Corruption and whistle-blowing – a background note for TUAC

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1. Background: corruption and whistle-blowing

A. Extent and basis of corruption
Corruption is generally used to cover a range of activities, usually involving one of two main categories.

- Misappropriation: of public money by officials/politicians: some recent examples concern European Union funds and politicians.
- Bribes: usually paid by private companies to obtain contracts, or contracts on more favourable terms. A current example is the bribing of a Lesotho official by a group of international construction companies from a number of west European countries.

Most of this paper focuses on the second form of corruption. The sectors most affected seem to be construction and defence equipment, but this probably reflects the dominance of these sectors in government procurement. Especially with the growth of privatisation, corruption is also found in other sectors eg water.

Two further points are relevant.
- North-South common problem: corruption is not restricted to developing countries. In the last five years leading politicians of the UK, Belgium, France, Austria, Spain and Italy have all been convicted of corruption, and the entire European Commission has resigned because of it.
- Public/private sector problem: the private sector has also identified corruption as a problem in its own procurement practices: most major oil companies now have procedures for dealing with contractors who offer bribes.

B. International action against corruption
Traditionally most attention has focussed on the recipients of bribes, especially in developing countries. More recently, there have been two major international initiatives on the issue of corruption which focus on the bribe-giver.

- World Bank procurement guidelines – in 1998 the World Bank drew up new procurement guidelines which enabled the bank to investigate corruption on its projects and to ban any companies involved from participating in bank projects for an indefinite period. Some companies have already been banned and are listed on the bank’s website.
- OECD Anti-bribery convention – signed in 1998, requires countries to legislate to make it an offence for any of their companies to pay of bribes anywhere in the world. This is intended to align other countries with the FCPA law in the USA, so that there is a level playing field. So far there is no evidence of this being used.

Both these initiatives are being tested by the current Lesotho case, which involves clear evidence of bribes paid by many of the biggest construction companies in the world.

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¹ For a detailed account of recent experiences with corruption, see “Privatisation, multinationals and corruption” by David Hall in Development in Practice, Volume 9, number 5, November 1999)
C. Some examples of corruption: sectors and companies²

It may be helpful to consider some recent cases of proven or reported corruption,

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>Company</th>
<th>Sector</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>Pakistan</td>
<td>SGS Inspectio</td>
<td>services</td>
<td>Former prime minister of Pakistan convicted of receiving bribes worth US$9m from SGS subsidiaries for inspection contract.</td>
</tr>
<tr>
<td>1999</td>
<td>UK</td>
<td>GEC Defence</td>
<td></td>
<td>GEC admit paying ‘commissions’ for arms contracts from two countries.</td>
</tr>
<tr>
<td>1998</td>
<td>Belgium</td>
<td>Agusta, Dassault</td>
<td>Defence</td>
<td>Willy Claes, former Nato secretary-general, given a suspended three-year prison sentence yesterday after being found guilty of accepting bribes totalling more than £2 million paid by the Italian helicopter manufacturer Agusta and the French firm Dassault to secure contracts to supply the Belgian armed forces in the 1980s.</td>
</tr>
<tr>
<td>1997</td>
<td>Europe</td>
<td>Group 4 Securitas</td>
<td>Security</td>
<td>European Commission admits that Group 4 obtained BFr600m security contract for Brussels EU buildings in an irregular manner.</td>
</tr>
<tr>
<td>1996</td>
<td>Singapo re</td>
<td>Siemens, Pirelli, BICC, Marubeni, Tomen</td>
<td>Utilities</td>
<td>Singapore's bans five multinationals from bidding for any government projects for five years after their consultant is convicted of paying bribes for utilities construction contracts.</td>
</tr>
<tr>
<td>1996</td>
<td>France</td>
<td>Generale des Eaux</td>
<td>Water</td>
<td>Two Generale des Eaux executives admitted making payments to elected officials on the French island of La Reunion in return for a water deal.</td>
</tr>
<tr>
<td>1995</td>
<td>France</td>
<td>Lyonnaise des Eaux</td>
<td>Water</td>
<td>Prosecuted for paying bribe to mayor of Grenoble to get water contract. Also investigated for other allegations of corruption.</td>
</tr>
</tbody>
</table>

D. Economic interests, risks and penalties

It is useful to treat corruption as an economic phenomenon, driven by real benefits to be gained by both sides. There are two extreme examples which illustrate this:

- the 'bilateral cartels' which reportedly operated in school building contracts in the Ile de France: the 3 key construction companies would meet every month with a single official of the local authorities concerned, agree on who would get each job and at what price, and the official was given a 2% commission to be shared amongst all the political parties in the region. (A similar system was operated in the Ancient Monuments department in the UK in the 1970s, with the bribes being shared by civil servants).

² These examples are all taken from “Privatisation, multinationals and corruption” (see above)
• The agent whose job is to recover bribes which have been paid by UK companies without receiving the benefit for which the bribe was paid.

This sets the question of cultures in a sharper context. Improving organisational cultures is an important part of eradicating corruption, but it is less easy to achieve if there are greater economic benefits from corruption, and real economic losses from acting properly (e.g. if competitors continue to pay bribes).

2. Whistle-blowing and corruption

A. Impact of whistle-blowing on the economics of corruption
Corruption is most attractive where the risk of detection is low and/or the penalties for detection are slight. Whistleblowing should increase the risk of detection, and thus acts as a deterrent to corruption, as long as the penalties of detection are significant (e.g. procurement bans).

Whistleblowers can also strengthen the enforcement agencies, by providing better information flows which increase the chances of successful prosecutions. This applies to both sides: prosecution of companies for paying bribes, and prosecution of politicians or officials for receiving them.

B. Routes for whistle-blower
As emphasised by the UK legislation (see below) whistle-blowers may use three different routes to deliver their information.
• Internal procedures – of company or public authority
• Approaching public agencies – such as regulators, public auditors, or – in a global context – the World Bank
• Other outlets – using the media to publicise an issue.

C. Different types of whistleblower
When considering corruption on globally tendered contracts, there are a range of different whistleblowers to be considered.
• Direct employees of companies (whistleblowing on their employer or politicians or officials)
• Employees of governments or agencies (whistleblowing on politicians or officials, and/or companies)
• Aid worker employed by foreign government (e.g. by development agency of Sweden, Australia etc)
• NGO employees (whistleblowing on companies, officials, politicians)
• Employees of multilateral agencies eg World Bank (whistleblowing on companies, officials, politicians)
• Accountants and auditors (an important category: they must see the evidence going across their desks - auditors and their staff should be able to whistle-blow on their clients, whether public authority or company)
• Consultants, academic researchers
• Member of the public
D. Different range of protection needs

These different groups may need different forms of protection, against:

- Discrimination/victimisation by employer
- Discrimination by future employers/blacklisting
- Loss of business by whistleblower’s employer (eg auditors)
- Loss of financial/other support for whistle-blower’s organisation (eg NGO)
- Lawsuits for breach of confidentiality (especially for non-employees)
- Lawsuits for libel or slander

E. Relevant agencies

In addition to national agencies, whistle-blowers should have protected access to international bodies, including:

- World Bank and other financial institutions (IMF, EBRD)
- Procurement agencies or rule-setters (inc WB, EU)
- Aid agencies (development and aid departments)

F. Levels of legislation/regulation:

Making whistleblowing effective may involve the use of a number of levels of legislation and/or regulation, including:

- OECD instruments
- Supranational legislative bodies (eg EU)
- Rules/regulations in key international organisations (eg World Bank, IMF, WTO)
- Legislative framework in OECD states
- Procedures and policy within individual companies
- Employment contracts

G. Role of trade unions

Trade unions have an important role to play, not only in policy-making at international and national level, but also in bargaining with companies, as the representative of the whistle blower, and as a conduit for whistle blowing.

3. Some examples of existing practices

A. Air traffic control - reporting near misses and other events

A good example of an established culture of reporting incidents is the procedures used in air traffic control and airlines for ensuring that there is full disclosure of incidents like near misses between aircraft. In air traffic control in the UK. There is a set procedure for reporting such incidents; an internal investigation is conducted; and the results are sent to an external regulatory agency. In addition, there is a Confidential Human Incident Reporting Procedure (CHIRP), run by an independent occupational health unit, which allows staff to make confidential reports about almost anything: the reports are then de-personalised and published bi-monthly.
These procedures operate in a “culture of relative openness and collective responsibility rather than that of assignation of blame and secrecy”, according to the trade union concerned. (The union also believes that privatisation of air traffic control could create the need for a formal whistle-blowing procedure, however, because of potential conflicts with commercial interests of a private operator).

B. UK law: Public Interest Disclosure Act 1998

Recent legislation in the UK provides general protection for whistleblowers against discrimination by their employers. The law applies to all employers, public and private; it protects whistle-blowers who raise issues, in good faith, either internally, or with recognised agencies, or with the media; and protects them against dismissal or discrimination by their employer. The act indirectly encourages employers to introduce agreed whistle-blowing procedures. A summary prepared by the UK trade union Unison is attached.

C. World Bank

The Bank has a code of ethics which applies to World Bank staff handling procurement in Bank-financed projects. This reminds staff of the absolute requirement to report any personal interest they may have in a project, but does not mention any obligation to report suspected corruption in connection with bank projects, or any protection for staff who raise such matters, or any procedure for them to do so.

The World Bank’s website advertises a toll-free telephone hotline for bank staff and the public (1-800-831-0463) “to facilitate the reporting of allegations of fraud and corruption within the World Bank Group or in connection with Bank Group-financed projects”, and offers a collect call Hotline (704-556-7046) for access from outside the USA. The hotline is “operated by an outside firm of trained specialists working under the strictest standards of confidentiality. Callers can choose to remain anonymous”. All hotline reports are referred to the bank’s Oversight Committee on Fraud and Corruption, which decides on action to be taken.

4. Further issues for discussion in the context of corruption

(These notes are intended to add to the range of issues set out in Guy Dehn’s paper)

♦ Range of possible whistle-blowers, and protections needed
Protections provided for whistleblowers should cover those who are not employees of the organisation concerned. See above.

♦ Relevance of procurement and other procedures followed by international agencies eg World Bank, European Commission
Procurement procedures need to address the issue of corruption, and should also ensure the protection of whistle-blowers.
♦ Protection offered by international bodies eg World Bank
The World Bank’s hotline does not offer clear protection for whistleblowers using its hotline apart from ‘confidentiality’. This makes it harder for a whistleblower’s report to be substantiated, and makes the report far less useful.

There is no protection against discrimination offered for Bank staff who whistleblow. This is a major omission since these staff are most likely to come across some evidence if there has been any corruption on a bank project.

♦ Internal cultures and external enforcement
Using internal procedures to change company (or departmental) culture are not an alternative to strengthening public – international – enforcement agencies. The economic gains to a company involved in paying bribes (or of a politician/official receiving bribes) should be offset by an increased risk of detection in order to increase the motivation to abandon corrupt practices. So whistleblower access to agencies and media not only strengthens the public interest agencies but also strengthens organisations’ motivation to improve its own culture.
Annexe 1: Procedures for reporting ‘near misses’ in air traffic control

(source: discussion with IPMS branch secretary, air traffic control, 7 December 1999)

Most air traffic control installations have a piece of equipment called SMF (separation monitoring function). This detects when “minimum separation” is lost between aircraft. It records the information from the radar and alerts staff.

The recording is then replayed by a manager.

Once satisfied it is a near miss, a CAA 1261 Mandatory Occurrence Report is filled in.

There is then an investigation locally by a NATS (National Air Traffic Service) safety officer, radar tapes and radio traffic tapes are impounded. A report is then made and sent to UK Air Proximity Board. This gathers in reports from the pilots, controllers, the radar tapes and radio traffic transcripts etc. Action is then taken to rectify any problems.

These reports are then published quarterly.

The culture is one of relative openness and collective responsibility rather than that of assignation of blame and secrecy.

The nearest thing to a whistle blower procedure is called CHIRP (Confidential Human Incident Reporting Procedure). This is run by the Institute of Aviation Medicine. Staff may make confidential reports about almost anything including their own performance. The reports are then de-personalised and published bi-monthly. It is meant to be a means of sharing information on common problems faced by pilots, controllers, engineers etc.

The need for whistle blowing procedures is not seen as a high priority because of this organisational culture. However, the union is extremely worried that privatisation will change the entire culture of the organisation and are well aware that there may be a real need for a whistle blowers procedure in the future.
Annexe 2: UK legislation on whistleblowing and employers

(extracts from the UNISON GUIDE TO WHISTLEBLOWING (June 1999)

♦ Whistleblower's Rights

The Public Interest Disclosure Act 1998 aims to protect whistleblowers from victimisation and dismissal, where they raise genuine concerns about a range of misconduct and malpractice.

It covers virtually all employees in the public, private and voluntary sectors, and certain other workers, including agency staff, homeworkers, trainees, contractors, and all professionals in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply.

A worker who blows the whistle will be protected if the disclosure is made in good faith and is about:

- a criminal act
- a failure to comply with a legal obligation
- a miscarriage of justice
- a danger to health and safety
- any damage to the environment
- an attempt to cover up any of these.

The Act extends protection given to health and safety representatives to individuals who raise genuine concerns about health, safety or environmental risks. (The Employment Rights Act 1996 already gives some legal protection to employees who take action over, or raise concerns about, health and safety at work.)

Whistleblowers will be protected when in good faith they:

- raise concerns internally
- raise concerns with the relevant Government minister if they work in quangos or in the NHS
- make disclosures to prescribed persons, such as the Health and Safety Executive, the Inland Revenue, the Audit Commission and the utility regulators (see Appendix 2)
- make wider disclosures (which could include to the media, MPs or the police), where the matter:
  - is exceptionally serious;
  - is not raised internally or with a prescribed regulator, because the worker reasonably feared that he/she would be victimised;
  - is not raised internally because the worker reasonably believed that there would be a cover-up and there is no prescribed person;
• was raised internally or with a prescribed person, but was not dealt with properly.
  Such wider disclosures must be reasonable in all the circumstances.

Where a whistleblower is victimised following a protected disclosure, he/she can take a claim to an employment tribunal for compensation. If a whistleblower is dismissed, he/she can apply for an interim order to keep his/her job, pending a full hearing. There is no qualifying period for bringing an unfair dismissal claim under this Act and awards made under it are unlimited.

Confidentiality clauses, such as gagging clauses in employment contracts and severance agreements, which conflict with the protection provided by the Act, will not be legally binding.

♦ Employers and whistleblowing policies

While the Public Interest Disclosure Act 1998 does not require employers to adopt whistleblowing policies, it gives them every reason to do so. Unless there are effective procedures in place, which demonstrate an organisation’s willingness to listen to and address concerns, workers are more likely to take their concerns outside (to prescribed persons, or to the media, MPs or the police) – and be protected by the Act in doing so. An effective whistleblowing policy can also help foster good relations, avoid crisis management, and minimise damaging incidents and unpleasant publicity.

If your workplace has no whistleblowing systems, you could explain the benefits of introducing a new procedure for workers. For example, a whistleblowing procedure:

• demonstrates an organisation is committed to ensuring its affairs are carried out ethically, honestly, and to high standards
• does not cost a great deal to introduce
• is good employment practice
• shows an organisation is keen to introduce procedures to protect public safety and public money
• will help develop a culture of openness, accountability and integrity
• will encourage workers to raise matters internally, making wider disclosures (to non-prescribed persons, or to the media, MPs or the police) less likely
• will contribute to the efficient running of the organisation and the delivery of services
• will help curb corruption, fraud and mismanagement
• will help uphold the reputation of the organisation, and maintain public confidence.
♦ A Whistleblowing Policy

A whistleblowing policy is designed to encourage employees to raise concerns about malpractice, danger and wrongdoing internally.

But it should do nothing to deter staff from making disclosures to prescribed persons, such as the Health and Safety Executive, the Audit Commission or the utility regulators. The policy should also ensure any public sector workers, whose employer has a Government appointed member on its board, are aware that they may disclose information direct to the Secretary of State, and will not be victimised or dismissed for doing so.

It may state the organisation is committed to achieving the highest possible standards in the delivery of public services, and wishes to encourage freedom of speech to help achieve this.

A whistleblowing policy should:

- be in writing
- say who and what it applies to
- provide for concerns to be dealt with quickly, preferably within clearly set out time limits
- ensure feedback is provided about the progress and outcome of the investigation
- make it clear the employer is committed to tackling malpractice and wrongdoing
- ensure staff know malpractice and wrongdoing will be dealt with seriously
- ensure confidentiality for the whistleblower, if this is requested
- ensure concerns and responses to them are properly recorded
- set out the relationship between the whistleblowing policy and the employer's other procedures (e.g. disciplinary, grievance, harassment)
- allow concerns to be raised independently from line management
- recognise employees may lawfully raise concerns externally
- explain that employees wanting to raise concerns can seek the help of their trade union representative.

♦ A Whistleblowing Procedure

It is important to agree a proper whistleblowing procedure with your employer, because the Act lays down rules whistleblowers must follow to be legally protected.

Any whistleblowing procedure you agree should ensure trade union representatives can advise and represent members during investigations.

There may be occasions when the concern raised is so serious that an inquiry may need to be held. You should ensure any whistleblowing procedure you agree includes arrangements for inquiries. It should state that the union will be involved
in all stages of the inquiry, and a union representative will be a member of the panel. You should also ensure your employer agrees to negotiate with the union over the implementation of the inquiry’s recommendations.

It can be very helpful if your employer agrees that the most senior person in your organisation has an 'open door' policy, which encourages trade union representatives or whistleblowers to raise serious concerns with them directly.

If your employer agrees to proper procedures and has an open door policy which encourages individuals to raise concerns, it will help create an open culture where workers feel their concerns will be heard and acted upon.

Alongside a whistleblowing policy and procedure, it is important to negotiate a procedure for evaluating standards of service delivery in your workplace. It should ensure the trade union is involved in any monitoring and evaluation exercises.

Your employer’s disciplinary procedure will also need to be amended to take account of the whistleblowing policy and procedure. The disciplinary procedure should make it clear that harassing or victimising a whistleblower (including informal pressures) will be considered a serious disciplinary offence, and will be dealt with under the disciplinary procedure.

The main steps you could include in any whistleblowing procedure are:

**Role of Trade Unions**

The employer should recognise the right of whistleblowers to be advised and represented by their union when raising concerns under the whistleblowing procedure.

**Designated Officer**

The employer should appoint a designated officer to be a point of contact for concerns raised under the whistleblowing procedure. He/she should be a senior officer, and report directly to the most senior person in the organisation. The designated officer should be impartial and capable of taking an independent view on the concern raised. Large organisations may appoint several designated officers.

**Raising a Concern**

An employee should normally raise concerns about wrongdoing and malpractice with his/her immediate manager first. The manager would notify the matter to the designated officer.

Where it is not appropriate to go via normal management reporting channels, because the matter is sensitive and serious (for example, if the whistleblower believes his/her manager is involved), he/she should contact the designated officer.
Employer's Response

The designated officer or line manager would, if requested, arrange an initial interview. At this stage, the whistleblower would be reassured he/she would be protected from possible victimisation, would be asked if he/she wanted confidentiality and/or wanted to make a written or verbal statement. In either case, the designated officer or line manager would write a brief summary of the interview, which would be agreed by both parties.

The designated officer or line manager would report to the most senior person in the organisation, who would set up any further necessary investigation.

Where exceptionally the concern is about the most senior person, the chair of the board/governing body would decide on how to proceed. This may include an external investigation.

The Investigation

It may be necessary that certain investigations would be carried out in strict confidence (with the employee under investigation not being informed until necessary). Where there are allegations of ill treatment of patients/clients/customers, the employee under investigation may have to be suspended.

The designated officer would give feedback on the outcome of the investigation to the whistleblower.

If the investigation shows there is a case to be answered, the disciplinary rules and procedures would be used.

If there is no case to answer, the designated officer would ensure the employee is protected, provided the disclosure was made in good faith.

Disciplinary action would only be taken where a false allegation is made maliciously.

Inquiries

Where the concern raised is sufficiently serious, an inquiry may need to be held.

The union should seek to negotiate its involvement in the inquiry, including drawing up the terms of reference and deciding on the membership of the panel, and the implementation of the recommendations of the inquiry.

After the Investigation

The most senior person would brief the designated officer about the outcome of the investigation. The designated officer would then arrange a meeting with the
whistleblower to give feedback on any action taken. (This would not include details of any disciplinary action, which would remain confidential.) The feedback would be provided within agreed time limits. Where the issue has been raised and dealt with by the line manager, the line manager will provide feedback as above. A note of the concern raised and how it was resolved will be lodged with the designated officer.

If the whistleblower is not satisfied with the outcome of the investigation, he/she would be notified of their right to make an external disclosure to a prescribed person, such as the Health and Safety Executive, or where justified, elsewhere, notwithstanding the result of the investigation.

**Time Limits**

Time limits should be allocated for each stage of the procedure. If the time limits pass without any satisfactory action being taken, the concerns should be raised at the next level.

**PRESCRIBED PERSONS**

Disclosures of information may be made to the following persons, who have been prescribed by the Government:

1. *Health & Safety risks:* HSE and local authority
2. *Environmental issues:* the Environment Agency
3. *Utilities:* OFTEL, OFFER, OFWAT, OFGAS, Rail Regulator
4. *Financial Services & the City:* Financial Services Authority (and pending its full operation, its predecessor bodies); HM Treasury (insurance)
5. *Fraud & fiscal irregularities:* Serious Fraud Office, Inland Revenue, Customs & Excise
7. *Company law:* Department of Trade & Industry
8. *Competition & consumer law:* Office of Fair Trading and local authority
9. *Others:* Certification Officer (Trade Unions), Civil Aviation Authority, Charity Commission, Criminal Cases Review Commission, Data Protection Registrar, Occupational Pensions Regulatory Authority.
Annexe 3: Model Whistle Blowing Policy and Procedure
(extracts from the UNISON GUIDE TO WHISTLEBLOWING (June 1999)

WHISTLE BLOWING AT WORK

INTRODUCTION

1. The word whistleblowing in this Policy refers to the disclosure internally or externally by workers of malpractice, as well as illegal acts or omissions at work.

POLICY STATEMENT

2. (Employer's name) is committed to achieving the highest possible standards of service and the highest possible ethical standards in public life and in all of its practices. To achieve these ends, it encourages freedom of speech. It also encourages staff to use internal mechanisms for reporting any malpractice or illegal acts or omissions by its employees or ex-employees.

OTHER POLICIES AND PROCEDURES

3. (Employer's name) has a range of policies and procedures, which deal with standards of behaviour at work; they cover Discipline, Grievance, Harassment and Recruitment and Selection. Employees are encouraged to use the provisions of these procedures when appropriate. There may be times, however, when the matter is not about your personal employment position and needs to be handled in a different way. Examples may be:

- Malpractice or ill treatment of a patient/client/customer by a senior member of staff
- Repeated ill treatment of a patient/client/customer, despite a complaint being made
- A criminal offence has been committed, is being committed or is likely to be committed
- Suspected fraud
- Disregard for legislation, particularly in relation to health and safety at work
- The environment has been, or is likely to be, damaged
- Breach of standing financial instructions

- Showing undue favour over a contractual matter or to a job applicant

- A breach of a code of conduct

- Information on any of the above has been, is being, or is likely to be concealed

This list is not exhaustive.
(Employer's name) will not tolerate any harassment or victimisation of a whistleblower (including informal pressures), and will treat this as a serious disciplinary offence, which will be dealt with under the Disciplinary Rules and Procedure.

ROLE OF TRADE UNIONS

4. (Employer's name) recognises employees may wish to seek advice and be represented by their trade union(s) officers when using the provisions of this policy, and acknowledges and endorses the role trade union officers play in this area.

DESIGNATED OFFICERS

5. The following people have been nominated and agreed by (employer's name) as designated officers for concerns under this procedure. They will have direct access to the most senior person in the organisation.

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ROLE OF THE DESIGNATED OFFICER

6. Where concerns are not raised with line manager, the designated officer will be the point of contact for employees who wish to raise concerns under the provisions of this policy. Where concerns are raised with him/her, he/she will arrange an initial interview, which will if requested be confidential, to ascertain the area of concern. At this stage, the whistleblower will be asked whether he/she wishes his/her identity to be disclosed and will be reassured about protection from possible reprisals or victimisation. He/she will also be asked whether or not he/she wishes to make a written or verbal statement. In either case, the designated officer will write a brief summary of the interview, which will be agreed by both parties.

THE ROLE OF THE MOST SENIOR PERSON IN THE ORGANISATION

7. The designated officer will report to the most senior person in the organisation, who will be responsible for the commission of any further investigation.

COMPLAINTS ABOUT THE MOST SENIOR PERSON IN THE ORGANISATION

8. If exceptionally the concern is about the most senior person in (Employer's name), this should be made to the chair of the board/governing body, who will decide on how the investigation will proceed. This may include an external investigation.
THE INVESTIGATION

9. The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud. In certain cases, however, such as allegations of ill treatment of patients/clients/customers, suspension from work may have to be considered immediately. Protection of patients/clients/customers is paramount in all cases.

9.1 The designated officer will offer to keep the whistleblower informed about the investigation and its outcome.

9.2 If the result of the investigation is that there is a case to be answered by any individual, the Disciplinary Rules and Procedure will be used.

9.3 Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the designated officer should ensure that the employee suffers no reprisals.

9.4 Only where false allegations are made maliciously, will it be considered appropriate to act against the whistleblower under the terms of the Disciplinary Rules and Procedure.

INQUIRIES

10. If the concern raised is very serious or complex, an inquiry may be held.

10.1 (Employer's name) recognises the contribution the trade union(s) can make to an inquiry, and agrees to consult with the trade union(s) about the scope and details of the inquiry, including the implementation of the recommendations of the enquiry. (Employer's name) recognises that in many cases it will be desirable that a trade union(s) representative will be appointed to the panel of the inquiry.

FOLLOWING THE INVESTIGATION

11. The most senior person in the organisation will brief the designated officer as to the outcome of the investigation. The designated officer will then arrange a meeting with the whistleblower to give feedback on any action taken. (This will not include details of any disciplinary action, which will remain confidential to the individual concerned). The feedback will be provided within the time limits (to be specified).

11.1 If the whistleblower is not satisfied with the outcome of the investigation, (Employer's name) recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive, the Audit Commission, or the utility regulators, or, where justified, elsewhere.
THE LAW

12. This policy and procedure has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act’s provisions. The Act is incorporated into the Employment Rights Act 1996, which already protects employees who take action over, or raise concerns about, health and safety at work.
Annexe 4: The US situation

The United States has had forms of whistle blowing legislation for decades, but there is no comprehensive federal law that prohibits employers from retaliating against employees who disclose potential corporate or governmental violations of law. Rather there exists a series of safeguards on specific points.

1. **Constitutional Protection** - Under the First and Fourteenth Amendments to the U.S. Constitution, state and local government officials are prohibited from retaliating against whistleblowers.


3. **Conspiracies to Intimidate Witnesses and Obstruct Justice in Federal Court Proceedings [42 U.S.C. 1985(2)]** - This clause, which was passed as part of the Reconstruction era, anti-Ku Klux Klan civil rights legislation, contains very broad provisions prohibiting conspiracies to intimidate parties or witnesses in proceedings before courts of the United States.

4. **False Claims Act** - The whistleblower protection provision of the False Claims Act [33 U.S.C. 3730(h)] is extremely liberal and protects "any employee" who is discharged or discriminated against on the basis of assisting in the preparation of litigation or in filing an action under this Act.

5. **Surface Transportation Assistance Act** - This Act [49 U.S.C. 2305 [Appendix 13]] protects employee whistleblowers (generally truck drivers) who file a complaint, testify in or cause to be instituted proceedings to enforce a commercial motor vehicle safety rule, regulation or standard.

6. **Occupational Safety and Health Act** - OSHA [29 U.S.C. 660(c)] protects employees from any form of retaliation for raising complaints concerning workplace health and safety. This has been interpreted to include a right to refuse hazardous work under certain specified and limited circumstances.

7. **Federal Mine Health and Safety Act** - This Act, 30 U.S.C. 815(c) (1977), provides for an administrative remedy for any miner, miner’s representative or applicant for employment in a mine, who files or makes a complaint regarding a potential violation of the Act.


**Annexe 5: World Bank guidance for staff**

(source: World Bank website [www.world-bank.com](http://www.world-bank.com))

Ethical Guide For Bank Staff Handling Procurement Matters In Bank- Financed Projects

**Date:** April 23, 1998  
**To:** Procurement Family and Accredited Staff  
**From:** Katherine Sierra, Director and Head, Operational Core Services

1. The Bank's Code of Professional Ethics issued in September 1994, summarizes the rules of conduct contained in the Articles of Agreement, the Staff Principles and the Staff Rules. It stresses that the highest level of professional ethics is expected from staff members. To facilitate compliance, Staff Rule 3.01, "Outside activities and interests" is circulated each year. This Rule authorizes the issuing of additional rules requiring some or all members in an organizational unit to avoid specified kinds of activities because of the staff members' duties.

2. This memorandum is being circulated to reiterate the importance of the Code to staff handling procurement in Bank-financed projects and to provide a motivating force in the day-to-day ethical behavior of the staff. The Bank is increasingly helping countries in their efforts to reduce corruption, and it is essential that these efforts be balanced by internal efforts to maintain the highest ethical approach to procurement.

3. Bank staff handling procurement in Bank-financed projects should be particularly aware of the requirements imposed by chapter three of the Principles of Staff Employment, which set out the broad principles of integrity, independence and discretion that constitute the ethical behavior of staff. In dealing with procurement matters, Bank staff shall exercise objective impartial judgment, and carry out their duties with due care and competence. Against this background, staff shall:

   - avoid strictly any conflict of interest or even the appearance of a conflict of interest in any matter related to the performance of the staff member's duties;
   - respect the confidentiality of information received in the course of duty and never use it for personal gain, as stated in Section 4.01 of Staff Rule 3.01. Information given in the course of duty should be true and fair and never designed to mislead;
   - decline acceptance directly or indirectly of any gratuity, gift, favor, entertainment, or anything of monetary value from anyone who has an interest in seeking business in Bank related projects. Exceptions are authorized in section 4.05 of Staff Rule 3.01;
   - disclose to his/her line manager any personal interest which may influence or appear to influence the staff member's impartiality in any matter relevant to his or her duties; and disqualify him/herself from outside employment or activities, including dealings with former or future employers and employment after separation, that conflict with his/her Bank duties and responsibilities, except as provided in Sections 4.02, 4.03 and 6.02 of Staff Rule 3.01.
4. The above provisions are not intended to cover every situation which may arise in handling procurement matters. It is understood that the staff member’s self-discipline and sense of higher duty will underlie the observance of these provisions.