

DAMAGE CONTROL:

BLOWING THE WHISTLE ON THE WHISTLEBLOWING SUPPORT INDUSTRY



---AN EXCLUSIVE REPORT BY TRUTH DEFENCE---

IN ASSOCIATION WITH SHADOW WORLD INVESTIGATIONS

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Truth Defence is a collective of activists, lawyers, creatives, journalists, academics and citizens concerned about the spread of misinformation online, in traditional media, and in political advertising and campaigning. We are equally concerned by the increasing use of defamation and other civil and public law procedures for politically-motivated purposes, especially in the online sphere.

Shadow World Investigations undertakes path-breaking investigations into cases of grand corruption, corporate malfeasance and militarism, predominantly but not exclusively in the global arms trade. These case-studies are used to highlight the blurred lines between business and state, and to indicate the legal and political reforms that are needed to halt the corrosive impact of criminal and institutional corruption.

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EXECUTIVE SUMMARY

Whistleblowing – the act of disclosing wrongdoing – is fundamentally a public good. Without it, we would know much less about systemic corruption in the banking sector, massive off-shore tax evasion, expansive state surveillance regimes, the true human cost of wars, and abuses of power of all kinds and in all types of organisations and institutions. In an age when corporate and government business is increasingly conducted without any formal paper trail, the act of truth telling by insiders is more essential than ever in order to meaningfully hold the powerful to account.

But this fundamental democratic and public interest function of whistleblowing is under threat. Since 2010, both the US and UK governments have adopted increasingly reactionary and repressive measures in a bid to contain and deter whistleblowing, especially from within the military and security state. Both countries have been accused by UN officials of treatment amounting to torture.

Sadly it is not just the full force of the state or their employers that whistleblowers often have to contend with. This exclusive report lifts the lid on serious conflicts of interest within organisations that claim to support them, compounded by a troubling lack of transparency.

Though whistleblowers often face significant financial hardship as a result of their disclosures, including the loss of their livelihood and career, whistleblower ‘services’ have become a billion-dollar industry fuelled in particular by US legislation that has introduced various forms of ‘bounty’ for state-sanctioned whistleblowing.

There are broadly two sides to this coin. First, specialist commercial law firms have capitalised on the range of financial rewards that are on offer for particular types of whistleblowing in particular circumstances. In some cases, legal actions against employers can be effectively underwritten by the state. Second, and partly in response to this increased legal liability faced by employers, there’s been a huge growth in software companies that produce and license internal whistleblowing systems, aimed at least partly at preventing disclosures from being made public.

There is not necessarily anything intrinsically wrong with companies profiting from such services, and there is no question they have been effective in supporting the cause of some whistleblowers and some types of whistleblowing. But therein also lies the problem: there

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are serious concerns that this system effectively rewards and legitimates particular acts of whistleblowing whilst undermining others, including those that are arguably more fundamental to the public interest and democratic function of whistleblowing.

In the US, statutory protections for whistleblowers and provisions for compensation and reward heavily favour white collar whistleblowers, especially those within the financial sector. And they risk distorting incentives for whistleblowing in ways that could skew attention away from public interest disclosures. Commercial law firms are also more incentivised to take on the cases of relatively senior employees who blow the whistle compared to frontline or rank and file workers, as well as offer them relatively favourable fee structures. This is because commercial law firms take a cut of any awards for damages and these are usually pegged to the extent of the employee's salary loss. By contrast frontline workers – who are often uniquely placed to witness some of the worst excesses and abuses of power – face a double financial jeopardy. Their potential financial risk of blowing the whistle is relatively high to begin with, but is effectively increased by a system that disproportionately benefits those with higher salaries.

Existing legislative frameworks – especially in the UK – are also heavily skewed in favour of those who blow the whistle internally and, to a lesser extent, those who report wrongdoing to a regulator or ombudsman. They offer relatively little protection for those who choose to make their disclosures public. This works effectively against the disclosure of *systemic* wrongdoing and limits protections and support for those who report 'bad apples': relatively isolated acts of ethical or criminal transgression.

Yet recent history is littered with examples of systemic corruption in sectors including the banking industry, the media and the arms trade. In such circumstances it would make little sense for an employee to blow the whistle internally if they believe that senior management and even regulators may be complicit in the very wrongdoing they are seeking to expose. Not only does the public have an inherent right to know about such systemic failings, but it is usually *only* when such failings come to public attention that there arises any prospect of meaningful accountability or reform.

Consequently neither the law – nor internal whistleblowing systems provided by commercial software firms – offer meaningful protections for whistleblowers arguably when they most need it: in publicly disclosing widespread corruption or cover up. They also offer no

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meaningful protections for whistleblowers from within the military and security state. The UK's Public Interest Disclosure Act, for instance, excludes disclosures that fall foul of the Official Secrets Act, widely regarded as one of the most draconian state secrecy regimes in the democratic world.

These structural imbalances are compounded by the fact that commercial interests have become immersed in the academic community as well as the non-profit sector and entrenched in frontline efforts to lobby for legislative reforms that further their interests still. Perhaps as a result, there has been comparatively little critical attention in the scholarly literature to the problems of either bounty-hunting or internal whistleblowing systems, with notable exceptions. One recent experimental study, for instance, suggests that financial incentives risk not only undermining the moral imperative of whistleblowing, but can (paradoxically) have an inhibiting effect on whistleblowing in certain contexts.ⁱ In regard to internal whistleblowing hotlines, these are said to amount to a practice of 'speaking truth through power' in ways that can serve to constrain and ultimately neuter the public good effects of whistleblowing.ⁱⁱ

Our report focuses on one whistleblower support organisation in the UK that is at the centre of lobbying efforts for legislative reforms and which has relatively opaque links to US-based corporations that profit from whistleblowing. Since 2018, Whistleblowers UK (WBUK) has been the secretariat of the All Party Parliamentary Group on Whistleblowing but we have gathered evidence pointing to potentially endemic conflicts of interest and a troubling lack of transparency, especially in regard to the organisation's funding.

This evidence raises serious questions about the efficacy and integrity of the wider whistleblowing support network and suggests an urgent need for reforms that ensure adequate protections and support for whistleblowers who are financially disadvantaged. Above all, our report highlights the need for a major policy rethink on how to protect those who seek to genuinely disclose information in the public interest, especially in relation to systemic failures and including those from within the military and security state.

BACKGROUND TO THE UK CONTEXT

Revealing contentious information on the conduct and policies of an employer can have acute as well as chronic effects on a whistleblower's mental health, not to mention their financial well-being. Whistleblowers are often particularly vulnerable just prior to or just after

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making disclosures, before they have come to the attention of relevant authorities or the general public.

This is usually the point at which a whistleblower is most likely to seek the support of organisations claiming to protect them. One such organisation is Whistleblowers UK, started in 2012 to provide whistleblowers with much needed support and advice in deciding whether to make a public disclosure. Its founders were the late investigative journalist Gavin Macfadyen, care home whistleblower Eileen Chubb and Ian Foxley, who publicly exposed irregular payments made by a defence contractor to Saudi officials, which also implicated the Ministry of Defence.

However, the organisation soon split in 2013 after Macfadyen and Chubb resigned. According to Chubb, both her and Macfadyen left following public comments made by Foxley about the former NSA-contractor Edward Snowden and former military intelligence officer Chelsea Manning. Foxley stated that these whistleblowers ought to have taken their concerns up the “chain-of-command”, differentiating their disclosures from others by the fact “they were part of intelligence organisations who have signed up to that.”ⁱⁱⁱ

This emphasis on blowing the whistle ‘internally’ was later echoed by WBUK’s current CEO, Georgina Halford Hall, who has described the organisation as primarily concerned with creating a dialogue between employee and employer, to deal with the issue at the “earliest and lowest possible level”.^{iv}

Following the split in 2013, a new organisation was formed in 2014, WhistleblowersUK, under the direction of Halford Hall and Foxley (who subsequently stepped down from his role in 2015).^v

WBUK was instrumental in setting up the All-Party Parliamentary Group on whistleblowing in 2018 and has since acted at the Group’s secretariat. Halford Hall has referred to herself as the APPG’s director of strategy and has previously described her work with the APPG as including the amending of speeches for the Group’s members.^{vi}

QUESTIONABLE EXPERTISE

In contrast to registered charities which support whistleblowers, including [Compassion in Care](#) and [Protect](#), WBUK is a private company limited by guarantee, a legal structure that comes with relatively light obligations in regard to transparency. This has particular

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implications for financial accountability which we will return to, but there are also questions in respect of the relevant experience and expertise of the group's most senior staff.

Thomas Carl Lloyd was the Chief Executive of WBUK from 2015 to 2020 and is now credited with the role of honorary president. Although he has a professional background in policing, it is unclear whether or not he has any direct or personal experience of whistleblowing or why he was appointed to such a senior role within the organisation. Lloyd was also Head of Security for the Institute for Statecraft from 2006 to 2010. In 2018, leaked documents exposed the Institute for Statecraft as a shadowy think tank funded by the UK government's counter-disinformation programme. It is also the organisation behind the Integrity Initiative, which promoted news stories highly critical of the Labour Party on its social media feed. The WBUK website makes no mention of Lloyd's professional background or any connection to whistleblowing prior to his WBUK appointments.

Halford Hall's background and experience of whistleblowing prior to joining WBUK is also unclear and the subject of contested accounts. The WBUK website states that "Georgina set up WhistleblowersUK after blowing the whistle on financial irregularities and poor practice in a charity" and that she was "[e]ventually vindicated when investigations were concluded". However, court records appear to suggest that an Employment Tribunal claim brought by Halford-Hall against Mere and District Footprints Ltd (the charity where she was previously employed) was dismissed following withdrawal of the claim. We were unable to verify this independently but attempted to reach Georgina Halford Hall in advance of publication in order to confirm whether or not the information is accurate and also to ask if there was any evidence to substantiate the claims made on the WBUK website in regard to her whistleblowing experience. We received no response.

AN OPAQUE LOBBYING CHANNEL

There have long been concerns that APPGs have the potential to behave as conduits for lobbyists in Westminster, with the allowance of corporate sponsors pursuing specific policy objectives, and the ability for secretariats to get a parliamentary pass, and therefore access to ministers and civil servants.^{vii}

Both WBUK and the APPG for Whistleblowing have been advocating for several key policy objectives which includes the Office of the Whistleblower and something akin to the US bounty system. According to legal experts we have spoken to, this system allows specialist

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law firms to profit from whistleblowers bringing cases against their employers at a standard rate of around 20-40 percent of the amount awarded. One such firm is Constantine Cannon which has provided financial support to WBUK in its role as secretariat of the APPG, according to disclosures on the parliamentary register.

Constantine Cannon is regarded as one of the largest US law firms specialising in whistleblower cases, an area of practice that has become a billion-dollar industry in its own right. In the fiscal year ending September 2020, the Justice Department recovered \$1.6 billion in settlements and judgements from civil cases brought by whistleblowers under the False Claims Act.^{viii} Constantine describes itself as having a total of 21 US attorneys working full time on whistleblower cases, as well as having recovered over \$350 million in whistleblower rewards.^{ix x xi}

The firm established a UK branch in July 2017, after they successfully represented a British whistleblower under US legislation as a test-case. This legislation allows whistleblowers to collect between 15-30 per cent of the amount the federal government recovers on the basis of the whistleblower's information. Constantine partner Mary Inman gave an interview to the *New York Times* affirming that the company had been trying for a number of years to persuade the UK government to offer similar rewards to whistleblowers.^{xii} The firm's sponsorship of WBUK began shortly after Constantine launched its London practice.^{xiii}

Inman has also highlighted the company's on-going lobbying efforts on the issue. This includes introducing the APPG's members to individuals from the Commodity Futures Trading Commission's whistleblowing office, which provides financial incentives to whistleblowers reporting potential breaches of the Commodity Exchange Act. She links these introductions to a number of British parliamentarians later advocating for a UK rewards-based system for whistleblowers, as well as moving the issue on to the agenda of the APPG.^{xiv}

Navex Global is another US-based company which was previously cited as a sponsor of the APPG alongside Constantine Cannon.^{xv} Navex is a world leader in the supply of internal whistleblowing systems to organisations of all types and sizes. The company's primary product is 'Ethics Point', a software solution which it sells to employers to act as an internal whistleblowing hotline.^{xvi} The whistleblowing software market is growing rapidly with global revenues forecast to reach \$150 billion by 2027. Navex was acquired by private equity firm, BC Partners, for \$1.4 billion in September 2018^{xvii} and its annual revenues are estimated in the

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region of \$200–500 million.

Like Constantine, the company has only in the last couple of years started to significantly expand into Europe, coinciding with its involvement in WBUK. This includes setting up a UK branch and purchasing competitors including the Swedish WhistleB and the UK's Expolink.^{xviii}

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Although in one sense operating on the opposite side of the fence to Constantine, Navex Global's commercial interests are similarly served by bounty systems of legislation. This is because its sales pitch is heavily focused on the value it offers clients in reducing the risk of potentially costly lawsuits brought by whistleblowers. And like Constantine, Navex has been actively engaged with both the APPG and WBUK. The company's UK Sales Director describes himself as having worked with "Rt Hon. Baroness Kramer and Whistleblowers UK, advising the APPG on the strength and effectiveness of structured ethics and compliance programs."^{xx} When summarising his role, he describes himself as regularly working with the "board of Directors, Executives and Management by helping them implement a complete ethics and compliance program on a single platform."

UNANSWERED QUESTIONS

WBUK reports, in line with transparency requirements as secretariat to the APPG, that it has not received donations of over £5,000 in the last twelve months.

Previously, however, the Parliamentary register reports that WBUK received financial remuneration from Constantine Cannon LLP to act as the APPG's secretariat. WBUK valued its services, sponsored by Constantine, at between £13,501– £15,000 in 2018. WBUK's contribution to the APPG in 2019 was valued at £21,001–£22,500 which was sponsored in part by Constantine. WBUK's own abbreviated accounts reported to Companies House show an end of year bank balance never exceeding £2,300 over this period, and as a relatively small company limited by guarantee, it is not required to provide a breakdown of its profit and loss account or detail any of its expenditure.

Nor is it clear what the funds from Constantine were spent on. The obligatory income and expenditure statements published by the APPG only reports on the APPG's spending, with WBUK's contribution noted as a "benefit in kind". Similarly, both the nature and extent of support offered by Navex Global remains unclear.

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We put these questions to WBUK, as well as the UK offices of Constantine and Navex in advance of publication. But we received no response from any of the organisations.

Questions about WBUK's funding were also raised by Sir Norman Lamb MP, the previous Vice Chair of the APPG. In October 2019, Lamb stepped down from his position on the APPG citing the "extraordinary allegations" against WBUK and its repeated failure to respond to his request for further information.

CHARGING FOR SERVICES

WBUK has on a number of occasions attempted to charge whistleblowers for their services, despite making no mention of this on their website or any of the group's outreach publicity. WBUK only discloses on its website that it offers a "free, confidential helpline to support whistle-blowers in making the decision to make a disclosure", and that they are "not legally qualified and therefore cannot offer legal advice", but "can refer whistle-blowers to trusted legal and other professional services."

Truth Defence has seen a copy of a contract offered to whistleblowers which stipulates that WBUK will "provide initial assistance of up to 2 hours... to help you decide the best way forward for you without charge... thereafter we charge £100 per hour for the work that we undertake to help you recover compensation." The contract's terms also stipulate an unspecified cut of any financial reward.

A number of whistleblowers have told us that this unexpected charge for services added immense pressure in what was already an extremely stressful and financially precarious situation.

Since WBUK makes clear that it does not offer a legal or professional service, the organisation does not fall under the auspices of any regulator, leaving their fees and the quality of their service effectively unchallengeable by complainants. Nor are such costs likely recoverable by claimants in any subsequent legal action against their employers. In *Banerjee v Royal Bank of Canada*, WBUK sought £8,625 of costs as a third party "not for legal services" but "preparation time". As the organisation was neither a charity nor a regulated claims manager, the judge expressed scepticism about whether it was "lawful or contrary to public policy" to order the payment of their costs.^{xxi} The request was subsequently withdrawn.

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IMPACT ON WHISTLEBLOWERS

We have spoken to a number of whistleblowers who claim to have been neglected or exploited by WBUK at a particularly precarious and vulnerable stage in their whistleblowing journey. Some of them have already made their allegations public whilst several others have opted to remain off the record for various reasons (including impending legal cases). What follows is the story of Michelle Sweeney, a former probation officer and now Labour councillor who sought the support of WBUK in disclosing serious failings in the part-privatised probation service, which she feared were posing a grave threat to public safety.

Michelle was a probation officer working at one of the Community Rehabilitation Companies (CRC) after the part privatisation of the probation service in 2014. Under the 'Transforming Rehabilitation' programme high risk offenders were to be monitored by the remaining state-run Probation service, while lower risk offenders were handled by the CRCs.

Despite many years of experience, after being moved to a CRC Michelle claims that she was finding her work increasingly stressful and difficult to complete. She claims this was because her CRC was downgrading the risk profiles of her offenders so that they could allocate less staffing resource to such cases compared to what would be required for higher risk offenders. As an experienced probations officer, Michelle soon came to believe that medium risk offenders were being categorised as low risk and, most disturbingly, high risk offenders - who should have been handled by the National Probation Service - were being downgraded to medium risk and handed to CRCs.

Michelle says that she was initially concerned about causing a panic amongst the public, so she tried to deal with the issue through internal processes for a year. She was forced to look outside the probation service when these efforts led nowhere and she became very concerned about the possible implications and risks to public safety. Michelle explained the immense pressures she experienced at this time, describing it as 'literally like drowning'.

She eventually made contact with WBUK but claims she was all but ignored and was subsequently contacted by a personal injury law firm. After what seemed to her like an ambulance-chaser call, Michelle left feeling despondent at the lack of support for whistleblowers and subsequently warned others about her experience with WBUK.

A few months after Michelle had tried to blow the whistle through WBUK and before she had succeeded in doing so, a young man was killed by an early release offender. According to

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Michelle, this followed exactly the downgrading of risk profile that she was trying to expose with the help of WBUK.

Michelle subsequently made contact with Eileen Chubb, founder of Compassion in Care. In 2015 Eileen helped Michelle get her story out and give evidence to MPs in parliament.

Several years after she had first tried to blow the whistle Michelle's claims were vindicated by the probation inspectorate which found that "over-worked staff had avoided giving offenders the highest 'red' risk rating because they did not have the resources to undertake the level of contact and supervision this required."^{xxii} Along with her testimony to MPs, this proved pivotal in a reversal of the privatisation policy with the government announcing in May 2020 that the entire probation service would be taken back into public hands.

CONCLUSION

Michelle's story illustrates the type of whistleblower and whistleblowing that may offer relatively little in the way of financial reward, but enormous public interest value. The fact that her case appeared to have attracted minimal interest from WBUK raises serious questions about its efficacy and integrity as a not-for-profit organisation committed to the support of whistleblowers at the earliest stage of making their disclosures.

Perhaps more importantly, Michelle's story is a reminder of just how essential it is in some contexts for whistleblowers to go *public* in order to deliver meaningful accountability or reform. The failures that she and some of her colleagues were trying to draw attention to were, by their nature, systemic. As such, it is not surprising that a year spent on trying to blow the whistle 'internally' did not bear any fruit.

In sum, our report has highlighted a number of areas in both the culture and practice of whistleblowing support services that require urgent attention by policymakers, scholars and campaigners alike. Specifically in the UK context, we have shown how commercial entities that profit directly or indirectly from whistleblowing have become entrenched in an opaque channel of lobbying facilitated by the All Party Parliamentary Group on Whistleblowing, pushing for legislative reforms that are likely to benefit only a limited subset of whistleblowers and threaten to work against the interests of others, especially those with lower incomes. Furthermore, the APPG's secretariat – a not-for-profit organisation set up to

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support whistleblowers in making disclosures – has refused to answer questions about its financial links to these corporations and has attempted to charge whistleblowers an hourly fee that is not subject to any regulatory oversight, is unlikely to be recoverable in the courts, and is not mentioned anywhere on the group’s website.

Collectively these problems risk having, on balance, a chilling effect on public interest disclosures at a time when they are increasingly needed in order to expose institutional corruption and systemic abuses of power. Recent decades have seen a marked decline in resources allocated to current affairs or investigative journalism by both broadcasters and newspapers. As a result, news organisations have become increasingly dependent on whistleblowers in order to expose institutional corruption and provide the public with meaningful oversight of state-corporate power. In the absence of adequate legal safeguards and support networks for whistleblowers, the business of speaking truth to power – and democracy itself – is fatally undermined.

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ⁱⁱ du Plessis, E. M. (2020). Speaking truth through power: Conceptualizing internal whistleblowing hotlines with Foucault's dispositive. *Organization*, 1350508420984019.

ⁱⁱⁱ <https://www.theguardian.com/world/2013/jun/10/whistleblowers-snowden-truth-sets-free>

^{iv} <https://www.linkedin.com/in/georgina-halford-hall-52135065/?originalSubdomain=uk>

^v <https://find-and-update.company-information.service.gov.uk/company/09347927/officers>

^{vi} <https://www.youtube.com/watch?v=shuBav2vtiY> at minute 1:16

^{vii} <https://www.theguardian.com/politics/2017/jan/06/lobbying-inquiry-registrar-parliamentary-secretaries>

^{viii} <https://www.jdsupra.com/legalnews/doj-s-false-claims-act-recoveries-drop-8313372/>

^{ix} <https://www.prnewswire.co.uk/news-releases/constantine-cannon-announces-a-900000-whistleblower-settlement-with-luxury-uk-e-retailer-673943613.html>

^x <https://constantinecannon.com/attorneys/>

^{xi} <https://constantinecannon.com/practice/whistleblower/contact/london/>

^{xii} <https://www.nytimes.com/2017/09/07/business/dealbook/whistle-blower-law-firm-britain.html?mcubz=0>

^{xiii} <https://constantinecannon.com/2020/11/06/whistleblowing-in-the-us-and-around-the-globe/>

^{xiv} <https://constantinecannon.com/2020/11/06/whistleblowing-in-the-us-and-around-the-globe/>

^{xv} https://twitter.com/alexander_minh/status/1187466161857818631/photo/1

^{xvi} <https://www.theguardian.com/world/2019/dec/25/how-whistleblowing-became-an-industry-in-the-wake-of-metoo>

^{xvii} <https://www.bcpartners.com/private-equity-strategy/portfolio/navex-global>

^{xviii} https://www.crunchbase.com/organization/navex-global/company_financials

^{xix} <https://www.businessleader.co.uk/navex-global-continues-expansion-in-uk-with-acquisition-and-new-senior-hire/74689/>

^{xx} <https://www.linkedin.com/in/manish-kainth/>

^{xxi} https://assets.publishing.service.gov.uk/media/5a294cc5ed915d458b922f1d/Mr_J_Banerjee_v_Royal_Bank_of_Canada_-_2200415-2017_Preliminary_Costs.pdf

^{xxii} <https://www.ft.com/content/32d66096-35e9-11e9-bd3a-8b2a211d90d5>



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