

Written evidence from Protect (CCE0088)

15 December 2021

To The House of Lords Environment and Climate Change Committee (“the committee”),

1. This letter is Protect’s submission of evidence for the committee’s inquiry into behaviour change in the context of climate change (mitigation and adaptation) and the environment (e.g. biodiversity, water, waste and the circular economy, and air pollution).
2. Protect seeks to answer the following questions listed in the call for evidence focused on behaviour change:

E: What can be learnt from successful and unsuccessful behaviour change interventions by the UK Government and other government actors (including in other policy or geographical contexts)?

J: How should the Government consider the balance between, or sequencing of, approaches to behaviour change focused on:

- *Encouraging changes to individual behaviour;*
- *Regulatory approaches focused on individuals and/or businesses which restrict or eliminate choices; and*
- *Fiscal measures (including taxation)?*

S: How can Government and large and small businesses from across supply chains and the financial sector work together to support behaviour change?

PROTECT – THE UK WHISTLEBLOWING CHARITY

3. Protect’s aim is to protect the public interest by helping workers to speak up to stop harm and wrongdoing. We support whistleblowers by providing free and confidential legal advice. We support employers to implement effective whistleblowing arrangements. We campaign for legal and policy reform to

better protect whistleblowers. We want a world where no whistleblower goes unheard or unprotected.

4. Since 1993, Protect has operated its free, legal Advice Line offering specialist whistleblowing advice to over 3,000 workers a year. We provide consultancy and training services for employers to improve their whistleblowing arrangements and in 2020 alone the employers we worked with had between them an estimated 1.3 million employees. These experiences inform our policy work in campaigning for better whistleblowing laws and public policy.

REASON FOR SUBMITTING EVIDENCE

5. At the beginning of the COP26, talking about the climate catastrophe, António Guterres, Secretary General of the United Nations warned, "Either we stop it, or it stops us". At Protect, we recognise that whistleblowing has a vital role in preventing further environmental damage and addressing the climate crisis. However, there appear to be very few whistleblowers raising concerns about environmental damage in the UK through the prescribed persons channels.
6. Earlier this year, the largest criminal investigation conducted by the Environment Agency led to Southern Water being fined a record £90 million for 51 pollution offences over a five-year period (2010-2015)¹. The judge stated in his sentencing remarks that the company had "flagrantly disregarded the law" noting that "the evidence shows that many different employees, at site level, recognised the inadequacies of the sites and had reported these up the management chain, but to no avail. The number and nature of these reports is such that it is inconceivable that the company, at the highest level, was unaware of the problems".²
7. Workers are the eyes and ears of an organisation. They are well placed to spot early warning signs that environmental damage is likely to occur or is already occurring. However, in Southern Water, effective whistleblowing

¹ [Southern Water fined record £90m for deliberately pouring sewage into sea | Pollution | The Guardian](#)

² [Environment Agency v WATER Southern \(judiciary.uk\)](#)

arrangements were clearly lacking; where workers were speaking up, their employer was not listening.

8. Between April 2020 and March 2021, the Environment Agency only received 10 qualifying whistleblowing disclosures.³ In the same period, Ofwat, received only four qualifying whistleblowing disclosures.⁴ This is compared to 9,591 reports received by the Health and Safety Executive⁵ and 1,046 received by the Financial Conduct Authority.⁶
9. At Protect, we also receive comparatively few calls from whistleblowers raising concerns about environmental damage. In 2020, only 13 of almost 4,000 concerns we received related to environmental damage. In the past 5 years, we have had fewer than 60 cases.
10. Increasing awareness of environmental damage across industries and sectors, along with additional regulation that seeks to protect the environment, has led to a growing awareness of these issues among workers, but this needs to translate into action. For example, the Competition and Markets Authority (CMA) has attempted to address a new type of concern: greenwashing, by setting out guidance for businesses on how to comply with the law when making environmental claims.⁷ Research has already shown that 43% of employees think their company is guilty of greenwashing.⁸
11. We want workers across all industries to be aware of the protections available for those who blow the whistle on environmental damage, and we want employers to establish effective routes for raising concerns and acting on them. We think that reform of the Public Interest Disclosure Act 1998 (PIDA), the UK's whistleblowing law, is key to facilitating behaviour change in these areas. We have drafted a bill with proposed reforms to PIDA; these changes would improve the protection available to workers who raise concerns and would place a positive obligation on employers to implement whistleblowing

³ [Whistleblowing about environmental malpractice: annual report 1 April 2020 to 31 March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92424/whistleblowing_about_environmental_malpractice_annual_report_1_april_2020_to_31_march_2021.pdf)

⁴ [Ofwat Annual report and accounts 2020-2021.pdf](https://www.ofwat.gov.uk/annual-reports/annual-report-and-accounts-2020-2021.pdf)

⁵ [Health and Safety Executive Annual Report and Accounts 2019/20 \(hse.gov.uk\)](https://www.hse.gov.uk/annual-report/annual-report-and-accounts-2019-20.pdf)

⁶ [Annual Report and Accounts 2020/21 \(fca.org.uk\)](https://www.fca.org.uk/annual-report/annual-report-and-accounts-2020-21)

⁷ [Making environmental claims on goods and services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92424/making_environmental_claims_on_goods_and_services.pdf)

⁸ [You can't fool us! Employees dubious about their companies' ESG credentials | Advanced \(oneadvanced.com\)](https://www.oneadvanced.com/you-cant-fool-us-employees-dubious-about-their-companies-esg-credentials/)

procedures.⁹ Silence is not golden; we need to encourage speaking up before the harm is irreparable.

E: What can be learnt from successful and unsuccessful behaviour change interventions by the UK Government and other government actors (including in other policy or geographical contexts)?

12. Following the financial crash in 2008 and the Libor scandal in 2012, Protect conducted research into the experience of whistleblowing in the financial services sector to help to determine why whistleblowers had not come forward with their concerns. Ultimately, our research found that there was a lack of trust and transparency in the City.¹⁰

13. Subsequently, new whistleblowing rules were implemented by the financial regulators in 2016 and a significant amount of work was done by regulators to improve whistleblowing cultures in the organisations they were regulating. In 2020, we repeated our research to see if these rules had led to any progression for whistleblowing in the sector. Significantly, we found that there was much more awareness and trust by employees in the internal whistleblowing arrangements put in place by employers with 78% of whistleblowers raising their concerns internally first and being 10% more likely to raise their concerns a second time.¹¹

14. There were also negative findings from our research with 70% of whistleblowers suffering victimisation, being dismissed or forced to resign. Further, 33% of concerns were ignored, suggesting that lessons have still not been learned in the sector regarding responding to whistleblowing concerns and providing feedback. There is still more work to be done to improve whistleblowing practices and behaviours.

15. In 2021 we commissioned a YouGov survey to further our understanding of workers awareness and confidence in their employer's whistleblowing

⁹ [Protect-draft-Whistleblowing-Bill-reviewed-Dec-2021.pdf \(amazonaws.com\)](#)

¹⁰ [Silence-in-the-City-2012.pdf](#)

¹¹ [Silence in the City 2 | Protect - Speak up stop harm \(protect-advice.org.uk\)](#)

arrangements.¹² The survey produced some concerning results. It found that across all sectors only 43% of UK workers know if their employer has a whistleblowing policy and only 31% know how to raise a whistleblowing concern at work.

However, these figures were significantly higher in more heavily regulated sectors that have strong whistleblowing rules, such as health¹³ and finance.¹⁴ In the financial sector 73% of respondents were aware that their employer has a whistleblowing policy, and 50% knew how to raise a whistleblowing concern. Whilst in the medical and health services sector 65% were aware that their employer had a whistleblowing policy and 43% knew how to raise a whistleblowing concern. This shows that more stringent regulation can produce tangible benefits in terms of improving workers understanding of the whistleblowing arrangements, and when workers know how to raise concerns, they are more likely to do so.

16. Our research shows the real impact that regulators can have in implementing behaviour change in organisations through regulation and the setting of standards. With more robust standards in place, whistleblowers were more likely to do the right thing and raise their concerns and were more willing to trust internal whistleblowing processes to do this. With more people speaking up, there is more scope for concerns about wrongdoing, risk or malpractice to be prevented or rectified before they escalate to a more serious issue.

J: How should the Government consider the balance between, or sequencing of, approaches to behaviour change focused on:

- **Encouraging changes to individual behaviour;**
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- **Fiscal measures (including taxation)?**

¹² [We Need to Fix UK Whblng Law \(amazonaws.com\) p6-8](#)

¹³ In the health sector including in the NHS and independent sector providers there are [700 Freedom to Speak Up Guardians](#), their activities are overseen by a national regulatory body [the National Guardian's Office](#).

¹⁴ The Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA) jointly implemented whistleblowing rules for the financial sector (defined as deposit takers with over £250m in assets, as well as PRA designated investment firms and insurers). For details on the rules see: <https://www.handbook.fca.org.uk/handbook/SYSC/18.pdf>

17. Encouraging individuals to whistleblow, and organisations to adopt adequate speak up arrangements, is crucial to ensuring concerns are raised and addressed. Only work with robust regulation and regulatory approaches will these behaviour changes occur.
18. *An Independent Study Into Fly-tipping and Unregistered Waste Carriers in England* by Ray Purdy at Oxford University's law faculty and Mat Crocker, the former deputy director of waste at the Environment Agency¹⁵, found that one of the failures for dealing with the issue of fly-tipping and dumping was a result of it being too big a problem for the Environment Agency (EA) and local authorities to tackle with the limited funding they have. There need to be regulatory resources in order for regulators to be effective, take appropriate action on concerns and act as a deterrent for committing future wrongdoing.
19. When regulators are perceived to be ineffective, for example by not dealing with issues such as fly tipping, workers are less likely to raise their concerns with the relevant regulator. Ensuring regulators have adequate resources to perform their functions enables them to be more effective, which in turn creates public trust and increases the likelihood that whistleblowers will make contact when they have concerns.
20. Effective whistleblowing practices can enhance the ability of regulatory bodies to carry out their functions. Our guide "Principles for Recommended Practice: Better Regulators" (Whistleblowing Regulator Guide | Protect - Speak up stop harm (protect-advice.org.uk) outlines key principles and practices that can maximise the intelligence gained from whistleblowers, at the same time as minimising the harm to those raising concerns. We recognise that all regulators are different which means that best practice is different for each regulator. Whilst it is difficult to definitively know why the Environment Agency receives so few reported whistleblowing disclosures, the statistics do suggest that more could be done to encourage whistleblower's to raise concerns and reassure them that if they do, they will be protected.

¹⁵ <https://eq3pi6tq2z7.exactdn.com/wp-content/uploads/2021/07/An-Independent-Study-into-Fly-tipping-and-Unregistered-Waste-Carriers-in-England-FINAL.pdf>

21. We welcome the new Office for Environmental Protection (OEP) whose remit will expand the scope of environmental regulation. As a public body that protects and improves the environment by holding government and public authorities to account against their commitments and environmental law, and also investigates complaints about possible breaches, there is a strong possibility of whistleblowers wanting to raise concerns relevant to the OEP's functions. Whistleblowers are a vital source of intelligence as they are the eyes and ears of organisations, and so we think it is important that the OEP actively encourages and provides clear support to whistleblowers. Whilst the OEP will sit alongside other environmental regulators, we think it should become a prescribed person¹⁶ under whistleblowing legislation in order to create a streamlined system of environmental regulation so that whistleblowers can raise relevant concerns to the correct regulator.

22. Prescribed persons are regulators that the government had designated as responsible for hearing and dealing with whistleblowing concerns in their sector. It is easier for workers to gain protection under whistleblowing laws if they raise their concerns to a Prescribed Person than other external bodies. Giving the OEP prescribed person status is likely to encourage more whistleblowers to raise concerns with the OEP and feel confident that they will be protected when doing so. Additionally, prescribed persons are also required to report annually on whistleblowing disclosures made to them. These reports would provide useful data to understand how effective the OEP has been as a reporting body and it would also feed into our understanding of whistleblowing on environmental damage.

S: How can Government and large and small businesses (from across supply chains and the financial sector work together to support behaviour change?

23. Robust regulation and supportive employers both play a vital role in implementing a good speak up culture that encourages staff to raise concerns about environmental damage. However, the law does not currently place a positive obligation on employers to listen to or protect whistleblowers.

24. We think the government should require employers to meet standards for whistleblowing and follow recognised procedures. We also think that there should be tougher enforcement against employers who fail to listen or who treat whistleblowers badly. There is currently no obligation (outside of certain regulated sectors such as health and financial services) for employers to even have a whistleblowing policy, let alone a whistleblowing support system to investigate concerns, train staff in handling and managing concerns, or preventing whistleblower victimisation. Protect has drafted a bill to reform the current whistleblowing law.¹⁷ Our draft bill would impose legal duties on employers with 50 or more employees to introduce internal whistleblowing arrangements. This includes not only having a whistleblowing policy, but proactively taking steps to prevent victimisation of those who raise concerns and providing training to staff and managers.

25. In turn, we think that employers, including large and small businesses, have an important role to play in promoting whistleblowing on environmental damage. Employers should have a clear and accessible whistleblowing policy and procedure, they should create a working culture that encourages workers to raise concerns, including concerns about environmental damage, and they should listen to and protect workers who do raise concerns.

26. We think these changes would foster and encourage workers to raise concerns about environmental damage. We think this behaviour change is crucial to addressing the climate crisis. Workers are likely to be the first to spot the signs that environmental damage either is occurring or is likely to occur. Ensuring that workers raise these concerns quickly, and are listened to

¹⁷ [Protect-draft-Whistleblowing-Bill-reviewed-Dec-2021.pdf \(amazonaws.com\)](#)

when they do so, could prevent further damage or stop harm before it happens.