

**BLOWING THE WHISTLE - A NEW PUBLICATION SEES IN-HOUSE
LAWYERS PROVIDING GUIDANCE ON THIS KEY CORPORATE
GOVERNANCE ISSUE**

A key part of any organisation's corporate governance arrangements should be to encourage its staff to report any serious malpractices that they observe, first to their superiors within the organisation and, if that avenue fails or is for some reason not available, to external authorities. Without such reporting, the organisation's senior management may not be aware of malpractices committed at lower levels of the organisation, the board may not be aware of malpractices committed by the senior management itself, and (if there is a complete breakdown of corporate governance in an organisation) the organisation's owners, creditors, regulators, or other stakeholders may not be aware of the board's own complicity in the malpractice. To date, in-house lawyers have had relatively little specific guidance to help them in defining the part that they should play in helping their organisations to implement an effective whistleblowing policy, or on their own situation if they need to blow the whistle themselves.

The Corporate Governance Committee of the Commerce & Industry Group (the Law Society's recognised body for in-house lawyers) has just published a report which seeks to provide such guidance. The Committee, whose members represent a cross section of business sectors and organisations, has been active in providing guidance to in-house lawyers on corporate governance for several years.

"Blowing the Whistle" aims to:

- provide the in-house lawyer with an overview of the law on whistleblowing, including: whether employees have a legal obligation to blow the whistle; and if they do so, what protection the law provides them with against victimisation or other detrimental treatment by their organisations;
- provide the in-house lawyer with some guidance on how to help their organisation to implement a good whistleblowing policy;
- examine the in-house lawyer's own position as a whistleblower, especially: Whether they have a greater legal or ethical obligation to blow the whistle, than other members of staff? How effectively will the law protect them if they blow the whistle? How, if at all, should the extent of such legal protection affect their decision whether to blow the whistle? and
- identify gaps in the law protecting whistleblowers.

The report finds that there are indeed some gaps in the law, as a result of which individuals may find that they are required to blow the whistle but are not protected by

the whistleblowing legislation; and in some cases in-house lawyers may have greater obligations than other staff to blow the whistle, but may have less (or no) protection.

Compliance officers and money-laundering reporting officers are particularly exposed, because they may have to make disclosures outside of their organisations, and this was not contemplated when the Whistleblowing legislation was drafted. The Committee suggests that the legislation should be amended to protect individuals who are complying in good faith with their obligations to make external reports.

In the case of in-house lawyers, there is a particular problem with a “legal advice privilege” exception to the Whistleblowing legislation, which would apply even though their disclosure of a malpractice is made within the organisation (for example, to the board).

Simon Welch, who succeeds Bruce MacMillan as Chairman of the Committee, said:

“The Committee intends to build on the firm foundations laid down by Bruce MacMillan and Adam Eades. Our aim is to maintain and develop our support for in-house lawyers so that they are equipped to carry out the ethical imperative and regulatory impetus that Corporate Governance demands. Our last publication, *A Fine Line*, tried to help in-house lawyers to define the scope and limits of their role and responsibilities by stating basic principles which can be applied to the legal function of any type of organisation in the UK, and to set standards which any competent in-house legal function can aspire to. Our latest publication, *Blowing the Whistle*, aims to provide in-house lawyers with guidance on one of the most sensitive corporate governance topics of all. It highlights some gaps in the legal protection available to whistleblowers, and points that in-house lawyers may be more exposed than other members of the organisation’s staff if they have to blow the whistle. We believe that this publication is an important contribution to understanding the in-house lawyer’s role in corporate governance.”

“Blowing the Whistle – Guidance to In-house Lawyers in England & Wales on Whistleblowing and Corporate Governance” can be downloaded at www.cigroup.org.uk/Regions_corp_gov.asp.

NOTES FOR EDITORS:

The C&I Group Corporate Governance Committee is a committee of the Commerce & Industry Group, which represents the interests of in-house lawyers. The Committee provides a forum for in-house lawyers to consider issues specific to them in relation to corporate governance, and its members give their time freely. The Chair of the Committee is Simon Welch, Group Secretary & Legal Counsel (Business Risk) of West Bromwich Building Society and the Deputy Chair is David Haig, Compliance Officer of Banque AIG, London Branch.

In May 2005, the Committee, in conjunction with Wragge & Co, published *“Reconciling the Irreconcilable”* which discussed the uncertainties that exist amongst in-house lawyers and their employers about the roles that in-house lawyers play in ensuring good corporate governance in their organisations - in particular whether they should be the “conscience of the company” with a legal, professional or moral duty to keep their organisations on the right path, or alternatively trusted advisors on specific legal issues put to them by the organisation’s management.

In July 2006, *‘A Fine Line’*, took this dialogue substantially further, aiming to help in-house lawyers (and their internal clients) to understand what the in-house lawyer needs to do to ensure

good corporate governance in his/her organisation; and assist the in-house lawyer and his/her management to understand the scope and limits of the in-house lawyer's role and responsibilities.

The current members of the Committee are:

Simon Welch, West Bromwich Building Society, Chairman
David Haig, Banque AIG London Branch, Deputy Chairman
Nina Barakzai, Towers Perrin, Forster & Crosby Inc.
Maxine Chow, LGC Group Holdings plc
Lola Emetulu, Vodafone Group Plc
Bruce MacMillan, Dell EMEA
Jean-Paul Rabin, The Capita Group Plc
Ian Scolah, Morley Fund Management Limited
Maria Seale, Transport for London
Vanessa Sharp, KPMG LLP
Richard Tapp, Carillion plc
Simon Graham, Wragge & Co LLP
Colin Leaver, Simmons & Simmons
Roger McCormick, London School of Economics

Further information about the Committee can be found at:

http://www.cigroup.org.uk/Regions_corp_gov.asp