

# ACTION THROUGH REGULATORS IN THE UK

Oslo 14 -15 February 2019

Paul Stephenson

# Life without a regulator – ‘*An Enemy of the People*’ by Henrik Ibsen

- Dr Stockmann, medical officer at his town’s spa, reports that bacteria in the water supply pose a major risk to health, and expensive and time-consuming works are unavoidable.
- The Mayor tells him that there is an alternative solution and as an employee he has no right to a different view. He sacks him.
- The editor of the paper tells him ‘if we print your report it would mean ruin for the entire community.’ Print workers are against him too for this reason.
- He organises a public meeting, but it’s disrupted. He’s ‘an enemy of the people’.

# Regulators need whistleblowers – as well as vice versa

- Regulators have the power to require change when needed.
- Regulators need to know problems in their sector in order to do their jobs properly.
- Dual role: doctors to the law-abiding, and policemen to the miscreants.
- Less stressful for WB – and for company - than going to media.

# Access limited: Art. 13 of the draft EU Directive

- Whistleblower cannot go to regulator first, with 6 exceptions:
- (a) he tried internal, but had no appropriate reply in 3 months
- (b) there are no known internal channels
- (c) he's not an employee
- (d) it's unreasonable to go internal because of subject matter
- (e) it's reasonable to think going internal would jeopardise inquiry
- (f) he's entitled to report externally by another law

# Open access: Public Interest Disclosure Act 1998

- Under section 43F, the whistleblower is protected if:
- (a) he reports to a listed regulator
- (b) he reasonably believes that:
  - the issue falls in the regulator's remit
  - the information and any allegation in his report are 'substantially true'

# Whistleblowing Commission 2013

- Found overwhelming support for the view that regulators should take more interest in the WB systems of the bodies they regulate.
- Good example of International Civil Aviation Organisation: WB part of mandatory safety system. Without it, no licence to operate.
- Proposed statutory code of WB practice. Not made statutory but now in widespread use.
- Proposed requirement for regulators to report annually on how they deal with WBs. Implemented 2017.
- Idea for the future: a WB Ombudsman – a regulator of the regulators?

# Financial Conduct Authority (FCA)

- Established 2013 (replaced Financial Services Authority)
- Regulates about 58,000 banks, building societies, insurers, credit unions and major investment firms
- Powers to impose fines (£60m in 2018), make public statements, take disciplinary action, ban financial products for 1 year, start criminal proceedings

# FCA Rules 2016 – obligations on firms

- To appoint ‘whistleblowing champion’ as non-executive director
- To inform staff of their right of direct access to FCA
- To protect confidentiality of WBs
- To provide feedback to WBs ‘where possible’
- To submit annual report to FCA on how concerns have been investigated
- To report to FCA on any WB case they lose at a tribunal
- To make clear in any financial settlement that this does not affect the right to make a public interest disclosure



# Barclays Bank

- In 2016 a WB sent letters to the Board raising concerns about the recruitment (by the CEO) of a top banker in New York.
- Letters not treated as WB report. Instead the CEO (Staley) used the bank's internal security unit to try to find WB. 'I was trying to protect a vulnerable colleague' he said.
- FCA investigated and in 2018 fined Staley £642k.
- Bank fined \$15m by US regulator.

# Labour Market Enforcement

- 3 regulating agencies:
  - Employment Agency Standards Inspectorate (in BEIS)
  - Gangmasters and Labour Abuse Authority
  - National Minimum Wage/National Living Wage unit (in HMRC)
- Overseen by a Director of Labour Market Enforcement since 2017
- Government propose to consult on idea of a single LME Agency