

[Hansard](#)

03 July 2019

Volume 662

4.26 pm

[Norman Lamb \(North Norfolk\) \(LD\)](#)

Share this contribution

I beg to move,

That this House calls for a fundamental review of whistleblowing regulation to provide proper protection for a broader range of people.

I thank the hon. Member for Stirling (Stephen Kerr) for his support in making the application to the Backbench Business Committee and all the other MPs who supported the application. I also thank the Backbench Business Committee, the Chair of which is sitting in front of me, for enabling this incredibly important debate to take place. I want to start by telling four brief stories to illustrate why facilitating whistleblowing is so important.

I was the Minister in the then Department of Health who initiated the review led by James Jones, the former Bishop of Liverpool, of the horror of what happened at Gosport War Memorial Hospital. In his report from June last year, the very first chapter deals with the nurses who tried to speak up in 1991 about what was happening in that hospital. However, the report refers to the silencing of those nurses' concerns and to a patronising attitude towards them, although they were trying to do the right thing. The consequence of not listening to those nurses is the extraordinary and horrifying conclusion of the report, which is that over 450 older people died following the inappropriate prescribing of opioids. These old people had gone in for rehabilitation but came out dead.

In this context, we can often be talking about life and death situations, so enabling and empowering people to speak up can literally save lives. That, at its most clear and stark, is why this matter is so important. The horrific scandal at Gosport hospital could have been stopped if those nurses have been listened to, but they were not, and that is an outrage in itself.

Scrolling forward to 2013, Dr Chris Day, a brave junior doctor working in a south London hospital, raised safety concerns about night staffing levels in an intensive care unit. It is in all our interests that brave people should speak out about safety concerns in any part of our health service, but perhaps particularly in intensive care units.

What happened to Dr Day, because he spoke out, is wholly unacceptable. He suffered a significant detriment. His whole career has been pushed off track, and his young family have been massively affected. Junior doctors in that unit were put in the invidious position of being responsible for far too many people compared with national standards, so he pursued a claim against both the trust and Health Education England. The NHS spent £700,000 of public money on defending the claim and, in large part, on attempting to deny protection to junior doctors who blow the whistle against Health Education England. Lawyers, disgustingly, were enriched.

Late last year, the tribunal that eventually heard Dr Day's case ended early after he was threatened with a claim for substantial costs. He and his wife could not face the prospect of losing their young family's home, so he caved in. That is surely scandalous treatment of a junior doctor. He was defeated by superior firepower. We have the grotesque spectacle of the NHS, of all organisations, deploying expensive QCs to defeat a junior doctor who raised serious and legitimate patient safety issues.

Justin Madders (Ellesmere Port and Neston) (Lab)

I pay tribute to the right hon. Gentleman's work on Dr Chris Day's case to get the answers we deserve on how he has been treated. Many whistleblowers face an inequality of arms at tribunals. They have often lost their job by that point, and they face a very difficult situation, with highly paid QCs running rings around them, which is often the result of employers trying to find loopholes in the law to avoid liability.

Norman Lamb

I thank the hon. Gentleman for his support in pursuing the Dr Day case, and I completely agree with the points he makes.

Sir Robert Francis, in his 2015 "Freedom to Speak Up" report, spoke about how NHS whistleblowers who had given evidence to him overwhelmingly experienced negative outcomes, and he talked of a hostile culture of fear, blame, isolation, reprisals and victimisation—in our NHS, for goodness' sake.

Those stories continue. The impact on individuals can be devastating and profound. They can be ostracised, abused and disadvantaged in their career, with dire consequences for their mental health. One nurse who tried to expose wrongdoing said, "I would never put myself in that position again. I would rather leave." What a damning indictment of how we treat people in our treasured and cherished public service.

Mr Andrew Mitchell (Sutton Coldfield) (Con)

The right hon. Gentleman and I have both worked on the general issue of whistleblowing. I pay tribute to his leadership on the matter, along with that of my hon. Friend the Member for Stirling (Stephen Kerr), who I hope will catch your eye later, Mr Deputy Speaker.

The right hon. Gentleman is making some very good points, and we know two things. First, we know there is strong concern across the country about how whistleblowers are being treated. We see it in the west midlands, and he is articulating the point. Secondly, we know whistleblowers help to ensure proper accountability and transparency. In my view, the work that he and others are doing on whistleblowing has not received anything like the amplification it requires.

Norman Lamb

I totally agree with the points the right hon. Gentleman makes, and he makes them well. I will come on to discuss them in a moment.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con)

rose—

Norman Lamb

I will give way briefly, but I am nervous about the Deputy Speaker and overstaying my welcome.

Mr Deputy Speaker (Sir Lindsay Hoyle)

Let me just reassure you on that. I hope I do not make anybody nervous.

Dr Johnson

I thank the right hon. Gentleman for giving way, as he is being most generous with his time. He said that the doctor was feeling under pressure from the overwhelming firepower and the potential to incur the NHS's substantial costs. What support did his union, perhaps the British Medical Association or defence unions such as the Medical Defence Union or Medical Protection Society, offer him on legal costs?

Norman Lamb

Shockingly, the BMA abandoned him, and that is a story in itself, which needs exploring further. Not just in the NHS but across the economy, people are often literally on their own, faced by expensive lawyers. I speak as a former employment lawyer and I know what happens in employment tribunals. They were intended as a layman's court, but they are anything but that these days.

The third story I want to mention is that of my constituent Mark Wright, a successful financial planner at RBS. Things started to go wrong after he raised concerns about unacceptable practices in the bank—this was before the crash. On 17 September 2008, immediately after the collapse of Lehman Brothers, an intranet statement was put up in RBS saying that the group was “well capitalised”. That was clearly an attempt to reassure staff, including staff shareholders, customers and investors that the bank was secure. Of course when the bank crashed, those staff shareholders lost a fortune, and many, including my constituent, believe that they were badly misled by that intranet statement.

Mr Wright's mental health was destroyed as a result of trying to challenge the bank, as was his career. He made a complaint to the Financial Conduct Authority, which reported his name back to the bank, for goodness' sake. The FCA was later criticised by the Complaints Commissioner. I pursued his complaint with the FCA and it denied knowledge of the intranet statement repeatedly to me, yet an internal FCA email has emerged, after a subject access request to the Complaints Commissioner. It was dated 14 March 2014 and it said

“the intranet notice that Mr Wright refers to was online between 17 September 2008 and January 2009... as staff used it to take reassurance that all was well which would tend to support Mr Wright's allegations”.

That was an email within the FCA, yet we were never informed of that email or of that finding in that explosive document.

Clearly, the FCA has a copy of that intranet statement, yet it will not or cannot disclose it to us. The FCA says that the law does not allow it to do so. RBS, which is part state-owned, will not disclose it, yet clearly it is in the public interest that it should be disclosed. I believe I was

misled by Andrew Bailey, the chief executive of the FCA, who told me, in effect, that Mark Wright's allegations offered nothing that was not already in the public domain and he referred to an intranet statement by Fred Goodwin, which he said had been "in the public domain for nearly 10 years".

Yet the intranet statement has not ever been in the public domain. The Treasury Committee, which had looked into this, had never received a copy of it. So I was misled, and we have a regulator that is too close to the banks; that failed to protect Mr Wright's disclosure or his identity; that, crucially appeared to fail to take the allegations about the misconduct of that bank seriously; and that cannot or will not put a crucial statement into the public domain. Let us just think about the damage caused by bankers in the run-up to the crash. Had we empowered people like Mark Wright to do the right thing, rather than destroyed them and ignored them, we might just have prevented the disgusting behaviour and greed of bankers, and we might now have seen some of those responsible for destroying our economy behind bars. As it happens, they have got away with it.

The fourth and final story is of foster carers throughout the country who are frightened to raise concerns about any behaviour from the council that they deal with. Of course, the council refers children into their care, so if a foster carer is concerned about the behaviour of a social worker and expresses concerns, that council can just stop the flow of children to them, and so their income stream—their ability to earn a living—disappears. This has a chilling effect on the willingness of any foster carer to speak out about child protection concerns, because they fear losing their livelihood.

Dr Philippa Whitford (Central Ayrshire) (SNP)

Does that not highlight how, whether in finance, the NHS or anywhere else, this happens in situations with a power differential and a hierarchy? Someone has power over someone else and can make them lose their job or lose what they love doing, so there is a constant threat.

Norman Lamb

The hon. Lady is absolutely right. We need effective legislation to redress that imbalance of power.

All the cases I have outlined highlight the value and importance of enabling people to expose wrongdoing. Effective protection for brave people who decide to speak out is first of all vital for that individual—they should be celebrated, not denigrated—but it also benefits us all if we give them protection. As the right hon. Member for Sutton Coldfield (Mr Mitchell) said earlier, this is actually an issue of good governance. It is about keeping organisations honest; protecting businesses from fraud, crime and other wrongdoing; and maintaining the highest possible standards. Good protection for those who speak out acts as a deterrent against bad behaviour; closed, secret cultures, which cover up wrongdoing and destroy those who try to speak up, deliver poor public services or cheat customers in the private sector, particularly in financial services, or lead to the toleration of bullying, sexual harassment and so on. So often, non-disclosure agreements are the final step that keeps the wrongdoing secret, slamming shut the door on proper scrutiny. Things need to change.

The question is: does the current law work? Palpably, from the examples I have given, it is clear that it does not. First, it leaves out key groups—not only foster carers—that simply are

not covered by the legislation. It leaves out job applicants, volunteers and priests. Just think about the abuse of children by so many priests over the past few decades. Had priests been given the protection to speak out, perhaps we would have prevented some of that dreadful abuse. The legislation leaves out non-executive directors and trustees. It leaves out relatives and friends of the whistleblower when they are victimised because of what the whistleblower has done. It leaves out someone who is victimised by being presumed to be a whistleblower—if a company thinks that someone has spoken out, even if they have not, and does something like dismissing them, that person has no rights under the legislation because they are not actually the whistleblower. That is a ludicrous situation.

Ann Clwyd (Cynon Valley) (Lab)

I am grateful to the right hon. Gentleman for giving way and am sorry that I was not here at the start of the debate. Some time ago—I think when the right hon. Gentleman was at the Department of Health—I was the co-author of a review of the NHS hospitals complaints system. One reason why we were not more forceful on the point he is making was that we thought legislation was in the pipeline, or that there was an attempt to put things right for potential whistleblowers.

I am still concerned. In my own local authority area, Rhondda Cynon Taf, the Cwm Taf health authority has just been heavily criticised for maternity deaths. One of the people involved got in touch with me anonymously. I did not know what to do with the letter—I did not want to pass it to the authorities—so I passed it to the Royal College of Obstetricians and Gynaecologists, which was at that time completing a report on the Cwm Taf health authority. It is still a major problem and people are afraid. Even when they think there is greater understanding and leeway, people are afraid. We have to put that right.

Norman Lamb

I totally agree with the right hon. Lady. Sir Robert Francis, who did the report in 2015, recommended the introduction of “freedom to speak up champions” in the NHS, and that has happened. However, this is an administrative process within trusts that, I am afraid, simply has not worked—that is the brutal lesson that we have to learn.

For those who are covered by the legislation, the law does nothing to enable a concerned person to speak up in the first place. For example, the law is silent on standards expected from employers, and it offers only inadequate protection after the event—after the person has been destroyed by a cruel organisation. The individual who then tries to pursue their rights under the legislation is too often faced by highly paid lawyers and is pressured into non-disclosure agreements, which, as I indicated, can result in wrongdoing never being exposed. Indeed, we know that the terms of some non-disclosure agreements are unlawful because they seek to shut up the individual and to stop them speaking out, even when a crime is involved.

Only a tiny percentage of cases that are pursued to the tribunal actually end up with a decision of the tribunal. To succeed, someone must show that the reason—or, if there is more than one reason, that the principal reason—for a dismissal is that the employee made a protected disclosure. They therefore open themselves up to false claims that other reasons

existed. If the tribunal decides that there were other reasons, either the person's claim is dismissed or their compensation is reduced.

There is no full definition of the range of disclosures that are covered by the legislation, so the protection is completely uncertain. Disclosure has to be to a prescribed person, but what happens if someone does not know who to report their concerns to? They could easily find themselves entirely unprotected—for trying to do the right thing.

Mr Mitchell

Will the right hon. Gentleman give way?

Norman Lamb

I am conscious that I am trying the patience of the Deputy Speaker, and I need to get to the conclusion of my remarks.

The brilliant organisation Protect highlights the fact that a number of laws, such as in the utility sector, make it an offence to disclose certain information and include no public interest defence exceptions for whistleblowing. Even if there is awful wrongdoing, the person is prevented from speaking out, because they would commit a criminal offence. That surely has to change.

The brutal truth is that brave people who do society a service by exposing wrongdoing are not adequately protected, and many have no protection at all. After Gosport, I met the Prime Minister and made the case for reform. I explained to her that these are life or death situations in many cases. I have heard nothing from the Prime Minister at all since then, and that was last summer. It is time for a fundamental review by the Government and for new legislation. Such a review needs to listen to all the interested parties—to the all-party group on whistleblowing, to Protect and to Compassion in Care, which has set out proposals as part of what it calls Edna's law. All must be involved, and we must look at international best practice.

The all-party group has a report due out soon. It follows a comprehensive survey, which included getting the views of very many people who have tried to whistleblow, and it will offer vital evidence to the Government. It will propose an office for the whistleblower, which could be of extremely powerful value in supporting people and would be a centre of excellence, providing guidelines to employers, monitoring activities and providing support, advice and training to members of the public, public institutions, private sector bodies and so on. It is a very important proposal.

I want a commitment from the Minister to undertake a thorough review, because it is long overdue. I also want a commitment to ensure that if the UK leaves the EU, it will at least meet the standards of the proposed new EU directive and preferably go much further. The UK was a pioneer, but the legislation is flawed and inadequate. New legislation to deliver high standards of governance in the public and private sectors is long overdue. We need safe space for brave people to do the right thing; effective mechanisms to hold people to account for wrongdoing that is uncovered, including potential criminal sanctions; and effective compensation and support for those who suffer as a result of speaking out.

4.50 pm

Kevin Hollinrake (Thirsk and Malton) (Con)

It is a pleasure and an honour to follow the right hon. Member for North Norfolk (Norman Lamb), who has done such incredible work in this area and on the all-party parliamentary group on fair business banking, on which most of my remarks will focus. Many points in his speech resonated with me, particularly when he mentioned a whistleblower who said, “If I knew then what I know now, I never would have spoken out.” Every single whistleblower I have been in contact with has said exactly that. If that is the case, we have got this drastically wrong.

There is so much good work going on. The all-party group is doing tremendous work, and many of those people are in the Public Gallery today. Whistleblowers are so valuable to us in so many ways, as the right hon. Gentleman described. The principle underpinning the work that is happening is that they should be encouraged, their contribution should be valued and, of course—more than anything—they should be protected. From my experience within the financial services sector, that is the opposite of what happens; I will allude to a number of cases during my speech.

Mr Mitchell

May I take my hon. Friend back to the last comment made by the right hon. Member for North Norfolk (Norman Lamb)? He talked about the importance of an office for the whistleblower and addressed the critical problem of the lack of effective high-level co-ordinating leadership, and in my view a national office for the whistleblower would be the answer. Does my hon. Friend agree that the creation of a national office for the whistleblower—to protect, advise and support whistleblowers by overseeing, co-ordinating, setting standards and holding to account the regulators and employers—is the right way to proceed? The vital point is that it would not investigate cases of whistleblowing; it would ensure that cases are properly investigated by existing bodies, identify failings and successes, and propose systemic improvements that would help to get us out of this very difficult situation.

Kevin Hollinrake

I support that principle and many other recommendations mentioned by the right hon. Member for North Norfolk. I will be interested to hear from my hon. Friend the Member for Stirling (Stephen Kerr), who chairs the all-party parliamentary group on whistleblowing, when he speaks about his group’s recommendations.

I just know that this is something that we have got to get right that we have got wrong at the moment, because the people who step forward to take these risks can lose everything—their careers, their jobs and their livelihoods. It is devastating when they tell their loved ones that this is what they are doing. In addition, their colleagues, friends at work and self-esteem are put at risk. From the cases I deal with, it seems that that is all put at risk for no benefit, as people do not even achieve what they set out to by highlighting the issue, and they suffer devastating consequences as a result.

Dr Julian Lewis (New Forest East) (Con)

I have not put in to speak because the issue that concerns me is still pending, but does my hon. Friend accept that even being a senior consultant is no protection against what can

happen to someone who blows the whistle? I have a case of a senior consultant in an eye unit who became concerned about financial irregularity and, even worse, substandard treatment that was causing eyesight to be lost. The effect of his complaining was that he was the one who was suspended and who faced a General Medical Council examination. The Royal College of Ophthalmologists was simply shown the results of an internal inquiry, not the source material. The Care Quality Commission did nothing, and the GMC is only now beginning to look into his claims—now that it has dismissed the false allegations that were made against him. Is that not a disgrace?

Kevin Hollinrake

I could not agree more. My right hon. Friend highlights the importance of some of these cases. We have to ask why an organisation would not want to know about this. My role before coming to this place four years ago was as managing director of my own business. We were quite a large business at that point. I dealt with all the complaints in the organisation because I wanted to know what was going on there, and that is the best way to find out. These people are our eyes and ears. We were an ethical business and we ran it well, but if anything was going off track, we would want to know about it. However, it seems that when these people step forward, the people around them—their superiors, I guess—too often feel that the situation is too risky and look to close down the complaints.

From the fair business banking perspective, we know that one third of all serious economic crimes are brought to light because of the actions of whistleblowers. It is very rarely the regulator that is going in there and identifying the problem and then dealing with it—in fact, quite the opposite. It is therefore absolutely fundamental that these people will step forward. All the whistleblowers we deal with say, “I would never do that again.” Other people in the sector hear about that and are then deterred from stepping forward. That is an absolutely intolerable situation. What these people do should be welcomed.

The right hon. Member for North Norfolk talked about the case of Mark Wright. In my experience, this not just about the organisations themselves but also about the regulator. The regulator could take a much firmer stance. Whistleblowing is part of its processes. It has responsibilities under protected disclosure to deal with whistleblowers, but that is not what happens. It pays lip service to the issue of whistleblowing. It says, “Yes, okay, we’re dealing with that,” but the cases that I will highlight illustrate that that is not what has happened. The FCA has got a terrible reputation in this area.

Norman Lamb

Does the hon. Gentleman agree that the sense one gets from the FCA is that it regards these people as irritants—troublemakers? The people who investigate the allegations of whistleblowers are often people who have been through the revolving door, in and out of banks and the regulator, and so are too close to the people they are supposed to be regulating.

Kevin Hollinrake

Yes. I ask myself all the time, “Why is it like this?” and that is one of the reasons—the revolving door. Those people are part of a wider group or club—the old boys’ tie kind of stuff. This cannot be allowed to be the case.

As I said, the right hon. Gentleman highlighted a case that was heavily reported where the FCA told RBS who the whistleblower was. That seems absolutely unthinkable, and it was criticised by the complaints commissioner. When the FCA dealt with the case of the chief exec of Barclays, Jes Staley, who had tried to find out the identity of a whistleblower, which is totally against protocol, he was fined a modest sum that was probably a few weeks' wages for him. Where is the deterrent there for not treating whistleblowers in the wrong way?

In my own experience, Joanne Rossouw contacted me about fraud at Barclays relating to payment protection insurance claims under the Consumer Credit Act 1974. She felt that there was a total lack of protection and support from the FCA and that its communications were simply unacceptable. The case of Paul Carlier was heavily reported. He whistleblowed on foreign exchange dealers at Lloyds and was then unfairly dismissed. The FCA had promised to support his case and to provide an opinion to the tribunal he went to when he was unfairly dismissed, but did not do so, despite Andrew Brodie at the FCA calling the Lloyds process for the treatment of whistleblowers a whitewash and a joke. That was not the only case—there were others that he dealt with. Yet these people are not sanctioned. Why is that?

Paul Moore, my constituent, was the first person to raise the issues at HBOS. In 2004, he described a toxic culture at HBOS, with pressured sales targets and people taking unacceptable risks in lending money. Of course, HBOS collapsed in 2008. He was unfairly dismissed. He was treated disgracefully by the Financial Services Authority, as it was then. As the right hon. Member for North Norfolk said, if we had taken a robust approach when whistleblowers came forward, it may have stopped the financial crash happening in the first place, which cost our taxpayers £1.8 trillion.

Stephen Kerr (Stirling) (Con)

My hon. Friend is underlining the point that the regulators are stricken with lethargy when it comes to responding to whistleblowers. Does he agree that whistleblowers need the protection of an independent office to advocate for them with these bodies, which are sometimes very forbidding in the way they respond to the approach of whistleblowers?

Kevin Hollinrake

My hon. Friend is absolutely right. We need to improve how we deal with whistleblowers and the legislation around them. We must also insist that regulators, which already have access to sanctions, deal with these issues robustly. There is a cultural problem in the FCA in dealing with this. That must be addressed, and it can only be dealt with by the leadership of the FCA.

The most egregious case I have dealt with over two years as co-chair of the all-party parliamentary group on fair business banking is that of Sally Masterton. She was a senior risk manager at Lloyds. In 2013 she wrote a report called “Project Lord Turnbull”, which highlighted the fraud that was concealed at HBOS before the takeover by Lloyds. She identified a billion-pound fraud—these are not small numbers or small issues, which is perhaps why they are swept under the carpet. She was asked to set out her findings. She produced the report and gave it to her superiors. This was happening at the same time as a police inquiry into the low-level fraud that was happening at HBOS. She was then suspended and prevented from working with the police, despite the fact that the police had said in an email that she was vital to the investigation. She was later constructively dismissed.

She was then discredited. Lloyds wrote to the FCA to discredit her, effectively saying, “This person is a rogue employee. They are not a cogent witness.” The FCA accepted that without any investigation. That was in 2013. Five years later, Lloyds apologised to Sally Masterton, saying that she had been disgracefully treated for five years and admitting that it had tried to discredit her all the way through that process—imagine what those five years of her life were like. The FCA told Lloyds to intervene because she felt she had been terribly mistreated. Andrew Bailey himself had met Sally Masterton and determined that she had been disgracefully mistreated. Lloyds apologised to her and came to a financial settlement with her, but the FCA did not sanction anybody in Lloyds for that mistreatment. That is incredible. All the FCA keeps telling me is that there is another investigation going on—Linda Dobbs’s investigation of Lloyds’s reporting of information before and after the HBOS takeover—but that is unacceptable. The FCA has already established the mistreatment, yet it will not move forward to sanction the people responsible. Under the senior managers regime, these people, including the chief exec, could be sanctioned, fined or banned. That is exactly what should happen.

Luke Graham (Ochil and South Perthshire) (Con)

My hon. Friend is making a very relevant point, and it applies to my constituent who suffered reputational damage following his whistleblowing about the High Speed 2 project. I am sure my hon. Friend will come on to talk about what either the FCA or another body can do to provide protection for whistleblowers and restore their reputation.

Kevin Hollinrake

My hon. Friend is right. The FCA has a huge opportunity. It should regulate without fear or favour, but that is not where we are. It constantly looks over its shoulder at the banks and seeks to defend their reputation by concealing the truth, rather than robustly investigating these issues.

I asked Andrew Bailey four times a simple question in connection with this issue: did he follow the processes set out on the FCA website for how it deals with whistleblowers? Sally Masterton’s case was supposed to be referred to his team within five days and then go through the proper process. Did he do that? He has not responded to that question four times. It is totally unacceptable.

Sally Masterton says in her protected disclosure to Andrew Bailey:

“This is the tenth time that whistleblowing issues have been raised with you and ignored”, over a period of five years. That is despite the fact that the FCA itself, in communication within the FCA, has admitted her report was well drafted and presented, and one FCA person said to another:

“I see a couple of potential risks... We may get challenged as to what we”—
the FCA—

“did about this report when received or LBG’s treatment of Mrs Masterton”.

Stephen Kerr

We should also mention the fact that there was whistleblowing to the Financial Reporting Council on the audits done at HBOS about the amounts of money set aside against expected liabilities. The head of the FRC, Stephen Haddrill, appeared before the Business, Energy and Industrial Strategy Committee, of which I am a member, and said some really interesting things about ongoing inquiries with other regulators in relation to whistleblowing, but nothing further has been said.

Kevin Hollinrake

I think this is about KPMG's audit of HBOS in 2008, which was signed off a few months before HBOS went bust, despite the fact that the risks to that business were clear. The FRC then gave KPMG a clean bill of health. There was the revolving door between the FRC and the auditors as well. It is a very big concern, which I know my hon. Friend has raised in his Select Committee work.

Ann Clwyd

I am sure everybody would like to join me in paying tribute to Julie Bailey, who was one of the best whistleblowers in the NHS. She triggered the Mid Staffs inquiry and the Francis report, as well as raising many other issues. She is now living in Wales. The way that Julie Bailey was treated after she became a very well-known whistleblower is an absolute disgrace. It is an example of what happens to whistleblowers, and it does not matter how well known they are.

Kevin Hollinrake

The right hon. Lady pays a very important tribute and makes a very important point about how we can persuade more people to come forward. It has to be about how they are protected and looked after. Looking at other regimes internationally and how they deal with this will be an important first step in reforming our whistleblowing procedures.

The big thing I would say about all the issues I deal with is that they go right to the top of these organisations. These are not at low level, they go right to the top. They must be dealt with—yes, by whistleblower reform, and, yes, by a regulator that is far more robust and regulates without fear or favour. I believe we need other measures, including a public inquiry into some of these situations and into the circumstances of the disgraceful treatment of many businesses, particularly by Lloyds and Royal Bank of Scotland.

I endorse many of the recommendations made by the right hon. Member for North Norfolk. I think we need a much more robust Financial Conduct Authority regulator. Culturally, the biggest issues in the regulator need fixing. We should look at whether we should provide financial incentives for whistleblowers of the right nature. We do need to make sure that our regulator goes in robustly when we see these mistreatments or improper practices, together with our law enforcement agencies. That is what happens in the States in these situations. It is a case of saying, "Either you deal with us and you deal with these issues, or we really will take further steps, including potential criminal sanctions."

The situation is not where we want it to be, but I conclude by thanking the whistleblowers who do come forward. They are so important, and we would not be where we are today in understanding what has happened in the banking sector without the incredible contribution of many of the whistleblowers I deal with.

5.09 pm

Jim Fitzpatrick (Poplar and Limehouse) (Lab)

I am grateful for the opportunity to speak briefly in this debate. I congratulate the right hon. Member for North Norfolk (Norman Lamb) on helping to secure it in time generously allocated by the Backbench Business Committee. I am pleased to follow the hon. Member for Thirsk and Malton (Kevin Hollinrake), who—along with so many other colleagues present—has worked so hard to ensure that the issue gets the attention that it deserves.

I have spoken in this House before about my constituent, Ms Julia Davey, who ran two successful businesses, Angelic Interiors Ltd and Angel Group Ltd. Despite fixed assets and shareholder funds worth multi-millions across the two businesses, they both ended up being placed into administration, which has lost Ms Davey more than £6 million. She followed advice from Lloyds bank during her time running the two businesses, and she believes that responsibility for the liquidation of her assets lies with it.

In 2009, unbeknown to Ms Davey, her account was transferred by Lloyds to its business support unit. Two years later, she was told that she had to pay for the services of a so-called turnaround company, Baronsmead Consultancy, which went on to charge her extortionately for its work. In good faith, she paid it more than £6 million in costs and fees, only to discover from a well-placed whistleblower inside Baronsmead that, far from working in her interests, it was taking her money while colluding with Lloyds to put her out of business and into administration.

Sadly, in the 18 months in which I have been trying to help Ms Davey since our last debate on the topic, nothing has progressed. Ms Davey is still being pushed through bankruptcy processes that she should not have to face. Like the constituents of other hon. Members, and like others who have been mentioned in this debate, she has found her life left in ruins. Her mental and physical health have both been hit, and she tells me that her wellbeing has been further disregarded by Deloitte, which took her to court at a time when it knew that she was the sole carer for her mother, who was dying from cancer. Just a few weeks ago, Ms Davey's office was broken into; two laptops were stolen and the server was tampered with. The campaign against her has been relentless, but there has been no such rigour from the Financial Conduct Authority or the police to bring to justice those whom she believes to be the real perpetrators.

Ms Davey might not have known the true course of events that led to the demise of her businesses if it had not been for a whistleblower who alerted her in 2013 to what was being done to her companies. Clearly, whistleblowers are invaluable in calling out immoral and frankly criminal acts such as those that have been detailed in our debate. As other colleagues have outlined, we urgently need legislation to protect whistleblowers and the public by deterring and preventing these situations. The Public Interest Disclosure Act 1998 has failed to protect whistleblowers or address the concerns that they raise. It is high time that an independent structure was put in place to vigorously regulate the banking industry and protect whistleblowers, to prevent further cases like Julia's.

It is greatly worrying that banks and their advisers can operate so unethically, employing turnaround companies to act on their wishes to liquidate a company while posing as a supportive business and facing no accountability whatsoever. In my constituent's case, the

turnaround company, Baronsmead, is not covered by regulation because it does not fall within the remit of the FCA. Similarly, not all the activities of Lloyds Banking Group come under the FCA's watch.

I would be grateful if the Minister commented on how and when new regulations might be introduced to provide oversight of all the operations of banking groups and the companies that they employ. I would also like to know why the FCA is not investigating the case as a genuine whistleblower complaint, eight months after receiving the information. The whistleblower has provided extensive evidence of the wrongdoing involved, but my constituent feels that the FCA has blocked her questions about an investigation and allowed the bank's cover-up to continue.

As I mentioned, the whistleblower first came forward in 2013 to raise concerns about the manipulation of Ms Davey's companies by Lloyds Bank and its agents, but those concerns were not acted on. It was only after WhistleblowersUK entered the picture in November 2018 that a meeting was arranged between the FCA and the whistleblower. Ms Davey's case was then referred from the FCA to the National Crime Agency, but since then the FCA has not answered questions about what investigations might be going on with the NCA, using the Federal Information Security Management Act as a shield.

I ask the Minister why no information is being provided to my constituent, her advocates or the whistleblower. Furthermore, what can be done to ensure that the FCA acts on this serious matter? I understand from WhistleblowersUK and its chief executive, Georgina Halford-Hall, that there is concern that when the FCA gets involved in such cases, it is seen to be an ally of the financial services, rather than an independent regulator, and that the complaints processes are designed to stifle information that could lead to prosecution.

Staff at the FCA have told WhistleblowersUK that the FCA has a responsibility to ensure that there is not a run on a bank that might impact the UK economy. That would not be a problem if whistleblower intelligence were acted on. This is a public interest issue of extreme importance; members of the public, especially owners of small and medium-sized enterprises, must be aware of the malpractice that can happen in the banking industry and, most importantly, be protected from it. I look forward to the report that WhistleblowersUK is due to release later this month, which I am sure will be very helpful.

I am grateful for the opportunity to present Ms Davey's case to the Chamber, but I am disappointed that I have had to do so. This case has dragged on for years, and in that time, Ms Davey has endured repeated attempts to smother her case, as well as attacks on her health, her private information and her personal property. She has gone from being a successful small business owner, who trusted her bank to uphold its professional and moral obligations, to being forced through bankruptcy procedures, and desperately fighting court case after court case. The serious injustice of having lost millions must be addressed, and stringent regulation should be brought in, so that no more hard-working business owners fall victim to this, as she has done. I look forward to the responses of the Minister and the shadow Minister.

5.16 pm

[Stephen Kerr \(Stirling\) \(Con\)](#)

I declare an interest as co-chair of the all-party parliamentary group on whistleblowing. I was very impressed by the speech of the right hon. Member for North Norfolk (Norman Lamb). It

was a compelling and comprehensive argument for the law to be reviewed. It is vital that we keep whistleblowing laws and protections, and public interest disclosure laws, up to date and relevant in an ever-changing, fast-moving landscape. I hope that the Minister will listen carefully to the arguments presented—the motion gives a strong case to be answered—and give a considered response. I know well that she is extremely conscientious in performing her duties as a Minister of the Crown.

I was hugely impressed, as ever, with the speech of my hon. Friend the Member for Thirsk and Malton (Kevin Hollinrake). Since becoming a Member of Parliament, I have had to look more closely at the performance of regulators, and what surprises me is how thoroughly inadequate most regulators in this country are at regulating what they are supposed to regulate. It is all too clear that there is, at times, an unholy relationship between the people who staff the regulator and the industry that they are supposed to regulate, and that stifles the tension that there has to be between a regulator and the sector or industry being regulated.

The APPG plans to publish a report shortly identifying how the law fails to protect whistleblowers of any type—I stress “of any type”. The APPG has consulted a whole range of groups, and has positive, effective and practical proposals for change. We hope to learn from other countries as we aim for a “best in class” legal framework. I believe this is one of the aspects of competitive advantage that we should be claiming for the United Kingdom, in terms of our economy and how we treat those who, in most cases, feel driven by conscience to speak up, to raise concerns and to do the right thing for the right reasons.

Mike Amesbury (Weaver Vale) (Lab)

I commend the hon. Gentleman and the APPG for the excellent work they do in this field. Prior to this debate, the Hospital Consultants and Specialists Association wrote to me. Referring to a recent staff survey in the NHS, it said that only 28% of respondents felt safe to raise their concerns as whistleblowers. So I agree wholeheartedly with the powerful contribution that he is making.

Stephen Kerr

I thank the hon. Gentleman for that intervention because it underlines the fact—and it is a central purpose of the APPG—that we need to improve the overall perception of whistleblowers, and the attitude to them.

Mr Jim Cunningham (Coventry South) (Lab)

I apologise for being a bit late for the start of the hon. Gentleman’s speech. Members who have been in this place for a long time will remember the case that I had of a consultant called Mattu. He was a whistleblower and he was suspended. He was never really employed again by the NHS and the case cost—you could take a guess at the figure—something like £3 million. It ended up in the courts, where they tried to use my letter against that individual. So on the one hand we encourage whistleblowers, but we do nothing to protect them and sometimes we try to destroy their reputation.

Stephen Kerr

I am grateful for that intervention. I think I remember taking part in a Westminster Hall debate in which that case was highlighted.

We are going to publish our first report of a series. We have created an ambitious work schedule for our all-party group, but our primary report, based on the first-hand testimony of whistleblowers, should be published soon. I see so many people in the Chamber who have been of so much support to the group's work, and who have served on the panels that we have put together to receive evidence and witness testimony, so I take the opportunity to thank publicly the Members who have been willing to do that.

We have also worked alongside WhistleblowersUK, which specialises in supporting whistleblowers. I pay tribute to its work and that of other such organisations. Most importantly, I would like to thank the whistleblowers themselves. The whistleblowers who have come before us to give testimony have proven to be caring, principled members of society who have put themselves at considerable risk to call out malpractice and misdemeanour. Some of those people are not covered by the current whistleblowers' protections and law; many work, but some were not working.

In less than 12 months, we have heard and collected over 400 pieces of individual evidence to contribute to the series of reports that we intend to publish. Many of the testimonies were very difficult to hear and I will tell hon. Members why. These are people who put everything on the line. As colleagues said earlier, when those whistleblowers first spoke up, they did not realise what it would involve. However, having started out on that course, they stuck with it. I have nothing but total admiration and respect for these people. They have suffered mental trauma, loss of their career, loss of their businesses, persecution of their families, stringent gagging orders—all in the name of blowing a whistle on crime, corruption, negligence, wastefulness and cover-ups.

Many of these people are not employees; they are service users, bystanders, parents at school, patients at hospitals, suppliers, customers and taxpayers. Whoever they are, we should be grateful for whistleblowers. They saw themselves as doing their job, doing their duty, doing what was right. They did the right thing to uphold what they thought was the right standard—the professional standard. They thought they would probably be praised and recognised for speaking up, doing the right thing, protecting people, protecting reputations—organisational reputations, individual reputations—and standing up for the public good and public confidence, particularly in our public services.

Dr David Drew (Stroud) (Lab/Co-op)

Does the hon. Gentleman accept that the public sector is sometimes the worst offender? I was contacted by a firefighter who had reported his hierarchy—I will not go into it because it is subject to legal action. He sent the report to the police and they then sent it back to the fire service he was reporting. That is the public sector. Unbelievable!

Stephen Kerr

As we have discovered, this is a common characteristic of how whistleblowers and the issues they raise are treated. Issues they raise in anonymity and confidence are then disclosed to the very body they are raising concerns about and because of that they are easily identified. What follows is deeply unpleasant—to hear about it is deeply unpleasant; to experience it must be something else. So I do agree.

Whistleblowing in a work environment in the public sector should not be difficult, but it is, and it is up to this Parliament to change that. Without whistleblowers, we would not know

about Gosport War Memorial Hospital, Cambridge Analytica, Lux Leaks, the behaviour of Jess Staley, the CEO of Barclays, Mid Staff NHS Trust or Rotherham's grooming gangs. These are issues that make headlines, but there are many more cases that Members probably know of in their constituencies, from all over the country and across all kinds of sectors and activities, public and private. Bringing these issues to light, while difficult, undoubtedly identifies better ways for companies to work, for services to be delivered and for justice to be served.

Norman Lamb

The hon. Gentleman is making an excellent speech. It was good to work with him in applying for this debate. We have heard about cases in the public sector, such as the one the hon. Member for Stroud (Dr Drew) mentioned, and about others in financial services, such as those the hon. Member for Thirsk and Malton (Kevin Hollinrake) mentioned. It is worth comparing the outcome for those brave people, whose lives, as he says, are destroyed, with the outcome for those guilty of wrongdoing in the banks, for example, who continue to earn a fortune and who no one has touched for their wrongdoing, despite the devastating impact they had on our economy.

Stephen Kerr

Whistleblowers are heroes, not villains—although sometimes there are villains in their stories—and they should be treated with respect and listened to. Sometimes they are looking for no more than validation of what they have brought to the attention of the authorities. Whether they should have a financial award, or whatever, is a side issue; the real issue is how they are perceived and responded to.

Dr Whitford

The hon. Gentleman raises financial rewards. Does he think they might make the personal situation for a whistleblower within a workplace worse, because it would be easy to ascribe their actions to their seeking a financial benefit as opposed to genuine altruism?

Stephen Kerr

I completely understand, and am sympathetic to, that point. We need to work together to establish this independent office of the whistleblower. Sometimes whistleblowers pay such a heavy price in terms of the financial consequences that flow from their actions that perhaps there is a case for compensation, but I have not made up my mind. We have to hear more evidence and have a wider discussion in Parliament about these issues. It is absolutely clear, however, that whistleblowers need somewhere safe to go, and to be supported and have their cases properly advocated in the face of power, authority and bureaucracy.

I mentioned the problem of blacklisting. One person told us how he had been blacklisted for speaking up. He had reported criminal activity to the employer. Instead of dealing with the issue, the employer dealt with the person who had spoken up in the first place and coerced them to stay silent. It is bad enough to have something criminal going on within one's business, but then to cover it up, and contrive to force those who are willing to speak up for the reputation of the organisation or business to leave, is clearly unacceptable, and then to

seek to blacklist them so that they cannot work in a profession in which they have trained and acquired qualifications is truly shameful.

The complex legal framework surrounding whistle-blowing covers too few people. It is complex and legalistic. Many of the whistleblowers whom we met were not recognised as whistleblowers by the law. The tests that are necessary to stop people abusing whistleblowing are too stringent and do not recognise complexity. One employee brought up issues of racism at work and the flouting of HR rules. The employer, instead of recognising the whistleblowing, tried to diagnose a mental health issue, sending the employee on medical leave. The company-appointed psychologist then broke confidentiality to speak to the managers of the business. Although regulators confirmed that the employee had a point, they were dismissed and have received no justice.

Whistleblowers can be dragged through the courts, with mounting costs and unending hassles. For many, their cases have consumed their lives. It may be thought that the best advice such a person could be given would be “Move on and forget it”, but that is not justice; it is unjust. While it might be said to have been good and well-intentioned advice, is that really the way in which we in this place want the affairs of our country—economic, and relating to public service—to be dealt with? I really do not think so.

However, it is equally important not to limit the definition of whistleblowers to employees. As I said earlier, and as was mentioned by the right hon. Member for North Norfolk, many categories of people should have the protection to which whistleblowers are legally entitled. We must ensure that, when they blow the whistle, they are given proper protection under the law—and the law is too vague in this regard.

When an individual faces the full force of a corporate or public sector legal department, it is a complete mismatch. Public corporations should be mandated to disclose legal costs to shareholders in such cases, and the same should be true of public authorities. They should have to make clear and transparent the costs of fighting whistleblowers that will be borne by the taxpayer. Some of the estimates of the costs that have been incurred by public services are absolutely mind-blowing and wholly disproportionate.

One brave whistleblower in Scotland had evidence of HR malpractice. It should have been a simple grievance dealt by the organisation, which should have been pleased to receive the feedback from that person. Instead, the person and their family, who also worked there, were victimised. They cannot afford legal representation, and will have to argue their own case at a tribunal against a public sector legal department with an expansive budget.

Bob Stewart (Beckenham) (Con)

I thank my very good friend for allowing me to intervene. It seems to me that the very best companies, corporations and organisations should include in their codes of ethics or conduct a requirement for employees, or people for whom they have responsibility, to report things that are wrong. In the first instance, that should happen within the organisation, but if people still feel that they have not obtained satisfaction, there should be a device within the organisation enabling them to report things, and they should not be victimised for that. They should be applauded, because if they do that, the company will get better.

Stephen Kerr

I completely agree with my hon. and gallant Friend. I cannot understand why any organisation would not embrace the feedback someone brings them when it has to do with the types of things whistleblowers raise: why on earth would any business or public sector organisation not want to know when things are not being done right—what is right in terms of the law, what is morally right, and what is right in terms of the values of the organisation? And there absolutely should be a no recriminations policy in any organisation worth its salt. I also absolutely believe that there needs to be a place where whistleblowers can go, a safe harbour where their case will be properly treated and respected and where they will get the necessary level of support, whatever that support might be, so their case can be properly heard.

I think I have made it clear that I strongly believe that no organisation of any repute should be operating in the ways we have heard discussed in this debate by various colleagues. Governments and companies should be confident enough to know when they are wrong, and they should be honest and brave enough to address that. The reaction to whistleblowing should be to say, “Thank you; thank you for speaking up”, and then when the whistleblower’s words and evidence are evaluated organisations should be more than happy; in fact, they should be recognising and themselves rewarding whistleblowers who speak up so that the changes that flow from that will mean they as businesses or public service organisations can become more efficient, effective and ethical in the way they operate.

The APPG will soon publish its findings and recommendations, and we will further consider and promote the case for an independent office for the whistleblower, giving protection to and advocating in the interests of whistleblowers. We shall also be asking for an end to the use of non-disclosure agreements to cover up wrongdoing, criminality and other morally dubious behaviour. That idea must be fully debated and explored, because there are currently far too many abuses of NDAs.

Parliament and Government have a responsibility to set the conditions and the standards; we have to create the culture in our country where people feel confident that they can and should speak up in the public interest. We want whistleblowing recognised as a positive and public-spirited thing to do, and I look forward to the Minister’s reply today, but this is the start of the debate on this issue, not an end, and we must recognise the courage and integrity of people who do the right things for the right reasons, because they are guided in what they are doing by conscience and the public interest.

5.37 pm

Justin Madders (Ellesmere Port and Neston) (Lab)

The hon. Member for Stirling (Stephen Kerr) has made a good and wide-ranging speech, and he is right that this is the start of the process, not the end of it: there is clearly a need for significant legislative reform. I thank the right hon. Member for North Norfolk (Norman Lamb) for getting this debate under way and for the consistency he has shown over a number of years in supporting those who blow the whistle, and indeed for how he set out today why there is a need for a fundamental review of the regulations. It has been clear for some time that we are simply not protecting people in the way I think we would all like to see.

We have had piecemeal reforms, often as a result of case law, which have given some notable advances in protection, but that has also left gaps and loopholes, and it still remains the case,

as we have heard on a number of occasions today, that the best-run organisations with the most comprehensive policies in place can be very daunting places for someone to blow the whistle in, and it does not come without consequences.

I know from my own experience as an employment lawyer before I was elected to this place about the issues employees face across a range of sectors when they are brave enough to speak up. We must not underestimate how difficult that is and how brave people are when they decide to blow the whistle, because there are many examples of how people have suffered, with careers destroyed, and worse, as a result of sticking their head above the parapet. This can involve anything from being shunned by colleagues to being dismissed on spurious charges. There are a number of unfortunate consequences that can arise from blowing the whistle, so we really should support those who have the courage to do it. Sadly, the treatment that some people receive can continue even after they have left their employment. This is far from being the benign environment that we would like to see. We are having new laws in Ireland and Australia, and a new EU whistleblowing directive is coming in in 2021, so if we are to ensure that our workers' rights at least keep pace with those in the EU, which is what the Government have committed to, we must begin to think about how we can strengthen workplace protections for whistleblowers.

I have spoken before about whistleblowing in the NHS and the importance of providing a workplace environment where NHS staff are able to raise concerns about things they are worried about. It should be an environment where there is no fear of repercussions or unfavourable treatment and where staff feel confident that action will be taken to resolve their concerns.

Alex Sobel (Leeds North West) (Lab/Co-op)

As my hon. Friend knows, the Department of Health is based in Leeds, and one of my constituents whistleblow about the DH2020 process in her role as a trade union representative. She was not supported, and she was hounded out of the job she loved, incorrectly. She won her case at an employment tribunal, but that was no compensation to her because she is no longer in that job and has had her career ruined by whistleblowing on behalf of all the employees in the Department of Health who have been affected by DH2020.

Justin Madders

My hon. Friend raises an important point, and that is something I will come on to later. The current legislation is retrospective. It is righting wrongs after they have occurred but, as we have heard, it is too late to put a career back in place after the event.

In the NHS, it is particularly important that people feel able to blow the whistle safely, not only because they have general obligations as an employee, but because many staff have a professional duty to raise concerns where they see them and could actually be in trouble with their own regulators if they do not do so. NHS England and NHS Improvement policies are very clear on this. They say:

“If in doubt, please raise it. Don't wait for proof. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.”

The NHS constitution pledges that NHS employers will support all staff in raising their concerns. As we have heard on a number of occasions, however, that clearly has not

happened. Fine words are not enough. Sadly, staff do not have the confidence to raise concerns without fear of repercussions.

The most recent NHS staff survey, in which staff were asked whether they would feel safe raising concerns about unsafe clinical practices, found that only a fifth said that they strongly agreed that that was the case, and three in 10 said that they did not feel safe raising such concerns. When asked whether they were confident that their organisation would address their concerns, just 14.8% of staff strongly agreed with that statement. Given that 17.8% of staff said that they had seen errors, near misses or incidents that could have hurt patients in the last 12 months, it should be deeply concerning to all of us that staff in the NHS do not feel that their concerns are being acted on.

As the right hon. Member for North Norfolk mentioned, junior doctor Chris Day was a prominent example of someone who blew the whistle and was treated appallingly. He raised legitimate concerns about staff ratios, then lost his job. The tribunal action that followed resulted in a lengthy and, in my view, wholly unnecessary legal battle in which Health Education England effectively sought to remove around 54,000 doctors from whistleblowing protection by claiming that it was not their employer. Four years and hundreds of thousands of pounds later, it eventually backed down and accepted that it should be considered an employer after all.

Norman Lamb

Is the hon. Gentleman aware that the contract between Health Education England and the trusts, which demonstrates the degree of control that Health Education England has over the employment of junior doctors, was not disclosed for some three years in that litigation? It was drafted by the very law firm that was making loads of money out of defending the case against Chris Day. I have raised this with Health Education England, but it will not give me a proper response because it says that the case is at an end. Does the hon. Gentleman agree that this is totally unacceptable and that it smacks of unethical behaviour for that law firm to make money out of not disclosing a contract that it itself drafted?

Justin Madders

The right hon. Gentleman highlights an important point, and in response I will quote something that Sir Robert Francis said:

“When asked for advice by NHS organisations about issues around public interest disclosure, legal advisors have tended to be influenced by an adversarial litigation—and therefore defensive—culture.”

That notion is clearly present in this particular case. At the end of the litigation, Health Education England said:

“Having never wished to do anything other than facilitate whistleblowing for doctors in training, HEE is happy to be considered as a second employer for these purposes if it removes a potential barrier for junior doctors raising concerns.”

However, as we have heard, that did not manifest itself during the four years of the litigation. Why did it take so long for HEE to accept that it should be considered an employer? What message does that send to NHS staff about the corporate attitude to whistleblowers? It is hardly encouraging.

Whistleblowers are a vital safeguard when all other systems have failed. As the right hon. Gentleman said earlier, there is a whole list of cases in which if the whistleblowers had been listened to earlier, lives could have been saved—Gosport, Morecambe Bay, Mid Staffordshire and Bristol Royal Infirmary. The Francis report shone a light on some of the completely unacceptable treatment that NHS staff have experienced. One individual told the inquiry that “finding employment is proving very difficult and I question whether any of it was worth it”.

Another said:

“I have often been so depressed by this experience that I have often considered suicide.”

Damning words. It shames us all that some people feel that way for having done what we all think is right.

I acknowledge that some progress has been made on the protections afforded to NHS employees in recent years, particularly as a result of the “Freedom to Speak Up” report and the regulations brought forward by the Government to protect whistleblowers’ future employment prospects. I remain worried about other issues, however, such as protections for other workers who support whistleblowers. Where a team of medical professionals are working on the same thing, it is easy to envisage circumstances in which two or more employees notice an issue of concern together, but only one of them actually makes the disclosure. I raised that matter with the Minister, and it was made clear at the time that the only remedy available to the second person or other associated parties would be to register a grievance under their employer’s grievance policy. That protection is not strong enough, so we need to recognise that people work in teams. Unity is strength, and collective arguments are always better, so we need to strengthen the protections in such situations.

Another issue is that it is only once someone has lost their job that they can take their previous employer to an employment tribunal and seek redress, but the onus is on the whistleblower to prove that it was their disclosure that led to them losing their job. The Hospital Consultants and Specialists Association has come across many cases of employees facing action after speaking out based upon circumstances different from their whistleblowing case, but which appear to be clearly linked. Such action can be subtle, such as bullying, harassment, undermining, being overlooked for opportunities for promotion, or a general feeling that the employer may be looking for a reason to act against them. Of course, such instances are virtually impossible to prove, but they contribute to the climate of fear for whistleblowers, who may worry that they are only ever as good as their next mistake. We cannot continue to allow promising careers to be left in tatters as a result of ineffective whistleblowing protections. We must send a strong message to employers that, as the legislation intended, those making disclosures should be protected, not attacked.

By its very nature, the legislation only gives a person protection after a detriment has been suffered, when it is often too late. No tribunal can fully mend a destroyed career after a dismissal. It is disturbing that the success rate of whistleblowing claims that reach tribunal is only 3%, which shows how easy it is for employers to use parts of the legislation to avoid their responsibilities. I do not know of any other tribunal jurisdiction that has such a low success rate. If I was still practising and my success rate was 3%, I would not be in a job for long, but that percentage shows why we need to understand how the legislating is not working as well as it could be.

Of course, as we have already discussed, most employers are in a much better position. They are able to rely on expert legal advice, they can put forward alternative allegations and reasons for treatment, and they can allege misconduct or redundancy. There are too many hoops to jump through and too many opportunities for employers to argue that disclosure does not count under the legislation, which of course removes the employee's protection altogether. That is wrong.

It is not enough for an employee to rely on their own assertion of subjective belief that the information tends to show a breach of regulations. That leaves them at the mercy of the roulette wheel of justice, and potentially having to wait many months before they can know for sure whether their disclosure will have full protection under the law.

In considering how the law operates, we need to examine whether protected conversations, which were introduced under the coalition Government, are working as intended. Of course, a person can have a protected conversation with someone without mentioning whistleblowing at all, but a potential disclosure might have been raised earlier. Employees in that situation who have been told that there is a payment for leaving their employment are in a vulnerable situation, and they will not know for sure whether their disclosure would count. We need to see whether there is any correlation between protected conversations and disclosures made under the whistleblowing Act.

Whistleblowers should not only be protected but venerated for their role in defending the safety of others. Nobody who makes a disclosure, wherever they work, should do so in fear or at the risk of having their livelihood taken away. The whole culture of workplace protection in this country is one of extreme disposability, be it temporary and agency work, zero-hours contracts or just the ease with which people can be dismissed. This does not lend itself to a healthy environment in which people feel confident and secure in speaking out without fear of reprisal.

The truth is that we have allowed a situation to develop in this country where job insecurity is considered to be just part of the landscape. That has to change. We owe it to people to ensure that protections are as effective as possible, which is one of my tests for a decent and civilised society. At the moment, it is a test we are comprehensively failing.

5.52 pm

[Anneliese Dodds \(Oxford East\) \(Lab/Co-op\)](#)

It is a real pleasure to follow my hon. Friend the Member for Ellesmere Port and Neston (Justin Madders). I am impressed by his hard work in matching the sad reality of NHS practice with its policy on paper and in thinking through the implications for patient care.

I am grateful to the right hon. Member for North Norfolk (Norman Lamb) for helping to secure this important debate and to the hon. Member for Stirling (Stephen Kerr) for his hard work as co-chair of the all-party parliamentary group on whistleblowing, on which I also serve. As he did, I thank all those whistleblowers who have been willing to come before our group to discuss this issue.

I also thank my constituents. Even though I am a new Member of Parliament, a number of my constituents have tried to blow the whistle and, in almost every single case, their experience has accorded with what has been described today—an initial unwillingness to address the issues and problems raised, followed by, in many cases, retaliation. My hon.

Friend the Member for Ellesmere Port and Neston described the variety of ways in which that retaliation occurs, which are difficult to write down and take action against.

The retaliation has been quite extreme in some cases. One constituent had a vexatious legal case taken against them. They were cleared, as they should have been, because they had done absolutely nothing wrong. Of course their name is still on the legal record, even though they were cleared, and they believe that is having an impact on their employment.

The hon. Member for Thirsk and Malton (Kevin Hollinrake) described the pattern at Lloyds bank, which is a common one. His account accords with the account of the Thames Valley police and crime commissioner, with whom I have discussed this case a number of times. He is rightly exercised about it, because it indicates many people's continuing unwillingness to deal with these issues properly.

I do not want to speak for long, but I want to address the need to reform PIDA and the non-disclosure agreement regime. That must come after a thorough review of all the arrangements for whistleblowing, as urged by the all-party parliamentary group on whistleblowing.

As a number of speakers have said, it is unclear to many whistleblowers who is a prescribed person under PIDA and the Public Interest Disclosure (Prescribed Persons) Order 2014. I find in my constituency casework that even within the category of "prescribed persons" it is often very unclear whether the scope of interest of that prescribed person covers their case. For example, in the field of education, the chief inspector is able to deal with issues relating to the welfare of children living in school-provided accommodation but cannot deal with unethical educational practice within those schools. It appears that the only body that could be appealed to in that case is the Secretary of State for Education, but there does not seem to be a clear procedure in that Department to deal with whistleblowing concerns. I recognise that this is not the same Department as today's Minister's, but the Government overall need to make sure that proper procedures are in place. After all, our constituents are informed on the website that lists those prescribed persons that if they cannot find someone to report to and they do not want to report to their employer, they should take their case to their Member of Parliament. If we do not know exactly who then to take the case up with to try to get some resolution, that puts us and our constituents in a difficult position.

We need to have a proper investigation of whether the existing list of prescribed persons is appropriate and whether those bodies are adequately prepared. In addition, because of the lack of preparation in many cases, we find that regulators and other bodies are ill-equipped to separate out vexatious complaints and genuine whistleblowers—there is a huge inefficiency in the system there. We also find that regulators who are not on the list of prescribed people often are not aware of, and do not understand, how to advise whistleblowers about who they should approach. I have had a number of cases where whistleblowers have tried to ask the relevant regulator, who is not a prescribed person, what they should do and they have then been signposted to the wrong people and given duff advice. That should not be happening, and the Government need to grasp the nettle and provide coherent guidance.

I very much agree with the right hon. Member for North Norfolk about many of the gaps, but we also need to deal with the issue raised rightly by my hon. Friend the Member for Stroud (Dr Drew) about the fact that those bodies, including those that have a duty under this regime, often talk to each other in a way that completely contradicts the principles of the legislation. They are sharing information inappropriately, even though it is already covered

by that PIDA regime. One case of that has been mentioned, but I have dealt with one case where someone's case was casually discussed at a semi-social networking occasion by a public employee and the whistleblower's employer. What makes it even worse is that the case was related to child protection. We cannot have this situation where almost chummy relationships lead to that valuable information being inappropriately shared.

I want to comment on the use of non-disclosure agreements and bring this discussion into line with that on their use in sexual harassment cases. The Women and Equalities Committee has criticised their use in relation to sexual harassment, and we should be questioning whether they are ever appropriate in relation to whistleblowing cases. The UK legal system is strong on libel compared with that of other countries. Those of us concerned about investigative journalism might argue that it is too strong, but it is very strong in international terms. If untrue statements are made by those who have been whistleblowers, that can be pursued in court by their previous employer or by the body about which the whistleblowing complaint was made. If we are really to learn from the testimony of whistleblowers, it should not be possible to silence them with NDAs.

As everyone else has done, I wish to end my speech by thanking the whistleblowers in my constituency. There are a number of them I cannot name because of the procedures I have just talked about and because they are concerned about the impact on their professional reputation if their name becomes known as that of a so-called troublemaker. That is an enormous problem because, as Members have mentioned time and again, whistleblowers provide a corrective to malfeasance and illegal activity, and their testimony is incredibly important.

When I talk about whistleblowers' evidence, I always think about the phrase "It can lead to positive change". I learned that phrase from the Oxfam whistleblower Helen Evans, who was one of my constituents. The whole process of what happened to her is instructive. Sadly, some people tried to weaponise the evidence that she brought to the table and use it against international aid, but she has consistently and rightly argued that what she and others uncovered indicated not only that those vulnerable young women and girls in Haiti had been appallingly treated, but that they really needed economic empowerment. She was never arguing against international aid; in fact, quite the opposite: she was arguing for it. She has been determined to argue that what she did must lead to positive change, and indeed her example, and that of others, is leading to positive change in the international aid sector. Those who initially did not listen to her now say that they are grateful for her testimony. That is often the case with whistleblowers, but they should not have to go through that fight to get to that understanding.

We need positive change in our public services and in the private sector, wherever unethical or illegal behaviour goes unchallenged. We should recognise and praise those whistleblowers who help us to get that positive change.

6.01 pm

[Jim Shannon \(Strangford\) \(DUP\)](#)

It is a pleasure to speak in this debate and to follow the hon. Member for Oxford East (Anneliese Dodds). I congratulate the right hon. Member for North Norfolk (Norman Lamb), who set the scene, and I thank the hon. Members for Stirling (Stephen Kerr) and for Thirsk and Malton (Kevin Hollinrake) for making such valuable contributions, as others have

previously and will afterwards. The members of the all-party group have been engaging on this subject and are to be congratulated on sustaining their interest and on their efforts today.

Like the hon. Member for Oxford East, I would not be happy to make known all the cases I have been involved in over the years, because of the individuals and organisations in Northern Ireland that were involved. I know of cases involving the health service, the council, sometimes the police and sometimes other organisations, but I shall not go into any of the details, because that would inhibit the people who came to me. I am always clear about the confidentiality of those conversations.

I wish to dwell on one case, because it has dragged on for so long. When I describe the case, the hon. Member for Thirsk and Malton will know it and the person involved, because he is indirectly involved in the case or has knowledge of the person. First, though, let me say that a review of the 20-year-old PIDA is welcome and necessary to ensure that the UK remains the best place in the world to do business. Piecemeal reforms, often as a result of individuals bringing claims, have extended the scope of who is protected, but unfortunately there remain gaps and inconsistencies. The Government recently committed to ensure that workers' rights keep pace with those in the EU, whatever the Brexit outcome. This is an opportunity to reiterate the commitment to ensure that worker protection does not fall behind in the coming years.

I feel that I can say all that for a few reasons. In my constituency, I had a constituent who was engaged in what was at the time the longest-running employment tribunal case. It ran from 2007 to 2012 and involved 50-plus tribunal days. It was an absolute endurance test for my constituent and led to his substantive mental health problems and a complete physical and emotional breakdown. My parliamentary aide and I supported the employment tribunal process for some 18 months while he recovered. We helped that gentleman and his family. Sometimes, we need to be aware not only of the impact on the individual who does the whistleblowing, but the financial, emotional and mental impact on the family, too. It is clear that what that gentleman went through was horrendous.

In the end, the employment tribunal found that my constituent had made 12 protected disclosures involving going concern matters for the UK company and intangible asset valuations that could not be justified. Does that sound familiar? We had Carillion and BHS in 2018 and 2019. If people learned their lesson, wouldn't that be great? But people do not learn their lesson, because these things seem to happen over and over again, as has been explained here today.

I make that point because, during those 18 months, my constituent and I engaged on occasion with the FRC on an investigation into his disclosures. The investigations by the FRC and the Institute of Chartered Accountants in England and Wales were lamentable. In fact, in response to the Business, Energy and Industrial Strategy Committee audit inquiry, the FRC's chief executive officer recently refused to disclose what whistleblowing investigations had been undertaken in the last 10 years.

In 2011 and 2012, the predecessor of the Department for Business, Energy and Industrial Strategy had a consultation on the Sharman inquiry on going concern, which started in late 2011, to which I made an extensive contribution.

The 30-plus responses have all been removed from the FRC website. Eight years on, we have another BEIS/FRC consultation on going concern. Will this accounting profession ever get

things right? Concurrently, in November 2011, the then Department issued a consultation on the reform of the FRC.

In December 2010, the FSA and PwC conducted an independent inquiry into the Royal Bank of Scotland. Their press release stated:

“The issues we investigated do not warrant us taking any enforcement action, either against the firm or against individuals.”

How disappointing. It continued:

“The FSA cannot publish the content of the RBS review as information gathered from the bank during the course of the review remains confidential under the Financial Services and Markets Act 2000.”

Last month, eight years later, we had a further report from the FSA’s successor, the Financial Conduct Authority. Disappointingly, it essentially concluded the same.

Stephen Kerr

The hon. Gentleman mentioned the FCA and the FRC. With the change that is now coming to the FRC, we have an opportunity to break away from the pattern of performance in the past. We have an opportunity to disconnect from that past. Does he agree that it is vital that, whatever replaces the FRC, it is not continuity FRC?

Jim Shannon

Yes, I absolutely agree. I do not think that anybody in the House today, or probably outside it, disagrees with what he has said. Continuity would not be what we want; it is change that we want, and the quicker, the better.

Concurrently, the HBOS whistleblower, my constituent Paul Moore—I have his authority to mention his name—met the then Treasury Committee Chairman, Andrew Tyrie MP, now Lord Tyrie, in February 2011. We were delighted to learn, as was subsequently published, that the Committee would look to engage independent assessors, who would report to it for some of its future investigations. That was announced and reported on the front page of the business section of *The Daily Telegraph* on 5 May 2011, and it was followed up in subsequent inquiries.

However, only days ago, commenting on the Government response to its excellent report on the future of audit, the Chair of the BEIS Committee, the hon. Member for Leeds West (Rachel Reeves), stated:

“The collapse of Carillion and accounting scandals at Tesco, BT and Patisserie Valerie and others have provided a painful lesson that audit isn’t working. Businesses, investors, pension-holders and the public deserve better. Urgent audit reform is needed, not yet further consultation.”

That is exactly what the hon. Member for Stirling referred to. She continued:

“The CMA and BEIS Committee’s extensive inquiries on audit proposed a range of practical recommendations to improve competition, tackle conflicts of interest and improve the culture of challenge in audit firms. Their response to our report suggests the Government is in danger of kicking vital audit reforms into the long grass.”

Then they will get lost, and we will forget about them. That should not happen. She added: “We should not wait for the next corporate collapse. The Government needs to ignore the lobbying of vested interests in audit and set out a clear timescale for delivering on the substance of the CMA and BEIS Committee’s recommendations”.

We should listen to what the Chair of that Committee says.

Are things different in 2019 for audit and whistleblowing, compared with my experience in 2011 and 2012, when I first came into the House? No, nothing has substantially changed yet. Yet, whistleblowers regularly provide an early warning sign when things are going wrong. Often dubbed the canaries in the coalmine, they can help to avert a future scandal. They can save organisations money. One in every three serious economic crimes was highlighted by a whistleblower, according to a recent survey. That makes whistleblowing more effective than all the usual watchdogs—corporate security, internal audits and law enforcement—combined.

In addition, we need a regulator who is willing and able to listen to whistleblowers who come forward, and to protect them from retaliation. Research by Professor Kate Kenny from Queens University in Belfast shows that the cost of whistleblowing can still be very high, financially and personally—both physically and mentally. I witnessed that up close with my constituent and his family.

For a healthy economy and a reputable financial sector, we need to start supporting whistleblowers. Finance has never been more difficult to regulate because it incentivises people to chase excess profits, even at the expense of ethics and the long-term survival of an organisation. It remains acceptable—in many cases, profitable—to remain silent about wrongdoing. We need to encourage whistleblowers. What this all means is that a significant shift is needed, starting with helping employees to speak up, otherwise the financial sector and the remainder of the economy remain at risk of another crisis. In fact, we may be asked to foot the bill, just as we did with the trillion-odd pounds last time.

The Democratic Unionist party has been very active in supporting the APPG on fair business banking and victim support groups such as the SME Alliance and the CYBG Remediation Support Group in pressing Her Majesty’s Government and the banks to put in place a voluntary redress scheme for SMEs that is truly independent. Wow! Wouldn’t that be great? Such a scheme should also address the unintended consequences of light-touch regulation enabled through the Financial Services and Markets Act 2000 and the abuse of SMEs. As a banking redress process is finally beginning to take shape, will the Minister make a similar commitment to address much more effectively the “Future of Audit” report and the renewed vigour for updating our whistleblowing legislation? Like the banking redress for SMEs, these are important matters for our economy post Brexit. The original PIDA whistleblowing legislation has its genesis some 20 years ago. I will therefore appropriately finish by restating my opening comments.

A review of the 20-year-old PIDA is necessary to ensure that the UK remains the best place in the world to do business. Piecemeal reforms, often as a result of individuals bringing claims, have extended the scope of who is now protected, but there remain gaps and inconsistencies. The Government recently committed to ensuring that workers’ rights keep pace with those in the EU. This is an opportunity for the Minister to reiterate the commitment to ensure that protection of workers does not fall behind in the coming years. The Democratic Unionist party—part of the partnership with the Conservative party in government—supports

that commitment with regard to updating our whistle-blowing legislation in a post-Brexit Great Britain and Northern Ireland.

6.11 pm

Dr Philippa Whitford (Central Ayrshire) (SNP)

I pay tribute to the right hon. Member for North Norfolk (Norman Lamb) for securing and opening this debate, and to the other members of the APPG for their work on this topic.

Bristol Royal, Mid Staffordshire, Morecambe Bay, Liverpool, Gosport, Whorlton Hall—all shocking scandals of health and social care. In every one of those scandals, there was a whistleblower years before it came out who tried to raise concerns and protect people. They were ignored, and that is often the least that happens, as they are often undermined, victimised or dismissed.

Bob Stewart

I suspect that the hon. Lady might be going on to say that those people were then blacklisted; they could not get another job in the health service afterwards, for some reason that they could never actually ascertain.

Dr Whitford

I thank the hon. and gallant Gentleman for his intervention. As a medic myself, it is clear that we are advised by the General Medical Council, the Royal College of Nursing and various official bodies that we must speak up—that we have a duty to speak up. However, the landscape we look at is littered with broken careers and often broken people.

The problem is that whistleblowers think they are protected because they have heard about whistleblower protection, but it simply does not exist. The right hon. Member for North Norfolk talked about “brave people” speaking up. People should not have to be brave to raise concerns. If all people see is others ahead of them who have been driven and hounded out of their career, and who have maybe ended up with mental health issues or worse, then that is a big, black, threatening cloud—keep your mouth shut, keep your nose clean, walk by on the other side. The problem is that that results in more suffering and more death.

There are two aspects to this issue: business and industry, which is represented most commonly by the finance sector; and public services, which are most commonly represented by the NHS. Those two sectors—finance and the NHS—probably generate the biggest number of scandals and whistleblowing cases, and therefore specific treatment is required in those industries to invite whistleblowers to come forward and protect them.

While there is UK-wide regulation of finance, health services are devolved. The four health services are struggling with this and working to improve whistleblowing. After the Mid Staffs scandal, Sir Robert Francis highlighted that in Mid Staffs—indeed, this was an issue in some of the later scandals—there was an obsession with becoming a foundation trust. The hon. Member for Stirling (Stephen Kerr) and others have talked about why people cover things up. Whether it is a high-profile business or a public service that has been corporatised, there is a

drive to remain shiny and perfect on the outside, instead of admitting a problem and trying to fix it.

Having produced his report, Sir Robert Francis set up the “freedom to speak up” guardians in hospitals and the national guardian. In Scotland, the local person in health boards—we do not have trusts—is a specific non-executive director who is a whistleblowing champion. The advantages of a non-executive director is that they are on the board, with a clear and loud voice, and they are not an employee, but they are part of the system. The “freedom to speak up” guardians are employed by the trust, so they are operational—they are a person to go to—but they are also an employee. There are issues at the trust and health board level with how the guardians or champions themselves are protected. Perhaps we need not only an independent national office but an independent system. In the NHS, that might be people who are taking responsibility for safety or healthcare services information. Unfortunately the legislation on that is in the Brexit long grass, but I hope it will eventually come forward.

There is a national guardian in England, but it does not have statutory powers. Scotland has set up an Independent National Whistleblowing Officer, who is basically the public services ombudsman. They are completely separate—they are outside the system—and they have statutory powers, which is important. A reporting and advice line was set up back in 2013, so that if people were afraid to report locally or were not getting anywhere, they could report to that phonenumber.

Stephen Kerr

The hon. Lady makes a good point about what is happening in Scotland now, but it is worth mentioning the evidence that my APPG received from Police Scotland and NHS Scotland. For example, the lessons that NHS Scotland has learned in Inverness are being taken on board by public authorities in Scotland. The size of our country allows us to do things a bit more quickly and deftly, but undoubtedly the lessons of the past are being learned and implemented, and I applaud NHS Scotland and Police Scotland for that.

Dr Whitford

So small is beautiful after all—that is excellent. The evidence is there; it has been there for years. The problem is that action has not been taken.

The Independent National Whistleblowing Officer has already developed, published and is consulting on standards. The standards will look at bullying and harassment—an issue that has come out in NHS Highland—and patient safety issues, and they can empower reporting and review. They include primary care and social care. They include not only trainees like Dr Chris Day, who was appallingly treated, but students and volunteers. No one should be limiting and excluding the person who saw bad and dangerous behaviour from coming forward and doing something about it.

Every health board will have to report on the actions they have taken to remedy the findings of an investigation. Health boards must investigate and record how they investigated. They must record the action they took, and they must show any improvements that they developed from that investigation. Statistical analysis will be part of an annual report by the board every year, which will look for themes, trends and patterns. This is—and I welcome the fact that the hon. Gentleman recognises it—an attempt to make this work by having an independent office.

The results of a survey of health and social care staff in Scotland—and they are health and social care staff now—showed that two thirds felt they would have the confidence to speak up and raise a concern. That is contrary to the fact, as Members have said, that approximately a quarter of staff in England would have the confidence to speak up. As a doctor, I would like to see the figure an awful lot closer to 100%.

The Independent National Whistleblowing Officer will have among their statutory powers the ability to take disciplinary procedures against anyone who victimises a whistleblower. That is also critical because, at the moment, as we have heard, the whistleblower suffers, and the person who caused the suffering does not.

Regardless of how the different nations of the UK are trying to tackle whistleblowing issues within their own public services, particularly their NHS, we need to deal here with the financial and other UK regulation systems. In particular, the Public Interest Disclosure Act is the overarching legislation for whistleblowing, covering all sectors. It was actually 21 years old yesterday. It was a private Member's Bill, so perhaps it did not really have the scrutiny it should have had. It was groundbreaking at the time, but the UK is now well behind the pack, including countries such as Ireland, and, frankly, it needs to catch up. As has been highlighted by the hon. Member for Ellesmere Port and Neston (Justin Madders), it does not protect the whistleblower; it only allows them to go to an employment tribunal after they have suffered huge detriment, with only a 3% success rate, and the tribunal is often used to create more damage and victimisation.

The whistleblowers I have been working with have asked for an independent, free-standing public interest protection Act—not part of employment law, but free-standing—that should do a few things. It must ensure investigation of the concern, because the concern often disappears in all the fighting. The whistleblower should be protected from the point at which they raise their concern. It should cover all those who would be in a situation to report, including trainees or non-workers. It should prohibit detriment, and there should be the ability for civil wrong or criminal offence actions to be taken.

This requires an independent agency or body, and it should also cover regulators. This is not just about the FCA or the FRC, because the Care Quality Commission is in the frame for Whorlton Hall, in that it did a report that described it as not having a problem when people had actually raised issues. If we take the heat out of whistleblowing and make reporting normal, as we have done with Datix systems in the NHS—making this not whistleblowing, but just part of normal duties—then we can change this. Whistleblowers must be valued. In the NHS, it is a matter of patient safety, and that is critical.

6.23 pm

[Laura Pidcock \(North West Durham\) \(Lab\)](#)

What an interesting debate this has been. I, too, would like to congratulate all those brave people who have come forward as whistleblowers. There has been so much agreement in this Chamber and that is not just because there are so few of us here; it is because this is a serious issue that we all have a willingness to try to redress.

I congratulate the right hon. Member for North Norfolk (Norman Lamb) on applying for and being successful in securing this debate. His speech went to the very heart of the question: where people have done a very brave thing in reporting abuse, they are then subject to serious

detriment. This is what I have been amazed by in this debate: rather than us concentrating all our energies and efforts on how the process can work best and how swift investigation can take place, they have been spent thinking about whistleblowers using their energies to fight to save their job, their relationships, home and mental health. The important point is the corrosive, knock-on effect on how everybody else feels about the system and their willingness to come forward and blow the whistle.

The case of Dr Day and the numerous other whistleblowing cases are illuminating. Nearly 10 years into austerity, the huge cuts in the public sector and the long-term societal shift towards privatisation lead to a couple of conclusions. First, the cuts need to stop—as a Labour Member, I would say that—because they often create dangerous working conditions, with staffing and skills shortages, and the privatisation of care is inappropriate. Secondly, we need much more robust legislation in the face of these conditions. A crucial theme that has been repeated throughout many hon. Members' speeches is the unequal distribution of power in the workplace; as with so many workplace issues, legislation must redress that inequality.

The right hon. Member for North Norfolk and my hon. Friend the Member for Ellesmere Port and Neston (Justin Madders) mentioned the need for non-regression clauses in respect of EU directives that pertain to workers' rights after our withdrawal from the European Union. The hon. Member for Thirsk and Malton (Kevin Hollinrake) highlighted an important trend that seems to occur when people whistleblow: rather than a thorough investigation being made of their claims, disciplinary procedures are used as a silencing mechanism. The hon. Member for Stirling (Stephen Kerr) paid tribute to the whistleblowers and stressed their selflessness. I think that there is probably a burden that those people wish to relieve selfishly, seeing that harm, but he is absolutely right that they are doing it to put an end to the harm or misconduct that they see.

There have been so many important speeches. My hon. Friend the Member for Oxford East (Anneliese Dodds) spoke about the complex picture for constituents trying to understand who the prescribed person is. If as Members of Parliament we find it confusing, imagine what it is like for people with very busy lives who are not navigating these systems all the time—it shows that there is a failure in the system.

For many years, whistleblowers were not given the protection that they need and deserve, and were left at the mercy of unscrupulous employers and state organisations. There are many victims of that negligence, so it is right that the balance started to shift from 1996 onwards, first with the Employment Rights Act 1996 and then with the Public Interest Disclosure Act 1998 and its revisions between 2013 and 2015. However, in this place, we must continuously ask whether our protections and support for whistleblowers are inadequate in an ever-changing work and political environment. I therefore welcome this debate and will shortly outline some of the principles behind my party's approach.

There are currently three key protections for those who have made a protected disclosure: first, the right not to be subject to detriment as a result of whistleblowing; secondly, the fact that where the principal reason for dismissal is the fact that a worker has made a disclosure, that dismissal is automatically unfair; and, thirdly, the fact that where a provision in any other agreement seeks to prevent whistleblowing, that provision is void. However, while those wever, in this place, we must continuously ask whether our protections and support for whistleblowers are inadequate in an ever-changing work and political environment. I

therefore welcome this debate and will shortly outline some of the principles behind my party's approach to businesses and organisations—a culture where whistleblowers are celebrated as a public good that forces organisational change.

The failure to cover all workers, because of the definition of “worker” that is used, is a major flaw in the current legislation; it means that many self-employed workers are not covered, for instance. As we know, self-employment is a much abused and contested category. It cannot be right that, just because someone is employed on a contract that tries in the first place to absolve their real employer of responsibility for them, they are also denied protections with regard to whistleblowing. Also excluded are most job applicants, which means that whistleblowers can routinely suffer detriment through the recruitment process, without any redress, because they are known to be whistleblowers. Surely that is an anomaly, given that job applicants have the right to protection under the Equality Act 2010 from discrimination, harassment and victimisation.

The Government's approach to whistleblowing makes little attempt to encourage a proactive culture that not only supports whistleblowers, but creates conditions in which the issues that they disclose are taken seriously in a timely manner and remedies are sought. Where is the requirement to investigate, and where are the mandatory and, importantly, enforceable methods of supporting good practice and cultural change? UK law needs to be much more proactive, and early intervention should be prioritised to protect both the whistleblower and the public.

It is clear that, in recent years, we have fallen well behind other countries on this issue, which is hardly surprising, given the Government's anti-worker stance on most issues. That was thrown into sharp relief by a recent EU directive that provides protection for the self-employed, and requires organisations with over 50 employees to establish reporting channels.

I would like to say a few words on the principles that will guide a future Labour Government, which hopefully is not too far off, when it comes to whistleblowing. Our key objectives in government will be: to encourage people to raise concerns about wrongdoing; to ensure that concerns are investigated in a timely fashion and appropriately; to ensure that wrongdoing is rectified; to protect whistleblowers and others affected by whistleblowing; and, importantly, to require employers to maintain procedures that facilitate whistleblowing.

A Labour Government would like it to be the legal duty of employers to protect whistleblowers, and would like that to be enforced. That would apply to all workers, irrespective of the nature of their position and whether they are paid; for example, it would include interns and volunteers. Protections would apply to those making the disclosure, whether they were a worker, a former worker, or were seeking work or undergoing training. I think I am right in saying that there is quite a consensus on that.

I want to talk about the patterns. As shadow Minister, I have been thinking about the themes in the experience of the whistleblower. The feedback is that the typical journey of a whistleblower looks like this: if the worker is inexperienced at whistleblowing, there is uncertainty about what to do and who to tell, as has been said. They often go to their immediate manager. The system response may be poor, and include ignoring or minimising the issues, deliberate delays, hostility and intimidation. It may include reluctant, ineffective or biased, tokenistic investigations, and deliberate attempts to exhaust and discourage the whistleblower through excessively lengthy and complex processes.

Intimidation may increase in severity; there may be counter-allegations, formal disciplinary proceedings against the whistleblower, suspension and dismissal. This is not even the full journey; we have to remind ourselves that all the whistleblower has done so far is report wrongdoing, misconduct or harm, yet their employment prospects are in serious danger by this point.

The whistleblower then escalates concerns externally to regulators. The system response is likely to be a full attack by this stage. If the whistleblower has not yet been dismissed, dismissal is almost certain, perhaps on trumped-up grounds, but probably on the lawful grounds of breakdown of employment relationship under the “some other substantial reason” route. At this point, the whistleblower’s employment prospects are likely to be damaged beyond repair. They are unlikely to obtain equivalent employment in the same field again. Regulators, oversight bodies and Government Departments are often part of the problem, and may turn a blind eye to the whistleblower’s disclosure and the fact that they have been suppressed and victimised. Sometimes they will even, outrageously, orchestrate the harm and suppression.

The Public Interest Disclosure Act 1998 kicks in only after the whistleblower has been harmed and, as has been mentioned, it allows the whistleblower to sue only for limited compensation, long after the event, and long after the public interest matters have been buried.

The Government continue to say that a review of whistleblowing legislation would be premature. Quite the opposite—it is well overdue. That is what those who have been affected by the failures of the legislation tell us, and it surprises me that some Members, on the Opposition and Government Benches, think that we know better than them. Whistleblowing legislation is about preventing disaster—preventing death or wrongdoing—so the legislation should be equally serious, and should provide appropriate pre-detriment protections for those who blow the whistle, and appropriate sanctions for those who are determined to punish and discount the voice of the whistleblower.

I end with a question. The motion refers to

“protection for a broader range of people”,

and widening the scope of the legislation. Job applicants, volunteers, interns, non-executive directors, public appointees, priests and ministers of religion, foster carers and members of the armed forces are not afforded protections for whistleblowing under the current regime. Have the Government any plans to extend the definition of “worker” to include people in those categories?

6.34 pm

[The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy \(Kelly Tolhurst\)](#)

I thank the right hon. Member for North Norfolk (Norman Lamb) and my hon. Friend the Member for Stirling (Stephen Kerr) for securing today’s important debate. I should also like to congratulate the right hon. Sir Norman Lamb on his knighthood, in recognition of his commitment to public service. I thank all hon. Members for their contributions today, and for

the passion that they have expressed in voicing the concerns and putting their arguments on UK whistleblowing policy.

The Government recognise how valuable it is that whistleblowers are prepared to shine a light on wrongdoing. That is important at an organisational level but also, more broadly, for society, so that issues such as abuse of power are brought to light. This afternoon, stories have been shared in the House of people who, having acted as whistleblowers, have been disadvantaged and experienced severe detriment.

Effective whistleblowing policies enable workers to speak up, to prevent wrongdoing and fraud. That helps to protect employers from financial loss and reputational damage, and builds their trust with customers. Those who blow the whistle should be able to do so without fear of recriminations. Employment protection enables workers who have blown the whistle to seek redress if they are dismissed or suffer detriment at the hands of the employer because they have made what is called a “protected disclosure” about wrongdoing that they have witnessed at work.

I can assure hon. Members that over recent years the Government have taken steps to support a cultural change in relation to whistleblowing in all sectors. A number of statutory and non-statutory improvements have been made. Those include the publication of guidance for whistleblowers on what they need to do to make disclosures while preserving their employment protections; and guidance for employers, including a non-statutory code of practice.

My hon. Friend the Member for Stirling and the hon. Member for Oxford East (Anneliese Dodds) mentioned guidance. The hon. Lady spoke about the extent to which MPs have clarity in dealing with people who come to them for advice. I would like to go away and see whether there is any kind of guidance that we might publish, particularly for MPs, to improve our ability to help our constituents.

Kevin Hollinrake

The Minister heard some of my comments about the Financial Conduct Authority and its, at best, quite tepid approach to whistleblowers. What are we to do when, effectively, an agency that is commissioned by the Government does not follow through on its whistleblower obligations?

Kelly Tolhurst

I thank my hon. Friend. I was preparing to come on to that, but he is absolutely right—the FCA falls under the control of Her Majesty’s Treasury. I shall go into greater detail later, but I want to meet HMT to raise with them some of the concerns that have been voiced today in the House about the FCA and whistleblowing policy.

Norman Lamb

I thank the Minister for her very kind comments. I am sure she will come to this, but would she agree to meet us to discuss the case for a review, because I think a review of the legislation—not just guidance—is absolutely necessary? It was a Conservative who introduced the private Member’s Bill, and it could be a Conservative Government who modernise it and ensure full protection for all whistleblowers.

Kelly Tolhurst

I am happy to meet colleagues to talk about things they would like done in this area, and I note that the right hon. Gentleman distinguished between guidance and a review, which I will come to.

I want to outline what the Government have done and what steps are being taken, though I understand that for some colleagues these have not gone far enough. We have increased the scope of the protections in whistleblowing legislation by extending them to NHS students, nurses, midwives and job applicants in the health sector. We have also fulfilled the commitment to keep the prescribed persons list up to date. In response to the recommendations from the Women and Equalities Select Committee, we have committed to adding the Equality and Human Rights Commission to the list of prescribed persons at our next annual update. It will be subject to parliamentary time, but we aim to present that to the House before the end of the year. As I outlined earlier, I will consider whether there are things we can do within that to make it clearer.

We have also introduced guidance for prescribed persons and employers to help them to support whistleblowers. The most recent reform was a new legislative requirement for most prescribed persons to produce an annual report on whistleblowing disclosures made to them by workers.

Justin Madders

I appreciate all the work that has been done, but, as I said earlier, does the 3% success rate at tribunals not tell the Government that the legislation is not working?

Kelly Tolhurst

The whistleblowing legislation at the moment is regarded as proportionate, but as new evidence comes to light and as things change, it is right that we keep these policies under review, and it is right that we have these debates in the House of Commons so that the Government can be challenged over what is happening now and how we can improve.

Dr Whitford

It has come out clearly from this debate that PIDA only allows 3% of people to get some redress—it is only some redress—so surely we require legislation that protects the whistleblower right at the start of the process, rather than trying to mop up afterwards?

Kelly Tolhurst

I understand the passion and concerns, and the statistics, but we need to implement a framework that works across all sectors, and actually in particular sectors some of the challenges are not easy. It is absolutely right that we do what we can at pace but that we also review and look at what happens in the future. That said, I take the hon. Lady's point.

The relevant prescribed persons were required to publish the first of their reports by the end of September 2018, and those were placed in the parliamentary Libraries. The second annual reports will be due by the end of this September and will also be available in the House Libraries. The reporting duty increases confidence in the actions taken by the prescribed

persons, because it enables greater transparency about how the disclosures are handled. With these improvements, we believe that the whistleblowing framework is proportionate, though I accept that as new evidence and practices come to light we will need to keep the legislation under review.

Hon. Members will be aware that the EU has developed a whistleblowing directive that we expect to be approved this summer. It is very wide-ranging and comprehensive, and we will have to consider how we take it into UK law. It could fall within the implementation period agreed under the terms of the withdrawal agreement, but, as we know, there are questions marks over that. The hon. Member for Ellesmere Port and Neston (Justin Madders) mentioned workers' rights. As colleagues knows, the Government were clear throughout the EU negotiations that we would not reduce workers' rights when we left the EU.

Whistleblowing and how we proceed in that regard is covered by the overall provision for the protection of workers in employment. I hope that Members will take that as some kind of commitment from me, at least. As for more formal reviews, it is right and proper for us to review the Government's whistle-blowing framework. It would be premature to do so now, but that does not mean that it will not happen.

I welcome the ongoing work of the all-party parliamentary group on whistleblowing, chaired by my hon. Friend the Member for Stirling and vice-chaired by the right hon. Member for North Norfolk. Officials are hoping to meet members of the APPG soon to discuss, in particular, the legislative framework and protections for workers, and to feed the results of those discussions into their internal work. I hope that my hon. Friend and the right hon. Gentleman have been able to speed up that process.

Many issues have been raised today, and I want to deal with as many of them as possible. The right hon. Member for North Norfolk talked about foster carers, and that is an issue about which I am particularly passionate. I understand the challenges faced by foster carers, and the importance of protecting people who are doing a fabulous job in looking after young people who desperately need help. Fostering services are required to have a complaints procedure and a whistleblowing policy. In addition, foster parents whose approval is terminated, or whose terms of approval are amended, have a right to challenge the decision, and the right to a review by means of the independent review mechanism. I understand that the right hon. Gentleman is to meet a representative of the Department for Education to discuss some of those challenges in more detail, and I shall be interested to hear about the outcome.

As the House will know, the Government embarked on a consultation earlier in the year. That has now closed, and we are ourselves consulting on the various elements. I know that there are certain opinions in the House. We will issue our response to the consultation very soon, but, as I have said before at the Dispatch Box, the use of NDAs in an attempt to cover up wrongdoing is unacceptable. We have made it clear that no NDA will prevent the protection of whistleblowers.

Many Members, including the right hon. Member for North Norfolk and the hon. Member for Central Ayrshire (Dr Whitford), have expressed concern about whistleblowing in the health sector. In 2016, the National Guardian's Office was created, and there is now a network of "freedom to speak up" in every NHS trust so that staff can speak up and be given advice on raising concerns with their local guardian. There is also a national helpline. Following the independent inquiry into Gosport War Memorial Hospital, the Government responded by

announcing it would legislate, subject to parliamentary time, for NHS trusts in England to report annually on the number of staff who speak up, thus increasing transparency. The Department of Health and Social Care is still considering further ways of strengthening protections for NHS workers.

I am very conscious of the time, Mr Speaker, but let me touch briefly on financial regulation. My hon. Friend the Member for Thirsk and Malton (Kevin Hollinrake) mentioned the work that he does in his role as chair of the all-party parliamentary group on fair business banking and finance. I have had many conversations with my hon. Friend about a number of issues. I understand that the Financial Conduct Authority is currently conducting two investigations of the activities of HBOS, including its communications with regulators, following issues relating to misconduct. I look forward to seeing the reports. As I have always said at the Dispatch Box, I am prepared to meet Treasury Ministers to take the matter further. The hon. Member for Poplar and Limehouse (Jim Fitzpatrick) mentioned his constituent Ms Davey. I shall be happy to meet Treasury Ministers to discuss that as well. I understand that it is a live case, and I shall be more than happy to speak to the hon. Gentleman after the debate. I understand all the concerns about the FCA that have been raised by Members on both sides of the House, and I hope they accept my assurances that I will take them forward.

On blacklisting, the Information Commissioner is opening a call for evidence on the implications of modern employment practice and recruitment and selection, and hopefully that will shed further light on what can be done. As the hon. Member for Strangford (Jim Shannon) knows, we are undertaking reform of the FRC after the independent review by Sir John Kingman.

I hope I have given some reassurance to the House in the time I have had that I am taking this issue seriously. I cannot stand here and promise Members exactly what they want, but I am prepared to promise that while I am in this post I will do what I can to work with them and address as many of their concerns as possible.

Once again I thank all those whistleblowers, some of whom might be watching our debate, who feel that they have suffered detriment for what they have done, and I also thank those Members who have made sure their voices are heard in this Chamber.

6.50 pm

Norman Lamb

This has been a remarkably well informed debate, and it is striking that a complete unanimity of view has been presented to the Minister that the law at the moment is not adequate; it is not, in her words, “proportionate”, I am afraid. We hope very much that we will convince her; I am pleased that she has agreed to meet us, but we need modern legislation that adequately protects people who do the right thing, because we all rely on them to ensure that we have the best business practices in this country and the best and safest public services. We only get those standards if people speak out, and at the moment we do not give those who do the necessary protection in order to do so.

Question put and agreed to.

Resolved,