

**UNDERSTANDING THE EFFECTIVENESS OF THE WHISTLEBLOWING  
FRAMEWORK IN GREAT BRITAIN  
APPENDICES A - K**

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## A. SUGGESTIONS FOR CHANGE

Throughout the fieldwork, numerous suggestions of areas or ideas for change were identified in parts of the literature and provided by research participants. Challenges to suggestions for change were provided by other literature and focus group participants. These suggestions for change and challenges to suggestions are outlined below in this appendix.

For the avoidance of doubt, these suggestions for change and challenges to suggestions are not the views of Grant Thornton or the DBT or formal recommendations for Government. The suggestions for change should be interpreted cautiously as they have not been assessed for proportionality, desirability, feasibility, cost or impact and no weighting has been applied.

The research has not assessed the proposals for change against the GB framework legislation or relevant case law.

The suggestions for change include areas and ideas for improving the existing GB framework, as well as ideas which could impact whistleblowing outside of the existing GB framework. Elements of proposed bills and laws have been incorporated in the sections of the report, rather than reflecting the proposed bill or law itself as a suggestion for change.

### Definitions

Suggestions for change related to the observations and emerging themes covered in the Definitions section are outlined below.

Some of the stakeholder literature identified numerous suggestions for improving the definitions, some of which include repealing and replacing the Public Interest Disclosure Act 1998 (PIDA).<sup>1</sup> For the purposes of this sub-section, the relevant suggestions that relate to the specific definitions referenced in the Definitions section have been collated and extracted. A participant in the legal representatives focus group advised caution in relation to amending legal definitions, as this could invite legal arguments based on semantics and interpretation.

There was also a concern raised by an employer representative in the employer focus group, who expressed a view that introducing more definitions, such as defining the term “whistleblower”, may complicate matters as they would have to be aligned and read in conjunction with existing definitions. The participant felt that any additional requirements need to be considered carefully as unnecessary burden may be placed on small organisations or organisations that do not have the capability or capacity to meet them.

### Amend or replace the definition of “worker”

A participant in the legal representatives focus group suggested that the focus should be on considering “who do we want to protect” and going from there, rather than focusing on expanding or amending the definition of a worker. Other participants in the legal representatives focus group supported this view.

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<sup>1</sup> LR08, LR17

## Extend the existing definition

It is a commonly held view of stakeholder literature that there should be a change to extend whistleblower protection to individuals in the workplace who are currently excluded.<sup>2</sup> Some stakeholder literature suggested that whistleblowers should continue to be defined primarily as workers<sup>3</sup> and other stakeholder literature suggested that anyone speaking up (or affected by someone speaking up, for example a family member) about wrongdoing in the public interest should qualify for whistleblower protections.<sup>4</sup> Two pieces of academic literature suggested that an umbrella term such as ‘members of an organisation’ would provide greater clarity and coverage.<sup>5</sup>

Two pieces of stakeholder literature suggested broadening the definition of who can blow the whistle, such as “any person”,<sup>6</sup> to be consistent with other laws in other jurisdictions, such as the EU Whistleblowing Directive.<sup>7</sup>

A piece of stakeholder literature suggested amending the definition via the Enterprise and Regulatory Reform Act 2013 (ERRA), which inserted the power into the Employment Rights Act 1996 (ERA) for the Government to make such alterations and minimises the need for primary legislation.<sup>8</sup> Another piece of stakeholder literature suggested that creating an Office for the Whistleblower and repealing PIDA will allow whistleblowing and its associated terminology to be defined.<sup>9</sup>

Further two pieces of academic literature,<sup>10</sup> and interviews and focus group participants, suggested explicitly adding categories of individuals within the definition of those who receive protection, rather than the current approach of an Employment Tribunal determining if their employment status qualifies for protection. The following are categories of individuals which were suggested could be included:

- agency staff
- agents
- alliance members
- business associates
- carers, including foster carers
- charity donors
- closely connected persons
- contractors
- crown employees

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<sup>2</sup> LR03, LR16, LR31, LR35

<sup>3</sup> LR30, LR31, LR41

<sup>4</sup> LR03, LR08

<sup>5</sup> LR10, LR36

<sup>6</sup> LR30, LR56

<sup>7</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (europa.eu) Accessed 24 January 2024

<sup>8</sup> LR31

<sup>9</sup> LR55

<sup>10</sup> LR09, LR67

- employees
- franchisees
- freelancers
- grant recipients
- interns
- job applicants
- ministers of religion
- next of kin of elderly relatives
- partners
- public and private office holders, including non-executive directors
- public appointments
- self-employed individuals
- shareholders
- students
- sub-contractors
- suppliers
- those suspected of reporting a concern, or who might report a concern but haven't
- trade union representatives
- trainees
- trustees
- victims of child abuse
- victims of misogyny
- volunteers
- work placement individuals

Participants in a prescribed person focus group agreed that the definition of worker should be broadened and alternatively suggested that the definitions in the Equality Act 2010 could be used to address inconsistencies. This research has not assessed if the list above aligns with the Equality Act 2010 or not.

## **Extend definition to include relationships outside of an organisational relationship**

Alternatively, some participants suggested extending whistleblowing protection to anyone raising a concern that is in the public interest. A participant in the legal representatives focus group expressed the view that trying to “shoehorn” every scenario into an employment situation is not possible and instead suggested that a broader definition should be adopted so that anyone raising a concern that is in the public interest is protected. Other participants in the focus group agreed with this view and felt that the focus should be on the public interest and allowing anyone to blow the whistle, moving away from the employment context. Several whistleblower participants supported this view and suggested that anyone raising a concern in the public interest should be protected.

## **Limit changes that extend whistleblowing protection**

However, some stakeholder literature argued that any change in definitions should not extend whistleblowing protection to everyone.<sup>11</sup> Specifically, the view held in this literature is that whistleblowers are a distinct group because they have insider information on an organisation. In relation to protection that might be required, due to their association with an organisation, the negative consequences are often losing their jobs or damaging their long-term career prospects or their reputations because of raising concerns. This limits the responsibility for protection to the organisation.<sup>12</sup>

Employer and prescribed person participants advised caution over expanding the “worker” definition for a number of reasons. An employer representative stated that extending protections could prove onerous and complex from the employer’s perspective. Another employer representative in the employer focus group struggled to see how extending protections outside of a contractual relationship could be enforced. A prescribed person interviewee expressed the view that whistleblower protections should be kept within the employment framework and remain with employees to prevent misuse of the legislation or reducing its effectiveness.

Another prescribed person interviewee noted that some groups of individuals raising concerns have routes of redress in addition to potential redress under the GB framework legislation (through the Employment Tribunal process), such as an ombudsman, and therefore any extension of the protections under the legislation needs to factor this in.

During a prescribed person focus group a participant suggested that there could be an increase in the number of qualifying disclosures prescribed persons would receive from expanding protection to additional groups of individuals. It was felt that based on current resources, this may be considered impractical.

## **Remove whistleblowing from an employment law context**

Some stakeholder literature suggested that keeping the “worker” definition will continue to contribute to the ineffectiveness of whistleblowing protection, since any enforcement of the law would remain in the Employment Tribunal.<sup>13</sup> A whistleblower interviewee expressed a view that given the current protections under the GB framework legislation are ineffective, expanding the definition of “worker” would make no difference.

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<sup>11</sup> LR16, LR31, LR41

<sup>12</sup> LR16, LR31, LR41

<sup>13</sup> LR03, LR08

## **Replace “employer” definition with a “relevant person” definition**

During the legal representatives focus group a participant suggested, and another participant agreed, that setting out categories of “relevant persons” that concerns could be raised with would provide improved flexibility and go beyond the existing scope of who concerns could be raised with <sup>14</sup>. A piece of stakeholder literature also reflected this alternative approach, defining a “relevant person” as a person to whom a protected disclosure is made and would include:<sup>14</sup>

- employers
- a body acting on behalf of a group of employers
- a regulator
- an organisation with a statutory obligation to safeguard
- a public authority
- such a person as may be prescribed by regulations made by the Secretary of State

A further participant in the legal representatives focus group suggested including a requirement of “reasonable belief” that the disclosure was being made to a “relevant person” to avoid concerns being raised with the wrong person. A piece of stakeholder literature provided a definition which could meet this, “In this Act, a person is a “whistleblower” if that person has made, makes or is intending to make a protected disclosure or is perceived by a relevant person to have made, be making or intend to make a protected disclosure.”<sup>15</sup>

## **Clarify the “public interest concern”**

Some academic literature and a piece of stakeholder literature suggested clarifying and extending the definition of public interest concerns to cover other forms of wrongdoing covered by other requirements,<sup>16</sup> for example explicitly including:<sup>17</sup>

- the organisation’s own ethical code of conduct
- the organisation’s legal and regulatory obligations
- human rights obligations

A participant in a whistleblower focus group stated that the public interest requirement that the concern relates to a breach of legal or regulatory obligation should be extended to include fiduciary duties, poor practice or failing to follow industry best practice.

Another observation from a piece of stakeholder literature is that the public interest test should consider the motivations of the whistleblower.<sup>18</sup>

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<sup>14</sup> LR08

<sup>15</sup> LR08

<sup>16</sup> LR10, LR30

<sup>17</sup> LR13, LR56

<sup>18</sup> LR16

## **Create a statutory code of practice in relation to public interest**

A piece of academic literature suggested creating a statutory code of practice in relation to “public interest”, covering the criteria that could be used to determine if something is in the public interest, rather than personal interest, to make the difference clearer.<sup>19</sup> The code could be taken into account by the Employment Tribunal when evaluating whether the reported concern meets the criteria of a qualifying disclosure, in that it passes the ‘public interest test’.<sup>20</sup> An alternative would be to improve the guidance in this regard.<sup>21</sup> A different piece of academic literature suggested this could include assurance that protected disclosures will not result in defamation proceedings where the public interest test is met.<sup>22</sup>

Participants in the legal representatives focus group suggested that the definition of a public interest disclosure should include elements of “having a genuine concern”, “genuine belief”, “reasonable belief”, or “more likely than not to be true”, as potential reporters are not expected to be legal experts and should not be dissuaded from raising concerns because they are not sure if their concern meets a legal definition.

It was noted in a prescribed persons focus group that broadening the definition of public interest may result in a higher number of reports from workers simply disagreeing with their employer.

## **Remove public interest element**

A piece of academic literature suggested that alternatively the “public interest” element could be removed from within the definition of making a protected disclosure.<sup>23</sup> A participant in the legal representatives focus group disagreed with this, as they believe that the “public interest” element was necessarily introduced to focus on genuine whistleblowing issues, rather than concerns raised about an individual’s specific employment situation.

## **Create a statutory definition of “whistleblower”**

A proposed definition of a whistleblower, provided by some stakeholder literature, is: “a person is 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”.<sup>24</sup>

An academic piece of literature suggested including the term “wrongdoing” within the definition of whistleblowing<sup>25</sup> and a different piece of academic literature suggested including the term “raise concerns”.<sup>26</sup>

A participant in the legal representatives focus group agreed that a definition of a whistleblower could be useful, especially when fielding calls from individuals asking if they are a whistleblower, but that the definition may become another tool to have a legal argument.

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<sup>19</sup> LR13

<sup>20</sup> LR13

<sup>21</sup> LR13

<sup>22</sup> LR11

<sup>23</sup> LR13

<sup>24</sup> LR08, LR17

<sup>25</sup> LR67

<sup>26</sup> LR09



An alternative proposal in a different piece of stakeholder literature suggested that a definition of whistleblowing should include the motivation of the whistleblower, such that whistleblowing should be motivated purely based on concern for others and highlighting wrongdoing.<sup>27</sup> In these circumstances, this and a piece of academic literature suggested that whistleblowing should be differentiated where a disclosure is made as a way of reducing the worker's liability in relation to wrongdoing or to obtain financial incentives.<sup>28</sup> The proposal suggested in the stakeholder literature also includes people who report a concern then walk away, or those who report a concern because others have, should be excluded from the definition of whistleblower.<sup>29</sup>

### **Create a definition of “protection”**

Some stakeholder literature suggested that either a new law or guidance could be introduced to clarify what is meant by “protection” and that it includes protection against all forms of retaliation, not just unfair treatment, dismissal or disciplinary actions.<sup>30</sup> This might include, for example, protection from victimisation and harassment or other forms of harm and could be proactive as well as compensatory.<sup>31</sup> Further related suggestions for change are included in the Protections section below.

### **Reform or overhaul of the GB framework legislation**

Some participants suggested complete reform or overhaul of the GB framework legislation. For example, a whistleblower interviewee suggested reforming the legislation so that whistleblowing is not categorised as an employment issue and to make whistleblowing easier, less onerous and less expensive. During a focus group, a prescribed person participant suggested moving away from the current legislation towards an ombudsman type model. However, they also stated that creating such a body potentially has much larger implications. A participant in the legal representatives focus group provided the view that the existing framework is not fit for purpose and that any amendments to the existing framework would not go far enough.

### **Disclosure routes**

Suggestions for change related to the observations and emerging themes covered in the Disclosure Routes section are outlined below.

### **Create obligations and offences for organisations to have reasonable procedures to receive and respond to concerns**

Some stakeholder literature suggested creating obligations and offences, similar to the Bribery Act 2010 and the Economic Crime and Transparency Act 2023, could incentivise a greater number of organisations to adopt and implement best practice whistleblowing arrangements, take whistleblowing concerns seriously and act on them promptly and appropriately.<sup>32</sup> This literature suggested that obligations and offences could also deter organisations from retaliating against whistleblowers, or from covering up or ignoring wrongdoing.

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<sup>27</sup> LR16

<sup>28</sup> LR16, LR34

<sup>29</sup> LR16

<sup>30</sup> LR03, LR16

<sup>31</sup> LR16, LR55

<sup>32</sup> LR08, LR16, LR24, LR31, LR33, LR42

### **Create further sector specific prescribed persons**

A piece of stakeholder and a piece of academic literature suggested that the creation of further sector specific prescribed persons – for example in technology, construction, retail and manufacturing – would fill gaps in certain sectors and provide whistleblowers with a route to a relevant and competent authority and ensure that prescribed persons have the necessary expertise and jurisdiction to deal with whistleblowing concerns in their respective sectors.<sup>33</sup> It could also reduce the confusion and complexity that whistleblowers may face when trying to identify the appropriate prescribed person for their concern.

During the employer focus group an employer representative agreed that there should be a prescribed person for all industries. However, a separate employer participant did not think that a purely sector based prescribed person for their industry would work, as the concerns raised could be too broad.

### **Consider removing overlapping prescribed persons**

A whistleblower focus group considered that having multiple prescribed persons for other sectors, such as the healthcare sector, was confusing and made it difficult for whistleblowers to identify who the appropriate prescribed person was for their concern.

### **Create a central prescribed body (or similar office or ombudsman)**

Numerous stakeholder pieces of literature and participants suggested that a central independent prescribed body or similar could be created with the appropriate resources and capacity to resolve some of the challenges outlined in this section.<sup>34</sup> The same literature and participants provided the following potential roles of the central independent prescribed body:

- act as a single point of contact for whistleblowers, organisations, and prescribed persons
- coordinate between prescribed persons
- facilitate the referral and resolution of whistleblowing concerns across different sectors, jurisdictions, or levels of authority, and address the challenges and inconsistencies that are experienced by some prescribed persons when referring matters to each other
- set the standards for disclosure routes
- provide guidance and support to whistleblowers and prescribed persons
- monitor and evaluate the performance of disclosure routes and the impact on outcomes on the whistleblowing system

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<sup>33</sup> LR03, LR36

<sup>34</sup> LR03, LR06, LR07, LR08, LR24, LR25, LR35, LR42

Various participants supported the creation of a central prescribed body or independent whistleblowing body. They believed that the creation of a central body would broadly act to indicate the importance of whistleblowing to the Government.

A prescribed person interviewee suggested that a single government body covering all government organisations could act as a “front door” for all whistleblowing disclosures. That central body could then triage the disclosures to the correct prescribed person. They noted that a single body could not necessarily deal with all disclosures because specialised industry knowledge was often required to investigate and understand the concerns raised.

An employer interviewee noted that if there was a central external body to triage the set of concerns to the right organisation then that would simplify the process for the individual reporting a concern.

A participant at the legal representatives focus group expressed a view that the United States system alleviates the burden on whistleblowers by placing the burden on a central function, while still protecting the whistleblower.

### **Create a central whistleblowing unit for local authorities to triage disclosures**

A prescribed person interviewee suggested having a central whistleblowing function or unit where all local authority disclosures could be triaged. That unit could then push the disclosure to the appropriate point of contact for whistleblowing at the local authority deemed most appropriate for the disclosure.

### **Improve guidance to assist individuals to find the appropriate prescribed person**

A prescribed person interviewee suggested that the Government list of prescribed persons could be made interactive, similar to the ICO website tool to report breaches,<sup>35</sup> and guide the individual through a series of questions to identify the appropriate prescribed person. This and other suggestions related to guidance are set out separately in the Awareness and Guidance section.

### **Allow information to be shared more freely between prescribed persons**

A prescribed person interviewee noted that there are occasions when they do not have a legitimate gateway for sharing a whistleblowing disclosure with another relevant organisation. The prescribed person suggested that the legislation could be amended to allow for information to be shared more freely between prescribed persons to improve responses to concerns raised.

## **Concerns raised**

Suggestions for change related to the observations and emerging themes covered in the Concerns Raised section, relating to the definition of a qualifying disclosure and how organisations and prescribed persons respond, are outlined below.

To address the observations and emerging themes outlined in the Concerns Raised section, numerous different types of literature contained proposals to reform the whistleblowing legislation and practice in Great Britain.<sup>36</sup> Many of these proposed

<sup>35</sup> [Report a breach](#) | ICO Accessed 24 January 2024

<sup>36</sup> LR03, LR06, LR08, LR10, LR11, LR14, LR16, LR17, LR20, LR25, LR30, LR31, LR32, LR33, LR35, LR36, LR38, LR39, LR41, LR42, LR44, LR48, LR50, LR56, LR58, LR59, LR60, LR63, LR66, LR67

reforms, suggested in stakeholder literature, have a stated common aim to create a culture of openness, trust and integrity in organisations and society, where whistleblowing is seen as a positive and responsible act to remedy wrongdoing, rather than a betrayal or a threat.<sup>37</sup> In the view of stakeholder literature, this would enhance the detection and prevention of corruption, fraud, abuse, and other misconduct, and improve the performance, governance, and reputation of organisations.<sup>38</sup>

### **Expand and clarify the qualifying disclosure definition**

During a whistleblower focus group, a participant suggested there should be an expansion and clarification of the list of what would be a qualifying disclosure covered by the GB framework legislation. This would eliminate gaps and ambiguity and would remove the need to rely on Employment Tribunal case law. Another whistleblower participant suggested that breaches of regulations in particular should be clarified or added to an expanded list under the legislation to make it easier to determine whether someone has made a qualifying protected disclosure without the need for intervention or a decision from the relevant regulator.

Some stakeholder literature suggested that this expanded definition could specifically include mismanagement of public funds, misuse, or abuse of authority, refusing to do something illegal when requested and other matters which could be prescribed by the Secretary of State to ensure it is flexible and up to date.<sup>39</sup>

A prescribed person interviewee suggested that the existing definition of a qualifying disclosure could be made clearer with additional supporting guidance.

### **Create national standards on providing proactive protection and responding to concerns**

Several pieces of stakeholder literature suggested that legislative change is needed to create national standards on providing proactive protection and responding to concerns.<sup>40</sup> These standards, expanded on in further stakeholder literature, would apply both to organisations and to prescribed persons (suggested to be collectively known as relevant persons) and an independent body (such as the Whistleblowing Commissioner or Office for the Whistleblower) would set minimum standards on what effective frameworks should include and penalties for non-compliance.<sup>41</sup> The same literature also suggested consequences for non-compliance with these standards, and these are expanded under the next heading.

Alternatively, but less favoured in some of these pieces of literature, it is suggested that these could be included in an Acas code of practice on whistleblowing.<sup>42</sup>

A whistleblower interviewee suggested that statutory standards for whistleblowing related policies and procedures should be set and maintained by organisations, irrespective of sector specific regulation. A whistleblower focus group broadly agreed that official standards related to how an organisation should handle concerns would be positive and should include an element of oversight or external audit. An employer representative stated during a focus group that official standards and accountability for

<sup>37</sup> LR03, LR04, LR06, LR11, LR15, LR20, LR31, LR32, LR33 LR64, LR65,

<sup>38</sup> LR03, LR17, LR65

<sup>39</sup> LR08, LR35

<sup>40</sup> LR03, LR32, LR35

<sup>41</sup> LR03, LR08, LR31, LR33, LR58

<sup>42</sup> LR31, LR35, LR58

handling concerns (including investigations) would assist with consistency and protection, but that caution should be taken as they believe that not all organisations have the desire or understanding to implement additional requirements. A prescribed person participant stated during a focus group that the focus of change should be on getting things right in terms of dealing with concerns, rather than reliance on retrospective protection from the GB framework legislation.

Various interview and focus group participants and several pieces of stakeholder and public body literature<sup>43</sup> provided items that the standards could require, including:

- focus on governance, risk understanding and corporate culture
- removal of individuals from the situation at the outset
- regular feedback and follow-up with individuals
- policies and procedures to support and reassure workers and highlight external routes, such as prescribed persons, for escalation of perceived unresolved concerns
- processes to ensure that the response to the concern and any investigation relating to the concern is fair and inclusive
- independence of the processes that handle the concerns
- internal investigation unit with robust procedures
- application of the ISO standards for investigations and whistleblowing management systems as a benchmark
- independent and transparent investigations
- processes for dealing with multinational concerns, if applicable
- anonymous and confidential reporting channels
- use of external investigators to undertake certain investigations, especially where there are conflicts of interest or risk of detriment to the individual

Some journalistic and public body literature suggested that larger organisations could have increased requirements, such as having a technical advisor to advise the board in relation to concerns raised by whistleblowers and making a Non-Executive Director responsible for investigations relating to these concerns.<sup>44</sup>

### **Create consequences for non-compliance with new standards**

Building on the idea to create national standards, several pieces of stakeholder literature suggested making failure to comply with the standards a criminal offence, or to alternatively introduce a regime of meaningful consequence such as censure by a regulatory or central prescribed body.<sup>45</sup> Some of the stakeholder and academic literature asserted that introducing standards and consequences will change the focus, from the

<sup>43</sup> LR03, LR26, LR31, LR33, LR40, LR56, LR58

<sup>44</sup> LR50, LR59, LR66

<sup>45</sup> LR08, LR16, LR17, LR35, LR41, LR42

current worker/organisation relationship to the wrongdoing and how the organisation responds.<sup>46</sup>

A whistleblower interviewee believed that prescribed persons need the powers to force concerns to be investigated by organisations and to take action against organisations who retaliate against whistleblowers. Another whistleblower interviewee said that no body currently exists to follow up on whether an employer investigates whistleblower concerns. A participant at the legal representatives focus group felt that greater accountability was needed to deal with the actual concerns being raised.

A participant at a whistleblower focus group described that one benefit of the United States Office of the Whistleblower system is that it makes it harder for organisations or prescribed person equivalents to undertake inadequate or inappropriate investigations.

During the legal representatives focus group a participant raised that if criminal sanctions were to be introduced in relation to whistleblowing, then the law needs to be clearer around the expected response to a whistleblowing concern, as organisations need certainty. The participant felt that it would be too onerous if a new framework required every concern to be investigated. Another participant agreed and suggested their preferred approach was to restrict criminal sanctions to things that were morally or clearly wrong, with a preference on applying regulatory sanctions.

A piece of stakeholder literature suggested that a change in the law could introduce a civil penalty regime which could be imposed when an individual, an organisation or a prescribed person is found to have breached requirements in relation to responding appropriately to concerns.<sup>47</sup>

A whistleblower interviewee suggested that incidents of wrongdoing could be reduced by having sufficient corporate fines to influence individuals engaged in wrongdoing. The whistleblower believed that individuals are less likely to engage in wrongdoing if they know that there is a financial consequence on their employer, which could result in them losing their jobs and careers.

### **Board or most senior level accountability for effectiveness of frameworks**

Several pieces of stakeholder literature and some public body literature indicated that there should be a whistleblowing champion at Board or most senior management level, which is typically described as someone who is senior enough to ensure that concerns are being handled in accordance with good practice.<sup>48</sup> More generally, this same literature suggested that Boards ought to be incentivised to be the drivers of change to discourage wrongdoing in the first place, and robustly respond to reported concerns. Two pieces of public body literature indicated that part of this is ensuring that the Board has oversight of the efficacy of the framework, by ensuring that the organisation has the time and resources to respond.<sup>49</sup>

<sup>46</sup> LR03, LR08, LR09, LR16, LR17, LR35, LR41, LR42, LR44

<sup>47</sup> LR35

<sup>48</sup> LR33, LR35, LR38, LR56, LR59, LR60, LR66

<sup>49</sup> LR60, LR66



## **Independent oversight of responses and management of individuals**

A whistleblower interviewee suggested that audit committees of large organisations should be responsible for overseeing the employer's response to concerns raised by a whistleblower.

Another whistleblower interviewee suggested that organisations should implement an independent scrutiny panel to consider all proposed internal investigations before they commence, to prevent investigations being initiated on the back of malicious allegations made in retaliation to individuals. The whistleblower said that the members of the panel should be externally sourced to prevent conflicts of interest or prejudice from influencing decisions.

## **Recognise effective frameworks (of prescribed persons, organisations and individuals)**

Some whistleblower participants suggested that there should be a mechanism to celebrate employers who respond to and resolve concerns well, for example without dismissing the employees who raise those concerns. Participants in a whistleblower focus group suggested that the mechanisms could include annual award ceremonies and positive recognition from people in authority.

## **Improve the guidance on prescribed persons' responsibilities for responding to concerns and set standards across all prescribed persons**

Two pieces of academic and one piece of stakeholder literature suggested standards are required to clarify the responsibilities of prescribed persons in handling whistleblowing concerns and ensure that they follow good practice.<sup>50</sup> Some stakeholder literature suggested that a new central prescribed body could be responsible for setting and overseeing these standards.<sup>51</sup> Alternatively, as suggested by a different piece of stakeholder literature, the central prescribed body could draft and communicate guidance in this regard.<sup>52</sup> These could increase the awareness and confidence of individuals in the role and function of prescribed persons and help them make informed and realistic decisions about reporting their concerns to them.

A prescribed person interviewee suggested that the individual's understanding could be enhanced by better guidance of what prescribed persons can and cannot do.

A participant at the legal representative focus group explained that it was important to manage the individual's expectations and respect the other legal obligations held by the organisation or investigating body. The legal representative suggested that increased guidance in this area would be helpful.

An employer representative suggested during an employer focus group that there should be standards set across all prescribed persons to ensure consistent treatment of individuals.

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<sup>50</sup> LR25, LR45, LR64

<sup>51</sup> LR03, LR35

<sup>52</sup> LR25

## **Create requirements for prescribed persons to investigate concerns in line with proven best practice guidance**

A piece of stakeholder and a piece of journalistic literature implied that a change in the law should include a requirement for prescribed persons to investigate concerns in line with best practice guidance, or inform the individual that they cannot, or that they have passed the concern onto a different prescribed person.<sup>53</sup>

A participant at a whistleblower focus group suggested that protections should be similar to witness protection, where the onus to investigate the concerns is on someone else, such as regulators, rather than falling on the whistleblower to prove.

It was stated at a prescribed persons focus group that it makes sense to have an expectation that concerns raised are sufficiently addressed and it was suggested that the extensive experience some prescribed persons have in handling intelligence and information could be leveraged. However, a prescribed person interviewee suggested that requiring a prescribed person to investigate certain types of concerns could create a conflict with other statutory obligations or risk thresholds.

During a prescribed persons focus group it was raised that some concerns may have multiple agencies or regulators involved in responding or investigating, and if a “requirement to investigate or respond” was introduced, establishing when and how those agencies share information about a concern and internal resourcing for the investigation would need to be considered. A participant noted that there are existing data sharing agreements between some agencies, so knowing when to use those could be a challenge. The participants agreed that further data sharing gateways between prescribed persons would be beneficial.

## **Create a separate investigative body – generally or regarding allegations of retaliation**

Some stakeholder literature suggested that there is a need for an independent body which can act as a separate investigative body generally and to consider allegations of retaliation resulting from reporting a concern.<sup>54</sup>

The participants at a whistleblower focus group agreed with the suggested creation of an independent body to ensure that prescribed persons respond appropriately to concerns raised. The participants felt that this could address perceived lack of trust and conflicts of interest.

A participant at the legal representatives focus group suggested there needs to be an independent body who has the right to investigate and sanction companies, and the right to reward employees for the risks they take by blowing the whistle. A whistleblower interviewee suggested that there should be an independent ombudsman to conduct investigations related to whistleblowing disclosures, as employers cannot be expected to independently investigate their own activities. An employer interviewee suggested there could be a panel of independent organisations appointed by regulators or prescribed persons to independently investigate matters on behalf of regulators or prescribed persons, with a sector-based panel scheme.

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<sup>53</sup> LR03, LR53

<sup>54</sup> LR03, LR17, LR22, LR42



## Protections

Suggestions for change related to the observations and emerging themes covered in the Protections section, including proactive protections and additional best practice protections for whistleblowers, are outlined below. Suggestions for change related to the claiming and the enforcement of legislation related protections are included in the Redress sub-section below.

### **Broaden the interpretation of detriment by Employment Tribunals**

Several pieces of stakeholder literature suggested that the interpretation of detriment that whistleblowers may suffer because of reporting their concerns should be broadened.<sup>55</sup> It was suggested that a wide range of forms of harm that a whistleblower may experience should be covered, including harassment, bullying, intimidation, threats, violence, isolation, ostracism, blacklisting, and discrimination by co-workers, managers, clients, customers, suppliers, and other third parties. The participants at a whistleblower focus group also suggested that harms such as having to move house, cost of disruption, loss of reputation and lack of employability should be covered.

An employer interviewee believed that whistleblowing investigators may also require protection from detriment they may face after investigating wrongdoing at senior levels.

### **Make the guidance on protections clearer and more visible for individuals**

A participant at the legal representatives focus group stated that employees did not understand what protection from detriment was, and there needed to be clearer and more visible guidance on this as the protections are in fact narrower than individuals think.

A participant at a prescribed person focus group stated that, given the current confusion experienced by some individuals, the guidance should be updated to make it clear that the GB framework legislation provides retrospective protection.

### **Set national standards and provide training on responding to allegations of harm**

Several items of stakeholder literature recommended that national standards should be set on responding to allegations of harm raised by whistleblowers, which would specify the roles and responsibilities of employers, prescribed persons, other regulators, and the Government in establishing, maintaining, and improving whistleblowing mechanisms.<sup>56</sup>

This literature suggested that these standards could include the following:

- providing a range of internal and external reporting channels that are clear, accessible, secure, and confidential, and that allow whistleblowers to report anonymously if they wish
- providing timely, transparent, and constructive feedback to whistleblowers on the progress and outcome of the investigation, and ensuring that the investigation is conducted independently, impartially, and thoroughly

<sup>55</sup> LR03, LR17, LR33, LR41, LR42, LR54

<sup>56</sup> LR03, LR08, LR16, LR22, LR31, LR33, LR53, LR58

- providing adequate support, protection, and remedies to whistleblowers who suffer detriment, and ensuring that whistleblowers have access to legal advice, representation, mediation, or arbitration if needed
- providing effective enforcement, oversight, and monitoring of the GB framework, and ensuring that whistleblowers have access to alternative or higher-level authorities, such as ombudsmen, tribunals, courts, or civil society organisations, if they are dissatisfied with the response or the resolution of their concerns
- providing incentives, recognition, or rewards to whistleblowers who make a positive contribution to the public interest and ensuring that whistleblowers are not subject to any negative consequences for raising concerns

It was stated at a prescribed person focus group that further training could ensure that the actions taken by prescribed persons when responding to concerns do not expose the individual to additional risks of victimisation.

### **Make it a civil or criminal offence to harm a whistleblower or to not fulfil responsibilities to protect whistleblowers**

Several pieces of stakeholder and journalistic literature went further and suggested that it could be made a civil or even a criminal offence to harm a whistleblower, or violate whistleblower protection laws, and that this should be linked to broader definitions discussed in the Definitions section of this report.<sup>57</sup> A whistleblower interviewee suggested that whistleblowers should be able to bring criminal cases against employers for whistleblower victimisation. This was echoed by one piece of stakeholder literature.<sup>58</sup>

It was stated at a prescribed person focus group that there should be consequences for prescribed persons who intentionally or otherwise victimise individuals.

Similarly, some academic and stakeholder literature suggested that legislative change could make it a civil or criminal offence to not fulfil responsibilities to protect whistleblowers in line with new national standards.<sup>59</sup> This could be the enforcement role of an independent oversight body, such as the Whistleblowing Commissioner or the Office for the Whistleblower, relating to the rules that body sets.<sup>60</sup>

### **Greater consequences for organisations found to be victimising individuals than currently applied by Employment Tribunals, and potentially for this to be governed outside of Employment Tribunals**

An employer interviewee suggested the introduction of punitive damages for employers that do not protect their individuals from detriment. During a focus group a number of whistleblowers agreed. The employer interviewee commented that if a criminal or civil offence was introduced, it would be necessary to apply appropriate mitigations depending on the type or size of an organisation as it may not be reasonable to expect the same governance structures and cultures in say a major bank versus a small charity.

<sup>57</sup> LR08, LR16, LR24, LR35, LR42, LR53

<sup>58</sup> LR42

<sup>59</sup> LR11, LR16, LR24, LR35

<sup>60</sup> LR03, LR08, LR35, LR52

Broadly similar ideas are contained in several pieces of stakeholder literature and one piece of academic literature.<sup>61</sup>

Another employer interviewee commented that retaliatory action by organisations against whistleblowers should be disincentivised and suggested this could be achieved through introducing legislation, such as a new Failure to Allow a Whistleblower Investigation to Proceed Unhindered offence.

### **Independent body to investigate retaliation against whistleblowers with the power to fine employers and dissuade the organisation (and others by proxy) from retaliating**

A whistleblower interviewee suggested that investigations of retaliation against whistleblowers should be undertaken by a designated body, with the power to fine employers proven to have victimised. They believed that the fines should be material to dissuade the firm from retaliating and to fund the cost of regulation. Some stakeholder literature supported this view.<sup>62</sup> Another whistleblower interviewee agreed and suggested that the fines should be used to fund the protection process.

A separate whistleblower interviewee suggested that employers should also be penalised if they make malicious allegations proven to be false in retaliation to whistleblowers.

### **Senior management to be held accountable for detriment caused to whistleblowers under their management**

Some participants at a whistleblower focus group stated that senior management should be held accountable for changes in culture, investigations and detriment caused to whistleblowers. Several pieces of stakeholder and one piece of academic literature were not as specific about who should be held accountable for harms caused, but agreed that organisations should be held to account, as outlined above.<sup>63</sup>

### **Compel prescribed persons to provide protection to whistleblowers**

A whistleblower interviewee suggested that prescribed persons should be compelled to provide protection to whistleblowers. However, it was stated at a prescribed person focus group that as an external party, prescribed persons cannot practically provide protection. Prescribed person participants in the same focus group advised caution about imposing additional requirements or consequence on prescribed persons, especially for small, prescribed persons, prescribed persons dealing with low volumes of disclosures or those who are not resourced to deal with additional requirements.

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<sup>61</sup> LR03, LR13, LR16, LR17, LR42

<sup>62</sup> LR08, LR35, LR41, LR52

<sup>63</sup> LR04, LR16, LR17, LR31, LR42, LR52

## **Place increased onus on prescribed persons in relation to whistleblower allegations of victimisation**

A piece of stakeholder literature suggested at a high level that prescribed persons should pay greater attention to, and possibly investigate, allegations of victimisation of whistleblowers by the organisations they regulate.<sup>64</sup> However, it was suggested by a participant at a prescribed person focus group that resources to conduct investigations would be an issue if they were required to investigate allegations of victimisation and resources were not increased.

## **Provide protections for whistleblowers who refuse to do the wrong thing**

During the legal representatives focus group a participant expressed a view that protections should be drafted in a way that allows for situations where whistleblowers refuse to do the wrong thing, because currently if they are dismissed for refusing, they will only be protected if they raised the request as a protected disclosure. Some of the stakeholder literature shared this view.<sup>65</sup>

## **Provide protections for whistleblowers raising concerns with journalists or the media**

A prescribed person participant suggested during a focus group that the current legislation may need modernising in relation to the protections that are offered to whistleblowers if they take their concerns to journalists or the media, as journalists were the next option for whistleblowers if their employer and/or prescribed person were not listening. Some academic literature and one piece of public body literature agreed that those that report to the media should be better protected but stopped short of making suggestions.<sup>66</sup>

## **Provide increased protection to UK whistleblowers based overseas**

A whistleblower interviewee suggested that UK whistleblowers based overseas require increased protection.

## **Ensure consistency of employer whistleblowing policies with case law**

A whistleblower interviewee stated that their employer's policy created the illusion that they had protection, but they felt that their employer's policy was not consistent with Employment Tribunal case law and therefore offered no protection. They believed that employer whistleblowing policies should be made consistent with case law to ensure that disclosures are protected. They stated that case law specified that the disclosure must specify what law or code is being broken in order to be deemed protected. The subject of this disparity was found in a piece of academic literature and a piece of public body literature, but this literature is silent on what, if anything, should change.<sup>67</sup>

## **Redress – Employment Tribunals**

Suggestions for change related to the observations and emerging themes covered in the Redress section are outlined below.

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<sup>65</sup> LR16, LR30, LR49

<sup>66</sup> LR14, LR28, LR34

<sup>67</sup> LR13, LR26

## **Establish an oversight body or adjudicator for whistleblowing cases**

Numerous pieces of different types of literature suggested establishing a specialist adjudicator or oversight body that would have the power and mandate to investigate whistleblowing cases, provide full redress and expedited remedies for workers, and monitor and enforce compliance with the law.<sup>68</sup> Two pieces of stakeholder literature suggested that such a body could also offer advice and guidance to workers, employers, and regulators, and promote a culture of openness and accountability in the public and private sectors.<sup>69</sup> The same literature suggested that a specialist adjudicator or oversight body could also have the authority to impose sanctions on employers who retaliate against workers, such as fines, injunctions, or disqualification from public contracts or subsidies.

## **Full redress and expedited remedies (such as interim relief) for whistleblowers**

Some whistleblower participants suggested that whistleblowers should be provided with full redress. One whistleblower interviewee suggested that there should be an option for whistleblowers who suffer direct detriment or dismissal to claim for lifetime loss of earnings compensation, as they believe that the damage done is permanent. Another whistleblower interviewee suggested that there should be an incentive element on top of the full redress, otherwise workers may not risk making a disclosure.

Alternatively, another whistleblower interviewee suggested that the financial compensation should be up to 2.5 times the average annual income of the claimant, proportionate to the damage done.

A participant at the legal representatives focus group suggested that fuller compensation could be awarded to claimants who win their Employment Tribunal claims, covering legal costs, reputational damage and consequential losses.

However, a prescribed person interviewee said that compensating whistleblowers based on their salary, for example paying their salary to retirement age if they are unable to find work after blowing the whistle, would not work as it would be too expensive to compensate high earning whistleblowers.

During a whistleblower focus group it was suggested that the current scope of awards should be expanded to go beyond economic harm suffered so that the claimant is fully compensated for all impacts of raising their concerns. Similarly, a participant at a separate whistleblower focus group stated that compensation needs to consider the impacts of defamation against the whistleblower, as careers can be gravely impacted. In relation to interim relief, a whistleblower interviewee suggested that an external body could triage the facts of a whistleblowing disclosure and establish if they are reasonable before granting interim relief, or legal aid. A piece of stakeholder literature<sup>70</sup> and another whistleblower interviewee suggested that employers should pay a whistleblower's salary until the Employment Tribunal outcome, i.e. automatic interim relief for all whistleblowers. However, in a focus group, a prescribed person participant questioned whether interim relief for whistleblowers was practical, as the relief might incentivise employees to claim they are a whistleblower, as they would be paid for a period of time, even if they have been rightfully dismissed.

<sup>68</sup> LR03, LR20, LR21, LR22, LR24, LR30, LR32, LR38, LR39, LR41, LR49

<sup>69</sup> LR21, LR52

<sup>70</sup> LR16

## **Amend time limits associated with interim relief and filing an Employment Tribunal claim to prevent premature adversarial situations**

A participant at a whistleblower focus group suggested that the longer time limits available in high courts should be considered to assess whether similar limits could be applied in the Employment Tribunal. Two pieces of stakeholder literature made similar conclusions.<sup>71</sup> A participant at the legal representatives group agreed that time limits for raising Employment Tribunal claims and related time limits for qualifying for interim relief should be reviewed and amended.

A whistleblower interviewee suggested that in instances where a whistleblower has filed a grievance, the time to make a claim should be extended by an additional three months. The whistleblower interviewee felt that this extended time may prevent situations from becoming adversarial before an inquisitorial process had taken place. During the employer focus group, a participant suggested that the current limits for raising a claim should be amended to remove barriers.

A participant at the legal representatives focus group suggested that the time limit for interim relief should be extended to at least 21 days. However, a participant at a whistleblower focus group stated that a limit of 21 days to claim interim relief would not be long enough.

## **Provide additional financial support to whistleblowers through legal aid, statutory advocates and/or cap respondent's legal fees**

To overcome the obstacle of legal costs, some of the suggested reforms in numerous pieces of stakeholder literature included providing legal aid or funding for workers who bring their claims under the GB framework legislation or other relevant laws.<sup>72</sup> Two pieces of stakeholder and one piece of academic literature suggested this would enable workers to obtain legal advice and assistance, as well as representation in a hearing or court, without having to bear the financial burden or risk.<sup>73</sup> The same literature suggested that legal aid or funding could also cover the costs of expert witnesses, mediation, or alternative dispute resolution, which could help resolve whistleblowing cases more efficiently and effectively. This literature continued that providing legal aid or funding for workers would also level the playing field between workers and their employers and encourage more workers to come forward and seek redress.

Some whistleblower participants also suggested that legal aid should be available to whistleblowers. One of these whistleblower participants noted that this was necessary so that legal advice could be sought without reliance on advice lines provided by whistleblowing organisations, and the need to use personal finances, which leaves many whistleblowers in debt. Participants in the legal representatives focus group agreed, stating that the onus was currently on the individual to pursue matters that were in the public interest and that support should be provided to address this and the current power imbalance. However, a point was raised in the legal representatives focus group that if legal aid was available for whistleblowing claims, it may have to be applied to all Employment Tribunal claims on equity grounds. Similarly, during the employer focus group, an employer participant felt that if additional financial support, such as legal aid, for Employment Tribunal claims was to be considered, it would need to be assessed

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<sup>71</sup> LR03, LR33

<sup>72</sup> LR03, LR07, LR08, LR17, LR16, LR17, LR30, LR31, LR32, LR33, LR41, LR42, LR44, LR49, LR52, LR58

<sup>73</sup> LR23, LR30, LR33



alongside financial support available to others across the legal justice system, such as victims of crime.

Whistleblower participants also provided other suggestions to even the Employment Tribunal playing field. For example, a maximum cap for the respondent's legal fees and the introduction of statutory advocates for whistleblowers, akin to those provided to sexual and domestic violence survivors.

### **Reverse the burden of proof within the proceedings and/or review**

A participant at a whistleblower focus group suggested that Employment Tribunal cases need to be made simpler by changing the Employment Tribunal rules.

Some of the stakeholder literature<sup>74</sup> and a participant at a whistleblower focus group suggested shifting the burden of proof in Employment Tribunal claims. A participant at the legal representatives focus group expanded and said that it can be extremely difficult to prove causation between blowing the whistle and suffering detriment and/or dismissal, which causes frustration for the claimant if the concern is deemed to be in the public interest but the link with the detriment and/or dismissal cannot be established. The participant suggested a "quick fix" could be to introduce a presumption of causation in Employment Tribunal claims where a protected disclosure was deemed to have been made, with the respondent having to then prove that detriment or dismissal was not linked to the disclosure. This suggestion was supported by another participant in the same focus group.

### **Address the extension of the "reasonable belief" test and apparent need to raise perfect concerns**

A participant at a whistleblower focus group believed that the onus is now on individuals to raise "perfect concerns" in line with their employer's policies for the disclosure to be protected.

Further, a participant at the legal representatives focus group explained their view that every aspect of the definition of a protected disclosure is argued or litigated heavily by respondents in Employment Tribunals, in a context where most claimants or whistleblowers do not have access to legal advice or expertise. They commonly see respondents asking the claimant to set out which section number of the relevant law or regulation they thought had been breached, which is not required under the GB framework legislation and goes beyond the "reasonable belief" test. The legal representative therefore believed that this extension of the "reasonable belief" test should be addressed.

### **Ban non-disclosure agreements as part of settlements**

A couple of pieces of stakeholder literature suggested a ban on NDAs as part of settlements.<sup>75</sup> A whistleblower interviewee felt that it cannot be in the public interest that some whistleblowers are incentivised to cover up wrongdoing with a non-disclosure agreement.

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<sup>74</sup> LR03, LR35, LR41

<sup>75</sup> LR03, LR41

## **Further training or specialist judges for whistleblowing related Employment Tribunal claims**

Further training or specialist judges for whistleblowing related Employment Tribunal claims are also suggested in a piece of stakeholder literature.<sup>76</sup> This literature stated that these could enhance the quality and consistency of the Employment Tribunal decisions, as well as reduce the reliance on external experts or guidance. They could also help to clarify and apply the legal definitions and tests more effectively and fairly. A participant in the whistleblower focus group agreed but noted that creating a separate Employment Tribunal structure for whistleblowing claims could create complications where there are multiple heads of claim.

## **Employment Tribunals to be heard by jurors rather than solely judges**

Employment Tribunals could be heard by jurors rather than solely judges according to a couple of pieces of stakeholder literature, to increase the legitimacy and credibility of the Employment Tribunal process, as well as the public confidence and trust in the GB framework.<sup>77</sup> One of these piece of stakeholder literature suggested that it could also introduce a more diverse and representative perspective to the assessment of the evidence and the merits of the case.<sup>78</sup> A whistleblower interviewee agreed and suggested that a judge should not make a decision on their own in an Employment Tribunal hearing.

## **Employment Tribunal claimants to automatically be awarded costs if they win their case**

A piece of stakeholder literature<sup>79</sup> and participants at whistleblower focus groups suggested that Employment Tribunal claimants should automatically be awarded costs if they win their case. However, a challenge to this suggestion was raised in one of the whistleblower focus groups as whistleblower claims sit within a broader system of employment law and having this rule for one part would be problematic. Another whistleblower focus group participant countered by saying these are matters of public interest and therefore should be treated differently.

## **Make civil or criminal courts responsible for enforcement**

A piece of stakeholder literature and a piece of journalistic literature suggested moving enforcement to civil or criminal courts to increase the deterrent effect and the severity of the sanctions for the wrongdoing or the retaliation, as well as the remedies and compensation for the workers.<sup>80</sup> This literature further suggested doing so could also provide a more formal and rigorous procedure for the investigation and prosecution of the cases.

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<sup>76</sup> LR42

<sup>77</sup> LR16, LR41

<sup>78</sup> LR16

<sup>79</sup> LR03

<sup>80</sup> LR35, LR53



## **Public fines for organisations that fail to comply with Employment Tribunal judgments**

A whistleblower interviewee suggested that examples needed to be made of organisations which failed to comply with Employment Tribunal judgments, with large public fines.

## **Take whistleblowing cases outside of the Employment Tribunal process to improve efficiency and to appropriately deal with concerns raised**

Some whistleblower participants in interviews and focus groups suggested that the Employment Tribunal is the wrong place for a whistleblowing case to be heard because it is a specialist area. One whistleblower interviewee suggested that Employment Tribunals could be more efficient and effective if whistleblowing cases were taken out into a separate process with judges and panel members experienced in the issues. Another whistleblower interviewee suggested that there should be an alternative mechanism to avoid reducing the matter to an HR concern between employer and employee but instead recognise the crime and the whistleblower as a survivor of organisational abuse.

A participant at a whistleblower focus group suggested that matters need to be decided by a regulator before being dealt with or decided at an Employment Tribunal.

## **Expand remedies and sanctions**

Further, several pieces of stakeholder literature suggested that there should be an expansion of the currently limited remedies and sanctions available to workers who win their claims (such as enforceable compensation, reinstatement, path to return to work, or recommendations), which may not adequately deter or punish the wrongdoing or the retaliation.<sup>81</sup>

## **Awareness and guidance**

Suggestions for change related to the observations and emerging themes covered in the Awareness and Guidance section are outlined below.

### **Greater and more accessible guidance for individuals**

Various prescribed person participants suggested greater and more accessible Government guidance for individuals. Areas noted that required increased guidance included:

- identifying the threshold between speaking up and whistleblowing, with examples
- difference between other employment matters, such as grievances, and protected whistleblowing disclosures
- disclosure content expectations
- protections
- definition of a worker, with examples

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<sup>81</sup> LR03, LR31, LR41, LR44

A participant at a prescribed person focus group suggested that the Government guidance could include sector specific guidance about the remit of the various prescribed persons to help the public know the appropriate prescribed person to contact. Increased guidance was also suggested by two pieces of stakeholder literature to assist individuals to identify the appropriate prescribed person, manage their expectations generally, and in relation to the role of prescribed persons.<sup>82</sup> As referenced elsewhere, a piece of stakeholder literature suggested this could be provided by a centralised independent body to raise awareness and educate the public.<sup>83</sup>

Two pieces of stakeholder literature suggested greater guidance for individuals in relation to the Employment Tribunal process, including guides, templates, and advice.<sup>84</sup>

In addition to government guidance, a participant at a whistleblower focus group suggested that organisations should be required to train staff on how to raise concerns, what protections are, and how protections apply.

### **Greater education for organisations on the benefits of listening and responding to concerns**

It was broadly agreed in the legal representatives focus group that employers and other bodies to which concerns are raised should be educated on the benefits of listening and responding appropriately to concerns, including the fact that addressing concerns early saves organisations money. One of the focus group participants suggested that the financial benefits of whistleblowing was a factor that underpinned the EU Whistleblowing Directive, and this data should be used to inform the education, as well as other assessments. A parliamentary paper suggested that this role could be performed by an independent oversight body, such as the Office for the Whistleblower or the Whistleblowing Champion.<sup>85</sup>

### **Greater guidance for prescribed persons**

Various prescribed person participants, a piece of stakeholder and a piece of public body literature<sup>86</sup> suggested ideas for increased guidance for prescribed persons. Areas noted requiring increased guidance included:

- whistleblower definition
- clear examples of types of wrongdoing
- public interest definition
- safeguarding of those impacted by wrongdoing reported by whistleblowers
- handling of disclosures
- expected future role of prescribed persons

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<sup>82</sup> LR03, LR25

<sup>83</sup> LR03

<sup>84</sup> LR03, LR33

<sup>85</sup> LR52

<sup>86</sup> LR27, LR65

Some prescribed person participants suggested that practical examples of how the prescribed person guidance could be implemented, such as case studies, would be helpful.

### **More frequent communication between prescribed persons and from the DBT to prescribed persons**

A piece of public body literature<sup>87</sup> and some prescribed person participants suggested that more frequent communication between prescribed persons would be useful so that they could learn from each other. Prescribed person participants noted that best practice, including case studies, and procedures for handling disclosures could be shared.

A prescribed person interviewee noted that they currently did not have much engagement with the DBT. Some prescribed person participants suggested that more frequent communication between prescribed persons and the DBT would be useful. For example, one prescribed person interviewee suggested that individuals at each prescribed person could be nominated to receive updates from the Government. Another prescribed person interviewee suggested that the Government could provide quarterly or annual updates to prescribed persons covering best practice, top tips, lessons learned and relevant updates.

A piece of public body and a piece of stakeholder literature suggested that more frequent communication is required from the DBT around interpretations on how to meet the DBT's expectations, trends in wrongdoing and improvements relating to prescribed persons annual reporting requirements.<sup>88</sup>

Prescribed person participants suggested that prescribed persons need more support from the DBT in relation to the preparation of prescribed persons annual reports, including feedback on reporting and preferred format of reports.

A separate prescribed person interviewee suggested that the information contained in the annual reports could be collated by the DBT and presented in a way that was interesting for the public.

### **Cultural change**

Suggestions for change related to the observations and emerging themes covered in the Cultural Change section are outlined below.

The suggestions for change below are additional to the suggestions included in previous sections. While efforts have been made to avoid duplication, the overlapping nature of some observations and emerging themes means that some duplication remains.

#### **Create a central body for whistleblowing**

Several pieces of stakeholder literature and one piece of public body literature suggested the creation of a central body to educate, advise, oversee, assure, and enforce standards in relation to whistleblowing in Great Britain.<sup>89</sup> The two main proposals suggested by stakeholder literature are:

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<sup>87</sup> LR27

<sup>88</sup> LR27, LR43

<sup>89</sup> LR03, LR25, LR33, LR35, LR38

- the Office of the Whistleblower<sup>90</sup>
- the Whistleblowing Commissioner<sup>91</sup>

Several whistleblower and employer participants, and a legal representative participant in a focus group were supportive of the proposals for the creation of a central body to oversee whistleblowing. Various aims for the proposed central body were suggested, and are outlined in a few pieces of stakeholder literature and parliamentary papers<sup>92</sup>, including:

- set and enforce whistleblowing standards
- support whistleblowers
- force organisations to have whistleblowing regimes
- protect the careers of whistleblowers
- change organisations and prescribed persons to a single reference of ‘competent authority’ or ‘relevant person’
- holistically look for patterns in sectors and organisations to identify recurrent issues
- hold organisations to account for poor management of their whistleblowing functions
- oversee prescribed persons
- take the responsibility or burden of cost and risk away from the whistleblower
- implement changes to the law and/or industry guidance
- force organisations to appropriately investigate concerns raised by whistleblowers
- earn respect from claimants
- receive, respond and investigate whistleblowing disclosures
- provide legal representation for claimants
- create a route for individuals who are not sure which body to raise their concerns to
- generate a return on investment, for example by paying for itself in the first year
- act as the backstop for whistleblowers’ protections

An employer interviewee suggested that a “one-stop-shop” for receipt of whistleblowing disclosures would be easier to promote than the current sector based prescribed persons.

A participant at the legal representatives focus group suggested that a central body was required to assist organisations in appropriately handling and responding to concerns raised, as well as addressing the underlying concerns.

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<sup>90</sup> LR03, LR17, LR52

<sup>91</sup> LR25, LR33

<sup>92</sup> LR03, LR08, LR52

A whistleblower interviewee suggested that this central body should not replace the function of sector regulators and should instead look at data recorded by regulators to identify trends in issues raised.

Some prescribed person participants expressed concerns with the proposal of a central body. One prescribed person interviewee was concerned that a central body would mean disclosures which they can currently act on could be taken away from them. During a prescribed persons focus group a number of concerns were raised by the participants, including:

- how a central body for whistleblowing might interfere or create tension with prescribed persons statutory functions and independence
- whistleblowers may see the central body as an appeal mechanism that sat above prescribed persons, just as they saw prescribed persons as an appeal mechanism that sat above employers
- a centralised body may lead to further bureaucracy
- in some sectors whistleblowers already have an appeal route above and beyond prescribed persons

### **Ongoing engagement and research to assess and monitor all aspects of the GB framework**

A piece of stakeholder literature and a piece of academic literature suggested that there should be ongoing engagement and research to assess and monitor all aspects of the existing GB framework.<sup>93</sup> This should include consultation for changes and the introduction of measures to support good practice. The same literature suggested that the research should provide coverage and ensure that it is not skewed in terms of occupations and locations.

A participant at a whistleblower focus group felt there needed to be a mechanism to hear the voices of whistleblowers in research or proposals for improvements. Other participants at the focus group agreed.

An employer interviewee explained that they are aware of frameworks in other countries or jurisdictions that do not seem to account for large multinational companies who operate in multiple countries and already have a global whistleblowing policy in place. The employer interviewee suggested that the Government should consult with, and listen to, multinational companies in designing any updates to the GB framework.

### **Efforts to improve effectiveness should be multifaceted and monitored**

A few pieces of stakeholder literature suggested that efforts to improve effectiveness of whistleblowing arrangements in organisations should be multifaceted, legally enforceable and monitored.<sup>94</sup> A participant at a whistleblower focus group suggested that any changes to the GB framework need to look beyond the large public sector organisations

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<sup>93</sup> LR09, LR31

<sup>94</sup> LR03, LR35, LR63

or specific regulated sectors, as specific issues also need addressing in smaller businesses and charities.

Some prescribed person participants in a focus group and a whistleblower interviewee expressed the view that the real solution was to fix the cultures in workplaces, prescribed persons and certain sectors. Another prescribed person participant in the same focus group suggested that introducing or extending a duty of candour for all organisations and prescribed persons to promote transparency and accountability may be an option, so protecting a speak up culture.

An employer interviewee suggested that organisations should be obliged to foster a culture that supported individuals raising concerns, rather than just providing a "quasi-safety net".

Another employer interviewee suggested that given its relative age, the GB framework legislation, and PIDA specifically, could be given a bit more promotion.

### **Improved mental health support for individuals**

A piece of stakeholder literature suggested the provision of improved and bespoke mental health support for individuals reporting concerns.<sup>95</sup> A participant in a whistleblower focus group supported this suggestion.

During the employer focus group, a participant explained that they were aware of instances where employers had attempted to gain access to records from claimants' mental health or therapeutic counselling. They therefore suggested that any additional mental health support for whistleblowers should be made completely independent and ring-fenced to ensure employers do not access and inappropriately use the information.

### **Legal advice and a degree of financial security while the claim progresses**

A couple of pieces of stakeholder literature suggested greater support is needed to provide claimants with legal advice, funded by legal aid, to balance out a so-called "inequality of arms".<sup>96</sup> Another option suggested by this literature was that the prescribed person could act on behalf of the whistleblower. The support could also include a cap on how much each side is able to spend on the case. A variety of stakeholder literature asserted that this support would provide the whistleblower with a degree of financial security while the claim progresses.<sup>97</sup>

### **Consideration of disincentives and incentives, for example implementation of a United States style reward system**

Some stakeholder literature compared the GB system to other frameworks in place internationally and noted that the GB framework has a number of features absent that are considered good practice globally.<sup>98</sup> This literature suggested that in relation to incentives and disincentives, there is evidence that the United States and Canadian whistleblower systems work both domestically and extra-territorially because they afford better protection for the whistleblower through anonymity, sharing the risk between the whistleblower and a law enforcement agency as the case is prosecuted, and providing

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<sup>95</sup> LR03

<sup>96</sup> LR03, LR33

<sup>97</sup> LR03, LR17, LR18, LR24, LR30, LR33, LR42, LR51

<sup>98</sup> LR22, LR55



greater compensation for the whistleblower. These systems appear, according to this literature, to also motivate organisations to improve their internal reporting procedures and responses to concerns raised as a way of mitigating the risk of concerns being raised externally. This literature suggested that these organisational improvements contribute to an overall reduction in wrongdoing, or a reduction in the severity of the wrongdoing due to it being raised and responded to earlier.

Whistleblower, employer, prescribed person and legal representative participants had mixed views on whether incentives for whistleblowers, such as a United States style reward scheme, would be beneficial.

Some participants suggested that such incentives encourage a greater number of disclosures, would encourage greater intelligence for prescribed persons, and provide a material outcome for the whistleblower.

A participant at the legal representatives focus group stated that there needs to be an element of incentive, as the current system, at best, can only put the whistleblower in the same position they would have been in if they had not made a disclosure.

An employer interviewee was sceptical about replicating the size of rewards of the United States scheme. A whistleblower interviewee believed that regulators would require powers to impose negative consequences on proven malicious accusers. Another whistleblower participant suggested during a focus group that a separate system outside of the Employment Tribunal process would be required to address claimants who might start hunting rewards.

Some whistleblower participants stated that a financial incentive or compensation would not have made it easier or more likely for them to blow the whistle. One of these whistleblower participants added that they still believe that they have an overriding legal obligation to raise concerns, regardless of any incentive. An employer interviewee felt that financial incentives should not be offered to employees and instead the legislation should enable people to "do the right thing".

A prescribed person interviewee outlined that it does not offer redress schemes or incentives and nor did it want powers in that respect because it believed it already has a high volume of disclosures. The prescribed person interviewee expressed that in their opinion individuals felt morally obliged to make disclosures and their motivation was not financial.

## Bibliography

Literature review reference number	Author(s)	Published year	Document title	Type of literature
LR01	Alexis Jay OBE	2014	Independent Inquiry into Child Sexual	government body literature

Literature review reference number	Author(s)	Published year	Document title	Type of literature
			Exploitation in Rotherham 1997-2013	
LR02	Allison Pearson	2023	NHS management is a bullying, incompetent cult	Journalistic literature
LR03	All Party Parliamentary Group on Whistleblowing	2019	Whistleblowing: The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it	Stakeholder literature
LR04	Alan Glasper	2017	Protecting whistle-blowers against discrimination in the NHS	Academic literature
LR05	All Party Parliamentary Group on Whistleblowing	2020	Making whistleblowing work for society	Stakeholder literature
LR06	Ashleigh Webber	2021	Whistleblowing protections to be reviewed amid dismissal claims	Journalistic literature
LR07	Ashleigh Webber	2020	'Office of the Whistleblower' needed to tackle retaliation	Journalistic literature
LR08	Claire Brader	2022	House of Lords: Protection for Whistleblowing Bill [HL] HL Bill 27 of 2022–23	Parliamentary papers



<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR09	John Blenkinsopp, Nick Snowden, Russell Mannion, Martin Powell, Huw Davies, Ross Millar and Jean McHale	2019	Whistleblowing over patient safety and care quality: a review of the literature	Academic literature
LR10	David Lewis, Alessio D'Angelo and Lisa Clarke	2015	Industrial relations and the management of whistleblowing after the Francis report: what can be learned from the evidence?	Academic literature
LR11	David Lewis	2017	Whistleblowing and the law of defamation: Does the law strike a fair balance between the rights of Whistle-blowers, the media and Alleged wrongdoers	Academic literature
LR12	Bjorn Fasterling and David Lewis	2014	Leaks, legislation and freedom of speech: How can the law effectively promote public-interest whistleblowing	Academic literature
LR13	David Lewis	2014	Is a public interest test for workplace whistleblowing in society's interest?	Academic literature

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR14	David Lewis and Wim Vandekerckhove	2015	Trade unions and the whistleblowing process in the UK: An opportunity for strategic expansion?	Academic literature
LR15	Dominic Hughes	2023	NHS whistleblowers need more protection, expert warns	Journalistic literature
LR16	Eileen Chubb	2020	There is no ME in Whistle-blower	Stakeholder literature
LR17	All Party Parliamentary Group on Whistleblowing	2022	The Whistleblowing Bill - APPG for Whistleblowing	Stakeholder literature
LR18	Iain G Mitchell KC	2023	Why PIDA has failed	Stakeholder literature
LR19	Iheb Chalouat, Carlos Carrion-Crespo and Margherita Licata	2019	Law and practice on protecting whistleblowers in the public and financial sectors	International body literature
LR20	Jan Stappers	2023	Navigating the whistleblowing landscape	Journalistic literature
LR21	Laura Williams and Wim Vandekerckhove	2021	Fairly and justly? Are Employment Tribunals able to even out whistleblowing power imbalances?	Academic literature

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR22	Cleary Gottlieb	2021	Whistleblower regulations in the UK and the US	Stakeholder literature
LR23	The British Academy, Equality, and employment law centre, University of Greenwich and Leverhulme Trust	2023	#Legalsupportmatters Whistleblowing with Discrimination at Employment Tribunal	Academic literature
LR24	Lauren Crosby Medlicott	2023	Whistleblowers pay the price for speaking up. A new law could protect them.	Journalistic literature
LR25	Miloš Resimić	2021	Institutional arrangements for whistleblowing: Challenges and best practices	Stakeholder literature
LR26	National Audit Office	2014	Government whistleblowing policies (Investigation)	Public body literature
LR27	National Audit Office	2015	The role of prescribed persons	Public body literature
LR28	OECD	2016	Committing to effective whistleblower protection	International body literature
LR29	Office of National Statistics	2023	Tribunal statistics quarterly (Jan to Mar 23)	Ministry of Justice guidance and statistics

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR30	Parrhesia Inc	2021	Best Practice Extracts from GAP: Are Whistleblower Laws working?	Stakeholder literature
LR31	Protect and Parrhesia	2023	Protect and Parrhesia's 8-point plan for Whistleblowing reform	Stakeholder literature
LR32	Patients First	2023	The freedom to speak up review	Stakeholder literature
LR33	Protect	2023	Protect's response to the scope of the Whistleblowing review	Stakeholder literature
LR34	Peter Yeoh	2014	Whistleblowing: motivations, corporate self-regulation, and the law	Academic literature
LR35	Protect	2022	WHISTLEBLOWING BILL – Updated May 2022 Short title: A Bill to strengthen whistleblowing protection	Stakeholder literature
LR36	Russell Mannion, John Blenkinsopp, Martin Powell, Jean McHale, Ross Millar, Nicholas Snowden and Huw Davies	2018	Understanding the knowledge gaps in whistleblowing and speaking up in health care: narrative reviews of the research literature and formal inquiries, a	Academic literature

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
			legal analysis and stakeholder interviews.	
LR37	Simon Fuller	2023	Whistleblowing: signs of a shifting landscape	Stakeholder literature
LR38	Sir Robert Francis KC	2015	Freedom to speak up: An independent review into creating an open and honest reporting culture in the NHS	Public body literature
LR39	Steve Turner	2023	The systemic silent killer – ending the stigma around whistleblowing	Stakeholder literature
LR40	Care Quality Commission	2023	Listening, learning, responding to concerns: A review to identify improvements in how we learn from, respond to and act on concerns	Public body literature
LR41	Dr Minh Alexander, Martin Morton, Greg Lawton and Clare Sardari	2010	A new law: Public Interest Protection Bill	Stakeholder literature
LR42	Minh Alexander and Clare Sardari	2018	Whistleblowers in Their Own Words What's wrong with UK whistleblowing law & how it needs to change	Stakeholder literature

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR43	Dr Minh Alexander	2018	Prescribed Persons or the Pretence of PIDA. How UK Whistleblowers are ignored.	Stakeholder literature
LR44	WhistleblowersUK	2023	Whistleblowing Awareness Week 2023: The Data	Stakeholder literature
LR45	Richard Hyde	2019	The Halfway House is Only Halfway Built: Reforming the system of prescribed persons and the Public Interest Disclosure Act 1998	Academic literature
LR46	Wim Vandekerckhove and Arron Phillips	2017	Whistleblowing as a protracted process: A study of UK whistleblower journeys	Academic literature
LR47	Courts and Tribunal Judiciary	2023	Presidential guidance: Alternative Dispute Resolution	Ministry of Justice guidance and statistics
LR48	Jane Croft	2023	Role of lawyers in misuse of NDAs to be examined by UK regulator	Journalistic literature
LR49	Government Accountability Project	2021	Are whistleblowing laws working? A global study of whistleblower protection litigation	Stakeholder literature

<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
LR50	Michael Searles	2023	Doctors call for independent panels with legal powers to fix NHS management crisis	Journalistic literature
LR51	Peter Wilmshurst	2017	Whistleblowing in healthcare	Stakeholder literature
LR52	Baroness Kramer	2022	The Protection of Whistleblowing Bill; repealing the Public Interest Disclosure Act (PIDA) 1998	Parliamentary papers
LR53	Whistleblower Network News	2020	Unsafe and Unsound: How all Citizens Suffer under the Public Interest Disclosure Act 1998	Journalistic literature
LR54	Daz Greenop	2019	NHSI Whistleblowers Support Scheme Pilot	Stakeholder literature
LR55	WhistleblowersUK	2023	International Whistleblower Reward Programmes: Is there a place for them in the UK?	Stakeholder literature
LR56	Principles for Responsible Investment	2020	Whistleblowing: Why and how to engage with investee companies	Stakeholder literature
LR57	Gregory Lawton	2023	Whistleblowing law in the UK: potential reforms, and whether they would be given	Stakeholder literature



<b>Literature review reference number</b>	<b>Author(s)</b>	<b>Published year</b>	<b>Document title</b>	<b>Type of literature</b>
			effect by the EU whistleblowing directive	
LR58	Protect	2020	The best warning system: whistleblowing during covid-19: An examination of the experiences of UK whistleblowers during a global pandemic	Stakeholder literature
LR59	Financial Conduct Authority	2018	Retail and Wholesale Banking: review of firms' whistleblowing arrangements	Public body literature
LR60	Protect, Slater & Gordon	2020	SILENCE IN THE CITY	Stakeholder literature
LR61	Financial Conduct Authority	2023	Handbook: Senior arrangements, systems and controls. Chapter 18. Whistleblowing	Public body literature
LR62	Financial Conduct Authority	2022	Whistleblowing assessment survey 2022	Public body literature
LR63	Protect	2021	WORKPLACE WHISTLEBLOWING: WHY WE NEED A LEGAL DUTY ON EMPLOYERS	Stakeholder literature
LR64	Protect	2022	PRESCRIBED PERSONS Annual	Stakeholder literature

Literature review reference number	Author(s)	Published year	Document title	Type of literature
			Whistleblowing Reports: Best Practice Guide	
LR65	Protect	2020	BETTER REGULATORS: Principles for recommended practice	Stakeholder literature
LR66	Lord Evans of Weardale	2023	The Committee on Standards in Public Life: Leading in practice	Public body literature
LR67	Barbara Culiberg and Katarina Katha Mihelič	2016	The evolution of whistleblowing studies: a critical review and research agenda	Academic literature

## **B. LITERATURE REVIEW**

### **Objective**

To conduct a literature review to identify and extract observations and emerging themes relating to the effectiveness of the GB framework relevant to the research topics.

### **Methodology**

A review of 67 relevant pre-existing pieces of literature on whistleblowing in Great Britain was conducted to meet the objective above. In accordance with the scope of the research, literature published between 2014 (when enhancements to the GB framework were made) and the end of March 2023 (when the DBT review was announced) were included as relevant.

### **Literature sources**

To establish the population of the literature review, the following diverse sources of potentially relevant literature were considered:

- 25 pieces of literature identified by the DBT
- literature from open sources, such as JSTOR, to identify relevant academic journal articles
- literature published and provided by the five whistleblowing organisations, either via their publicly available libraries, or from their private libraries of pre-existing sources
- additional literature provided during the research fieldwork, such as interviews and focus groups

### **Literature selection criteria**

A total population of 143 pieces of potentially relevant literature, identified from the above sources, was subject to a high-level triage assessment against the following selection criteria to determine whether the literature should be included in the substantive literature review population:

- existed after 2014 but before the DBT review was announced in March 2023
- considered the GB framework either in whole or in part, in a wider piece of literature
- followed an evidence-based methodology
- considered at least one (and preferably more) of the research topics, or is able to be used as evidence to extrapolate from
- contains a spectrum of voices/authors (e.g. academics, whistleblowing organisations, industry and legal experts), in order to provide balanced insights into the effectiveness of the GB framework

- application of these selection criteria resulted in an initial population of 60 pieces of literature being selected for substantive review

### **Completeness check**

The whistleblowing organisations suggested academics in the field of whistleblowing in Great Britain to check the completeness of the substantive literature review population based on their knowledge of the subject. Three academics were contacted and consulted to check the completeness of the substantive literature review population based on their knowledge of the subject. Two<sup>99</sup> of these three academics were:

- professor Dave Lewis (Middlesex University London)
- professor John Blenkinsopp (Oslo New University College and Northumbria University)
- additional literature proposed by the academics was assessed against the selection criteria set out above, resulting in seven additional pieces of literature being added to the literature review population for substantive review.

### **Literature review population**

The literature review population of 67 pieces of literature is listed in Appendix B – Bibliography. To aid the reader, the literature has been categorised using the following categories:

- stakeholder literature (26)
- academic literature (14)
- journalistic literature (12)
- government body literature (1)
- public body literature (7)
- international body literature (2)
- parliamentary papers (3)
- Ministry of justice guidance and statistics (2)

### **Analysis and output**

Each of the 67 pieces of literature were substantively reviewed to extract observations and emerging themes relating to the effectiveness of the GB framework, under the research topics, and suggestions for change. The following information was also gathered for each piece of literature:

<sup>99</sup> One academic chose not to be referenced by name

- title
- author
- date
- risk of bias
- background and context
- purpose of the literature
- methodology
- summary of contents
- references

### **Limitations**

The literature review was limited to 67 pieces of literature. The review focussed on defining a population of literature, which provided a balance of views from diverse sources within the overall population of literature.

Whilst the three academics were consulted regarding the completeness of the literature population, there is still a residual risk that relevant literature was not included in the final literature population.

The approach relied on publicly available literature and literature provided by the five whistleblowing organisations, the DBT and the three academics. Although the population of 67 pieces of literature goes some way to providing balanced views, a residual risk of bias in the literature content remains, particularly in relation to the prevalence of views highlighting areas of concern compared to the relatively little information highlighting areas of effectiveness of the GB framework. Consequently, the observations and emerging themes in the literature are largely drawn from negative views and experiences of the GB framework.

## C. QUALITATIVE INTERVIEWS

### Objective

To undertake qualitative interviews to identify and extract observations and emerging themes relating to the effectiveness of the GB framework relevant to the research topics.

### Methodology

The qualitative interviews encompassed pre-interview questionnaires and interviews with whistleblowers, employers and prescribed persons, in order to gather a cross-section of views across GB framework users.

It was intended for 40 qualitative interviews to be conducted. However, due to a low uptake in participation by employers, the number of employer interviews achieved were less than the original intended quota, and a total of 35 interviews were conducted.

The table below shows the original intended number of interviews, and the actual number of interviews achieved in each interviewee category.

Interviews	Original Intended Quota	Achieved
Prescribed persons	13	13
Whistleblowers	14	14
Employers	13	8

The interview process took place between 18 October and 7 December 2023.

### Sampling and recruitment

A purposive sampling approach was used for qualitative data collection. A predominantly sector based approach was applied to the sample selection, to ensure sector coverage and diversity of interviewees, using the Standard Industrial Categorisation ('SIC') hierarchy sections published by the Office of National Statistics ('ONS').<sup>100</sup> An additional sector called "Charities, consumer protection, and equalities and human rights" was added on the basis that a related SIC section (sector) could not be identified or mapped and that certain prescribed persons fall under that description. The following 20 sectors were adopted:

- (i) accommodation and food service activities
- (ii) administrative and support service activities
- (iii) agriculture, forestry and fishing
- (iv) arts, entertainment and recreation
- (v) charities, consumer protection, and equalities and human rights
- (vi) construction

<sup>100</sup> [UK Standard Industrial Classification \(SIC\) Hierarchy \(onsdigital.github.io\)](https://onsdigital.github.io) Accessed 3 August 2023

- (vii) education
- (viii) electricity, gas, steam and air conditioning supply
- (ix) financial and insurance activities
- (x) human health and social work activities
- (xi) information and communication
- (xii) manufacturing
- (xiii) mining and quarrying
- (xiv) other service activities
- (xv) professional, scientific and technical activities
- (xvi) public administration and defence; compulsory social security
- (xvii) real estate activities
- (xviii) transportation and storage
- (xix) water supply; sewerage, waste management and remediation activities
- (xx) wholesale and retail trade; repair of motor vehicles and motorcycles

The following two ONS sectors were not adopted on the basis that there are no corresponding prescribed persons in these sectors:

activities of households as employers; undifferentiated goods and services producing activities of households for own use

activities of extraterritorial organisation and bodies

The sectors covered in interviews were predominantly driven by the prescribed persons that received the highest volume of qualifying disclosures in the year ended 31 March 2021,<sup>101</sup> as reflected in their annual disclosure reports. The rationale for high volume of qualifying disclosures being the main driver of sector selection was that the prescribed persons would likely be those most engaged in the GB framework.

Whistleblower and employer interviewee selection was consequently driven by the sectors identified from prescribed persons sector selection, with the aim of sourcing whistleblowers and employers from the same sectors covered by the prescribed persons sampled in order to provide a degree of consistency across interviews and to obtain sector-based perspectives.

In accordance with the terms of reference, potential interviewees from sub-sectors involving Crown Employment, National Security, Police Officers and work outside of Great Britain were out of the scope and excluded from the sample selection.

<sup>101</sup> These were the prescribed persons annual reports available to the research team at the time of selecting the sample.



## **Prescribed persons**

- A.1 the interviewee sample of 13 prescribed persons was selected to include ten prescribed persons who received the highest volume of qualifying disclosures in the year ended 31 March 2021, as reflected in their annual disclosure reports; two prescribed persons believed to most impact consumers and their day-to-day lives; and one new prescribed person (since the beginning of 2022)
- A.2 as there are more prescribed persons in some sectors and less in others, up to two prescribed persons from the same sector were selected for the sample. Many of the prescribed persons with the highest volumes of qualifying disclosures fall under the 'Public administration and defence; compulsory social security' sector and are pan-sector in their remit. Greater weighting was therefore applied to the selection of prescribed persons for interviews and focus groups from that sector. This resulted in a greater number of participants from that sector across the interviews and focus groups
- A.3 additional sample selection factors considered included prescribed person type (i.e. professional association or regulatory body) and geographical coverage

## **Whistleblowers**

There were two main sources of whistleblowers, who made a protected disclosure since 2014, for inclusion in the whistleblower interviews: a) whistleblower organisations and b) whistleblowers who showed an interest in participating in the research. Due consideration was given to the balance of interviews to enable participation and to ensure impartiality in sample selection. The interviewee sample of whistleblowers predominantly covered the same sectors as the prescribed persons interviews.

The following additional factors were considered when selecting interviewees, to further ensure diversity in the whistleblower interviewee sample:

- size of employer (number of employees)
- seniority of role (senior manager / manager / non-managerial)
- whistleblower experience (positive experience, negative experience, experienced detriment)
- whistleblower journey (blowing the whistle to an employer, blowing the whistle to a prescribed person, consulting an employment lawyer, commencing Employment Tribunal proceedings)
- received a judgment for or against from the Employment Tribunal

It became apparent that some potential interviewees were subject to non-disclosure agreements, limiting the extent of their potential contribution to the research. This was considered as an additional factor when selecting interviewees.

## **Employers**

The interviewee sample of eight employers was selected from Grant Thornton's diverse client base and employers introduced by the whistleblowing organisations and the DBT. The

employer sample predominantly covered the same sectors as the prescribed person and whistleblower interviewees, including a mix of public, private and charity entities.

The following additional factors were considered to further ensure diversity in the employer interviewee sample:

- size of employer (with reference to number of employees)
- geographical location
- consulted an employment lawyer
- participated in an Employment Tribunal
- received a judgment for or against from the Employment Tribunal

## Interviewees

The identity of the interviewees has been kept confidential and the responses and any data provided by interviewees has been kept confidential, anonymised and presented in a summary format, without the use of direct quotes. A unique code was allocated to each interviewee in order to allow the research team to link the pre-questionnaire and interview responses to the interviewee. The pre-interview questionnaires and interviews were conducted consistently, regardless of how the respective participants were sourced.

The table below shows the sector distribution of the 40 intended interviewees selected in the sample.

### Sector distribution for intended interview sample

Sectors	Prescribed Persons	Whistleblowers	Employers
Charities, consumer protection, and equalities and human rights	2	2	2
Electricity, gas, steam and air conditioning supply	1	1	1
Accommodation and food service activities	1	1	1
Information and communication	1	1	1
Financial and insurance activities	2	2	2
Professional, scientific and technical activities	1	1	1
Public administration and defence; compulsory social security	2	2	2

Education	1	1	1
Human health and social work activities	2	3	2
<b>Total</b>	<b>13</b>	<b>14</b>	<b>13</b>

- The table below shows the sector distribution of the 35 actual interviews which took place based on the selected sample.

#### **Sector distribution for actual interview sample**

<b>Sectors</b>	<b>Prescribed Persons</b>	<b>Whistleblowers</b>	<b>Employers</b>
Charities, consumer protection, and equalities and human rights	2	2	2
Electricity, gas, steam and air conditioning supply	1	1	0
Accommodation and food service activities	1	1	0
Information and communication	1	1	1
Financial and insurance activities	2	4	1
Professional, scientific and technical activities	1	1	0
Public administration and defence; compulsory social security	2	0	0
Education	1	0	0
Human health and social work activities	2	3	0
Manufacturing	0	0	1

Water supply; sewerage, waste management and remediation activities	0	0	1
Construction	0	0	1
Wholesale and retail trade; repair of motor vehicles and motorcycles	0	1	1
<b>Total</b>	<b>13</b>	<b>14</b>	<b>8</b>

### Pre-interview questionnaires

Pre-interview questionnaires were created in Microsoft Forms for each of the three interview subgroups to enable provision of responses to close-ended questions to allow the interviews to focus on more detailed, open-ended questions and to allow time to discuss the effectiveness of the GB framework. The pre-interview questionnaires were sent to the interviewees for completion ahead of the interview, with an estimated completion time of 30 minutes to 1 hour.

The pre-interview questionnaires and proforma interview plans are included in Appendices I to K.

### Interviews

The interviews included follow up on questionnaire responses, as necessary, and focussed on exploring views on the effectiveness of the GB framework. Any necessary further contact with interviewees was arranged following the interviews.

The interviews were scheduled for 45 minutes, with 15 minutes contingency, and hosted on Microsoft Teams. In addition to the interviewee, two interviewers and one notetaker took part in the interviews. The pre-interview questionnaire and interview responses have been kept confidential and anonymised.

### Analysis and output

The pre-interview questionnaire and interview responses were given equal weighting to extract observations and emerging themes relating to the effectiveness of the GB framework, under the research topics, and suggestions for change.

### Limitations

The number of intended interviews was limited to 40 interviews, across three groups of interviewees, under the terms of reference. However, it was not possible to conduct the full quota of intended interviews due to a low uptake in participation by employers.

Additionally, while a healthcare sector employer was recruited for an interview, they had to pull out of the research at the last minute due to operational pressures in their geographic region. The participation of a healthcare sector employer in the interviews could have

provided an additional perspective to this research. However, a healthcare sector employer did take part in the employer focus group.

The recruitment of interviewees was limited to the sources outlined above to achieve participation.

The report does not provide numerical findings based on interviewee or focus group participant insights. This is because the adopted qualitative research approach aimed to achieve a diverse range of sampled participants, rather than a statistically representative sample. The qualitative research approach provides in-depth insight based on the range of experiences, observations, views, and suggestions of participants.

## D. FOCUS GROUPS

### Objective

To facilitate focus groups to enhance and enrich common observations and emerging themes identified in the literature review and qualitative interviews, and to extract further evidence relating to the research topics.

### Methodology

Five categories of attendees were invited to partake in the focus groups. It was intended that seven focus groups would be held, each with around 10 participants from each category. The categories were:

- (i) whistleblowers and whistleblowing organisation representatives (two focus groups)
- (ii) employers
- (iii) prescribed persons (two focus groups)
- (iv) trade union representatives, and
- (v) legal professionals.

Due to a low uptake in participation by trade unions, it was not possible to conduct a trade union focus group.

Also, due to a low uptake in participation, the employer focus group had only two participants, representing the financial services and public healthcare sectors.

The table below shows the original intended number of focus groups, and the number of focus groups achieved in each category.

Focus Groups	Original Intended Quota	Achieved
Prescribed persons	2	2
Whistleblowers and whistleblower organisation	2	2
Employers	1	1
Trade Unions	1	0
Legal professionals	1	1

The focus groups took place between 23 November and 8 December 2023. The number of attendees in each focus group ranged from two to nine.

### Sampling and recruitment

#### Prescribed persons and employers

A predominantly sector-based approach was applied to ensure diversity of focus group participants across the prescribed persons and employers focus groups using the same

sectors listed above. These focus groups were designed to supplement and provide additional sector diversity input from that obtained in the prescribed persons and employers interviews.

Two prescribed persons focus groups were conducted. One focus group included participants predominantly from the same sectors as the prescribed persons interviewed. The other focus group included participants predominantly from other sectors.

There was greater selection of participants from the 'Public administration and defence; compulsory social security' ONS sector, given that it covers a wide range of prominent pan-sector prescribed persons, and the 'Human health and social work activities' sector, given that it covers a wide range of sub-sectors with prominent prescribed persons.

The intention was for the participants of the employer representatives focus group to be predominantly sourced from employers in sectors not covered in interviews, in order to obtain views from other sectors. Again, attempts were made to source employers from Grant Thornton's client base and employers introduced by the whistleblowing organisations and the DBT. Due to a low uptake in participation, the employer focus group had only two participants.

The focus groups were conducted consistently, regardless of how the respective participants were sourced.

In accordance with the terms of reference, potential focus group participants from sub-sectors involving Crown Employment, National Security, Police Officers and work outside of Great Britain were excluded from the sample selection.

The table below shows the intended and actual sector distribution of the participants selected for the prescribed persons and employers focus groups.

**Intended and actual sector distribution of prescribed persons and employers focus group participants**

Sectors	Prescribed Persons		Employers	
	Intended	Actual	Intended	Actual
Agriculture, forestry and fishing	0	0	1	0
Mining and quarrying	1	1	1	0
Manufacturing	0	0	1	0
Charities, consumer protection, and equalities and human rights	2	2	0	0
Water supply; sewerage, waste management and remediation activities	1	1	0	0
Construction	0	0	1	0



Wholesale and retail trade; repair of motor vehicles and motorcycles	0	0	1	0
Transportation and storage	2	2	1	0
Accommodation and food service activities	1	0	1	0
Information and communication	1	1	0	0
Financial and insurance activities	1	1	0	1
Real estate activities	2	2	0	0
Professional, scientific and technical activities	1	1	0	0
Administrative and support service activities	0	0	1	0
Public administration and defence; compulsory social security	4	3	0	0
Education	1	1	0	0
Human health and social work activities	3	2	0	1
Arts, entertainment and recreation	0	0	1	0
Other service activities	0	0	1	0
<b>Total</b>	<b>20</b>	<b>17</b>	<b>10</b>	<b>2</b>

### Whistleblowers and whistleblowing organisation representatives

Whistleblower participants in focus groups were those that met the selection criteria for the interviews but that were not selected for interview due to a different individual being selected to represent the relevant sector.

Whistleblowing organisation representatives were sourced from representatives from the whistleblowing organisations, as well as representatives from other whistleblowing organisations suggested by the whistleblowing organisations.

## **Legal professionals**

The legal professionals focus group was attended by individuals that represent whistleblowers and employers, and a legal practitioner who also sits as an Employment Tribunal judge. The legal professionals were sourced from Grant Thornton's contacts within law firms and recommendations from the whistleblowing organisations, as well as the Law Society of England and Wales and Employment Lawyers Association.

## **Focus Group participants**

The identities of the focus group participants have been kept confidential and the responses and any data provided by participants have been kept confidential, anonymised and presented in a summary format, without the use of direct quotes.

## **Focus Group participant communications**

Ahead of the focus group, participants were provided with a high-level agenda and reminder of the purpose of the focus group.

## **Focus groups meetings**

The focus groups were scheduled for two hours and hosted on Microsoft Teams/in person. Two facilitators and one notetaker took part in the focus groups. Attendees were provided with a high-level agenda beforehand. A focus group topic guide was prepared for use by the focus group facilitators.

The focus groups explored the observations and emerging themes from the literature review and qualitative interviews and gathered participant views on the effectiveness of the GB framework.

## **Analysis and output**

The focus group contributions were used to extract observations and emerging themes relating to the effectiveness of the GB framework, under the research topics, and suggestions for change.

## **Limitations**

The number of focus groups conducted was limited to six focus groups. However, as noted in paragraph above, the adopted qualitative research approach aimed to achieve a diverse range of sampled participants to allow wider inference to be drawn from the insights.

Due to a low uptake in participation by trade unions, and the fact that the sole participant was unwell on the day of the scheduled meeting, a trade union focus group was not conducted. A trade union focus group could have provided other perspectives for this research.

Also, due to a low uptake in participation, the employer focus group had two participants, representing the financial services and healthcare sectors. A higher number of participants in the employer focus groups from a range of sectors may have provided additional and more varied insights.

The recruitment of focus group participants was limited to the sources outlined above to achieve participation

## **E. E. SECONDARY DATA ANALYSIS – EMPLOYMENT TRIBUNAL STATISTICS**

### **Objective**

To identify and explore trends in Employment Tribunal receipts, disposals and outcomes for whistleblowers over time and to provide comparatives to other jurisdictions (grounds on which a claim is brought) of Employment Tribunal claims (for example, to see if cases involving public interest disclosure claims were disproportionately dismissed).

### **Methodology**

#### **Data sources**

The UK Government has published statistics relating to Employment Tribunals on the Gov.uk website since the year ended 31 March 2008. In accordance with the scope of the research, data from 2014 to March 2023 was obtained for analysis.

The Employment Tribunal statistics were extracted from the 'Main Tables'<sup>102</sup> Microsoft Excel spreadsheet contained in the January to March 2023 quarterly Employment Tribunal statistics data set<sup>103</sup> on the Gov.uk website. The spreadsheet presents historic data dating back to 1 April 2007.

The following three tables in the Main Tables spreadsheet were used as data sources for the analysis:

ET\_1: presents the total number of 'receipts' (claims counted as received once His Majesty's Courts and Tribunals Service ('HMCTS') has accepted the claim as valid) by jurisdiction from 1 April 2007 to 31 March 2023

ET\_2: presents the total number of 'disposals' (for example, being withdrawn, struck out, dismissed or decided at a hearing) by jurisdiction from 1 April 2007 to 31 March 2023, and

ET\_3: presents a matrix of the percentage of 'disposals' by outcome (i.e. the final result) and jurisdiction from 1 April 2007 to 31 March 2023.

#### **Data gaps**

It was not possible to undertake the full scope of analysis across the complete period from 2014 to March 2023 due to the following gaps in the data:

Data for 'disposals' and outcomes by jurisdiction for 2021/22 and 2022/23 in tables ET\_2 and ET\_3 are not available. The table notes state: "Jurisdictional breakdowns data for 2021/22 and 2022/23 are still undergoing more rigorous checks after the migration to a new case management system and will not be presented until the checks are complete."

Data for the number of 'receipts' by jurisdiction for the quarter ended 30 June 2021 and the annual totals for the year ended 31 March 2022 in table ET\_1 are not available. The table

<sup>102</sup> [Main Tables Q4 2022-23 \(gov.uk\)](#) Accessed 11 September 2023

<sup>103</sup> [Tribunal Statistics Quarterly: January to March 2023 \(gov.uk\)](#) Accessed 11 September 2023

notes state: “The Q1 2021/22 data for the Employment Tribunal (ET) is unavailable as it has not been possible to provide the full results from both databases during the case management migration period of March to May 2021 on a consistent basis, and therefore the annual total for 2021/22 cannot be provided.”

### **Data extraction**

Data was extracted from the Main Tables listed in paragraph F.4 into separate tables in Microsoft Excel from the following fields on an annual and quarterly basis between 2014 and March 2023:

- the total number of jurisdictional complaints received
- the number of receipts by jurisdiction
- the total number of disposals of jurisdictional complaints
- the number of disposals by each jurisdiction
- the percentage of disposals by outcome and jurisdiction

### **Data cleaning**

Before the data could be analysed, a data cleansing exercise was undertaken involving:

- removing merged cells
- separating annual and quarterly tables
- reformatting date columns to allow time series analysis to be performed by period end date (e.g. “2014/15” was changed to 31 March 2015 and “Q1” was changed to 30 June), and
- consolidating columns which displayed receipt/disposal counts per jurisdiction into a single column categorised based on a jurisdictional description in an additional column.

### **Data analysis**

The quantitative analysis was performed on the following statistics, subject to the data gaps outlined above:

- the volume of Public Interest Disclosure ‘receipts’ on a quarterly basis between 1 January 2014 and March 2023
- the volume of ‘receipts’ by jurisdiction and by region on a quarterly basis between 1 January 2014 and March 2023
- the volume of Public Interest Disclosure ‘disposals’ on an annual basis between 1 April 2014 and 31 March 2021
- the distribution of Public Interest Disclosure outcome types on an annual basis between 1 April 2014 and 31 March 2021

- the analysis also compared the ‘receipts’, ‘disposals’ and distribution of outcome types of Public Interest Disclosure claims against average volumes and outcome type distributions of the other jurisdictions.

## Outcome assumptions

Assumptions were used to group the disposal outcomes of Employment Tribunals presented in the ET3 table in order to analyse the percentage of disposals where the outcome was in favour of the claimant (i.e. the employee) for each jurisdiction, year and on average.

The table below shows the outcomes of Employment Tribunals in the ET3 table and how each was categorised in the analysis. Disposal outcomes grouped into the “Not employee” category was deemed to be either neutral to the employee or in favour of the respondent (i.e. the employer).

Disposal outcome	In favour of
Acas Conciliated Settlements	Employee
Withdrawn	Not employee
Successful at hearing	Employee
Unsuccessful at hearing	Not employee
Dismissed at a preliminary hearing	Not employee
Struck Out (not at a hearing)	Not employee
Default judgement	Employee
Dismissed Rule 27	Not employee
Dismissed Upon Withdrawal	Not employee
Case Discontinued	Not employee

## Data output

The output of the analysis of Employment Tribunal statistics is a series of tables and time-series line graphs and stacked bar charts, with commentary detailing observations included in Section 8 – Redress – Employment Tribunals.

## Limitations

The data source tables for Employment Tribunal statistics are incomplete. Data showing ‘disposals’ by jurisdiction and outcomes (in ET\_2 and ET\_3) are not available for March 2021 onwards in the Main Tables. Data showing ‘receipts’ by jurisdiction and overall (in ET\_1) are unavailable for the year ended 31 March 2021. This prevents complete analysis of Employment Tribunal statistics for the intended period of 2014 to 31 March 2023.

‘Receipts’ of Employment Tribunal claims are categorised into jurisdictions based on claimants’ responses to the ‘ET1’ claim form. This reduces the reliability of data contained in ET\_1. When completing the ET1 form, if an individual ticks a box for a certain jurisdiction, it would count as a receipt of a claim in that jurisdiction. The jurisdictional ‘receipts’ may

therefore be overstated as individuals may select jurisdictions which do not actually apply to their claims.

This is especially likely to impact the receipt figures for the Public Interest Disclosure jurisdiction as the definition of a Public Interest Disclosure is more commonly misinterpreted compared with other jurisdictions such as unfair dismissal or forms of discrimination. Comparisons between volumes of receipts in the Public Interest Disclosure jurisdiction and other jurisdictions may therefore be misleading.



## **F. SECONDARY DATA ANALYSIS – EMPLOYMENT TRIBUNAL JUDGMENTS**

### **Objective**

To identify and explore trends in Employment Tribunal outcomes for whistleblowers over time, including heads of claim, categories of wrongdoing, judgment outcomes, redress awards, claimant legal representation and observations on disclosure routes and claim length.

Despite best efforts and amendments to the prompts (questions), unfortunately, as detailed below, the accuracy of the information extracted using the artificial intelligence ('AI') model was insufficient across a number of key information items to allow any meaningful analysis of the Employment Tribunal judgments to be undertaken. The methodology up to the point of data analysis is outlined below.

### **Methodology**

The legal judgments analysis involved an attempt to examine publicly available Employment Tribunal decisions and related documents, relevant to whistleblowing claims, for cases in England, Wales and Scotland, published online between 1 February 2017 and 27 March 2023.

The online database of Employment Tribunal case documents<sup>104</sup> states that "Decisions are not affected by GDPR rules and cannot be removed from GOV.UK". The research team is not aware of any reasons why a judgment may not be present in the database.

The Employment Tribunal decisions contain personal information. Care was taken to protect this personal information through processing it in Grant Thornton's secure, closed environment, and the intention to analyse and report the data in an aggregated, anonymous manner.

### **Data sources and population**

Keyword searches were run in the online database of Employment Tribunal case documents to identify cases relevant to whistleblowing and public interest disclosure claims. The search term "whistleblowing" returned 2,159 cases, "whistle blow" returned 637 cases, "public interest disclosure" returned 1,281 cases and "protected disclosure" returned 3,004 cases between 1 February 2017 and 27 March 2023. These searches returned 3,908 unique cases.

Employment Tribunal cases often contain multiple documents per case. From the 3,908 responsive Employment Tribunal cases above, 6,784 case documents were downloaded. The file label of each document often included a document type. In a limited number of instances, the document type stated in the file label did not match the type of document stated on the face of the document itself. However, for the majority of documents, the file label was deemed a sufficient indicator of document type. The most common document types were 'Judgment with Reasons', 'Judgment' and 'Reserved Judgment'. Document types 'Withdrawal' and 'Partial Withdrawal' were deemed not to relate to a judgment and

<sup>104</sup> [Employment Tribunal Decisions \(gov.uk\)](#) Accessed 2 October 2023

were therefore excluded, resulting in 6,366 Employment Tribunal case documents being included in the initial sample.

A large portion of Employment Tribunal cases downloaded were not primarily related to protected disclosures or whistleblowing, despite being responsive to the keyword searches. In order to exclude these “false positives”, a frequency-based model was applied to exclude cases with a low prevalence of the key words throughout the case documents, relative to the volume and length of the case documents. This frequency-based model resulted in 3,241 documents being excluded, with 3,125 case documents remaining for review.

## **AI data extraction**

Due to the large volume of cases and documents, AI was used as a novel, experimental approach to expedite the extraction of text from the documents, related to the key information outlined below.<sup>105</sup> Using AI for the purpose of extracting information involves the process of collecting or retrieving disparate types of data to transform this information into structured information with the aim of producing meaningful insights.

- OpenAI’s GPT-3.5 Turbo (‘GPT’) text generative AI model was used inside Grant Thornton’s secure, closed Microsoft Azure environment to ask questions (prompts) to extract the necessary information.
- the questions (prompts) sought to extract the following information from the documents:
  - location of the Employment Tribunal hearing
  - whether the Claimant was represented by legal counsel
  - respondent name (to identify relevant sector)
  - category of wrongdoing (what did they blow the whistle about)
  - date or time period of the wrongdoing
  - date that disclosure first made
  - who the disclosure was made to (internal, external or both)
  - date that the Employment Tribunal process started
  - grounds for bringing the Employment Tribunal claim
  - date of final judgment
  - outcome(s) of the final judgment (for claimant, partially for claimant, for respondent)
  - whether the Claimant was found to be an employee/worker
  - whether the disclosure was found to be in the public interest
  - whether detriment was related to the protected disclosure
  - compensation or remedies awarded

<sup>105</sup> The Costs and Remedies documents and Corrections and Reconsiderations documents were downloaded separately for separate data extraction specific to those document types.

- reason(s) the Employment Tribunal gave for their judgment
- the prompts were run against all documents from each case, in order to extract the information for each case as a whole. The majority of the information was contained in the latest/final document, e.g. 'Judgment with Reasons' and 'Judgment', however certain information was only contained in documents from other stages in the Employment Tribunal process of a case.

### **Sample testing for AI accuracy check**

A random sample of 25 Employment Tribunal cases, consisting of 57 case related documents, were selected to form a benchmark for measuring the response accuracy of the AI model. These 25 cases were manually reviewed to identify and extract the required information above and compared to the responses from the AI model based on initial prompts (questions). Accuracy was manually determined based on whether the AI model response provided a close match to the manual response.

The following steps were undertaken to prepare the sample case documents and run the sample case documents through the AI model.

### **Document chunking**

The Employment Tribunal judgments were often longer than 12,000 words (equated to tokens in AI tools). Due to limitations in the number of tokens (words) that can be presented to GPT for consideration, it was not possible to present all case text to GPT as a single instance (document). To address this limitation, as GPT responses are significantly improved where it considers the entire context of a document, procedures were developed to reduce the number of tokens per case to facilitate better answers to each question.

Two procedures were developed. The first procedure split each document into several smaller chunks of text and asked the model to identify which chunks tended to contain the information to be extracted. The relevant chunks were then re-combined to form a smaller document. The second procedure took a manually defined number of pages from the start/end of the text. This latter procedure was used to extract information that is always found on the first/last pages, such as the name of the respondent and the judgment date

### **GPT prompt generation**

By default, GPT answers queries with open-ended responses which are unsuitable for analysis. In order to be able to analyse data extracted from these judgments, a series of closed-end questions (prompts) needed to be developed to extract suitable information. For example, a closed-ended question (prompt) such as "was the whistleblowing in relation to worker safety?" can easily be analysed, whereas answers to the open-ended question "what was the nature of the whistleblowing?" cannot. Yes/no responses, dates, and numeric responses (such as cost figures) were generally preferable to longer text responses.

For baseline questions that were open-ended in nature (e.g. "what was the nature of the whistleblowing?"), these were first asked in an open-ended format. Exploring the GPT responses to these questions then enabled identification of the primary categories of responses to these questions. These categories were then extracted from the response with

non-AI tools (e.g. a semantic search) or converted into several closed-ended questions to be re-asked of GPT.

Prompt engineering, a trial-and-error method of creating text prompts and reviewing outputs compared to known answers, based upon commonly used techniques, was used to ensure that GPT answered questions in the correct format. This involved forcing GPT to respond with yes/no responses, and to respond with page numbers/citations where required.

Amendments to prompts were made as necessary based on this comparison to improve response accuracy. The following table shows the prompt accuracy at case level, following prompt amendments for the 14 cases in the 25-case sample that related to protected disclosures or whistleblowing:

Information	Benchmark Accuracy (%)
Location of the Employment Tribunal hearing	100%
Whether the Claimant was represented by legal counsel	100%
Respondent name (to identify relevant sector)	100%
Category of wrongdoing (what did they blow the whistle about)	71%
Date or time period of the wrongdoing	57%
Date that disclosure first made	64%
Who the disclosure was made to (internal, external or both)	57%
Date that started Employment Tribunal process	57%
Grounds for bringing the Employment Tribunal claim	0%
Date of final judgment	79%
Outcome(s) of the final judgment (for claimant, partially for claimant, for respondent)	64%
Whether the Claimant was found to be an employee/worker	57%
Whether the disclosure was found to be in the public interest	57%
Whether detriment was related to the protected disclosure	81%
Compensation or remedies awarded	43%
Reason(s) the Employment Tribunal gave for their judgment	66%

The table shows that the response accuracy from the AI model was insufficient across a number of key information items across the sample, and therefore no meaningful analysis of the Employment Tribunal judgments has been possible.

## **Limitations**

The Employment Tribunal judgments have only been available online since February 2017 and therefore it is not possible to obtain digital versions of judgments earlier than this.

As noted above, the keyword searches in the Employment Tribunal database resulted in many false positive results. Whilst efforts were taken to minimise the number of false positives, there is a chance that some remain. It is also possible that certain relevant cases were excluded due to not being captured by the keyword searches or limitations of the search functions of the database.

The document chunking performed by the AI model may have excluded relevant parts of judgments and related documents for subsequent querying by the model.

## **G. SECONDARY DATA ANALYSIS – PRESCRIBED PERSONS DISCLOSURE REPORTS**

### **Objective**

To identify and explore trends in qualifying disclosures and disclosures requiring further action in prescribed persons disclosure reports over time between sectors.

### **Methodology**

#### **Role of prescribed persons**

For context, the Public Interest Disclosure (Prescribed Persons) Order 2014 sets out a list of organisations and individuals (the prescribed persons) to which a worker can report suspected wrongdoing.<sup>106</sup>

The majority of prescribed persons, generally regulatory bodies, are required by The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017<sup>107</sup> to publish a report on the whistleblowing disclosures made to them annually. The first reporting period was the year ended 31 March 2018. Some prescribed persons are exempt from the reporting requirement.

The published reports are required to include:

- the total number of qualifying disclosures made by workers
- the number of disclosures where the prescribed person decided to take action
- a summary of the type of action taken, a summary of how the disclosures have impacted on the ability of the prescribed person to perform its functions and meet its objectives
- an explanation of the prescribed person's functions and objectives

#### **Data sources**

DBT collate the prescribed persons' annual reports on whistleblowing disclosures into a single document for each reporting year.

The collated reports for each of the five years ended 31 March 2018 to 31 March 2022 were provided by DBT. The collated reports for the year ended 31 March 2023 were not available at the time of the research.

In accordance with the terms of reference, reports from prescribed persons in sub-sectors involving Crown Employment, National Security, Police Officers and work outside of Great Britain were excluded from the analysis.

<sup>106</sup> The Public Interest Disclosure (Prescribed Persons) Order 2014 ([legislation.gov.uk](https://www.legislation.gov.uk)) Accessed 2 October 2023

<sup>107</sup> The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 ([legislation.gov.uk](https://www.legislation.gov.uk)) Accessed 2 October 2023

Five reports published for the year ended 31 March 2021 were not included in the collated reports for that year and were provided separately by the DBT.

The total number of prescribed persons reports provided by the DBT per reporting year is shown in the table below.

<b>Reporting year end date</b>	<b>Count of prescribed persons reports provided by the DBT</b>
31 March 2018	61
31 March 2019	62
31 March 2020	66
31 March 2021	64
31 March 2022	64

### **Data categorisation and extraction**

The following 13 sectors, included above, were used to categorise the prescribed persons in the analysis:

- (i) Accommodation and food service activities
- (ii) Charities, consumer protection, and equalities and human rights
- (iii) Education
- (iv) Electricity, gas, steam and air conditioning supply
- (v) Financial and insurance activities
- (vi) Human health and social work activities
- (vii) Information and communication
- (viii) Other service activities
- (ix) Professional, scientific and technical activities
- (x) Public administration and defence; compulsory social security
- (xi) Real estate activities
- (xii) Transportation and storage
- (xiii) Water supply; sewerage, waste management and remediation activities

The following ONS sectors were not used in the analysis on the basis that there are no prescribed persons' reports produced by prescribed persons in these sectors or, in the case of the latter two sectors, no corresponding prescribed persons in those sectors:

- (i) Administrative and support service activities
- (ii) Agriculture forestry and fishing



- (iii) Arts, entertainment and recreation
- (iv) Construction
- (v) Manufacturing
- (vi) Mining and quarrying
- (vii) Wholesale and retail trade; repair of motor vehicles and motorcycle
- (viii) Administrative and support service activities
- (ix) Activities of households as employers; undifferentiated goods and services producing activities of households for own use
- (x) Activities of extraterritorial organisation and bodies

The following key figures were manually captured from each of the reports:

- the number of qualifying disclosures made to the prescribed person in the period
- the number of qualifying disclosures for which the prescribed person decided to undertake further action

### **Limiting assumptions**

It was unclear in some instances whether the number of qualifying disclosures received had been reported or the total number of disclosures received (i.e. both qualifying and non-qualifying). The research also noted that prescribed persons are required to make a judgement about whether or not a disclosure received is qualifying for this purpose. Where it was unclear, all “disclosures” (or similar) were assumed to be qualifying. This meant that analysis of qualifying disclosures as a percentage of total disclosures received was not possible.

The number of disclosures deemed to require further action was not stated in some instances. In these cases, the number of disclosures deemed to require further action was assumed to be zero.

The number of "actions taken in response to qualifying disclosures" was greater than the corresponding number of "qualifying disclosures" in some instances. This suggested that some prescribed persons were reporting the total number of actions taken rather than the number of qualifying disclosures requiring further action. To allow some form of analysis to be undertaken on qualifying disclosure deemed to require further action, it was assumed that all qualifying disclosures were acted upon (i.e. the number of disclosures deemed to require further action was capped at the total number of qualifying disclosures). Due to the two limiting assumptions above, it was not possible to analyse the relationship between the number of qualifying disclosures received and the number of qualifying disclosures deemed to require further action.

### **Data analysis**

The quantitative analysis was performed on the following statistics, applying the assumptions outlined above:

- the volume of qualifying disclosures by ONS sector on an annual basis between 2018 and 2022
- the volume of qualifying disclosures deemed to require further action by ONS sector on an annual basis between 2018 and 2022

In addition to the quantitative analysis set out above, a qualitative review was conducted of the prescribed persons' reports for the year ended 31 March 2021.<sup>108</sup> This qualitative review was undertaken to assess the completeness (with reference to the minimum reporting requirements), consistency and clarity of information reported by the prescribed persons to understand what, if any, impact this may have on the analysis. A summary of the outcomes from this review are included in the Limitations sub-section below.

### **Data output**

The output of the quantitative analysis of the prescribed persons reports across the five reporting periods is a series of tables and time-series line graphs and stacked bar charts, with commentary detailing observations on the annual and sector specific trends apparent in the reports, included in Section 5 – Disclosure Routes.

The output of the qualitative review performed on the reports collated for the year ended 31 March 2021 took the form of a written summary of the key observations.

### **Limitations**

A lack of clarity and comparability in the content of the prescribed persons' reports prevented some quantitative analysis from being carried out and some caused analysis to be inhibited.

Due to the fact that some prescribed persons are pan-sector, the approach to allocate each prescribed person to one ONS sector may have distorted the analysis.

Various data assumptions were made, as outlined above. For example, in some instances it was unclear whether the number of qualifying disclosures received had been reported or the total number of disclosures. In such instances, all disclosures were assumed to be qualifying. These assumptions reduce the usefulness of the resulting analysis and resulted in certain analysis not being possible, as outlined above.

There is likely to be double counting in the figures which are reported by prescribed persons. The GB framework legislation states that the prescribed persons are not required to report on disclosures which fall outside of the "description of matters in respect of which that person is so prescribed". However, it is apparent that some prescribed persons have included within the figures they report, disclosures they received which were outside of their remit and were referred to an alternative body. Such disclosures may, therefore, be counted twice: once by the initial prescribed person to whom the disclosure was made and once by the body to which it was referred to. This double counting may result in overstatement of both the number of qualifying disclosures and the number of qualifying disclosures on which

<sup>108</sup> This year was selected because at the commencement of the review, it was the most recent reporting year for which the prescribed persons reports had been collated by the DBT.

action was taken, especially if the initial prescribed person included the referral as an “action” in the figures it reported.

The analysis performed is also limited by the fact that the prescribed persons reports are incomplete across that five-year period. This is evidenced by the fluctuation in the number of reports per year, which does not correspond to a fluctuation in the number of prescribed persons required to publish reports. A count of prescribed person reports specifically identified as missing is shown in the table below.

<b>Reporting year end date</b>	<b>Count of prescribed persons reports identified as missing / not published</b>
31 March 2018	2
31 March 2019	2
31 March 2020	0
31 March 2021	2
31 March 2022	2

## H. QUALITATIVE INTERVIEW DOCUMENTS – PRESCRIBED PERSONS

### Pre-interview questionnaire

Topic	Question
<b>Your role and prescribed bodies status</b>	What is your role at the prescribed body generally and specifically in relation to whistleblowing?
	When did your organisation become a prescribed body?
<b>Communication and guidance</b>	How does your organisation articulate your functions and objectives as a prescribed body?
	Does your organisation communicate with members of the public to inform them that you are a prescribed body and articulate your approach and whistleblowing routes?
	How do you communicate this to your intended audience, including frequency, routes, mediums and content?
	How do your communications refer to internal whistleblowing arrangements (i.e. at the organisations you have a relationship over) and the interaction between your function and the internal function?
	Does your organisation articulate the benefits of whistleblowing?
	What benefits of whistleblowing are articulated?
	Where are the benefits of whistleblowing articulated?
	What guidance do you provide to prospective whistleblowers and how do you provide it?
<b>Influence</b>	Does your organisation seek to improve internal whistleblowing standards in the organisations you have a relationship over?
	How do you achieve this?
	To what extent do you insist organisations you have a relationship over have whistleblowing related policies and procedures?
	Do you have the authority to enforce whistleblowing requirements for organisations you have a relationship over?

Topic	Question
<b>Your understanding of whistleblowing definitions</b>	Does your organisation have a definition of a whistleblower?
	What is your organisation's definition of a whistleblower?
	On what basis has that definition of a whistleblower been made (e.g. regulation, legislation, industry guidance)?
	Where is this definition of a whistleblower articulated?
	How often do you review your definition of a whistleblower?
	Does your organisation have a definition of a qualifying whistleblowing disclosure?
	What is your organisation's definition of a qualifying disclosure?
	On what basis has that definition of a qualifying disclosure been made (e.g. regulation, legislation, industry guidance)?
	Where is this definition of a qualifying disclosure articulated?
	How often do you review your definition of a qualifying whistleblowing disclosure?
<b>Your approach and processes</b>	Has your organisation made any changes to its processes in the last 9 years (i.e. since the framework GB legal whistleblowing framework took on its current form in 2014 and the introduction of the 2017 reporting requirements) to better fulfil its role as a prescribed person?
	Please describe the nature and substance of these changes to your approach to managing whistleblower disclosures
	What were the drivers of these change(s)?
<b>Reporting channels and trends</b>	<p>What routes or channels does your organisation provide for receiving disclosures from members of the public?</p> <p>Online form</p> <p>Email address</p> <p>Webchat</p> <p>Telephone</p> <p>Other</p>

Topic	Question
	Rank the use of disclosure routes from most used to least used:  Online form  Email address  Webchat  Telephone  Other
	What topics (categories of wrongdoing) are disclosures being made about?
<b>Anonymity and confidentiality</b>	Do you accept anonymous whistleblowing concerns?
	How do you ensure anonymity (or confidentiality) of disclosures is maintained?
	Does the level of anonymity (or confidentiality) offered differ based on the whistleblower's preference?
<b>Protection from harm or detriment and provision of support and redress</b>	How does your organisation provide whistleblowers with protection from harm or detriment?
	What categories of people are afforded this protection?
	How does your organisation practically or operationally provide this protection?
	Where are these protections articulated?
	How does your organisation address a situation where a whistleblower reports that they have already been victimised?
	Does your organisation have a definition of what you consider as harm or detriment?
	What is this definition of harm or detriment and where is it articulated?
	Do you provide additional support services to those making a disclosure?
	What type of support services do you offer?
	Does your organisation provide whistleblowers with a route of redress (e.g. compensation) where harm or detriment does occur?

Topic	Question
	How would a whistleblower access compensation/redress for any harm or detriment that your organisation agrees the whistleblower has experienced?
	Does your organisation offer any other incentives to whistleblowers?
	What incentives do you offer?
<b>Whistleblower journey</b>	Management and handling of incoming disclosures
	Action taken if you receive a disclosure which you determine does not qualify under the scope of your organisation (for example referral to a different prescribed body)
	Main steps followed from initially receiving a disclosure through to your definition of "closing" the matter
	Engagement with the whistleblower
	Setting and managing whistleblower expectations in terms of the process and potential outcomes
	Frequency of providing feedback and status updates to the whistleblower and how this is determined
	Barriers faced in engaging with the whistleblower
	Instances in which you liaise with the relevant employer
	Extent to which you allow a whistleblower to provide feedback or input on your findings before publication of your findings, such as in an internal or publicly available annual report
<b>Government guidance</b>	Are you aware of guidance related to the legal framework and the role of prescribed bodies provided by government agencies?
	How do you access this guidance?
	How helpful is this guidance?
	How could the guidance be improved?

## Interview plan

Topic	Questions / Points to cover
Interview Preamble	<p>Good morning/afternoon.</p> <p>Nice to meet you and thank you for taking the time to complete the questionnaire and provide us with your insights in this discussion.</p> <p>GT Introductions - I am [X], a [Role] at Grant Thornton. I am joined by my colleague [Y] and my colleague [Z] is with us to take notes. They are both working with me on this research.</p> <p>Participant Introduction.</p> <p>As you are aware, we have been appointed by the DBT to undertake a research study into the effectiveness of the whistleblowing framework in Great Britain.</p> <p>Would you like me to provide a brief overview of the research? If yes:</p> <p>Collate evidence on the effectiveness of the framework – effective, ineffective, improvements- and in relation to topics and research questions related to whistleblowing</p> <p>Literature Review, Data Analysis, and Interviews and Focus Groups (various framework users)</p> <p>Our report will be provided to the DBT, for the DBT to determine next steps</p> <p>The session will last approximately 45 minutes.</p> <p>We will cover three areas in this session:</p> <p>Follow up on some of your questionnaire responses</p> <p>Explore your views on your prescribed bodies' approach</p> <p>Explore your views on the whistleblowing framework in Great Britain</p> <p>All findings from this session will be kept confidential and anonymous, and will not mention specific individuals.</p> <p>You do not have to answer any questions you do not feel comfortable with or wish to answer. If you are not clear about a question or would like us to repeat a question, please feel free to ask.</p>



Topic	Questions / Points to cover
	<p>We would like to record this session so that it can be transcribed and to allow us to refer back to it. Are you happy for us to record the session? [If Yes – notetaker to turn on recording and transcription. If No – Not a problem]</p> <p>Do you have any questions before we begin?</p> <p>Let's begin.</p>
<b>Questionnaire Clarifications</b>	Questionnaire responses to be clarified as necessary
<b>Your prescribed body's approach, procedures and processes</b>	<p>What potential areas of improvement or enhancement would you make to your organisation's approach as a prescribed body?</p> <p>What does your organisation do as a prescribed body to engender trust in your whistleblowing process?</p>
<b>The GB legal whistleblowing framework</b>	<p>GB legal framework understanding</p> <p>What is your understanding of the GB legal framework related to whistleblowing?</p> <p>How has this understanding changed during the last 9 years since 2014?</p> <p>Is the legal framework a factor that is considered when creating or updating your prescribed body approach, procedures and processes?</p> <p>If yes, how is the legal framework considered?</p> <p>GB legal framework views</p> <p>What are your views on the GB legal framework?</p> <p>Is it working?</p> <p>Benefits</p> <p>Strengths</p> <p>Weaknesses</p> <p>Issues</p>

Topic	Questions / Points to cover
	<p>Potential improvements or enhancements to the legal framework, particularly in relation to:</p> <p>Prescribed bodies' role</p> <p>Protection of whistleblowers and enforcement</p> <p>Definition of a qualifying disclosure</p> <p>Financial incentives or compensation</p> <p>Government guidance</p> <p>Annual reporting duty</p> <p>To what extent has the annual reporting duty, introduced in 2017, increased transparency and trust?</p> <p>How time consuming is the annual reporting duty?</p> <p>Do you think the input you are required to provide in your annual report provides an accurate picture of your activity as a prescribed body?</p> <p>Qualifying disclosure assessment</p> <p>You are required to assess whether the disclosures you receive meet the definition of a 'qualifying disclosure'</p> <p>How do you make this assessment?</p> <p>Whistleblower protections</p> <p>What is your understanding of the protections this legal framework provides to whistleblowers?</p> <p>How has this understanding changed during the last 9 years since 2014?</p> <p>Do you think that these protections should be extended to others outside of the employment relationship?</p> <p>If so, which groups should these protections be extended to?</p> <p>Do you perceive there to be any limitation of the legal framework in providing protection and assisting in seeking redress for whistleblowers?</p> <p>If so, what are these limitations?</p>
<b>Interview Close</b>	Thank you

Topic	Questions / Points to cover
	Any questions?  Next steps

## I. QUALITATIVE INTERVIEW DOCUMENTS – WHISTLEBLOWERS

### Pre-interview questionnaire

Topic	Question
<b>Your whistleblowing experience</b>	<p>Your whistleblowing journey and use of the GB whistleblowing framework</p> <p>Select all that apply:</p> <p>Whistleblew to my employer</p> <p>Whistleblew to another entity, but related to employment</p> <p>Whistleblew to a prescribed person (e.g. a regulator, professional body or your Member of Parliament)</p> <p>Whistleblew to the press</p> <p>Consulted an employment lawyer</p> <p>Approached Acas (Advisory, conciliation and arbitration service) to start a claim</p> <p>Concluded at early conciliation service stage assisted by Acas</p> <p>Consulted or were supported by a trade union</p> <p>Consulted citizens advice</p> <p>Attended the preliminary hearing</p> <p>Attended Employment Tribunal hearing</p> <p>Received decision from Employment Tribunal</p> <p>Other</p>
	What was the nature of the issue or wrongdoing?
	In what month and year did you first become aware of the issue or wrongdoing?
	Did you raise concerns or speak up in the normal course of your work in a non-protected manner?
	In what month and year did you raise your concerns or speak up in the normal course of your work in a non-protected manner?

Topic	Question
	Please explain how you raised your concerns or spoke up more informally
	What teams or individuals did you deal with at your organisation before formally blowing the whistle?
	Did you consult anyone for guidance or advice before blowing the whistle? Select all that apply:
	No
	Human resources
	An employment lawyer
	Friends or family
	Colleagues
	Citizens Advice Bureau
	Other
	In what month and year did you formally blow the whistle?
	Who did you blow the whistle to?
	Select all that apply:
	Human Resources
	Legal team
	Manager or supervisor
	Internal hotline/email dedicated to whistleblowing reports
	External third party hotline/email dedicated to whistleblowing reports
	C suite member (senior executive/board member)
	Non-executive director
	Auditor
	Regulator or prescribed body
	Press
	Other

Topic	Question
	Did anything delay or prevent you from blowing the whistle?
	How did your employer (and/or prescribed body) handle your disclosure?
	What teams or individuals did you deal with after blowing the whistle?
	What were the outcomes of your whistleblowing in relation to the concern and how you were treated by those who were aware of your disclosure?
	How long approximately did it take from you initially blowing the whistle to the outcome of your whistleblowing?
	Did you suffer any financial cost and/or burden from blowing the whistle (including the time and costs of the Employment Tribunal process, if applicable)? If so, please describe the costs and/or burdens you incurred.
	What were your expectations in terms of the process and potential outcomes at the time you blew the whistle?
	Did your experience meet your expectations before you blew the whistle?
	What are your views on the experience you had?
	Did you encounter any issues during or after the process?
	Did you experience any detriment as a result of blowing the whistle?
	Describe the detriment you experienced?
	Did the detriment you experienced relate to any of the following protected characteristics, as defined in the Equality Act 2010?
	Age discrimination
	Disability
	Gender reassignment
	Marriage and civil partnership
	Pregnancy and maternity
	Race
	Religion and belief
	Sex

Topic	Question
	Sexual orientation
	Please select 'Prefer not to say' if you are not comfortable sharing a response to this question.
	Rate your overall experience of whistleblowing
	Positive Negative but I did not experience detriment/harm Negative and I experienced detriment and harm
<b>Your understanding of whistleblowing definitions</b>	What is your understanding of the definition of a whistleblower?
	Where does that understanding of the definition come from?
	What is your understanding of the protections that whistleblowers are entitled to in Great Britain?
	Where does your understanding of the protections come from?
	Did your understanding of the definition of a whistleblower and the protections available change as a result of your experience? If your understanding changed, how did it change?
	Do you think that these protections should be extended to others who can identify wrongdoing in a workplace/business outside of the current definition of worker? If so, which groups should these protections be extended to?
<b>Your employer relevant to your whistleblowing</b>	Size of employer Choose an answer which most closely reflects the number of employees: Small (1 - 49 employees) Medium (50 – 499 employees) Mid (500 – 5000 employees) Large (5000+ employees)
	Industry/sector of employer Please select the closest industry/sector grouping. If more than one industry/sector applies, please select the industry / sector in which the wrongdoing you blew the whistle on occurred.

Topic	Question
	<p>Agriculture, forestry and fishing</p> <p>Mining and quarrying</p> <p>Manufacturing</p> <p>Charities, consumer protection, and equalities and human rights</p> <p>Electricity, gas, steam and air conditioning supply</p> <p>Water supply; sewerage, waste management and remediation activities</p> <p>Construction</p> <p>Wholesale and retail trade; repair of motor vehicles and motorcycles</p> <p>Transportation and storage</p> <p>Accommodation and food services activities</p> <p>Information and communication</p> <p>Financial and insurance activities</p> <p>Real estate activities</p> <p>Professional, scientific and technical activities</p> <p>Administrative and support service activities</p> <p>Public administration and defence; compulsory social security</p> <p>Education</p> <p>Human health and social work activities</p> <p>Arts, entertainment and recreation</p> <p>Other service activities</p> <p>What was your contractual relationship with your employer?</p> <p>Salaried employee</p> <p>Trustee</p> <p>Partner</p> <p>Volunteer</p> <p>Owner</p>



Topic	Question
	Contractor
	Trainee
	Agency staff
	Other
	Your seniority level within your employer
	Non-managerial
<b>Your employer's whistleblowing policy</b>	Manager (e.g. team leader)
	Senior manager (e.g. decision maker)
	Your job title and role
	Your length of service
	How did you know how to blow the whistle?
	How easy was it to blow the whistle?
<b>The prescribed body framework</b>	Did your employer have a whistleblowing policy?
	Were you aware of the policy before you blew the whistle?
	How did your employer's policy provide you with protection?
	To what extent did you feel protected by your employer?
	Did you report your concerns to a prescribed body (e.g. a regulator, professional body or your Member of Parliament)?
	How did you know which prescribed body to speak to?
	How easy was it to make your report to the prescribed body?
	What were your interactions with the prescribed body?
	To what extent did you feel protected by the prescribed body?
	Did you report your concerns to anyone else (e.g. the media)?
	Who else did you report your concerns to?
	Did your matter result in the commencement of an Employment Tribunal process?

Topic	Question
<b>Employment Tribunal experience</b>	<p>What was your Employment Tribunal outcome?</p> <p>Closed by early conciliation settlement</p> <p>Withdrawn</p> <p>Struck out</p> <p>Default judgment</p> <p>Dismissed at preliminary hearing</p> <p>Successful at tribunal hearing</p> <p>Unsuccessful at tribunal hearing</p> <p>Other</p>
	Please describe your experience of the Employment Tribunal process
<b>The whistleblowing framework in Great Britain</b>	Were you aware of Great Britain's legislative whistleblowing framework before you blew the whistle?
	Which of the following elements of the whistleblowing framework were you aware of before you blew the whistle?
	Rights
	Protections
	Prescribed bodies
	Guidance
	What is your understanding of the whistleblowing framework in Great Britain?
	What is your understanding of how the whistleblowing framework protects whistleblowers?

## Interview plan

Topic	Questions / Points to cover
<b>Interview Preamble</b>	Good morning/afternoon.

Topic	Questions / Points to cover
	<p>Nice to meet you and thank you for taking the time to complete the questionnaire and provide us with your insights in this discussion.</p> <p>GT Introductions - I am [X], a [Role] at Grant Thornton. I am joined by my colleague [Y] and my colleague [Z] is with us to take notes. They are both working with me on this research.</p> <p>Participant Introduction.</p> <p>As you are aware, we have been appointed by the DBT to undertake a research study into the effectiveness of the whistleblowing framework in Great Britain.</p> <p>Would you like me to provide a brief overview of the research? If yes:</p> <p>Collate evidence on the effectiveness of the framework – effective, ineffective, improvements- and in relation to topics and research questions related to whistleblowing</p> <p>Literature Review, Data Analysis, and Interviews and Focus Groups (various framework users)</p> <p>Our report will be provided to the DBT, for the DBT to determine next steps</p> <p>The session will last approximately 45 minutes (longer if necessary)</p> <p>We will cover three areas in this session</p> <p>Follow up on some of your questionnaire responses</p> <p>Explore your views on your whistleblowing experience</p> <p>Explore your views on the whistleblowing framework in Great Britain</p> <p>All findings from this session will be kept confidential and anonymous, and will not mention specific individuals.</p> <p>You do not have to answer any questions you do not feel comfortable with or wish to answer. If you are not clear about a question or would like us to repeat a question, please feel free to ask.</p>

Topic	Questions / Points to cover
	<p>Please be reminded that the purpose of this discussion is not to make a new whistleblowing disclosure or to enhance any existing whistleblowing claim.</p> <p>We would like to record this session so that it can be transcribed and to allow us to refer back to it. Are you happy for us to record the session? [If Yes – notetaker to turn on recording and transcription. If No – Not a problem]</p> <p>Do you have any questions before we begin?</p> <p>Let's begin.</p>
<b>Questionnaire Clarifications</b>	Questionnaire responses to be clarified as necessary
<b>Your whistleblowing experience</b>	<p>What would you have done differently?</p> <p>Would a financial incentive or compensation have made it easier or more likely for you to blow the whistle?</p>
<b>GB whistleblowing framework</b>	<p>GB legal framework understanding</p> <p>Did your understanding of the GB framework and its protections change as a result of your experience?</p> <p>If your understanding changed, how did it change?</p> <p>Aware of its existence?</p> <p>Awareness of nature? – rights, protections, prescribed bodies, and access to guidance</p> <p>GB legal framework views</p> <p>What are your views on the GB legal framework?</p> <p>Benefits</p> <p>Strengths</p> <p>Weaknesses</p> <p>Issue</p>

Topic	Questions / Points to cover
	<p>Potential improvements or enhancements, to the legal framework, particularly in relation to:</p> <p>Views of the framework, including fairness of framework</p> <p>Gaps in your knowledge or areas of uncertainty /confusion</p> <p>Satisfaction with information available on: gov.uk; prescribed persons website; other sources</p> <p>Views on the level of support you received</p> <p>Any changes to perceptions of legislation since reforms introduced</p> <p>Suggested improvements to legislation</p> <p>Is there anything you thought we would cover that we have not?</p>
<b>Interview Close</b>	<p>Thank you</p> <p>Any questions?</p> <p>Reiteration re confidentiality and anonymity</p>

## Qualitative interview documents – Employers

### Pre-interview questionnaire

Topic	Question
<b>Your organisation and your role</b>	<p>Your organisation's size</p> <p>Small (1 – 49 employees)</p> <p>Medium (50 – 499 employees)</p> <p>Mid (500 – 5000)</p> <p>Large (5000+ employees)</p>
	<p>Industry/sector(s) of organisation</p> <p>Select the industries which the whistleblowing arrangements in your organisation cover.</p> <p>Agriculture, forestry and fishing</p> <p>Mining and quarrying</p> <p>Manufacturing</p> <p>Charities, consumer protection, and equalities and human rights</p> <p>Electricity, gas, steam and air conditioning supply</p> <p>Water supply; sewerage, waste management and remediation activities</p> <p>Construction</p> <p>Wholesale and retail trade; repair of motor vehicles and motorcycles</p> <p>Transportation and storage</p> <p>Accommodation and food service activities</p> <p>Information and communication</p> <p>Financial and insurance activities</p> <p>Real estate activities</p> <p>Professional, scientific and technical activities</p> <p>Administrative and support service activities</p> <p>Public administration and defence; compulsory social security</p> <p>Education</p> <p>Human health and social work activities</p>

Topic	Question
	Arts, entertainment and recreation
	Other service activities
	Your seniority level within your organisation
	Non-managerial
	Manager (e.g. team leader)
	Senior manager (e.g. decision maker)
	Other
<b>Your organisation's whistleblowing policies and procedures</b>	Your job title
	Summarise the responsibilities of your role
	Does your organisation have a whistleblowing policy?
	Approximately how long has this policy existed?
	Has the policy substantively changed in the last nine (9) years, i.e. since the whistleblowing framework in Great Britain took on its current form in 2014?
	How has the policy changed?
	Did you refer to the government guidance on the legal framework in the design of your policy?
<b>Whistleblowing definitions</b>	Which guidance did you refer to?
	How useful was the guidance?
	Does your organisation have a definition of a whistleblower?
	What is your organisation's definition of a whistleblower?
	On what basis did you decide on that definition of a whistleblower?
	Where is the definition of a whistleblower articulated in your organisation?
	How often do you review your definition of a whistleblower?
	Does your organisation have a definition of a qualifying disclosure?
	What is your organisation's definition of a qualifying disclosure?

Topic	Question
	On what basis has the definition of a qualifying disclosure been made?
	Where is the definition of a qualifying disclosure articulated in your organisation?
	How often do you review your definition of a qualifying whistleblowing disclosure?
<b>Communications and feedback</b>	Does your organisation communicate the existence and nature of your organisation's whistleblowing policy or whistleblowing routes?
	How is this communicated?
	Do these communications go to individuals or organisations outside your organisation?
	Does your organisation communicate external routes (for example regulators, prescribed bodies, industry body)?
	How are these external routes communicated?
	Does your organisation articulate the benefits of whistleblowing?
	What benefits of whistleblowing are articulated?
	Where are the benefits of whistleblowing articulated?
	Does your organisation provide training for staff on whistleblowing?
	What does this training entail?
	Do you ask for feedback from whistleblowers to ascertain their satisfaction with the process?
	How do you obtain feedback (for example surveys, face-to-face discussion) and how often do you obtain feedback?
<b>Reporting channels and trends</b>	What routes or channels does your organisation provide for receiving disclosures?
	Online internal form (e.g. intranet based)
	Email address
	Webchat
	Telephone
	Third party provider



Topic	Question
	Face to face
	Other
	Rank the use of disclosure routes from most used to least used
	Online internal form (e.g. intranet based)
	Email address(es)
	Webchat
	Telephone
	Third party provider
	Face to face
	Other (described in previous question)
	How do you ensure that disclosures are easy for whistleblowers to make in the channels?
	What topics (categories of wrongdoing) are disclosure being made about?
<b>Anonymity and confidentiality</b>	What trends over time have there been regarding overall volume?
	Do you accept anonymous whistleblowing concerns?
	How do you ensure anonymity (or confidentiality) of disclosures is maintained?
	To what extent does the level of anonymity (or confidentiality) offered differ based on the whistleblower's preference?
<b>Protection from harm or detriment and provision of support and redress</b>	Does your organisation provide whistleblowers with protection from harm or detriment?
	What categories of people are afforded this protection?
	How does your organisation provide this protection?
	Where are these protections articulated?
	Does your organisation have a definition of what they consider detriment?
	What is the definition of detriment your organisation uses?

Topic	Question
	Where is the definition of detriment your organisation uses articulated?
	Do you provide additional support services to those making a disclosure?
	What type of support do you offer?
	Does your organisation provide whistleblowers with a route of redress (e.g. compensation) where detriment does occur?
	How would a whistleblower access compensation or redress for any detriment that your organisation agrees the whistleblower has experienced?
	Does your organisation offer any other incentives to whistleblowers?
	What incentives for whistleblowing do you offer?
<b>Whistleblower journey</b>	Management and handling of incoming disclosures
	Main steps followed, from initially receiving a disclosure through to your definition of "closing" the matter
	Engagement with the whistleblower
	Setting and managing whistleblower expectations in terms of the process and potential outcomes
	Frequency of providing feedback and status updates to the whistleblower
	Extent to which you allow a whistleblower to provide feedback or input on your findings before publication of your findings, such as in an internal or publicly available annual report
<b>Prescribed bodies</b>	Are you aware of the relevant Prescribed Bodies for your organisation?
	What are the relevant Prescribed Bodies?
<b>Government guidance</b>	Are you aware of guidance related to the legal framework provided by government agencies or Prescribed Bodies?
	What aspects of the guidance are you aware of?
<b>Employment Tribunal experience</b>	Has your organisation had any claims brought against it in an Employment Tribunal involving whistleblowers or allegations of whistleblower detriment?

Topic	Question
	Approximately how many claims were made during the last nine (9) years since 2014?
	Approximately how many matters were decided in your organisation's favour?
	What do you see as the risks of entering the Employment Tribunal process and where in the whistleblower journey do they arise?

## Interview plan

Topic	Questions / Points to cover
<b>Interview Preamble</b>	<p>Good morning/afternoon.</p> <p>Nice to meet you and thank you for taking the time to complete the questionnaire and provide us with your insights in this discussion.</p> <p>GT Introductions - I am [X], a [Role] at Grant Thornton. I am joined by my colleague [Y] and my colleague [Z] is with us to take notes. They are both working with me on this research.</p> <p>Participant Introduction.</p> <p>As you are aware, we have been appointed by the DBT to undertake a research study into the effectiveness of the whistleblowing framework in Great Britain.</p> <p>Would you like me to provide a brief overview of the research? If yes:</p> <p>Collate evidence on the effectiveness of the framework – effective, ineffective, improvements- and in relation to topics and research questions related to whistleblowing</p> <p>Literature Review, Data Analysis, and Interviews and Focus Groups (various framework users)</p> <p>Our report will be provided to the DBT, for the DBT to determine next steps</p> <p>The session will last approximately 45 minutes.</p> <p>We will cover three areas in this session</p> <p>Follow up on some of your questionnaire responses</p> <p>Explore your views on your whistleblowing policies and procedures</p> <p>Explore your views on the whistleblowing framework in Great Britain</p> <p>All findings from this session will be kept confidential and anonymous and will not mention specific individuals.</p> <p>You do not have to answer any questions you do not feel comfortable with or wish to answer. If you are not clear about a question or would like us to repeat a question, please feel free to ask.</p> <p>We would like to record this session so that it can be transcribed and to allow us to refer back to it. Are you happy for us to record the session? [If Yes – notetaker to turn on recording and transcription. If No – Not a problem]</p>

Topic	Questions / Points to cover
	<p>Do you have any questions before we begin?</p> <p>Let's begin.</p>
<b>Questionnaire Clarifications</b>	Questionnaire responses to be clarified as necessary
<b>Your whistleblowing policies and procedures</b>	<p>What factors have enabled your firm to embed effective whistleblowing policies and procedures?</p> <p>What does your firm do to engender trust in your whistleblowing process?</p> <p>What potential areas of improvement or enhancement would you make to your firm's whistleblowing policy and framework?</p>
<b>The GB legal whistleblowing framework</b>	<p>GB legal framework understanding</p> <p>What is your understanding of the GB legal framework related to whistleblowing?</p> <p>How has this understanding changed during the last 9 years since 2014?</p> <p>Is the legal framework a factor that is considered when creating or updating your firm's whistleblowing policy?</p> <p>If yes, how is the legal framework considered?</p> <p>Does your firm's whistleblowing policy differ from the legal framework?</p> <p>If yes, how does your firm's policy differ?</p> <p>If yes, why does your firm's policy differ and what caused you take a specific approach?</p> <p>Definition of a worker</p> <p>What do you understand to be the definition of 'worker' in the framework and how does this align to eligibility to blow the whistle in your framework?</p> <p>Have you received concerns from an individual not meeting the definition of worker?</p> <p>Whistleblower protections</p> <p>What is your understanding of the protections this legal framework provides to whistleblowers?</p> <p>How has this understanding changed during the last 9 years since 2014?</p>

Topic	Questions / Points to cover
	<p>Do you think that these protections should be extended to other groups or individuals who can spot wrongdoing in the workplace?</p> <p>If so, which groups or individuals should these protections be extended to?</p> <p>If so, why these groups?</p> <p>If so, how can these groups spot wrongdoing in your organisation?</p> <p>If so, do you have any examples of the risks/harms currently faced by these groups?</p> <p>Prescribed bodies</p> <p>What are your views on the current sector-based approach to prescribed bodies?</p> <p>To what extent would a central prescribed body be more suitable than separate sector-based bodies?</p> <p>GB legal framework views</p> <p>What are your views on the GB legal framework?</p> <p>Is it working?</p> <p>Benefits</p> <p>Strengths</p> <p>Weaknesses</p> <p>Issues</p> <p>Potential improvements or enhancements, particularly in relation to:</p> <p>Centralised prescribed body</p> <p>Protection of whistleblowers and enforcement</p> <p>Definition of a qualifying disclosure</p> <p>Financial incentives or compensation</p> <p>Government guidance</p>
<b>Interview Close</b>	<p>Is there anything we haven't asked you in respect of the whistleblowing framework that you would like to raise with us?</p> <p>Thank you</p> <p>Any questions?</p>

Topic	Questions / Points to cover
	Reiteration re confidentiality and anonymity

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