAPPs are disposed of as quickly as possible in court. In order to achieve this, we need a new statutory mechanism that will require claims targeting public participation to meet a higher threshold to advance to the trial stage. Such a threshold must be high enough to prevent such abusive lawsuits being stretched out to trial. Judges should also have discretion to filter out cases that exhibit abusive qualities or would otherwise have a disproportionate impact on freedom of expression.

Second, effective anti-SLAPP law must keep costs for SLAPP targets to an absolute minimum. In Protect's view, costs must be awarded on a full indemnity basis. Since SLAPPs operate through the litigation process, however, it is important that SLAPP targets can see that process through to a resolution. While we recognise that the government has no plans to expand legal aid, there are other ways the costs can be minimised for those targeted by such lawsuits - including by reducing the burden of disclosure.

Third, costs for SLAPP filers must be sufficiently high to deter further SLAPPs. In addition to costs being made available on a full indemnity basis, exemplary damages should be available for cases where the claimant has exhibited particularly egregious conduct, and where the time and psychological harm caused to the defendant needs to be compensated. This must be proportionate to the resources available to the claimant to provide an effective deterrent to those using such tactics.

Find more information on the UK Model Anti-SLAPP Law we have drawn up to achieve the above [here](#).

Sustainable development and Environmental whistleblowing

Whistleblowers play a vital part in preventing environmental damage and holding companies and governments who break the law or breach climate targets to account. Workers are the eyes and ears of an organisation. They are well placed to spot early warning signs that greenwashing, misrepresentation of ESG credentials and environmental damage is likely to occur or is already occurring. If they are supported and protected by their employer in raising these concerns, environmental damage can be prevented, and the impact minimised as soon as possible..

Additionally, effective whistleblowing can assist in ensuring a company's ESG reporting is honest and accurate, so greenwashing is avoided. If whistleblowers can bring their concerns internally, businesses can address misleading claims before they are exposed by stakeholders, regulators, and the public. This can help to ensure that the public and regulators are accurately informed about a company's environmental impact. Whistleblowers therefore have an important role to play in exposing companies and governments failure to meet SDG's.

We are concerned that, there appear to be few whistleblowers raising concerns about environmental issues in the UK. Last year, only 8 of 2,500 calls Protect's Advice line received related to environmental issues. We are not alone. The [Environment Agency reported](#) in September 2021 that it had received only ten qualifying disclosures from whistleblowers between April 2020 and March 2021, while [Ofwat](#), the economic regulator for water, had four (2020-21). These statistics do not seem to reflect the widespread public concern about the environment crisis, nor international trends where we are seeing more ESG and environmental whistleblowers such as Desiree Fixler. We think works needs to be done to ensure that workers understand, and are empowered, to use the legal protections that are available to them if they do blow the whistle on environmental wrongdoing.

UK eco-mafia case study

In 2013, one of the largest illegal waste disposal sites in Europe was uncovered in Derry, Northern Ireland. It was found to be home to over 1 million tonnes of waste, including asbestos and arsenic. The site is both an environmental and financial disaster. The clean-up cost is an estimated £100m.¹ This is not an isolated incident; the Environmental Agency estimated that 18% of waste was managed illegally in a 2021 report.² The House of Commons Committee noted that only a quarter of waste crime is reported to regulators.³ This demonstrates a lack of internal reporting mechanisms for workers to raise concerns when witnessing illegal waste activity. Lower-level employees are more likely to spot illegal waste activities occurring, and by having a system in place that acknowledges and investigates these concerns would assist in stopping waste crime before it becomes a major environmental risk.

Further resources

- Our [whistleblowing bill](#)
- Our [webpage](#) on PIDA
- Our [webpage](#) on extending PIDA protection to more groups
- A [blog post](#) on Protect's proposed reforms "Whistleblowing: where should we go?"
- A [blog post](#) on why we need PIDA

¹ <https://www.theguardian.com/tv-and-radio/2023/jan/23/buried-bbc-podcast-exposing-waste-rubbish-crime-scandal>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023187/National_waste_crime_survey_report_2021_-_report.pdf

³ <https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/33/summary.html>