



BRIEFING PAPER

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Whistleblowing to MPs

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Summary

Public interest disclosure law now protects whistleblowers that disclose information to Members of Parliament, provided certain conditions are satisfied. This note summarises and briefly explains those conditions.

For a fuller overview of the law in this area, see the Library's standard note on whistleblowing: [Whistleblowing and gagging clauses: the Public Interest Disclosure Act 1999, SN248](#).

1. Introduction

Whistleblowing law protects workers that disclose information about malpractice at their workplace or former workplace provided certain conditions are met. The conditions concern the nature of the information disclosed and the person to whom it is disclosed. If these conditions are met, the Act protects the worker from suffering detriment as a result of having made the disclosure.

As of 6 April 2014 disclosure of information to a Member of Parliament may be protected. [The Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) Order 2014](#),¹ inspired by a [Ten Minute Rule Bill](#) sponsored by the Rt Hon David Davis MP,² added MPs to the list of “prescribed persons” to whom disclosure may be made. Other than MPs, the list of comprises mainly regulatory bodies, for example, the Financial Conduct Authority (“FCA”).

Each prescribed person may receive information in respect of specified matters relevant to its function. This means disclosure to that person will generally only be protected if the whistleblower reasonably believes the information relates to one of those matters. For example, in the case of the FCA, the matters include the listing of securities, the operation of banks, money laundering, etc; disclosure of information relating to other matters, eg health and safety concerns at a bank, would not be protected if disclosed to the FCA, but may be if disclosed to the Health and Safety Executive.

MPs are unique among prescribed persons. Disclosure to an MP may be protected in relation to any matter for which any other person is prescribed. This encompasses a vast range of matters relating to the functions of almost 70 regulatory bodies. The rationale for this is that MPs are “often well placed to make representations on behalf of whistleblowers”.³

¹ SI 2014/596

² *Public Interest Disclosure (Amendment) Bill 2013-14*; see [HC Deb 19 November 2013 cc1117-1119](#)

³ [Explanatory Memorandum to the Public Interest Disclosure \(Prescribed Persons\) \(Amendment\) Order 2014](#)

2. The operation of the law protecting whistleblowers

2.1 The statutory framework

The statutory protection afforded to whistleblowers originated with the *Public Interest Disclosure Act 1998*, which amended the *Employment Rights Act 1996* ("the 1996 Act"). The key provisions are contained in Part IVA of the 1996 Act, as amended, and secondary legislation, principally [The Public Interest Disclosure \(Prescribed Persons\) Order 1999](#) ("the 1999 Order"),⁴ which details the prescribed persons.

2.2 Protected persons

Whistleblowing law protects "workers" that disclose certain types of information in specified ways. The status of "worker" includes persons that work under contracts of employment (ie employees) as well as those who work under contracts that require them to work for someone else (eg agency workers). Whistleblowing law does not apply to employment in the Security Service, the Secret Intelligence Service or Government Communications Headquarters.⁵

2.3 The general duty of confidentiality

Whistleblower protection is set against the background of a general duty of confidentiality. This duty prohibits the disclosure of certain information obtained by workers during the course of their employment. The duty exists during the employment and in some cases persists afterwards. Breach of the duty can justify dismissal or some other form of sanction. The whistleblowing provisions of the 1996 Act are intended to protect workers from these consequences in circumstances where disclosure is made in the public interest.

2.4 Protected disclosure

In order to be protected, the whistleblower's disclosure must fall within the definition of "protected disclosure". The 1996 Act provides that a protected disclosure is:

- a specific type of disclosure (a "qualifying disclosure");
- made in a specific way.⁶

2.5 Qualifying disclosure

A "qualifying disclosure" is a disclosure of **information** which, in the **reasonable belief** of the worker making the disclosure, is made in **the public interest** and tends to show one or more of the following matters listed in section 43B(1) of the 1996 Act:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;

⁴ SI 1999/1549

⁵ *Employment Rights Act 1996*, [section 193](#)

⁶ Section 43A, *Employment Rights Act 1996*

- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or
- that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.⁷

The disclosure will not constitute a qualifying disclosure if the person making it commits a criminal offence while doing so,⁸ nor will it if disclosed in breach of legal professional privilege.⁹

The requirement for the disclosure to be one of information excludes from the Act's protection allegations and opinion. A 2009 Employment Appeal Tribunal judgment illustrates the distinction between information and an allegation:

the ordinary meaning of giving "information" is conveying facts Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "you are not complying with Health and Safety requirements". In our view this would be an allegation not information.¹⁰

The requirement for the worker reasonably to believe disclosure is in the public interest is intended to exclude disclosure that is personal in nature. For example, a disclosure concerning a breach of the employee's contract of employment is unlikely to be protected.¹¹ Whether or not belief is reasonable is a question of fact, determinable by a court.

2.6 The method of disclosure

As noted, a qualifying disclosure will only become a protected disclosure if disclosure is made in a specific way. The 1996 Act expresses this as follows:

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

Thus, sections 43C to 43H set out the permissible methods of disclosure (eg, disclosure to one's employer). For present purposes, the most relevant provision is section 43F, which protects disclosure to a "prescribed person"; Members of Parliament are prescribed persons.

2.7 Disclosure to prescribed persons, including Members of Parliament

Disclosure to a prescribed person can only be protected if the worker reasonably believes:

- the information disclosed is substantially true; and
- "the relevant failure falls within any description of matters in respect of which that person is so prescribed".

That second point warrants further explanation. Prescribed persons are prescribed in respect of matters relevant to their function. So, for example, the Environment Agency is

⁷ Section 43B, *Employment Rights Act 1996*

⁸ For example, disclosure in breach of the *Official Secrets Act 1989*

⁹ The confidentiality between a lawyer and her client.

¹⁰ [Geduld v Cavendish Munro Professional Risks Management Ltd](#) [2009] UKEAT 0195_09_0608, para 24

¹¹ The public interest test is new, inserted into the 1996 Act by [section 17](#) of the *Enterprise and Regulatory Reform Act 2013*. The test is intended to prevent employees claiming whistleblower protection when disclosing breaches of personal contracts, for purely private reasons, which they were previously able to do following the judgment in *Parkins v Sodexho Ltd* [2002] IRLR 109; see [HC Deb 3 July 2013 c388](#).

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prescribed in respect of acts or omissions affecting the environment. The Schedule to the 1999 Order deals with this by way of a table comprising two columns:

- the first column lists the prescribed persons;
- the second sets out the description of matters in respect of which that person is prescribed.

Thus, to reuse the Environment Agency example, the Schedule provides the following:

FIRST COLUMN	SECOND COLUMN
Environment Agency.	Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to pollution, abstraction of water, flooding, the flow in rivers, inland fisheries and migratory salmon or trout.

Instead of being prescribed in respect of specific matters, **MPs are prescribed in respect of any matter specified in the second column.** This encompasses a wide range of matters. The table contained in the Schedule to the amended 1999 Order is annexed to this note.

3. Checklist

Disclosure to an MP will qualify for protection if the answer to all the following is “yes”:

- the whistleblower is a worker (excluding those employed by the Security Service, the Secret Intelligence Service or Government Communications Headquarters);
- the whistleblower is disclosing information (ie facts), as distinct from allegations or opinion;
- the whistleblower reasonably believes the disclosure is made in the public interest;
- the disclosure tends to show one of the matters listed in section 43B(1) of the 1996 Act (see above, under “qualifying disclosure”);
- the disclosure is not made in breach of legal professional privilege and the whistleblower is not committing a criminal offence by making it;
- the whistleblower reasonably believes the information disclosed is substantially true; and
- the whistleblower reasonably believes the relevant failure falls within any of the matters described in the second column of the table in the Schedule to the amended 1999 Order (see Annex, below).

4. Public Concern at Work

Public Concern at Work is a charity which offers legal advice about whistleblowing. It operates an [advice line](#), managed by lawyers and subject to lawyer-client privilege (ie confidential), and has produced a guide to whistleblowing law, available [here](#).¹² The advice line can be reached on: **020 7404 6609**.¹³

Should a constituent wish to disclose information but is uncertain whether the disclosure would be protected, the constituent may wish to discuss the matter with PCaW prior to making disclosure, or obtain legal advice. A Library note setting out where legal advice in employment matters can be obtained (including free advice) is available [here](#).¹⁴

Annex

The following table is contained in the Schedule to the *Public Interest Disclosure (Prescribed Persons) Order 1999*, as amended. This is the version in force as at 6 April 2014, the date MPs were added to the list of prescribed persons. Provided the other necessary conditions are satisfied (see above) disclosure of information to an MP will be protected in respect of any matter listed in the second column (see below, at the bottom of page 15).

FIRST COLUMN	SECOND COLUMN
Persons and descriptions of people	Descriptions of matters
Accounts Commission for Scotland and auditors appointed by the Commission to audit the accounts of local government bodies.	The proper conduct of public business, value for money, fraud and corruption in local government bodies.
Audit Commission for England and Wales and auditors appointed by the Commission to audit the accounts of local government, and health service, bodies (including local policing bodies, and the chief constables and Commissioner of Police of the Metropolis appointed under the Police Reform and Social Responsibility Act 2011).	The proper conduct of public business, value for money, fraud and corruption in local government, and health service, bodies (including local policing bodies, and the chief constables and Commissioner of Police of the Metropolis appointed under the Police Reform and Social Responsibility Act 2011).

¹² [A Guide to PIDA - Public Interest Disclosure Act 1998](#), PCaW website (accessed 17 April 2014)

¹³ [Advice Line](#), PCaW website (accessed 17 April 2013)

¹⁴ [Legal advice and help in employment matters](#), Commons Library Standard Note, SN2830, 24 May 2013.

Independent Police Complaints Commission.	Matters relating to the conduct of a person serving with the police (as defined in section 12(7) of the Police Reform Act 2002) or of any other person in relation to whose conduct the Independent Police Complaints Commission exercises functions in or under any legislation.
Certification Officer.	Fraud, and other irregularities, relating to the financial affairs of trade unions and employers' associations.
Charity Commissioners for England and Wales.	The proper administration of charities and of funds given or held for charitable purposes.
The Scottish Ministers.	The proper administration of charities and of funds given or held for charitable purposes.
Chief Executive of the Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Chief Executive of the Scottish Criminal Cases Review Commission.	Actual or potential miscarriages of justice.
Civil Aviation Authority.	Compliance with the requirements of civil aviation legislation, including aviation safety [and aviation security.
Office of Communications	<p>Matters relating to—</p> <hr/> <p>(a) the provision of electronic communications networks and services and the use of the electromagnetic spectrum;</p> <hr/> <p>(b) broadcasting and the provision of television and radio services;</p> <hr/> <p>(c) media ownership and control; and</p> <hr/>

(d) competition in communications markets.

Commissioners of Customs and Excise.

Value added tax, insurance premium tax, excise duties and landfill tax.

The import and export of prohibited or restricted goods.

Commissioners of the Inland Revenue.

Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the national minimum wage.

Comptroller and Auditor General.

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally-funded public services.

Auditor General for Wales.

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.

Auditor General for Scotland and persons appointed by or on his behalf under the Public Finance and Accountability (Scotland) Act 2000 to act as auditors or examiners for the purposes of sections 21 to 24 of that Act.

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.

Audit Scotland.

The proper conduct of public business, value for money, fraud and corruption in public bodies.

Gas and Electricity Markets Authority.

The generation, transmission, distribution and supply of electricity, participation in the operation of an electricity interconnector (as defined in section 4(3E) of the Electricity Act 1989) or

providing a smart meter communication service (as defined in section 4(3G) of that Act) and activities ancillary to these matters.

The transportation, shipping and supply of gas through pipes, participation in the operation of a gas interconnector (as defined in section 5(8) of the Gas Act 1986 or providing a smart meter communication service (as defined in section 5(11) of that Act) and activities ancillary to these matters.

Water Services Regulation Authority.

The supply of water and the provision of sewerage services.

Water Industry Commissioner for Scotland.

The supply of water and the provision of sewerage services.

The Water Industry Commission for Scotland.

The supply of water and the provision of sewerage services.

Director of the Serious Fraud Office.

Serious or complex fraud.

Lord Advocate, Scotland.

Serious or complex fraud.

Environment Agency.

Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to pollution, abstraction of water, flooding, the flow in rivers, inland fisheries and migratory salmon or trout.

Scottish Environment Protection Agency.

Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to flood warning systems

and pollution.

Food Standards Agency.

Matters which may affect the health of any member of the public in relation to the consumption of food and other matters concerning the protection of the interests of consumers in relation to food.

Financial Conduct Authority.

The listing of securities on a stock exchange; prospectuses on offers of transferable securities to the public; the carrying on of investment business or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies; the functioning of financial markets and investment exchanges; money laundering, financial crime, and other serious financial misconduct, in connection with activities regulated by the Financial Conduct Authority.

Prudential Regulation Authority.

The carrying on of investment business or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies.

The Bank of England.

The functioning of clearing houses.

The Financial Reporting Council Limited and its operating bodies the Professional Oversight Board, the Financial Reporting Review Panel and the Accountancy and Actuarial Discipline Board.

Matters relating to—

(a) the independent oversight of the regulation of the accountancy, auditing and actuarial

professions;

	(b) the independent supervision of Auditors General (as defined in section 1226 of the Companies Act 2006);
	(c) the monitoring of major audits (as defined in section 525 of that Act for the purposes of that section or section 522, or paragraph 13(10) of Schedule 10 to that Act for the purposes of that paragraph);
	(d) the registration of third country auditors (as defined in section 1261 of that Act);
	(e) compliance with the requirements of legislation relating to accounting and reporting; and
	(f) the investigation of the conduct of auditors, accountants and actuaries and the holding of disciplinary hearings in public interest cases (as defined in paragraph 24 of Schedule 10 to that Act).
Care Council for Wales.	Matters relating to the registration of social care workers under the Care Standards Act 2000.
Scottish Social Services Council.	Matters relating to the registration of the social services workforce by the Scottish Social Services Council under the Regulation of Care (Scotland) Act 2001.
Children's Commissioner.	Matters relating to the views and interests of children.
Commissioner for Children and Young People in Scotland.	Matters relating to promoting and safeguarding the rights of children and young people.
Children's Commissioner for Wales.	Matters relating to the rights and welfare of children.
General Chiropractic Council	Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

General Dental Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

General Medical Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

General Optical Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

General Osteopathic Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

General Pharmaceutical Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council;

and

(b) any activities not covered by (a) in relation to which the Council has functions.

Health and Care Professions Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

Nursing and Midwifery Council.

Matters relating to—

(a) the registration and fitness to practise of a member of a profession regulated by the Council; and

(b) any activities not covered by (a) in relation to which the Council has functions.

Health and Safety Executive.

Matters which may affect the health and safety of any individual at work other than individuals at work wholly or mainly on premises which are, or are on—

(a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013);

(b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998; or

(c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations).

Matters which may affect the health and safety of any member of the public arising out of or in connection with the activities of persons at work other than persons at work on a GB nuclear site, an authorised defence site or new nuclear build site.

Office for Nuclear Regulation.

Matters which may affect the health and safety of any individual at work wholly or mainly on premises which are, or are on—

(a) a GB nuclear site (within the meaning given

in section 68 of the Energy Act 2013);

(b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998; or

(c) a new nuclear build site (within the meaning given in regulation 2A of those Regulations).

Matters which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work on premises which are, or are on, such sites.

Housing Corporation.

The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.

Local authorities which are responsible for the enforcement of health and safety legislation.

Matters which may affect the health or safety of any individual at work; matters, which may affect the health and safety of any member of the public, arising out of or in connection with the activities of persons at work.

Information Commissioner.

Compliance with the requirements of legislation relating to data protection and to freedom of information.

Scottish Information Commissioner.

Compliance with the requirements of legislation relating to freedom of information.

Care Quality Commission.

Matters relating to—

(a) the registration and provision of a regulated activity as defined in section 8 of the Health and Social Care Act 2008 and the carrying out of any reviews and investigations under Part 1 of that Act; or

(b) any activities not covered by (a) in relation to which the Care Quality Commission exercises its functions.

The Monitor.	Matters relating to—
	(a) the regulation and performance of NHS foundation trusts; and
	(b) any activities not covered by (a) in relation to which the Monitor exercises its functions.
	Matters relating to the provision of Part II services as defined in section 8 of the Care Standards Act 2000 and the Children Act 1989.
	Matters relating to the inspection and performance assessment of Welsh local authority social services as defined in section 148 of the Health and Social Care (Community Health and Standards) Act 2003.
National Assembly for Wales.	Matters relating to the review of, and investigation into, the provision of health care by and for Welsh NHS bodies as defined under the Health and Social Care (Community Health and Standards) Act 2003.
	The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.
Social Care and Social Work Improvement Scotland.	Matters relating to the provision of care services, as defined in the Public Services Reform (Scotland) Act 2010.
	Matters relating to—
	(a) furthering the improvement in the quality of health care (within the meaning of section 10A of the National Health Service (Scotland) Act 1978); and
Healthcare Improvement Scotland.	(b) any activities not covered by (a) in relation to which Healthcare Improvement Scotland has functions.

Pensions Regulator.

Matters relating to occupational pension schemes and other private pension arrangements including matters relating to the Regulator's objective of maximising compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008.

Competition and Markets Authority.

Matters concerning the sale of goods or the supply of services, which adversely affect the interests of consumers.

Competition affecting markets in the United Kingdom.

Office of Qualifications and Examinations Regulation.

Matters in relation to which the Office of Qualifications and Examinations Regulation exercises functions under the Apprenticeships, Skills, Children and Learning Act 2009

Rail Regulator.

The provision and supply of railway services.

Police and Crime Panels.

Matters relating to—

(a) any complaint about the conduct of a relevant office holder, within the meaning of section 31 of the Police Reform and Social Responsibility Act 2011; and

(b) any report made in accordance with section 114 of the Local Government Finance Act 1988 or section 4 or 5 of the Local Government and Housing Act 1989 in relation to the elected local policing body for the Police and Crime Panel's area.

Elected local policing bodies.

Matters relating to any report made in accordance with section 114 of the Local Government Finance Act 1988 in relation to—

(a) the chief constable for the elected local policing body's area; or

(b) where the elected local policing body is the Mayor's Office for Policing and Crime, the Commissioner of Police of the Metropolis.

Standards Board for England.

Breaches by a member or co-opted member of a relevant authority (as defined in section 49(6) of the Local Government Act 2000) of that authority's code of conduct.

Local Commissioner in Wales.

Breaches by a member or co-opted member of a relevant authority (as defined in section 49(6) of the Local Government Act 2000) of that authority's code of conduct.

Standards Commission for Scotland and the Chief Investigating Officer.

Breaches by a councillor or a member of a devolved public body (as defined in section 28 of the Ethical Standards in Public Life etc. (Scotland) Act 2000) of the code of conduct applicable to that councillor or member under that Act.

Treasury.

The carrying on of insurance business.

Secretary of State for Business, Innovation and Skills.

Fraud, and other misconduct, in relation to companies, investment business, insurance business, or multi-level marketing schemes (and similar trading schemes); insider dealing.

Consumer safety.

Secretary of State for Transport.

Compliance with merchant shipping law, including maritime safety.

Local authorities which are responsible for the enforcement of consumer protection legislation.

Compliance with the requirements of consumer protection legislation.

Local authorities which are responsible for the enforcement of food standards.	Compliance with the requirements of food safety legislation.
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A member of the House of Commons.	Any matter specified in this column.
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A person ("person A") carrying out functions, by virtue of legislation, relating to relevant failures falling within one or more matters within a description of matters in respect of which another person ("person B") is prescribed by this Order, where person B was previously responsible for carrying out the same or substantially similar functions and has ceased to be so responsible.	Matters falling within the description of matters in respect of which person B is prescribed by this Order, to the extent that those matters relate to functions currently carried out by person A.
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