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Protect Submission to the Corporate Governance Code Consultation

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This is a short submission from the whistleblowing charity Protect.

About Protect

1. Protect, the UK whistleblowing charity, was established in 1993 and has individually advised more than 50,000 whistleblowers to date. Protect aims to make whistleblowing work for individuals, organisations, and society.
2. Every year, we support around 3,000 whistleblowers who call our free, confidential legal Advice Line. In addition, we work with organisations on improving their speak up arrangements and campaign for better legal protection of whistleblowers.
3. We would like to answer question 3 from the consultation and in particular the changes that have been made to point 6 from 'Section 1 – Board leadership and company purpose'.

For ease of reference point 6 is produced here:

There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review **the effectiveness of these arrangements** and the reports arising from **their** operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.

4. We welcome the changes to the code as a clear message to boards across the UK that whistleblowing is a key function to their role. We are especially pleased to see an acknowledgement in the code that having a policy and avenues for staff is good, but not enough on its own and that the board should be reviewing the effectiveness of these arrangements in practice.
5. We believe this section could be strengthened further if there was also a requirement for companies to have non-executive director whose role it is to oversee the whistleblowing arrangements including the review itself.
6. The Committee for Standards in Public Life states in their report *Leading in Practice*, published in January this year that: *'we heard from contributors that visibility is key: employees need to know how to raise a concern, and 'speak up' guardians and board-level whistleblowing champions need to have a profile within the organisation.'*¹ So a board level role gives the whistleblowing arrangements a real boost in terms of profile.

Such a role would also encourage an individual to take responsibility for the effectiveness of their arrangements and provide a mechanism to ultimately hold a director to account if the organisations whistleblowing culture fails.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130992/CSPL_Leading_in_Practice.pdf

7. This role has worked well in the financial services where a Whistleblowing Champion, someone who must be part of the Senior Manager Regime, so at a certain seniority in the sector, is tasked with overseeing the whistleblowing arrangements more broadly.² This is requirement by both the Financial Conduct Authority and the Prudential Regulatory Authority as part of set of wider whistleblowing rules applicable to each financial services firm.³
8. This approach means that typically a whistleblowing team would deal with day-to-day whistleblowing issues e.g., triaging cases, investigating the issues, interacting with the whistleblower etc. The Whistleblowing Champion at board level would be able to pick up the strategic issues, such overseeing the review and reporting findings back to the board. This division works well as in large organisations creating a single role to receive concerns and handle those strategic challenges can be too much.
9. In smaller organisations, where the need for a separate whistleblowing function may not be needed, having a board or senior manager overseeing the whistleblowing arrangements is even more beneficial. They can act as a point of contact for staff to approach, while also leading the strategic decisions around the whistleblowing arrangements.
10. To support this new change to the Code we would like to see the FRC produce some guidance for companies on how to conduct such a review of whistleblowing arrangements. As you can imagine we have some clear ideas of what this should look like, but official guidance from the FRC would be very beneficial. This is something that Protect would be happy to support.
11. Protect has developed a benchmarking tool, the “Whistleblowing Benchmark”, an evaluative tool which enables organisations to reach beyond the numbers of whistleblowing cases (which alone do not tell the whole story). The tool provides an in-depth look at the governance (policies and procedures, accountability, review and reporting arrangements) staff engagement (communications and training) and operations (support and protection, recording and investigations, resolution and feedback). On completion, an organisation receives a score under each area, allowing comparisons with other organisations and against best practice, and providing a gap-analysis so that organisations know where to improve. Together these three areas cover a successful whistleblowing/speak up programme.⁴
12. This is a commercial product for the charity that we sell to organisations. Below we provide an outline of the key areas we think organisations should be thinking about when they carry out a review of their whistleblowing arrangements. Larger organisations should also consider the [International Standard on Whistleblowing Management Systems: ISO 37002:2021](#).
13. We believe the following areas should be examined in any whistleblowing review process, and would encourage guidance based on recommending the process, whether carried out by the organisation or where a third party is contracted to conduct the process:
 - Number and types of concerns raised and outcomes of investigations
 - Feedback from individuals who have used the arrangements
 - Complaints of victimisation
 - Complaints of failure to maintain confidentiality
 - Other existing reporting mechanisms

²See rule [Allocation of FCA-prescribed senior management responsibilities SYSC 24.2.1](#)

³ The full FCA/PRA whistleblowing rules can be found: <https://www.handbook.fca.org.uk/handbook/SYSC/18/?view=chapter>

⁴For more details on the Whistleblowing Benchmark: <https://protect-advice.org.uk/our-benchmark/>

- Adverse incidents that could have been identified by staff (e.g. consumer complaints, publicity or wrongdoing identified by third parties)
- Any relevant litigation
- Staff awareness, trust and confidence in arrangements

14. In conclusion we welcome the changes to Section 1, point 6 and encourage the FRC to go a little further and require boards to appoint a Non-Executive Director to oversee whistleblowing. We also think targeted guidance on what a good review looks like would benefit organisations overseen by the code and would be happy to share some of our experience from our Benchmark tool.