

Agenda Item 8

Executive Board Meeting
4 March 2015

Memo No 3/15

WHISTLEBLOWING

Purpose

1. To inform the Executive Board on proposed changes to the FC's Whistleblowing Policy following recommendations from the Public Accounts Committee (PAC).

Background

2. In January 2014, following an evaluation of 39 Government bodies, the National Audit Office (NAO) produced a Whistleblowing report explaining what a good whistleblowing policy should constitute and highlighting good practices.
3. In August 2014 the PAC issued a series of recommendations to Government in relation to whistleblowing. The Government accepted the majority of the recommendations.
4. HR Directors across Civil Service Departments received a letter from Cabinet Office in December 2014 with a detailed list of the PAC recommendations (see Annex 1). The letter requested HR Directors work with their Permanent Secretaries to ensure that these recommendations are implemented.

Current Policy Position

5. The Forestry Commission's (FC) currently published whistleblowing policy and procedure details the process for raising a concern and links to external support for the whistle blower. However, there is no information on what to do if an employee believes that they are victimised for blowing the whistle.
6. The Head of Internal Audit is the whistleblowing data owner/holder and records all the whistleblowing complaints made, investigations that arise, the outcome of the investigation, and actions/changes made as a result of the investigation.
7. The Head of Internal Audit updates all three Audit and Risk Assurance Committees (England, Scotland, and Forest Research) of our whistleblowing practices; the number of concerns raised, details of investigation, and the outcome of any

investigation, as and when required, or following a change in policy or process, or after a specific case.

8. The FC Procurement terms and conditions do not make reference to whistleblowing or encourage suppliers to have effective whistleblowing practices.

Implementation of PAC Recommendations

9. Following on from the NAO report on whistleblowing and the PAC's subsequent series of recommendations, the FC is taking steps, listed below, to ensure that these recommendations are effectively implemented.
10. The HR Management Board (HRMB) has approved proposed changes to the Whistleblowing Policy and Procedure. The FCTU have been consulted. HR Policy are in the process of refreshing the Whistleblowing Policy and Procedure which will go live in March 2015. The FC is taking a consistent approach with Civil Service Employee Policy (CSEP), and the policy and procedure are being refreshed in line with CSEP model policy.
11. The HR Service Board is content with HR's approach to implementing the PAC recommendations.

Greater Strategic Leadership

12. As the FC does not have a Permanent Secretary, Director of Central Services will work with the FC Executive Board (EB) to ensure that these recommendations are implemented.
13. In the revised procedure, it will be clarified that the Director of Central Services will have overall responsibility for whistleblowing practices within the FC, and will ensure that whistleblowing practices are effective and support the proper treatment of whistle blowers.
14. In addition, the revised procedure will include a statement that the FC will publicize changes made as a result of whistleblowing complaints and their subsequent investigation, where appropriate.

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15. The FC conducts an annual staff survey in September and it is intended that questions about the effectiveness of the whistleblowing procedure and suggestions for improvement are included.

Whistle Blower Support

16. The updated Whistleblowing Procedure will contain the following:
- Signposting the whistle blower to support, legal and counselling services.
 - Detail that feedback will be provided to the whistle blower, and the frequency and timescales for feedback will be outlined.
 - Reassurance that protection will be afforded the whistle blower and any complaints of victimisation resulting from blowing the whistle will be properly investigated, with appropriate sanctions for victimisers.
 - Detail that at the end of the whistleblowing investigation, feedback will be sought from the whistle blower on the effectiveness of the process, their experience, and any suggestions for improvement.
17. Also included will be standard wording within the confidentiality section of the procedure that ensures that no settlement or special severance agreement will prevent an employee from whistleblowing.

Areas for Consideration

18. In order to fully implement the PAC recommendations, the EB is required to consider and agree the following:
- Director of Central Services will be the designated person to report to the EB on the effectiveness of our whistleblowing practices, issues identified, and actions taken to address the issues.
 - Whistleblowing will be reported and discussed at the EB on a 6 monthly basis, and the Head of Internal Audit will continue to report to the Audit and Risk Assurance Committees, as and when required.
 - Head of Internal Audit will provide a summary of the FC whistleblowing practices in their annual report to the Audit and Risk Assurance Committee, and Director of Central Services will cover whistleblowing in the annual communication of the Civil Service Code.

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- Country Directors and CEOs will report on the effectiveness of the FC whistleblowing arrangements in their Annual Report and Accounts.
 - The FC procurement terms and conditions will include a clause that 'the contractor must comply with the Public Interest Disclosure Act (PIDA) 1998 and ensure effective Whistleblowing practices', and reference will be made to this in the FC Tender documentation.
19. In addition, HR Policy proposes that:
- Head of Internal Audit will be responsible for obtaining feedback from the whistle blower following investigation outcomes;
 - employees who believe that they have been subject to victimization as a result of blowing the whistle will report this to the Deputy Director of HR who will arrange for an investigation, and also inform the Head of Internal Audit as the data owner; and
 - Country Directors and CEOs will be responsible for publicising changes made as a result of whistleblowing within their area. They will decide in each case whether;
 - it is appropriate to publicize changes;
 - publicising changes will compromise the confidentiality of the whistle blower, or any employee subject to disciplinary action for wrongdoing following an investigation; and
 - the appropriate channel for publicizing changes.
20. A flowchart with the proposed process for ensuring an effective whistleblowing practice is contained in Annex 2.

Resource Implications

21. HR Policy will refresh the whistleblowing policy and procedure. Once they have been refreshed and published, Head of Internal Audit will have greater responsibility for collecting, analysing, and reporting on data. Country Directors and CEOs will also have responsibility for reporting on whistleblowing on an annual basis.

Risk Assessment

22. The NAO report highlighted the risk that employees do not feel confident about raising a concern. Currently in the FC, there are very few whistleblowing cases. This may be due to a lack of confidence in the process, and there is the risk that concerns about wrong practices may not be raised. This risk will be mitigated by the refreshed policy and procedure placing emphasis on the protection provided to employees.

Communications Issues

21. The Connect Bulletin will be used to advise all employees when the refreshed policy and procedure are available in the staff handbook.
22. The HR Business Partner teams will also communicate the changes to the whistleblowing policy and procedures to their business areas.

Implementation and Evaluation Proposals

23. The refreshed Whistleblowing Policy and Procedure will be launched at the end of March 2015. The head of Internal Audit will monitor and analyse data to consider whether the revised procedure results in an increase in employees blowing the whistle.

Recommendation(s)

24. The Executive Board is asked to note the PAC recommendations (annex 1), and to provide a view on the proposed actions as set out in paragraph 18 and 19.

Jean Lindsay
Director, Central Services
4th March 2015

Cross-government approach to Whistleblowing

1. The Public Accounts Committee (PAC) has recently issued a series of recommendations to government in relation to whistleblowing. The Government has accepted the majority of these recommendations and a response was provided to PAC last week.
2. Whistleblowing is an important part of good government and we need to learn lessons from the issues raised. The recommendations focus on ensuring there is strong leadership on this issue, with consistent expectations across government. They also recognise the need to ensure that whistleblowers themselves are fully supported throughout the process.
3. **Annex A** includes a detailed list of recommendations. As HRDs you are asked to work with your Permanent Secretaries to ensure that these are implemented. Cabinet Office will require a progress update from departments by 30th January 2015 outlining your state of readiness to implement these recommendations.
4. There is an expectation that all developments align with the CS Employee Policy model to ensure a consistent cross-Civil Service standard on whistleblowing. If your department proposes to take or is already taking a different approach, it would be helpful if you could set out the reasons for why this is the case.

Key activities

5. Following our acceptance of the PAC recommendations a senior board member will have overall responsibility for whistleblowing. In line with this, as HR Director you are asked to work with your Permanent Secretary to ensure that whistleblowing is regularly considered by both the Board and the department's Audit and Risk Assurance Committee. Departments are expected to collect data on the number of concerns raised and any complaints of victimisation due to whistleblowing and should be able to provide this information upon request. Also important will be considering and analysing any trends and learning lessons. Good data will be critical to this.

ANNEX A. Summary of PAC recommendations with key departmental actions:

Greater strategic leadership and accountability

1. A senior board member should have overall responsibility for whistleblowing practices within the Department. In line with this, as an HRD you are asked to work with your Permanent Secretary to ensure that whistleblowing is regularly considered by the Board and the department's Audit and Risk Assurance Committee.

2. This includes:

- ensuring that effective practices are put in place;
- accountability for ensuring these practices support the proper treatment of whistleblowers;
- reporting to the board/ Permanent Secretary on: the effectiveness of the Department's whistleblowing practices, any systemic issues identified, and action being taken to address those issues; and
- ensuring data is collected on the number of concerns raised so that this can be provided to the centre upon request.

In discharging this accountability you should ensure that the department is:

1. Reporting on the effectiveness of whistleblowing arrangements in the Annual Report and Accounts and escalating any concerns to the Departmental Audit and Risk Assurance Committee.
2. Where appropriate, publicising changes made as a result of whistleblowing complaints.
3. Utilising tools such as the Civil Service Survey to assess whether whistleblowing arrangements are effective/whether individuals are aware of them.
4. Conducting trend analysis of concerns raised across the department to identify potential systematic issues.
5. Discuss with commercial colleagues whether other providers that the department is engaged with can be encouraged to have effective whistleblowing processes in place.

Whistleblower support

The following recommendations are reflected in the CS Employee Policy model 'Whistleblowing and Raising a Concern' policy.

It is important that Departments are:

1. Signposting to support and advice such as access to legal and counselling services.
2. Providing a route map to employees outlining the appropriate reporting routes for concerns.
3. Providing feedback to whistleblowers in a timely fashion.

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- 4.** Investigating complaints of victimisation and putting appropriate sanctions in place for those who victimise whistleblowers.
 - 5.** Asking employees who have raised a concern for feedback on their experience and how the process could be improved in practice.
 - 6.** Using standard wording in confidentiality clauses to ensure that no provision in the agreement or undertaking can prevent the individual from making a protected disclosure. Separate Cabinet Office guidance will be issued on this shortly. Where the department is proposing to enter into a settlement agreement with a whistleblower, the department must comply with the Cabinet Office guidance on settlement agreements.

Whistleblowing Flowchart

