



Protection for Whistleblowing Bill [HL]

HL Bill 27 of 2022–23

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The [Protection for Whistleblowing Bill \[HL\]](#) is a private member's bill introduced in the House of Lords by Baroness Kramer (Liberal Democrat) on 13 June 2022. The bill's second reading debate has not yet been scheduled.

The key purpose of the bill is to increase the protection of whistleblowers in Great Britain. This followed concerns raised by parliamentarians and whistleblowing support organisations about the effectiveness of the Public Interest Disclosure Act 1998 in providing adequate and comprehensive protection to whistleblowers and the public.

The bill would introduce several protections for whistleblowers, including the establishment of an independent Office of the Whistleblower. The office's principal duty would be to protect whistleblowers and oversee the process of whistleblowing. It would do this in a variety of ways, including by setting minimum standards for whistleblowing policies and enforcing compliance of organisations with those standards. The bill would also create offences relating to the treatment of whistleblowers and the handling of whistleblowing cases. It would repeal the UK's current whistleblowing legislation: the Public Interest Disclosure Act 1998.

Baroness Kramer introduced a similar version of the bill during the 2021–22 parliamentary session. The previous bill focused on the establishment of an Office of the Whistleblower. It received its second reading debate on 25 June 2021, but failed to make it any further before the end of the parliamentary session.

Baroness Kramer's latest bill is almost identical to a private member's bill introduced by the chair of the All Party Parliamentary Group (APPG) on Whistleblowing, Mary Robinson (Conservative MP for Cheadle), in the House of Commons on 26 April 2022. This House of Commons bill fell at the end of the 2021–22 parliamentary session, before it could receive a second reading.

Several whistleblower support organisations have welcomed the bill, specifically the establishment of an Office of the Whistleblower. However, not all have agreed that the Public Interest Disclosure Act 1998 should be repealed and have argued that the legislation should be reformed instead. The government has committed to undertaking a review of the UK's whistleblowing legislation. In July 2022, it said the scope and timing of this review would be set out in due course.

1. What is whistleblowing?

There is no legal definition of whistleblowing in UK law. The term 'whistleblowing' is described in government guidance as a situation where a person, usually a worker, passes on information about wrongdoing.¹ The wrongdoing will typically (but not always) be something that they have witnessed at work.

The Public Interest Disclosure Act 1998 (PIDA) is the UK's whistleblowing law. It aims to protect workers from detrimental treatment or victimisation by their employer if they report wrongdoing.

To be protected by the law, whistleblowers must reasonably believe that passing on information is in the public's interest and shows that one or more of the following has occurred, is occurring, or is likely to occur:

- a criminal offence

¹ Department for Business, Energy and Industrial Strategy, '[Whistleblowing: Prescribed persons guidance](#)', April 2017, p 3.

- a breach of a legal obligation
- a miscarriage of justice
- danger to the health or safety of any individual
- damage to the environment
- the deliberate covering up of wrongdoing in the above categories

The passing on of information by a person in these circumstances is referred to as a ‘protected disclosure’ under the law if it is made to an employer or legal adviser, amongst several others as prescribed in PIDA. Whistleblowers who make protected disclosures have certain protections under PIDA, including being able to rely on unfair dismissal procedures if they lose their job as a result of making a protected disclosure.

PIDA inserted these protections into the Employment Rights Act 1996.

2. Why has the bill been introduced?

The purpose of the bill is to increase protection and support for whistleblowers. During a debate on an earlier whistleblowing bill, Baroness Kramer described some of the challenges faced by whistleblowers, including high court fees and “informal blacklist[ing]” by employers.² She said quick progress was needed to ensure a “proper and effective framework for whistleblowing so that corruption and fraud can be stopped in their tracks, while ensuring that those who speak out are protected and supported”.

Subject to a minority of provisions, the bill is otherwise identical to the [Whistleblowing Bill](#): a private member’s bill introduced by the chair of the whistleblowing APPG, Mary Robinson (Conservative MP for Cheadle), in the House of Commons on 26 April 2022. The House of Commons bill fell at the end of the 2021–22 parliamentary session, before it received a second reading debate.

² [HL Hansard, 25 June 2021, col 512.](#)

The bill incorporates recommendations made in a 2019 report by the APPG on whistleblowing, of which Baroness Kramer was previously co-chair.³ This report said that PIDA had failed to provide adequate and comprehensive protection to whistleblowers or the public. The APPG gave several reasons for this, including that the protections in PIDA were mainly retrospective:

PIDA encourages, more or less directly, employers to adopt internal reporting procedures or internal mechanisms of whistleblower protection, but there is no legal obligation to do so. Thus, the main protection offered by PIDA to whistleblowers who are subjected to any detriment by their employers is the presentation of a complaint to an employment tribunal.⁴

The APPG said that presenting a complaint to an employment tribunal was a formal and complex undertaking which required investment in time, money and human resources.⁵

Additionally, the APPG noted that not all disclosures are protected under PIDA:

The protection granted by PIDA is not universal, as some disclosures are excluded. Amongst these, notably, are external disclosures made to persons or bodies not responsible for the matter, as well as disclosures made by members of the public not related to the organisation by any working relationship.

The APPG's most recent report, on Mary Robinson's bill, said the bill would address these failings and support whistleblowers in several ways:

³ APPG on Whistleblowing, '[Whistleblowing: The personal cost of doing the right thing and the cost to society of ignoring it](#)', July 2019.

⁴ APPG on Whistleblowing, '[Whistleblowing: The personal cost of doing the right thing and the cost to society of ignoring it](#)', July 2019, p 34.

⁵ APPG on Whistleblowing, '[Whistleblowing: The personal cost of doing the right thing and the cost to society of ignoring it](#)', July 2019, p 35.

The Whistleblowing Bill [would] define whistleblowers and whistleblowing in law. It [would] properly and clearly set out the duties of relevant persons and establish an Office of the Whistleblower with the responsibility to uphold the rights of whistleblowers but also to set, monitor, and enforce the new standards. The bill proposes a multi-level, multi-stakeholder approach to emphasise the value of whistleblowers and the crucial role they play in a healthy society.⁶

This is the third time that Baroness Kramer has introduced her bill in the House of Lords. The two previous versions contained fewer provisions and focused on the establishment of the office. The latest bill contains additional provisions, including some that would introduce a criminal offence of subjecting a whistleblower to a detriment, and civil penalties that could be imposed on a person for failing to comply with obligations placed upon them by the office.

3. What would the bill do?

The bill contains 28 clauses split into seven parts.

3.1 Part I: Protected disclosures, whistleblower and relevant persons

Part I (clauses 1 to 3) would define what the terms ‘protected disclosure’, ‘whistleblower’ and ‘relevant person’ mean under the act.

Clause 1 would define a ‘protected disclosure’ as any disclosure of information made in the public interest and related to a matter listed in the bill. The bill would expand the range of relevant matters provided for in PIDA and would include:

- a criminal offence or regulatory breach

⁶ APPG on Whistleblowing, [‘The Whistleblowing Bill’](#), April 2022, p 6.

- the failure of any person, including a relevant person (see clause 3), to comply with a legal obligation
- a miscarriage of justice
- the endangering of the health or safety of any person
- damage to the environment
- mismanagement of public funds
- misuse or abuse of authority
- such other matter as may be prescribed in regulations made by the secretary of state
- concealment of information, or removal, deletion or destruction of any documents relating to any of the above matters.

A disclosure would be a ‘protected disclosure’ if it is made to:

- the Office of the Whistleblower (more information on this is provided in part 2 of the bill)
- a ‘relevant person’ (defined in clause 3 of the bill)
- someone who the person making the disclosure reasonably believes is a relevant person
- someone who it is reasonable for the person making the disclosure to make that disclosure to

Clause 2 would see a person defined as a ‘whistleblower’ if they make, have made or intend to make a protected disclosure, or if a relevant person perceived this to be the case.

Clause 3 would provide that a ‘relevant person’ included an employer, a public authority and a regulator. Amongst other things, a relevant person would have a duty to not subject, or cause or allow others to subject, a person to detriment as a result of either being, or being perceived to be, a whistleblower. A ‘detriment’ would be something that caused disadvantage, loss or harm to a person. A relevant person would also be required to cooperate with and adhere to standards laid down by the Office of the Whistleblower.

3.2 Part 2: Office of the Whistleblower

Part 2 (clauses 4 to 12) contains provisions on the Office of the Whistleblower (the office).

Clause 4 would require the secretary of state to introduce regulations that would establish the office. This would be done within one year of the act coming into force. The office's principal duty would be to protect whistleblowers and oversee the process of whistleblowing. The objectives of the office would be to:

- encourage and support whistleblowers to refer concerns to the appropriate authorities
- support an effective and fair whistleblowing process
- protect the public purse and ensure that wrongdoers bear the cost of wrongdoing revealed by whistleblowing
- promote good governance through the normalisation of whistleblowing
- ensure that concerns raised by whistleblowers are acted upon
- monitor and review the operation of this act

The office would have several functions, including to:

- set minimum standards for whistleblowing policies, procedures and reporting structures
- monitor and enforce the compliance of organisations with those standards
- bring prosecutions for the whistleblowing offences (information on criminal offences is provided in part 5 of the bill)
- provide information and advice on whistleblowing, as well as give support to whistleblowers

Clause 5 would set out the office's governance arrangements. It would be

led by a 'whistleblowing officer' who is appointed by the secretary of state and overseen by a board of directors. The office would be required to regularly report on the exercise of its duties, objectives and functions. Such reports would be made to each House of Parliament, as well as the Senedd Cymru and the Scottish Parliament in relation to matters that are within their legislative competence.

Clause 6 would require the office to set minimum standards for how relevant persons should carry out their duties. Any minimum standards for handling protected disclosures would need to preserve the confidentiality and anonymity of whistleblowers, amongst other things. The office would also be permitted to accredit whistleblowing schemes that met the minimum standards.

Clause 7 would give the office powers to carry out investigations into whistleblowing complaints and to establish schemes for the recognition of whistleblowers, amongst other things. The clause would also permit the secretary of state to make a variety of regulations, including ones that would enable the office to assess, process and refer protected disclosures to a relevant regulator.

Clause 8 would enable the office to issue a written notice (known as an 'information notice') that would require any person to provide information, as reasonably required by the office when carrying out its functions or investigating offences. The information notice must explain the following:

- why the office required the information
- consequences of failing to comply with the information notice
- rights of appeal

The office could insert an 'urgency statement' into the information notice if it believed that the information was required urgently. Clause 8 would prevent the office from asking someone to disclose information that would infringe legal professional privilege or privilege of the Houses of Parliament. The office would also be prevented from asking a person to provide

information that would expose the person to criminal proceedings. Anyone who failed to take all reasonable steps to comply with an information notice could be subjected to a civil penalty (more information on civil penalties is provided in part 4 of the bill).

Clause 9 would allow the office to issue an ‘action notice’ to anyone who had contravened the minimum standards set by the office. The action notice would require the person to take, or refrain from taking, any steps specified in the notice. The clause sets out what information the action notice should include and what would happen if someone appealed it. Anyone who failed to take all reasonable steps to comply with an action notice would be liable for civil penalties under part 4.

Clause 10 would enable the office to issue a ‘redress order’ if it believed a relevant person had subjected a whistleblower to detriment. This order would direct the relevant person to either take, or refrain from taking, certain steps so as to provide the whistleblower with a level of redress as may be determined by the office. A redress order could include an order for financial redress (of an unlimited amount) if loss or damage had been incurred. A redress order could be issued if the detriment had been caused deliberately, recklessly, negligently, or otherwise in breach of any duty owed by the relevant person to the whistleblower. Anyone who failed to take all reasonable steps to comply with a redress order would be subject to a civil penalty under part 4 of the bill.

Clause 11 would allow the office to issue an ‘interim relief order’ if it considered this necessary to protect a whistleblower’s interests pending the completion of an investigation into a whistleblowing complaint. This order could specify any relief that the office considered appropriate. Anyone who failed to comply with the order would be subject to civil penalties under part 4.

Clause 12 would require the office to publish guidance on the exercise of its functions and powers in connection with the issuing of: information notices; action notices; redress orders; interim relief orders; and civil penalties.

3.3 Part 3: First tier tribunal

Part 3 (clauses 13 to 18) contains provisions for the establishment of a first-tier tribunal (the tribunal).

Clause 13 would set out the general appeals process. The clause sets out who could bring an appeal, what the appeal could dispute, and what the tribunal could consider when determining an appeal.

Clauses 14 and 15 set out procedures that would apply to appeals against information notices and urgency statements.

Clause 16 would permit a person to appear before a tribunal either by themselves, or through representation by counsel, a solicitor, a trade union representative, employers' association, or any other person that they desired.

Clause 17 would require the secretary of state to make regulations on the tribunal proceedings. This would include provisions that require a person to give evidence and produce documents, as well as set out the procedure to be followed during tribunal proceedings.

Clause 18 would permit a person to make an appeal to the upper tribunal on any question of law that arose from a decision of the tribunal or proceedings before it.

3.4 Part 4: Civil penalties

Part 4 (clause 19) would set out the civil penalties that a person or organisation could become liable for if they failed to comply with their obligations under clauses 8, 9, 10 or 11. In the case of an individual, the maximum penalty would be 10% of the individual's gross annual income, but not exceeding £50,000. In any other case (such as an organisation), the maximum amount would be 10% of annual global turnover, not exceeding

£18mn. Penalties would be payable directly to the office, and the office could require the penalty to be paid within a certain time frame. The secretary of state could also increase the maximum penalty amounts by regulations. If a penalty was not paid, the office could recover it by civil enforcement or other means.

3.5 Part 5: Criminal offences

Part 5 (clauses 20 and 21) contains criminal offences.

Clause 20 would create the offence of subjecting a whistleblower to detriment. Anyone who intentionally or recklessly submitted a person as defined in the clause, including a whistleblower or someone perceived to be one, to detriment would be liable to either a fine on summary conviction, or to a maximum 18-month prison term and/or a fine if convicted on indictment.

Clause 21(1) would make it an offence to intentionally or recklessly provide false information in response to an information notice. Under clause 21(2), it would also be an offence for a person who had received an information notice to destroy, dispose of, conceal, block or falsify an information notice, or to cause or permit another to do any of these things, with the intention of preventing the office from examining the material. A person charged with this offence would have a defence if they could prove that the destruction, disposal, concealment, blocking, falsification or modification of information would have occurred in the absence of the person to whom the information notice was given.

3.6 Part 6: Supplementary provisions

Part 6 (clauses 22 and 23) contains supplementary provisions.

Clause 22 would prohibit any agreements made between a relevant person and another from containing confidentiality clauses if they purported to

prevent or restrict that other person from making a protected disclosure. This would prevent a relevant person from creating an agreement that could effectively prevent a person from making a protected disclosure. The office would also have the power to invalidate such agreements if identified, and take further steps as it considered appropriate.

Clause 23 would provide whistleblowers with certain protections against criminal or civil action. For instance, if a person was prosecuted for any offence that involved the disclosure of information in circumstances where the disclosure was prohibited or restricted, it would be a defence for that person to show that this was a protected disclosure. Civil proceedings could also not be brought against a person who had made a protected disclosure in respect of that disclosure.

3.7 Part 7: Remaining provisions

Part 7 (clauses 24 to 28) would provide the act's remaining provisions.

Clause 24 would do several things, including set out who the office should consult with when creating and proposing minimum standards (as provided in clause 6). The office would be required to hold a consultation with several stakeholders, including the Advisory, Conciliation and Arbitration Service (Acas), the secretary of state, and Welsh and Scottish ministers, as necessary. After this consultation, the office would then be required to communicate the proposed minimum standards to the secretary of state, Senedd Cymru and Scottish Parliament. A draft statutory instrument containing the minimum standards would then need to be laid before the Houses of Parliament, Senedd Cymru and Scottish Parliament for approval.

Clause 25 would provide the procedures for making regulations under the following clauses:

- clause 5 (the office governance)
- clause 7 (standards for handling protected disclosures)

- clause 13 (appeals to the first tier tribunal)
- clause 17 (first tier tribunal procedure regulations)
- clause 19 (civil penalties)

Clause 26 would repeal PIDA.

Clause 27 would provide for the financing of measures in the bill. This would be used to pay for certain costs, including any expenditure incurred by the secretary of state as a result of this act.

Clause 28 would see the act extend to England, Wales and Scotland. With the exception of clause 28 (which would come into force on the day the act receives royal assent), the rest of the act would come into force on a day specified by the secretary of state in regulations.

4. What parliamentary discussion has taken place?

In recent years, several debates in the House of Lords have included discussions on the protection of whistleblowers in the UK. This includes during a debate on financial fraud in December 2021, and during a committee stage debate on the Criminal Finances Bill in 2017.

During a debate introduced by Lord Sharkey (Liberal Democrat) in the House of Lords on financial fraud, Lord Sharkey said that there was a “general agreement” that financial fraud in the UK was increasing.⁷ Baroness Kramer argued that protections for whistleblowers in the UK were limited when compared to protections afforded to whistleblowers in the United States. After arguing that the Financial Conduct Authority’s scope was too narrow and prevented it from intervening to protect whistleblowers in many cases, she said:

My second issue is that of whistleblowers and the dreadful way we treat

⁷ [HL Hansard, 2 December 2021, col 305GC.](#)

them in the UK. The United States is probably the exemplar of how to value financial whistleblowers. Regulators and enforcement agencies in the US have told me that whistleblowers are the citizens' army that enables them to clean up and deter bad behaviour in an industry where money creates so many temptations.⁸

Baroness Kramer said that the UK—"once a leader in protecting whistleblowers"—was now "one of the most risky developed countries in which to speak out". She said that whistleblowers were assumed to be "troubled people" by the Financial Conduct Authority (FCA), rather than vital informers. In response, Baroness Williams of Trafford, minister of state for the home office, said that HM Treasury continued to "work closely with the FCA to ensure that its duties and powers are sufficient to meet the threats in the financial sector". The minister also noted that the FCA said it had launched its 'In confidence, with confidence' campaign to encourage individuals working in financial services to report potential wrongdoing and remind them of the confidentiality processes in place.⁹

The establishment of an independent Office of the Whistleblower was previously raised in 2017 during a committee stage debate of the Criminal Finances Bill. Baroness Kramer introduced an amendment that aimed to protect and provide compensation for whistleblowers. She said that establishing an office would help to enshrine the importance of whistleblowing in the UK.¹⁰ Whilst several members agreed that whistleblowers needed more protection in the UK, not all agreed that this should be in the form of a dedicated office. For example, Lord Kennedy of Southwark (Labour), the then shadow spokesperson for home affairs, said that that further statutory protections were needed instead.¹¹ The government also disagreed to the establishment of a new office. It argued that the best bodies to investigate whistleblowing concerns would be the

⁸ [HL Hansard, 2 December 2021, col 311GC](#).

⁹ [HL Hansard, 2 December 2021, col 318GC](#); Financial Conduct Authority, '[FCA launches campaign to encourage individuals to report wrongdoing](#)', 24 March 2021.

¹⁰ [HL Hansard, 28 March 2017, col 535](#).

¹¹ [HL Hansard, 28 March 2017, col 538](#).

bodies that regulated the issue about which the concerns were being raised.¹²

5. What external support has the bill received?

Several whistleblowing organisations support the bill. For example, whistleblowing charity Protect welcomed the proposals to establish an independent office.¹³ It agreed that whistleblowers would be better protected by setting and enforcing standards across regulators and employers.

Not-for-profit organisation and secretariat to the APPG on whistleblowing Whistleblowers UK also expressed support for the establishment of an independent office. It said this would ensure that citizens were protected when raising concerns, and people were educated on their whistleblowing rights.¹⁴ Whistleblowers UK has called for an Office of the Whistleblower to be established since 2014.

However, the charity Protect disagreed with the bill's provisions to repeal PIDA. It said that whistleblowers needed effective remedies through the employment tribunal if they were treated badly or dismissed.¹⁵ Despite this, it did acknowledge that reforms to the UK's whistleblowing law were needed. The charity launched the 'Let's Fix UK Whistleblowing Law' campaign in April 2021 which called for reforms to PIDA.¹⁶

¹² [HL Hansard, 28 March 2017, col 539.](#)

¹³ Protect, '[Mary Robinson MP introduces Whistleblowing Bill to Parliament: Protect statement](#)', 26 April 2022.

¹⁴ Whistleblowers UK, '[Baroness Kramer's Protection for Whistleblowing Bill](#)', accessed 4 August 2022.

¹⁵ Protect, '[Mary Robinson MP introduces Whistleblowing Bill to Parliament: Protect statement](#)', 26 April 2022.

¹⁶ Protect, '[Protect campaign calls on civil society to help fix the UK's whistleblowing law](#)', accessed 28 July 2022.

5.1 Government review

In April 2021, the government said it remained committed to reviewing the UK's whistleblowing legislation. It said this review would be carried out "once sufficient time had passed for there to be the necessary evidence available to assess the impact of the most recent reforms".¹⁷ The whistleblowing charity Protect has argued that a review was "long overdue".¹⁸

In July 2022, the government said the scope and timing of the whistleblowing legislation review would be confirmed in due course.¹⁹

The most recent whistleblowing reform took place in 2017. This saw the introduction of a new legislative requirement for certain prescribed persons to produce an annual report on whistleblowing disclosures made to them by workers. Prescribed persons include bodies such as the Bank of England and the General Medical Council, amongst others.

6. Read more

- House of Lords Library, ' [Office of the Whistleblower Bill \[HL\]](#) ', 15 June 2021

¹⁷ House of Commons, '[Written question: Disclosure of information](#)', 19 April 2021, 175940.

¹⁸ Protect, '[Baroness Kramer Office of the Whistleblower Bill update includes reforming existing UK law](#)', 25 May 2021.

¹⁹ [HC Hansard, 7 July 2022, col 1071](#).

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