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Bertha Eson-Benjamin
Labour Markets Directors
Department of Business, Innovation and Skills
1 Victoria Street
London SW1

By email: bertha.eson-benjamin@bis.gsi.gov.uk

29 September 2014

Dear Bertha-Eson-Benjamin

Prescribed Persons: Annual Reporting Requirements on Whistleblowing

I write on behalf of the Employment Lawyer's Association in response to the above Consultation document.

The Employment Lawyers Association (ELA) is a non-political group of specialists in the field of employment law and includes those who represent Claimants and Respondents/Defendants in the court and employment Tribunals.

The ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to new legislation/regulations (including consultation exercises prior to legislation/regulation in the field of employment law. I chair the sub-committee on Whistleblowing (the full membership of which is set out below).

Having circulated the consultation document to the members of the sub-committee, we do not believe that we can usefully respond to all of the consultation questions other than to welcome in general terms both the introduction of the proposed reporting requirement and its content.

However, bearing in mind the policy objectives set out in the consultation document and in particular the need to provide greater reassurance to whistleblowers that action is taken in response to their complaints, we would make two specific observations on the content of the proposed reporting requirement:

- First, we believe that the relevant prescribed person should be required to record the total number of all whistleblowing inquiries in addition to those which are then determined to qualify as protected public interest disclosures. Obviously this would not include inquiries which are misdirected or trivial. They should also be required to identify in broad terms why those initial inquiries were not considered to qualify as protected public interest disclosures.

- Secondly, we believe, again in general terms, that the prescribed person should identify why the disclosure is referred to another alternative body in addition to the numbers so referred.

If it is considered that this adds unnecessary complexity to the formal reporting requirements as set out in the Regulations themselves, we would suggest that this additional information could be included in any guidance to the Regulations as being illustrative of good practice.

Finally, we note that there is no proposed remedy for non-compliance with the reporting requirements. Given the importance of the objectives set out in the Consultation Paper, we believe that at the very least there should be some administrative sanction for non-compliance.

Yours sincerely

Anthony Korn

Members of ELA Sub-committee

Anthony Korn, No5 Chambers (Chair)
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