Courage when it counts

Annual Report 2013

Advice Centre for Whistleblowers in the Netherlands
Foreword

2013 was a significant year for whistleblowers. Matters brought to light by whistleblowers, both in the Netherlands and internationally, led to increased public interest in whistleblowing. This public interest is justified. Besides touching on the difficult position in which whistleblowers sometimes find themselves, public attention has focused on the wrongdoing they revealed. This is as it should be. In an ideal world, everything should go well for the whistleblower.

It has become clear to us over the past year that for many whistleblowers things do not go well. In the whistleblowing cases in which the Advice Centre was involved, only one in four whistleblowers stated that he had not experienced any disadvantage as a result of raising his concerns. This proportion needs to increase. We have worked hard to achieve this during the past year and we will continue to do so in 2014. Expert advice and proper support are essential. Separating the wrongdoing from the individual situation and formulating one’s words carefully when raising a concern increase the likelihood of the concern being followed up properly.

2013 saw the Advice Centre for Whistleblowers developing into a professional organisation with increasing public recognition. Whistleblowers showed that they were aware of our existence. The number of people contacting us at an early stage, before they had taken any action, increased from 14% to 41%. This early contact is of great importance. It enables us to advise and support the whistleblower from the beginning, making it more likely that a concern will be properly followed up.

Our staff have put a great deal of effort into their work and achieved significant results. The people who came to us for support made it clear, in their responses to our customer satisfaction survey and on other occasions, that they felt we gave them the assistance they needed. The Committee is extremely grateful to the office staff for their efforts.

In addition to whistleblowers, companies and other organisations also contacted the Advice Centre. It became apparent that there is a general demand for practical advice. Increasingly, the motivation behind this has less to do with mere compliance with the applicable laws and regulations and more to do with a realisation that developing an effective policy on whistleblowing offers an opportunity to improve the quality of the organisation. It is our hope that this will ultimately lead to better treatment of whistleblowers. They should be valued and shown in a positive light.

So that this annual report is not confined only to our own experience, we have included a number of interviews giving the whistleblowers a voice. These interviews offer an insider view of the problems that whistleblowers encounter and show how the Advice Centre has been able to advise and support them.

In the past year we have gained a great deal of experience and made various findings. Based on these findings, we have formulated a number of recommendations. All are mentioned in this annual report, but one recommendation takes priority. The Committee requests the Ministry of the Interior and Kingdom Relations (BZK) and the Ministry of Social Affairs and Employment (SZW), under whose joint authority it operates, and the Dutch Parliament to convert the Temporary Decree establishing the Advice Centre into permanent legislation, guaranteeing the availability of advice and support to whistleblowers in the future. Society owes it to whistleblowers. After all, they show courage when it counts.

The Committee

Martin van Pernis (Chairman), Edith Snoey, Onno van Veldhuizen
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Provisional recommendations

In the past year we have gained experience of advising and supporting whistleblowers and in the process we have made a number of findings. These findings form the basis for a number of provisional recommendations, which are set out in this annual report.

Interviews and photographs

The Advice Centre for Whistleblowers believes that it is important to allow whistleblowers to tell their story. We have therefore included three interviews with whistleblowers in this annual report. For confidentiality reasons, the interviews have been anonymised and certain details have been omitted. The photographs in this annual report form part of the Advice Centre’s “Courage when it Counts” campaign. These photographs do not depict our clients; models have been used. The quotations are taken from the interviews.
1. Summary

In this summary we set out our most significant findings during 2013. Based on over a year’s experience as an Advice Centre, we describe the way in which organisations in the public, semi-public and private sectors deal with concerns about wrongdoing and the people who raise them.

Advice in practice

Since our establishment in late 2012 we have gained a great deal of knowledge and experience of whistleblowing in the Netherlands in practice. In 2013, 435 people contacted the Advice Centre for Whistleblowers. Approximately three-quarters of them asked the Advice Centre for advice. The others had a simple request for information or were looking for someone to listen to them or give them a platform. 61 cases involved a genuine whistleblowing matter. The Advice Centre provided these 61 whistleblowers with guidance during the past year, in many cases intensively. We were in daily contact with some whistleblowers. In those cases, detailed legal advice was provided. However, an advisor is much more than just a legal counsel. In many cases, the advisor is the only person to whom the whistleblower is really able to talk about his case.

The highest proportion of the concerns raised about wrongdoing related to the healthcare sector (31%), followed by the ‘local council’ and ‘industry’ sectors (both 10%). Many whistleblowing cases involve an international element, so it is important to investigate the possibility of establishing international arrangements to protect whistleblowers.

In some cases, whistleblowers approached the Advice Centre after they had begun to experience negative consequences as a result of raising a concern. For this reason, the Advice Centre emphasises that it is important for people with concerns about wrongdoing to ask us for advice at the earliest possible stage. This allows us to give the whistleblower the best possible guidance about the correct steps to take. We have seen a considerable increase in the number of people asking us for advice at an early stage.

We have observed that in some whistleblowing cases legal advisors (lawyers in private practice, legal counsel at legal assistance providers or union legal counsel) were insufficiently aware of the special position applying to whistleblowers. For civil servants, there is currently an explicit statutory provision protecting them against unfair treatment as a result of raising concerns about suspected wrongdoing (provided that such concerns are raised according to the proper procedure). The Advice Centre believes that it is important that whistleblowers in all sectors should be protected by statute, by the adoption of explicit statutory provisions to this effect. Although in practice even statutory protection is not always sufficient, it is a significant step in the right direction.

Out of the 324 people who asked us for specific advice in 2013, we concluded that 217 cases could not be classified as involving whistleblowing. We assisted these people either by listening to what they had to say or by referring them to the appropriate organisation. Not all those who approached the Advice Centre were individuals. 21 employers also came to us for advice in 2013. We believe that this is evidence that employers, too, are increasingly aware of the importance of whistleblowers.

Companies and organisations need to make proper provision for whistleblowing
It can often take a long time before concerns about wrongdoing (or suspected wrongdoing) are raised. In some cases they are never raised. A significant factor in the decision not to raise such concerns is the fear of losing one’s job. Sadly, the evidence shows that in many cases such fears are not without justification. Out of the 61 whistleblowing cases in which the Advice Centre gave advice in 2013, 48 whistleblowers raised their concerns internally or externally, either before or after coming to us for advice. One in four whistleblowers have stated that they did not experience any negative effects. For example, arrangements were made that allowed the whistleblower and the organisation to continue their relationship.

Enabling whistleblowers to raise concerns safely is not just important for the whistleblower, it is vital for the organisation itself. It offers the organisation the opportunity to investigate the wrongdoing and if necessary to take appropriate action. This ensures that potential whistleblowers do not feel obliged to take action by raising their concerns publicly. The Advice Centre therefore considers it important that companies and organisations, as a minimum, have proper, accessible whistleblowing policies, handle any concerns raised in a satisfactory and pro-active manner and ensure that independent investigation takes place. The creation of a safe environment for raising concerns, supported by the organisation’s management at the highest level, is of critical importance.

Regulators need to be more aware of the special position of whistleblowers

There are a great many regulators in the Netherlands and this number continues to increase. The Advice Centre assists people in selecting the correct regulatory body to report their concerns. With many regulators we have made arrangements about the way we work together. In some cases we encounter the situation where investigation agencies have only limited capacity available. On other occasions, the duration of an ongoing investigation has been a problem for the whistleblower. In yet other cases, a regulatory body’s overly-formal attitude has caused considerable frustration and uncertainty for the whistleblower. We have drawn regulators’ attention to the special position of whistleblowers. The application by the Dutch public prosecutor to have its own case against whistleblower Ad Bos declared inadmissible is significant and at the very least shows an awareness on the part of the public prosecutor of the position in which whistleblowers find themselves.

Whistleblowers should be able to raise their concerns to the press

The Advice Centre has been in touch with Puleaks because we believe that it is important that whistleblowers using the Puleaks website are warned about the risks of leaking information anonymously. We believe that Puleaks is primarily useful for whistleblowers who have exhausted all the options; if reporting concerns internally and externally has not resolved the wrongdoing, it should be possible to raise these concerns to the press.

The United Kingdom deals with this situation in the Public Interest Disclosure Act 1998, which provides for a system of ‘protected disclosures’. Such a system should be introduced in the Netherlands as well. Certainly in view of the fact that whistleblower dismissal cases in the Netherlands often involve the issue of whether a whistleblower was entitled at a certain point to raise his concerns externally or approach the press.

Communication and information
The Advice Centre is tasked with providing information and communicating its findings and has carried out these tasks in various ways in the past year. The Advice Centre was frequently requested to provide information about whistleblowing and about the Advice Centre’s activities. The Advice Centre is also actively involved in a number of European associations representing the interests of whistleblowers (including the Whistleblowing International Network (WIN)).

In the past year, the draft legislation for a ‘House for Whistleblowers’ has been debated in the House of Representatives of the Dutch Parliament. In advance of the debate, the Advice Centre sent two letters on the subject, addressed among others to the initiators of the proposed legislation and the members of the House of Representatives. In these letters we emphasised the undesirability of combining the roles of investigation and advice in one organisation.

Once again in 2013, the focus in the media was often on the negative consequences of raising concerns, with the effect that the wrongdoing itself received little attention. The Advice Centre has sought to find a way of improving public perception of whistleblowers. We have chosen an image that evokes associations with a vulnerable hero who overcomes his doubts and raises concerns about wrongdoing. In the course of the coming year, this campaign will be conducted through various media under the Advice Centre’s new motto: Courage when it counts.

What others say about the Advice Centre

The Advice Centre has made an active contribution to the exchange of knowledge and experience within the field of ethics and integrity and has established a sound reputation in this area. This is illustrated by the comments of a number of stakeholders. On average, our clients stated that they were ‘satisfied’ to ‘very satisfied’ with the Advice Centre. At the same time, we have observed signs that some parties question whether the Advice Centre is sufficiently independent. These doubts are based on the fact that the Advice Centre has been set up and is fully financed by the government.

Looking to the future

In the coming year, the Advice Centre will continue to provide advice and support to whistleblowers. To perform our activities to the highest possible standard, we consider it important to exchange expertise and experience on various levels with experts in a number of areas. For this reason, we are setting up a Board of External Experts in 2014.

Two other important matters planned for 2014 are the review of the Advice Centre and the conference that the Advice Centre is due to organise in collaboration with several other organisations. During the conference we will share our main findings and recommendations with an audience that includes employers and journalists. We will also include more information aimed at employers on our website.

“Each time anything happened that was in any way related to my raising my concerns, I was able to contact my advisor again immediately.”
Interview

He took up a position at a government institution where legislation and regulations were being breached. He thought he was doing a good thing by questioning this and ended up being dismissed. Court proceedings are currently in progress with respect to his dismissal.

Did you know what you were getting into when you raised the alarm?

Not at all. Shortly after I entered employment I had written an internal document in which I mentioned my criticisms of the way in which certain legislation and regulations were being breached. My manager responded in writing that he agreed with what I was saying and another manager had also informally commented that he could see my point. In the first few months that I worked there, I received a lot of compliments. All this made me feel I was in a strong position.

What went wrong?

A new permanent manager joined the organisation. It then emerged that the department that had been working according to this system for years had taken offence at my comments. I was called in and given a talking-to. I then received a letter from the management stating that my views differed from those of the organisation and that the management assumed that from now on I would express the views of the organisation. In a subsequent interview with the director I was told: ‘This will end badly for you.’ That was not what I had expected.

What did you do then?

I raised my concerns with an external regulator. At a certain point, that organisation referred me on to the Advice Centre for Whistleblowers. I didn’t just want to have my concerns investigated; I wanted advice about what else I could do. When the regulator told me that they were unable to keep my identity secret because they wanted to give both parties a hearing, I decided not to proceed. I was afraid of reprisals if my identity were discovered. At work, I became involved in a mediation process and I hoped that everything would work out. At first this seemed likely, but in the end I was put under pressure to perform my duties in a specific way that I did not consider acceptable. I was checked up on all the time and also experienced harassment. The next step was dismissal, on the grounds that my performance was unsatisfactory.

How do you view your dismissal?

A court case is currently in progress against my dismissal, all of it prompted by the fact that I questioned the breach of the legislation and regulations. I expect the case to be heard before the summer. An investigatory body has produced a report stating that I am recognised to be a whistleblower, but that in the end the organisation I worked for has not done anything seriously wrong. The investigatory body says that the regulations are ‘very complicated’. I’m keen to hear what the court finds.
Surely the court will conclude that you were simply doing your job?

I agree. I believe that I am a whistleblower and that my performance was satisfactory. The organisation I worked for says ‘you’re not a whistleblower and you didn’t perform satisfactorily’. Now the investigatory body has acknowledged that I am a whistleblower, my former employer will say ‘OK, so you’re a whistleblower, but you still didn’t perform satisfactorily’. It’s now up to the court to decide.

Don’t you wish you hadn’t said anything?

I don’t think so. I’m nearly 60 and I’ve had good appraisals all the way through my career. I just wasn’t prepared for this. If we had taken a bit more time and listened to each other a bit better, without any power play, we might have been able to understand each other’s positions better. But I was so shocked by the way I was told off. I responded very emotionally. This escalated within a week. When I was told that my views were undermining the organisation’s objectives, there was no longer any going back.

Did the way you felt about going to work also change suddenly?

It did. Fortunately I have a very sympathetic wife, with a great capacity for empathy. I was very stressed following the interviews with my managers. The situation at work became more unpleasant and awkward every day. Luckily, my wife understood and really sympathised with me. We talked about it a great deal. The pressure was immense and I dreaded going to work. She has given me so much support and still does to this day.

How was the support you received from the Advice Centre?

Credit where credit’s due, it was really great. Heart-warming, professional, I can hardly find the words to do it justice. I can’t give it anything but top marks. I wouldn’t have known what to do if it wasn’t for the Advice Centre. I found the two investigatory bodies that were involved in my case to be, both literally and figuratively, extremely distant and business-like, focusing purely on the investigation, on the complaint. What they lack is the compassion and the understanding. What I experienced from the Advice Centre was compassion, sympathy and assistance in coming up with solutions, or even on some occasions simply mental support. A combination of both practical and mental support. The Advice Centre sees both the human side and the specific details of the concern raised.

What advice would you give to anyone wishing to raise concerns about wrongdoing at their work?

If you are going to raise a concern, make sure you have good legal assistance insurance, because I didn’t. Or union membership, I didn’t have that either. That’s the first thing. And secondly, try to find people sympathetic to your views; take it very slowly. Don’t just find out your immediate manager’s position, sound out the senior management or the board as well. With hindsight, I underestimated this aspect. I had no idea that raising my concerns would cause so much commotion. I thought that others shared my views, but the reality was very disappointing. So make absolutely certain that that support is really there. If your organisation has a culture in which people protect each other and
know each other socially, excluding others, then you really need to watch out. Being a whistleblower isn’t easy, but I didn’t feel I had a choice.

For confidentiality reasons this interview has been anonymised and certain information has been omitted.

“I had no idea that my raising my concerns would cause so much commotion. I thought that others shared my views, but the reality was very disappointing.”
2. The Advice Centre for Whistleblowers

The Advice Centre for Whistleblowers provides advice and support to whistleblowers in the public, semi-public and private sectors on the actions they can take to raise their concerns about wrongdoing. Our goal is for whistleblowers to be able to raise concerns about wrongdoing without suffering any negative effects themselves as a result.

The Advice Centre is an independent organisation operating on a strictly confidential basis and the legal services provided are free of charge. The Advice Centre for Whistleblowers was established by the Ministries of BZK and SZW on 1 October 2012. The Advice Centre was established partly in response to representations by employers’ and employees’ representatives, united in the Labour Foundation and the Council for Public Sector Personnel Policy. The Advice Centre has been provisionally set up for a period of three years (ending in July 2015) and will be reviewed in 2014 by the bodies under whose authority it operates.

Tasks

Our tasks are described in the Temporary Decree establishing the Advice and Referral Centre for Whistleblowers Committee dated 27 September 2011 (including explanatory notes). Article 3 provides for the following tasks:

a) on request, to provide information and advice on and offer support with possible follow-up steps to anyone who suspects wrongdoing that affects the public interest in:
   • a business or organisation where he works or has worked; or
   • any other business or organisation if he has obtained knowledge of the possible wrongdoing through his work;

b) to identify from the information available to it by virtue of its task as described in paragraph a) trends and patterns that cannot be traced back to an individual and to communicate its findings to the relevant organisations;

c) to provide general information about dealing with possible wrongdoing.

We report annually to the Ministers of BZK and SZW, to the Senate and the House of Representatives of the Dutch Parliament and to the employers’ and employees’ representatives.

Public Concern at Work

When establishing the Advice Centre, we looked to the British organisation Public Concern at Work, which has more than 20 years’ experience of advising whistleblowers. It is important to note that the United Kingdom has national legislation on whistleblowing (the Public Interest Disclosure Act 1988), which includes provisions protecting whistleblowers against unfair treatment (including dismissal).

Organisation
The Advice Centre for Whistleblowers is made up of a supervisory committee and a general office, both fully dedicated to providing support for whistleblowers. The office staff (5.8 FTE) man the advice line and advise the individuals who contact us. The committee has three members (0.7 FTE), with backgrounds in business, employees’ organisations and government. The committee and staff work together to determine the Advice Centre’s policy. The advisors also involve the committee in complex whistleblowing cases. The number of FTE in the office has increased by 1.4 as compared to 2012 (due to the addition of a fourth advisor and a front-office assistant). In 2014, the Advice Centre will also set up a Board of External Experts.

Budget

The Advice Centre for Whistleblowers is funded by the Ministry of BZK and the Ministry of SZW and had a budget of € 850,000 in 2013.

Accessibility and response times

The Advice Centre for Whistleblowers can be contacted by telephone on week days between 9 a.m. and 5 p.m. By telephoning 070 722 2400, people can discuss concerns about wrongdoing with us directly. Outside office hours, they can send us an email or submit the contact form on our website (www.adviespuntklokkenluiders.nl). Anyone who contacts us in writing will receive confirmation of receipt within one working day. In that confirmation we will state when they can expect either further contact or an initial response. Straightforward questions will receive an immediate response, where possible. Where the question or request is more complex, we will review this and, in most cases, provide an initial response regarding the issues raised within a few working days.

Training

All our advisors are trained legal counsel with experience of working in legal practice. To ensure that we perform the tasks assigned to us in the best possible way, the office staff regularly attend in-service training. For example, in 2013 they attended training courses on interviewing techniques. Our advisors have also received training on relevant aspects of the law, integrity and whistleblowing.
3. Advice in practice

Since its establishment, the Advice Centre for Whistleblowers has provided advice and intensive support in 61 whistleblowing cases. However, the Advice Centre’s practice covers a great deal more than this.

Initial contact

In 2013, 435 people contacted the Advice Centre for the first time. They had a variety of reasons for contacting us. 324 people asked us for advice on a specific issue. The other 111 people had a simple request for information or were looking for someone to listen or a platform to draw attention to specific matters affecting society.

Of the 435 people who contacted us, 40% worked in the public sector, 23% in the semi-public sector and 26% in the private sector. The 11% of cases that we categorised as “other” related to other situations, for example cases in which all kinds of general issues affecting society were raised.

In an initial interview (often by telephone) the potential whistleblower tells his story. The advisor listens, asks questions and, if necessary, asks for further information to be supplied. During this interview the advisor generally explains the services that the Advice Centre can and cannot provide. For example, the fact that the Advice Centre itself does not carry out any investigation. Another important aspect explained by the advisor is that all information will be dealt with confidentially and the advisors have a duty of secrecy.

Services to whistleblowers

The Advice Centre for Whistleblowers considers a matter to be a whistleblowing case where:

- someone has reasonable grounds to suspect wrongdoing;
- the wrongdoing affects the public interest; and
- it occurs in a business or organisation where the whistleblower works or has worked, or any other business or organisation if he has obtained knowledge of the possible wrongdoing through his work.

Between its establishment and 31 December 2013 the Advice Centre classified a total of 61 matters as whistleblowing cases. We have chosen to report here the total number of whistleblowing cases for 2012 and 2013 combined because the services we provided in the whistleblowing cases that were brought to us in 2012 continued in 2013. We consider it important to provide a report on the substance of these cases, which we were not yet able to do in 2012. Of the 61 whistleblowing cases, 3 cases were concluded in 2012 and 37 were concluded in 2013. The remaining 21 whistleblowing cases are therefore ongoing in 2014. 43% of the whistleblowing cases relate to the semi-public sector, 34% to the private sector and 23% to the public sector.

A key principle of the services we provide to whistleblowers is that the whistleblower himself is always in charge of and responsible for the action that he takes. The role of the Advice Centre is to provide advice and support. In many cases, the guidance we provide is intensive.
We are in daily contact with some whistleblowers. In those cases, we provide detailed legal advice. This includes attempting to establish the precise facts of the case, the type of wrongdoing involved and how much evidence the whistleblower has to support his suspicions. We also try to ascertain what the whistleblower’s motives are, whether there is anyone else who may be prepared to join him in raising a concern and to whom he may be able to report his concern. Of course we also point out the potential risks involved in raising a concern. If the whistleblower decides to report his concern, we can assist him with putting his concern in writing so that he can report it internally or externally. If requested, we guide and support the whistleblower through the various internal or external procedures.

However, an advisor is much more than just a legal counsel giving advice on the issues involved in the case. In many cases, the advisor is the only person to whom the whistleblower is really able to talk about his case. People at home sometimes find it difficult to keep listening patiently all the time. Sometimes advising involves coaching a whistleblower, sometimes it involves correcting a draft letter and sometimes it actually involves advising on and helping to decide the best strategy for the whistleblower to take. The advisors at the Advice Centre are closely involved and committed, in a highly professional way. This close involvement and commitment is essential in providing whistleblowers with good advice.
Reporting concerns internally

In most cases, the Advice Centre for Whistleblowers advises whistleblowers to raise their concerns internally first. Of the 61 whistleblowers, 45 reported their concerns internally. A proportion of these whistleblowers had already raised the issue internally themselves; the remainder did so following our advice. In the majority of cases, concerns were reported to the executive management of the organisation (42%) or to the whistleblower’s immediate superior (38%). In 40% of cases, the issue was immediately denied or rejected. However, in 27% of cases the wrongdoing was fully or partially resolved or promises were made or agreements reached about this. In 11% of cases, an internal investigation was still in progress on 31 December 2013.

Raising concerns externally

In 21 cases, the whistleblower raised his concerns to an external organisation. 17 of these people had already raised their concerns about the wrongdoing internally first. Here again, a proportion of the whistleblowers had already reported their concerns externally before they contacted us; others reported them only after we had advised them to do so. In 16 cases, the concerns were reported to a regulator, an investigatory body, an inspectorate, the police or the public prosecutor. In five cases, the concerns were reported to various other entities, including politicians and the media. Where concerns were raised externally, in almost half of cases they were investigated and/or partially resolved.

Completed whistleblowing cases

Of the 61 whistleblowing cases, 37 were concluded in 2013. Analysing our advice in these completed whistleblowing cases, in seven cases we advised the whistleblower to raise the issue within his own organisation (although it should be noted that some whistleblowers had already raised their concerns internally) and in five cases we advised the whistleblower to report the matter to an external investigating body or another appropriate organisation. On five occasions we referred the whistleblower to a lawyer; these were cases where the whistleblower’s main objective was not to raise his concern but to obtain legal assistance, generally in order to conduct court proceedings. In twelve cases we did give the whistleblower specific advice but did not refer him on. The majority of these cases were situations where the whistleblower had already exhausted all the options for raising concerns about wrongdoing and therefore in view of our remit (advice and support in raising concerns about wrongdoing) the Advice Centre had no further role to play.

Of the 37 whistleblowers, six whistleblowers ceased to pursue the matter for personal or financial reasons. In three cases, the reasons were fear of losing their jobs and concern about the cost of legal proceedings.

International elements in whistleblowing cases handled by the Advice Centre

Many whistleblowing cases have an international aspect. For example, the Advice Centre received a request for advice from someone working for a Dutch subsidiary of a foreign company where certain regulations were systematically breached. Another example involved various foreign companies being swindled by a Dutch company. Or a report that we received about fraud at a Dutch company’s Asian subsidiary. Cases such as these can involve the laws of several countries. Not only did
Wrongdoing with international elements come to light in the practice of the Advice Centre in 2013, it also received significant media attention in the past year. Consider, for example, the horsemeat scandal, in which the meat originated from more than one country and was exported to several countries. Or the NSA surveillance scandal revealed by Edward Snowden, which involved the collection of data relating to both world leaders and ordinary citizens in various countries.

A motion relating to the position of international whistleblowers was submitted in the House of Representatives of the Dutch Parliament by the members Recourt and Schouw: the government was requested to investigate the possibility of establishing international procedures to protect international whistleblowers. We would emphasise the importance of this motion; we expect the Cabinet to respond in 2014. We monitor developments in other countries closely, as it has become clear to us that keeping up to date with these issues is of importance for our advice to whistleblowers.

Wrongdoing: the sector affected and the nature of the wrongdoing

The highest proportion of the concerns raised about wrongdoing related to the healthcare sector (31%), followed by the ‘local council’ and ‘industry’ sectors (both 10%). If we focus on the nature of the wrongdoing, the majority of cases fell into the categories we refer to as “fraud, embezzlement or theft” (24%), “conflict of interests or personal gain” (13%), “risk to health or environmental safety” (13%) and “mismanagement” (13%).

Whistleblower’s relationship to organisation

The great majority of the whistleblowers who contacted us were employees (62%) or former employees (15%) of the organisation where the wrongdoing took place. 8% were freelancers and 7% suppliers. The remaining 8% included volunteers, among others.

Table 1. Nature of the wrongdoing

<table>
<thead>
<tr>
<th>Nature of the Wrongdoing</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Fraud, embezzlement or theft</td>
<td>24</td>
</tr>
<tr>
<td>Conflict of interests or personal gain</td>
<td>13</td>
</tr>
<tr>
<td>Risk to health or environmental safety</td>
<td>13</td>
</tr>
<tr>
<td>Mismanagement</td>
<td>13</td>
</tr>
<tr>
<td>Breach of requirements or rules</td>
<td>11</td>
</tr>
<tr>
<td>Withholding information / dissemination of incorrect information</td>
<td>6</td>
</tr>
<tr>
<td>Intimidation, violence or discrimination</td>
<td>6</td>
</tr>
<tr>
<td>Misappropriation of government funds</td>
<td>5</td>
</tr>
<tr>
<td>Abuse of power</td>
<td>4</td>
</tr>
<tr>
<td>Forgery</td>
<td>4</td>
</tr>
<tr>
<td>Bribery and corruption</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
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**Table 2. Whistleblower’s relationship to the organisation**

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Employee</td>
<td>62</td>
</tr>
<tr>
<td>Former employee</td>
<td>15</td>
</tr>
<tr>
<td>Agency worker / freelancer</td>
<td>8</td>
</tr>
<tr>
<td>Supplier</td>
<td>7</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
</tr>
<tr>
<td>Volunteer</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
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</table>

**Advice at the earliest possible stage**

Experience has taught us that our advice has the greatest value when a whistleblower contacts us at an early stage. Ideally this should be before he has taken any action at all. At this stage, no position has yet been adopted by the whistleblower or the employer or investigating body and it is still possible to ensure that if concerns are raised the focus is on the wrongdoing and resolving that situation and not on other issues. At this stage we are still able to make sure that the correct steps are taken in the correct order. Particularly in cases involving other elements, such as employment law aspects and personal issues, there is a danger that when a concern is raised the focus will be on issues other than the wrongdoing reported. It is precisely in these cases that we have observed the importance of separating the wrongdoing from the whistleblower’s own situation. By doing so, and by formulating one’s words carefully when raising a concern, one can increase the likelihood of the concern being followed up properly by the employer or an external regulator. By giving a neutral account of the facts when reporting a concern, the Advice Centre attempts to reduce the likelihood of negative consequences for the person raising the concern.

Comparing the statistics for the last three months of 2012 with those for various periods in 2013, we see that an increasing proportion of whistleblowers are approaching us at an early stage, before any action has been taken. In the period from October to December 2012, 14% of the whistleblowers had not taken any action at the time when they contacted us; in the first half of 2013 this figure was 24% and in the second half of 2013 it was 41%. The Advice Centre aims to raise its public profile, to ensure that it is able to make contact with whistleblowers at an early stage.

**Legal advisors not always aware of special position of whistleblowers**

We have observed that in some whistleblowing cases legal advisors (lawyers in private practice, legal counsel at legal assistance providers or union legal counsel) were insufficiently aware of the special position of whistleblowers. In most cases the legal advisor concentrated on the aspects of the case.
relating to employment law or the laws governing civil servants; aside from a general mention of the wrongdoing, it was generally ignored. We regard this as a missed opportunity because, as already indicated above, an employment law dispute often results from the whistleblower having raised concerns about wrongdoing. Whistleblowing policies often contain prohibitions on unfair treatment or even dismissal that can offer the whistleblower some degree of legal protection at least. To ensure that sufficient attention is given to the special position of the whistleblower in an individual case, our advisors can discuss the matter with the legal advisors if the whistleblower wishes. We can assist with the drafting of case submissions, for example by referring to relevant case law or particular trends and developments with respect to whistleblowing. As a result we are contributing not only to the dissemination of knowledge on this subject, but also, and perhaps more importantly, to the creation of new (and, we hope, positive) case law in this area.

Statutory protection for whistleblowers in all sectors required

At the present time, an explicit statutory provision only exists to protect civil servants against unfair treatment as a result of raising concerns about suspected wrongdoing (provided that such concerns are raised according to the proper procedure). The Advice Centre believes that it is important that whistleblowers in all sectors should be protected by statute, by the adoption of explicit statutory provisions to this effect. It is inappropriate that statutory protection only applies to civil servants and not to employees.

There will always be employers who try to dismiss a whistleblower anyway. Although we realise that in practice even statutory protection is not always sufficient, it is a significant step in the right direction. If a statutory prohibition on unfair treatment and dismissal were to apply to employees in the private and semi-public sectors as well, this would have a preventive effect. Employers would be conscious of the fact that whistleblowers were protected.

Recommendation:

We recommend the introduction of legislation creating statutory protection against unfair treatment (including dismissal) for whistleblowers in all sectors (public, semi-public and private).

Whistleblowers who cannot afford legal assistance

In certain cases the Advice Centre has observed that whistleblowers are unable to pay a lawyer, have too high an income to be entitled to a lawyer under the legal aid scheme, are not a member of a union and do not have legal assistance insurance. Some of our clients do not feel able to raise their concerns due to worries about the significant costs involved in possible legal proceedings. We are investigating whether legal advisors or lawyers may be prepared to assist our clients on a pro bono basis. We are investigating whether there may be more legal advisors who are prepared to champion the cause of whistleblowers in this way. Of course, there are other possible options for helping whistleblowers who are unable to afford a lawyer.
Recommendation:

We recommend that any statutory provisions establishing an advisory body for whistleblowers should make provision for legal assistance for whistleblowers with respect to employment law issues.

Secrecy and confidential nature of advice

Whistleblowers frequently ask us about our duty of secrecy and the confidential nature of the advice we provide. At present, the staff and the Committee have a statutory duty of secrecy under the General Administrative Law Act and the Civil Service Act. Arrangements have also been made with the public prosecutor regarding confidentiality and we are exempted from the duty to report public office offences. The Advice Centre is also exempted from the Freedom of Information Act and complies with the Personal Data Protection Act. Given that the relationship between advisor and client is a confidential relationship and the matters discussed and documents exchanged must be completely confidential, an even more extensive duty of secrecy would be appropriate. By this we mean a statutory advisor-client privilege, such as that applying to lawyers, notaries and doctors.

This would be consistent with the statement made preparatory to the Temporary Decree establishing the Advice Centre: “Granting a form of privilege (such as that applicable to lawyers) to the staff of the institute is mentioned as a possible means of safeguarding confidentiality if a whistleblower (or potential whistleblower) makes himself known to the institute.”

The Advice Centre also observes the Dutch government’s ‘Data protection baseline’. In addition to this, we have introduced internal regulations and procedures to ensure that we exercise care and caution in dealing with information we have received from third parties.

Recommendation:

We recommend that any statutory provisions establishing an advisory body for whistleblowers should provide a full safeguard of the confidentiality and secrecy of that body.

Importance of psychological assistance

The Advice Centre has observed a need among some whistleblowers for guidance by a psychologist or coach and/or contact with other whistleblowers. This service is not among the tasks assigned to us, but we stress the importance of adequate psychological help for whistleblowers. In 2013 we consulted a number of experts in this field. We referred a number of whistleblowers who expressed a wish for contact with other whistleblowers to the Expertgroep Klokkenluiders, an organisation for whistleblowers run by individuals with personal experience of whistleblowing.

Services to persons not classified as whistleblowers

Out of the 324 people who asked us for advice about a specific matter in 2013, we concluded that 217 of these matters could not be classified as a whistleblowing case. The reasons for this were as follows: in 77 cases, the matter did not relate to a working relationship; in 65 cases, the situation
concerned was an individual one and no public interest existed; and in 30 cases no wrongdoing was involved. In the remaining cases, the call was made on behalf of someone else or some wrongdoing may have been involved but the whistleblower was unable to prove his suspicions.

Examples of requests for advice that we were unable to classify as whistleblowing cases are: people who were dissatisfied with the assistance they received from a lawyer in an employment dispute or a request from an official in politics involving integrity issues within his own party or the civil service. The Advice Centre is able to make a useful contribution in these cases. For example, by referring these people to the appropriate body (39%). In 24% of cases we advised the person to contact a legal advisor (a lawyer, legal assistance insurer or union or the Juridisch Loket, a free legal advice service). In a further 13% of cases, we were unable to advise the person. In those cases, the person did not contact us again after they first got in touch. This meant that we had insufficient information to provide the person with appropriate advice. In some cases, our contribution was simply listening to what someone had to say. Even though the services that we are able to provide in these cases is more limited than in whistleblowing cases, our impression is that we are still able to assist the people and/or organisations concerned.

When is public interest involved?

We have observed that it is often difficult to determine whether or not ‘public interest’ is involved. If no public interest is involved then the Advice Centre is unable to classify the matter as a whistleblowing case. An example is when someone contacted us about the way in which people were dismissed during a reorganisation. According to the person who contacted us, this was not being carried out properly. In times of economic crisis, some organisations try to implement reorganisations but proving that wrongdoing is taking place and that laws are being breached systematically is often a complex affair. The person in question was only able to show us his own employment file. We were unable to establish that people were being ‘unlawfully’ dismissed on a large scale or that other irregularities were taking place. There was no element of public interest. Although there may have been more going on than we were able to establish, the person reporting the situation was ultimately referred to the company’s works council. We also advised him to contact the union with respect to his own position. The individual himself considered this unfair and believed that he was a whistleblower.

Particularly in matters relating to the public or semi-public sector, those contacting the Advice Centre are quick to assume that public interest is involved. For example, where they believe that policy decisions by the management of organisations result in government money being wasted. The fact that wrongdoing may involve the government does generally mean that there is a public aspect to the matter. However, it is too simplistic to conclude on this basis that the public interest is automatically involved. The management can and must make certain decisions and in many cases such decisions cannot be classified as wrongdoing involving public interest.

It is difficult to provide general guidelines for the interpretation of the term public interest. All advice must be tailored to the specific situation and we assess on a case-by-case basis whether the facts amount to wrongdoing involving public interest.

Contact with employers
Not all those who approached the Advice Centre during the past year were individuals. 21 employers also came to us for advice in 2013. As the main aim of the Advice Centre is to provide advice and support to whistleblowers, our advice to employers was restricted to providing general information on the subject of whistleblowing and advice about the introduction of a whistleblowing policy. In a number of cases we also referred the employers concerned to the sample whistleblowing policies issued by organisations such as the Stichting van de Arbeid (Labour Foundation) and Brancheorganisaties Zorg (an umbrella organisation for the various healthcare sectors) or provided copies of these sample whistleblowing policies. The total of 21 employers referred to above does not take account of the presentations we have given to umbrella or sector organisations in which employers are represented or the many occasions when we have carried out networking with employers. Please also refer to Section 7.
4. Companies and organisations need to make proper provision for whistleblowing

Raising a concern internally is not always easy. Whistleblowers hesitate because of the potential consequences. Arrangements such as a whistleblowing policy are a significant step in the right direction.

The fact that raising concerns internally is not always easy is illustrated by a scientific fraud revealed by a journalist in 2012. The report investigating the fraud, which appeared in 2013, shows that accusations had already been tentatively made in academic circles as early as 2002 but clearly these allegations remained tentative. The conclusion of the report contains the following comments:

“There is no doubt that raising the subject of misconduct among colleagues is a very sensitive issue. It can have significant consequences for the ‘whistleblower’ and cause considerable damage to the department’s reputation. This problem cannot simply be resolved by appointing a committee or a confidential integrity advisor. The most important remedy would appear to be an open and participatory work climate, based on amicable cooperation between colleagues and transparent management.”

This quotation is consistent with three significant issues identified by the Advice Centre:

- Whistleblowers are, rightly, hesitant to raise their concerns due to the possible consequences.
- Arrangements such as a whistleblowing policy or a confidential integrity advisor are a significant step in the right direction.
- It is only really possible to create a secure internal reporting system if the entire organisation (including the management) understands the importance of such a system and encourages and appreciates it when employees raise their concerns within the organisation.

Whistleblowers’ hesitations

It can take a long time before concerns about wrongdoing (or suspected wrongdoing) are raised. In some cases they are never raised. Approximately a quarter of the whistleblowers that the Advice Centre advised and supported in 2013 ultimately decided not to raise their concerns due to the possibility of negative consequences. In a number of cases, the whistleblower’s reason for deciding not to raise his concerns was the fear of losing his job.

Sadly, the evidence shows that in many cases such fears are not without justification. Out of the 61 whistleblowing cases in which the Advice Centre gave advice in 2013, 48 whistleblowers raised their concerns internally or externally, either before or after coming to us for advice. Only 23% of these whistleblowers have stated that they did not experience any negative effects as a result of raising their concerns. Negative effects included: bullying, exclusion, going on sick leave (whether voluntarily or otherwise), transfer, demotion, not having their contracts renewed or even dismissal. Although strictly speaking people reporting a concern should not experience any negative effects of doing so, provided they follow the proper procedure, the evidence shows that this is often not the case. See Table 3.
Table 3. Consequences of raising concerns as a whistleblower

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed or contract not renewed</td>
<td>25</td>
</tr>
<tr>
<td>No negative effects</td>
<td>23</td>
</tr>
<tr>
<td>Other (e.g. business relationship terminated)</td>
<td>15</td>
</tr>
<tr>
<td>Resigned</td>
<td>13</td>
</tr>
<tr>
<td>Suspended</td>
<td>8</td>
</tr>
<tr>
<td>Reported sick (either voluntarily or otherwise)</td>
<td>6</td>
</tr>
<tr>
<td>Bullied, isolated or threatened</td>
<td>6</td>
</tr>
<tr>
<td>Denied promotion or transferred</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

Whistleblowing policies and other arrangements are an important step in the right direction

Whistleblowing policies provide a code of conduct for employers and employees. If properly drafted, the matters they provide for include the procedural steps required, the standard of care that must be observed and legal protection for the whistleblower.

Whistleblowing policies must enable concerns to be raised safely and provide clarity as to the procedure to be followed. They should function as a guideline for those considering reporting a concern.

Use of language

In the course of advising whistleblowers and potential whistleblowers, the Advice Centre has reviewed a great many whistleblowing policies. In doing so, we have observed that these documents are often difficult to understand due to the large number of legal terms used and that some organisations have not given sufficient attention to the definitions of certain terms. In our view, there is considerable room for improvement. For example, a whistleblowing policy in which too many legal terms are used (good faith, bad faith, discrimination, general interest, public interest, reasonable grounds, criminal offence etc.) makes many potential whistleblowers less inclined to raise their concerns. We would recommend that where possible legal terms should be avoided or translated into language that is widely understood. In some cases, whistleblowing policies even create obstacles (linguistic or otherwise) so that they seem to be discouraging potential whistleblowers from raising their concerns.

‘No formal requirements’

Furthermore, many whistleblowing policies do not prescribe how a concern should be reported or the requirements that a report of a concern must satisfy in order to be accepted for consideration. In some cases, whistleblowing policies state that there are ‘no formal requirements’ for reporting a
concern, but in practice it actually turns out to be a requirement that the report should be made in writing. For example, in a case in which the Advice Centre advised, the whistleblower reported his concerns about the wrongdoing orally. As the organisation did not take any action in response to this report, the whistleblower felt obliged to take his concerns to an external regulator and ask them to investigate the wrongdoing. However, this external organisation referred the whistleblower back to his employer because he had not reported the matter in writing. It did so even though the files showed that the whistleblower in question had raised the issue internally on several occasions and that according to the whistleblowing policy there were ‘no formal requirements’ for reporting a concern.

Confidential integrity advisor

Another important aspect of the whistleblowing policy is the identity of the person appointed as the ‘confidential integrity advisor’ within an organisation. The term ‘confidential integrity advisor’ already indicates that this needs to be a person you can speak to in confidence and from whom you can obtain advice. In practice, the duties of the confidential integrity advisor are often allocated to the wrong individual. For example, we have seen cases where the head of Human Resources was also the confidential integrity advisor. The person who conducts the appraisal interviews and has ultimate responsibility for whether an employee remains in the organisation’s employment should not also be the person with whom confidential discussions about wrongdoing take place.

Research

As the policies we have encountered in whistleblowing cases often differ greatly, even within a particular sector, we have taken the initiative to research existing policies in a number of sectors and, on this basis, formulating proposals for improvement. The sectors concerned are secondary vocational education, healthcare and local councils. Our objective in 2014 is to discuss our findings with the parties concerned and, if possible, to present proposals to improve the policies.

Importance of a system for reporting concerns safely

On several occasions in 2013 we experienced situations where an organisation conducting investigation after concerns had been raised by a whistleblower reformulated the issue for investigation (or allowed it to be reformulated) to such an extent that no proper (or independent) investigation of the suspected wrongdoing could actually be said to have been conducted. Or where an investigation was conducted without hearing both parties’ points of view: the whistleblower simply didn’t get a hearing. Another situation that arose several times was where promises were made that the identity of the whistleblower would be kept secret but in spite of this his identity was revealed during the investigation, with predictable results.

It is therefore clear that investigations are not always conducted independently and with due care. Protection and anonymity are of great importance to whistleblowers and proper provision needs to be made for these matters. There should also be proper guarantees that any concern raised will actually be investigated – with the right intentions – and adequate feedback given to the whistleblower. Fortunately, we have heard positive experiences from whistleblowers along with the negative ones. We have also identified organisations where concerns raised were acted on, the
whistleblower was kept informed about the progress of the investigation and satisfactory measures were taken.

Of course having proper whistleblowing policies is a step in the right direction, but there are many factors influencing whether an internal system for reporting concerns will ultimately function properly in practice. In the end, the key issue is whether a culture exists in which concerns can safely be reported, without fear of negative consequences.

Reporting a concern should be regarded as a positive action that can be to the advantage of the organisation. In practice, it is all too often clear that there is resistance to this idea. Employers would do well to dispense with this resistance. After all, taking serious action in response to whistleblowing (or a sign detected at an even earlier stage) may prevent an employee from feeling obliged to raise his concerns externally, with all the associated media attention and reputational damage that is likely to ensue. So there are advantages for employers in creating a climate in which concerns can be safely reported.

From the contact we have had with companies and other organisations we observe an increasing awareness of the need for a change in culture. The Advice Centre is convinced that working together with companies and other organisations is the best way to resolve these issues. The Advice Centre intends to place more emphasis on this aspect in its own communication in 2014.

In summary, the Advice Centre for Whistleblowers considers the following matters to be of key importance:

- consideration should be given to drafting whistleblowing policies that do not discourage potential whistleblowers from raising their concerns;
- whistleblowing policies should make it clear who is entitled to report concerns (employees only or former employees and freelancers as well), exactly what matters may be reported (the nature and type of wrongdoing that concerns may relate to), to whom they may be reported and in what order;
- the policies should be discussed with and approved by the works council;
- the existence of the policies should be properly publicised and they should be readily available for consultation (preferably on the organisation’s website);
- consideration should be given to the training required by those persons to whom concerns may be reported (such as managers and human resources staff);
- the confidential integrity advisor must be someone with whom it is actually possible to discuss matters in confidence;
- reports of concerns should be handled correctly and satisfactorily and a thorough and independent investigation into the suspected wrongdoing should be set up;
- action should be taken according to the findings of the investigation; and
- consideration should be given to the whistleblower’s position and to providing him with adequate protection.
5. Regulators need to be more aware of the special position of whistleblowers

The Advice Centre advised a number of whistleblowers to raise their concerns about wrongdoing to a regulator. This did not always progress as we would have hoped.

Large number of regulators each specialising in a different field

There are a large number of regulators and investigatory bodies in the Netherlands. As a result, people wishing to report concerns about wrongdoing often have great difficulty in identifying the correct organisation to contact. The number of regulators continues to increase. For example, it was recently announced that the Investigative Council for Integrity in the Market Sector has been established to investigate wrongdoing in the private sector.

The Advice Centre assists whistleblowers in finding the right organisation. In 2013, 21 whistleblowers, some of whom had already raised their concerns internally, reported concerns about wrongdoing to a regulator such as the Investigative Council on Government Integrity, the Healthcare Inspectorate, the Fiscal Information and Investigation Service or the police. A number of the whistleblowers who received guidance from the Advice Centre on raising concerns about wrongdoing externally had already contacted an external investigatory body on their own initiative. In some of those cases we then contacted the regulator in question; these instances are not included in the figure of 21 cases mentioned above. The Advice Centre’s website provides a referral overview showing the main organisations to which wrongdoing can be reported.

Arrangements with regulators

The Advice Centre has made arrangements with a great many regulators concerning the way we work together with those organisations. In cases where the Advice Centre has given the whistleblower guidance on reporting his concerns to the relevant organisation, we have generally made arrangements with the organisation in advance. Often the purpose of these discussions is to gain information about the possible consequences (both positive and negative) that reporting concerns externally may have for the whistleblower. This contact also enables us to ensure that the report reaches the right level within the organisation. The aim of this ‘smooth transition’ is to ensure that matters are dealt with in an active manner. The whistleblower himself decides whether he wishes to report the matter. As our contact with the organisation is based on anonymity, the regulator does not have the whistleblower’s name or details unless a whistleblower has specifically agreed to this. We have observed that whistleblowers appreciate our independent advisor role and the fact that they retain control over the situation.

Capacity, duration of investigation and formal approach

In a number of cases, the involvement of the Advice Centre has resulted in a regulator responding with a high level of urgency to a report of concerns about wrongdoing. Although we are extremely satisfied with the dealings we have with the various organisations and with the good will shown towards the special position of whistleblowers, in some cases we encounter the situation where investigation agencies have only limited capacity available. In addition, some regulators decide in
advance which issues they prioritise during a specific period. An illustrative example is a fraud case reported to a regulator at the start of 2013, involving fraudulent use of funds on a scale suspected to run to millions of euros. On 31 December 2013 this report still had not led to any investigation. Not only is this situation undesirable from the point of view of society in general, in this case it is most unfortunate for the whistleblower. In addition to being severely disappointed, he is forced to keep silent at the request of the regulator to avoid hindering the forthcoming investigation, whilst at the same time facing legal proceedings that might not have taken place if the regulator had initiated an investigation in good time.

In some cases the duration of an ongoing investigation is also a problem for whistleblowers. Each day that an investigation continues is another day of waiting and uncertainty for the whistleblower. If an investigation continues for several months, all this waiting can cause the whistleblower to lose faith in a positive outcome and become desperate. In other cases, a regulatory body’s overly-formal attitude has caused the whistleblower considerable frustration and uncertainty in wondering whether his report of concerns about wrongdoing is being taken sufficiently seriously.

Awareness of the special position of whistleblowers

As well as discussing how we work together, we have raised the issues mentioned above in our discussions with some regulators. We have drawn their attention to the special position of whistleblowers: in many cases, a whistleblower has a working relationship with the organisation about which he is raising concerns, so a swift response and tactful approach to investigations are important. The situation is complicated where the whistleblower himself has, often as a result of coercion, participated in some way in the wrongdoing that he is considering raising concerns about. When a regulator responds by saying “it’s quite likely that if you report the matter we will only take action against you and not the organisation or your boss who instructed you to do it”, this is unlikely to encourage a whistleblower who is having doubts to go ahead with raising his concern. On one occasion, the Advice Centre wrote to the investigatory body concerned to ask for a full explanation of the way they dealt with a particular matter. In the end, we were able to discuss the situation with them and hopefully whistleblowers will be treated differently by this investigatory body in future.

Recommendation:

We recommend the government to investigate whether regulators give sufficient consideration to the special position of whistleblowers.

Pronouncement by Dutch public prosecutor gives hope

As far as considering the special position of whistleblowers is concerned, the course of action taken by the public prosecutor in the criminal case against the Dutch whistleblower Ad Bos was, without going into the details of the case, a positive sign. Arguing that the public prosecutor “(...) now [takes] a different view of the appropriateness of prosecuting him”, an application was made for the public prosecutor’s own case to be declared inadmissible. In its judgment of 2 December 2013, the Court of Appeal granted this application. The “different view” in question concerns the role of the whistleblower and the public interest served by that role. Although the duration of the proceedings was also a significant factor, this at any rate shows that the public prosecutor is aware of the position and role of the whistleblower.
Interview

He performed his work at a public sector organisation satisfactorily for years until X came to work there. When X’s projects failed, X mistreated colleagues and even when X breached the duty of secrecy, the management took no action. To blow the whistle on this situation, the whistleblower had to leave his employer. ‘I have lost my faith in the public sector.’

What happened at the organisation where you worked?

The organisation I worked at needed to become more efficient in order to absorb cutbacks. At a certain point, a new colleague, X, joined our team on a temporary basis. Initially, X worked well with the other members of the team. After some time, I noticed a change in behaviour: X intimidated colleagues and neglected the work. The situation was worsening daily, so I brought it to the attention of my manager. But he didn’t take any action.

What kind of work did this colleague do?

X was responsible for starting up innovative projects. As X neglected the projects, they never got off the ground. Our employer had invested four million euros in those projects: because of X’s actions, those investments were completely wasted. Then a colleague discovered that X was breaching the duty of secrecy. This colleague informed the manager of this immediately, but again nothing happened.

What did you do then?

I went to my manager and reported the matter. But he didn’t believe me. I also suddenly received a poor appraisal from my manager, even though my colleagues were very satisfied with my work. In the mean time, X was left alone to keep on doing the same things.

Were you able to continue with your job?

No, I decided to resign my position. In the mean time, more and more of my colleagues were approaching the manager with complaints about X. In the end, this resulted in the manager taking X off the project. By then, I had been to the Advice Centre for advice. We had discussed several options. With my permission, the Advice Centre contacted a regulator. The regulator took a proactive approach to dealing with the matter. The employer then took action against X as advised by the regulator.

How do you look back on these events?

The contact I had with the Advice Centre was useful. As a civil servant, I wasn’t familiar with the various regulatory bodies. I had a lot of doubts about whether I should blow the whistle; I’m glad I did it in the end. Having an organisation like the Advice Centre is really effective.
What are your views on the role of whistleblower?

I didn’t want to damage the organisation, but I wasn’t able to stand back and watch one person have such a negative effect on an organisation. As I had resigned my position and therefore no longer needed to worry about losing my job, I took it upon myself to report the situation to a regulator. I have experienced at first hand the kind of bullying and harassment that you’re exposed to once you raise concerns. If all this hadn’t happened, I’d still be contentedly working for the organisation concerned.

How could this happen in a public sector organisation?

The organisation was undergoing a lot of changes, so temporary workers were used regularly and that leads to risks.

Do you have any advice for whistleblowers?

Make sure you record everything on paper and collect as much information as possible. Get in touch with the Advice Centre for Whistleblowers. They have the contacts you need.

For confidentiality reasons this interview has been anonymised and certain information has been omitted.
6. Whistleblowers should be able to raise their concerns to the press

As a last resort – if there really are no other options left – the Advice Centre for Whistleblowers will draw the whistleblower’s attention to the possibility of contacting the press. Since September 2013 Publeaks has offered whistleblowers in the Netherlands this option. However, in England the right to report concerns to the press is laid down in legislation.

Working together with Publeaks

On 9 September 2013 various media entities set up the website Publeaks. This website offers the option to upload information safely and anonymously and send it to the editorial staff of a number of newspapers, radio stations and television networks. Approximately 40 media organisations are now participating in Publeaks.

In the first few weeks following the launch of the website, the first reports emerged in newspapers based on information made available to journalists through Publeaks.

Discussions between the Advice Centre and Publeaks took place at an early stage because we believe that it is important that whistleblowers using the Publeaks website are warned about the risks of leaking information. The Publeaks website makes whistleblowers aware of the Advice Centre for Whistleblowers. Publeaks is also mentioned on the Advice Centre’s website and reference is made to the potential risks.

We believe that Publeaks is primarily useful for whistleblowers who have exhausted all the options; if reporting concerns internally and externally has not resolved the wrongdoing, it should be possible to raise these concerns to the press.

System of ‘protected disclosures’

The United Kingdom deals with this situation in the Public Interest Disclosure Act 1998, which provides for a system of ‘protected disclosures’. In summary, this system means that a whistleblower must in the first place raise concerns internally (to his employer). If this has no effect, a whistleblower can report the matter externally to one of the regulatory bodies (appointed by statute or otherwise). If this does not have any effect either, then the whistleblower is permitted to approach the press. The whistleblower is protected against discrimination at every stage, but there is a rule that the more publicly the whistleblower expresses his concerns the more convincing his case needs to be and the more strictly certain requirements apply. It is not difficult to see the advantages of such a system. Here in the Netherlands, too, whistleblower dismissal cases often involve the issue of whether a whistleblower was entitled at a certain point to raise his concerns externally or approach the press. Whistleblowers also regularly ask us about the legal risks of reporting concerns to the press.

The Council of Europe – which has drawn attention to the need for better protection of whistleblowers in the Member States – is also an advocate of the system of ‘protected disclosures’. Following in the footsteps of the United Kingdom, Ireland also intends to introduce a whistleblowing act based on the concept of ‘protected disclosures’.

Recommendation:
7. Communication and information provision

The Advice Centre is tasked with providing information and reporting on trends and patterns in whistleblowing and has carried out these tasks in various ways in the past year. We have provided information and explanations on matters relating to whistleblowing in general and on the activities of the Advice Centre. We have also communicated our findings regarding certain developments and patterns that we have identified in our practice to the relevant parties, such as employers. These activities have raised awareness of whistleblowing in general and the special position of whistleblowers and increased public recognition of the Advice Centre for Whistleblowers.

In the paragraphs below we explain in more detail some of the activities we have carried out in this area. It is noteworthy that as 2013 progressed the Advice Centre was approached with increasing regularity to provide information and give its views on the subject of whistleblowing and integrity or regarding reports in the press concerning these issues. The Advice Centre for Whistleblowers was contacted by a wide variety of individuals and organisations wishing to discuss the subject of whistleblowing, including individual employers, organisations for employers in a particular sector, journalists and academics.

Presentations and workshops

During the past year we have given a variety of presentations and workshops. These included a presentation given during a seminar held by the Dutch Employment Law Association. Another presentation was made to the Dutch Association of Public Sector Employers. We also gave presentations to groups of integrity coordinators, confidential integrity advisors and compliance officers and to delegations from other countries.

In addition, we attended conferences and seminars on the topics of whistleblowing and integrity. For example, we attended two international conferences on whistleblowing held in London and Strasbourg.

Networking discussions

We have conducted discussions or made arrangements for working together with various regulatory bodies, academics, organisations for employers in a particular sector, national and international NGOs and employers’ and employees’ representatives.

WIN

The Advice Centre also participates in a number of pan-European interest groups representing the interests of whistleblowers. For example, it is a member of the Whistleblowing International Network (WIN). The Advice Centre makes a contribution to WIN’s mission of sharing knowledge and expertise in order to increase appreciation of whistleblowers and improve protection for whistleblowers across national, legal, social and cultural boundaries.

Articles and interviews
In the course of the past year, the Advice Centre regularly received telephone calls asking questions on the subject of whistleblowing. Journalists made regular use of the Advice Centre’s expertise to obtain background information for articles about whistleblowers.

We also published a number of articles ourselves in industry journals and legal publications.

Various newspapers have also published interviews and articles on the Advice Centre for Whistleblowers and interviews have been given on a number of radio and television programmes.

**Proposed legislation on ‘House for Whistleblowers’ and press release**

During the past year, the draft legislation proposal regarding a ‘House for Whistleblowers’ (draft proposal 33 258) has been debated in the House of Representatives of the Dutch Parliament. Based on its experience to date, the Advice Centre for Whistleblowers drafted and sent two letters on the subject (dated 21 May 2013 and 8 August 2013) to the initiators of the proposed legislation, the members of the House of Representatives and the Minister of BZK. In these letters the Advice Centre raised a number of questions and commented on the draft legislation proposal, with the ultimate aim of achieving a whistleblowing system that will function effectively. Discussions also took place between the Advice Centre for Whistleblowers and members of the House of Representatives, including a number of the initiators of the proposed legislation. The draft legislation is currently being debated in the Senate of the Dutch Parliament.

On 29 October 2013 the Advice Centre released a joint press release with Transparency International with respect to the debate on the proposed legislation for a House for Whistleblowers, pointing out that the draft legislation presently under consideration will not create a safe place where those reporting concerns about possible wrongdoing are able to explain their concerns in complete confidence.

**Public perception of whistleblowers**

The person who coined the Dutch translation of the English term whistleblower, *klokkenluider*, which literally means ‘bell-ringer’, actually had Quasimodo, the hunchback of Notre Dame, in mind when he came up with this term. Professor of Public Administration Mark Bovens, who invented the Dutch term in the early 1990s, believed that whistleblowers were the Quasimodos of our time: like the famous hunchback, they were fighting for a just cause but were taunted and treated as outcasts.

The choice of a term with these associations had the unintentional effect that raising concerns about possible wrongdoing (and being a whistleblower) became primarily associated with the consequences that raising such concerns had for an individual personally, which were often extremely negative. Even now, those consequences are certainly not something one should overlook. But we believe that someone who raises concerns about wrongdoing deserves a different name. A name that, rather than emphasising a tragic situation and the negative consequences of raising concerns, places the emphasis on the service that such a person renders to society. A name that makes it clear that anyone can find themselves in this situation. That you discover wrongdoing at work and are unable and unwilling simply to look the other way. A normal person, but one with a special quality. Someone brave enough not to look away but to take action. Someone who steps into the firing line.
In our daily conversations with whistleblowers, we notice that the term *klokkenluider* is perceived to have negative connotations. When they hear the word *klokkenluider*, people often think of someone who deliberately decides to make something public outside their own organisation, whereas we particularly want to make contact with the people who want to raise or report something internally or are considering doing so. In this sense one could question whether the choice of the Dutch name of the Advice Centre for Whistleblowers, *Adviespunt Klokkenluiders*, is a good one.

Sometimes when one is looking for a different way of referring to something it can be useful to look to other countries. Unfortunately the Dutch-speaking Belgians, although generally known for their linguistic finesse, also use the term *klokkenluider*, but in Afrikaans, a language related to Dutch that is spoken in various countries in southern Africa, a whistleblower is known by the straightforward, clear and neutral term *bekendmaker*, meaning literally ‘one who makes something known’.

In our desire to look to the future and make progress towards a society where making wrongdoing known, ideally internally but where necessary externally, is generally regarded as a good thing, the Advice Centre is taking positive action to change the public perception of whistleblowers for the better.

To achieve this, the Advice Centre launched the campaign “Courage when it counts” at the end of 2013, focusing on the idea of an individual who reports wrongdoing as a vulnerable hero who overcomes his doubts and raises his concerns about wrongdoing. The agency Pool Worldwide prepared a series of photographs portraying individuals who are ordinary employees, but have the special quality of courage. This special quality emerges only when the situation requires it, when wrongdoing exists that needs to be eradicated in the public interest.

Our aim in producing this series of images is to provide the picture editors of the various media with an alternative for the standard images of ringing bells that currently tend to accompany reports about whistleblowers (*klokkenluiders*) in the Netherlands. The campaign material, which is explained in a short promotional video on the internet, will be made available via our website at no charge.

**Advertising campaign at end of 2013**

In advance of our campaign to improve the image of whistleblowers, we conducted a short advertising campaign at the end of 2013, placing advertisements in four industry journals (targeted at healthcare, education and the public sector).

**Website and social media**

Our website ([www.adviespuntklokkenluiders.nl](http://www.adviespuntklokkenluiders.nl)) is one of our primary channels of communication. It provides whistleblowers and other interested parties with detailed information about whistleblowing. Our library also includes relevant publications on whistleblowing. The website also describes the services we provide. Whistleblowers can use the contact forms on the site to send us information. Due to the interest in the Advice Centre that has been shown in other countries, we have added an international page to our website.

In the second half of 2013 we devoted more attention to interacting with other parties in the field of integrity using social media, particularly Twitter. We follow national and international developments relating to the protection of whistleblowers, circulate information about relevant publications and draw attention to noteworthy reports in the media.
8. What others say about the Advice Centre

In order to evaluate and, where necessary, improve our services, as in 2012 we once again asked our clients to complete a survey assessing our services. Almost all the people who contacted us in 2013 and provided us with an email address received an electronic customer satisfaction survey to complete.

Our clients

Almost all of the whistleblowers who completed the customer satisfaction survey turned out to have heard about the Advice Centre for the first time in the media or have found us on the internet. The remainder were referred to us by another organisation in the field of integrity.

In the majority of cases they stated that they had got in touch for advice and/or support or because they were looking for someone to listen to them. We asked the whistleblowers to evaluate the following aspects of our services: accessibility, speed, friendliness, commitment, taking proper care and quality of the website. From the responses we received, our general impression was that on average they were extremely satisfied with our services. The majority of the whistleblowers also indicated that they felt ‘supported’ to ‘very supported’ by the Advice Centre and that they had followed the advice we gave. More than 60% of them indicated that they would have liked to have been in touch with us at an earlier stage. A few whistleblowers stated that there were additional services that we should offer, including providing legal protection, raising a concern on behalf of a whistleblower, conducting investigation or offering contact with fellow whistleblowers.

Our other contacts (those who contacted us but we did not classify as whistleblowers) also generally stated that they had become aware of the existence of the Advice Centre and the services it offers either through the media or on the internet. In this category it was again the case that the majority of the remainder were referred to us by another organisation in the field of integrity. When asked why they contacted us, the most common responses were either to obtain advice and support or because they felt themselves to be a victim. A number of people also stated that they wanted to raise concerns about wrongdoing to us. The general impression given by the individuals in the ‘other contacts’ category was that they were satisfied with our services.

Doubts about independence

The Advice Centre has observed certain signs that some parties, including whistleblowers, question whether the Advice Centre for Whistleblowers is sufficiently independent. These doubts may be due to the fact that the Advice Centre has only been in existence for a short period so it has not yet been able to demonstrate its independence sufficiently. We are also aware that one of the factors giving rise to these doubts is that the Advice Centre has been set up by the government and is fully financed by the government. This view is equally likely to be held by potential whistleblowers who are simply unaware of the way government functions and those who have actually had a particularly negative experience of government (for example, when working in the public sector). The basis for the establishment of the Advice Centre and the way it is funded are matters that we cannot change at this time. However, in all our actions and statements we function completely independently.
Recommendation:

We recommend that any statutory provisions permanently establishing an advisory body for whistleblowers should fully safeguard the independence of that advisory body.

Statements by some stakeholders

In the course of 2013 there has been much activity in the field of integrity and the Advice Centre has played an active role in these developments, in particular by sharing the expertise we have gained in this area as widely as possible. Statements made by various stakeholders and players in the field of integrity have led us to conclude that this active role is perceived as a valuable addition to existing knowledge and experience. It is with some pride that we observe that the Advice Centre has now established a sound reputation in the field of integrity.

This recognition is reflected by the references to the Advice Centre for Whistleblowers on a wide range of websites, including those of the Juridisch Loket (a free legal advice service), WIN (Whistleblowing International Network), Publeaks (a service for leaking information to the press anonymously), the Investigative Council on Government Integrity, the Dutch National Ombudsman, the Dutch Crimestoppers organisation Meld Misdad Anoniem and the Dutch Safety Board. We observe that the experience and knowledge we have gained through our contact with whistleblowers is also regularly referred to by others, for example in articles in the press and industry journals and in radio interviews.

Complaints

We offer people the opportunity of submitting an official complaint about the Advice Centre for Whistleblowers, for example concerning the services we provide or specific advice we have given. The complaints procedure is available to view on our website. Although a number of letters about the Advice Centre’s services were received by the committee personally, no complaints were submitted in 2013.

Press release by the Labour Foundation and the Council for Public Sector Personnel on 10 December 2013:

“(…) In the opinion of the StvdA and the ROP, the draft legislation should in any event be amended such that the Advice Centre for Whistleblowers – which has by now more than proved its worth – continues to exist after 2015 as a standalone organisation, entirely independent of the House for Whistleblowers.”

Press releases by the Confederation of Netherlands Industry and Employers (VNO-NCW) on 26 June 2013 and 25 October 2013:

“The business organisations believe that the current Advice Centre for Whistleblowers is functioning well.”
Ronald van Raak, Member of the House of Representatives for the Dutch Socialist Party and one of the initiators of the Draft Legislation Proposal on a House for Whistleblowers, comments taken from the official record of the debate on 31 October 2013:

“Naturally, we have also studied the work of the Advice Centre and seen that the advisors do a good job, particularly when it comes to assessing whether someone is actually a whistleblower.”

Professor E Verhulp and FC van Uden, Master of Laws, during a broadcast of the Argos radio programme:

“(…) a support centre for whistleblowers already exists, which is a very good thing and I believe it also functions well (…)”

“(…). We now have an excellent Advice Centre for Whistleblowers, which has been operating for a few months, and in the first instance that is the organisation that can advise, guide and coach people (…)”
Interview

In the department of the organisation where she came to work, false invoices were submitted and sums of money were transferred to the personal account of a company that her department did business with. An employee in her department turned out to be having an intimate relationship with the owner of the company in question. When she raised questions about the matter, she became the target of gossip and harassment by colleagues. Her contact is due to expire shortly and will not be renewed.

Why did you contact the Advice Centre?

I first raised my concerns about the wrongdoing to the internal auditor. The matter was investigated but I wasn’t happy at all with the way the investigation was carried out. In fact no proper investigation took place. All that happened was that the employee concerned was asked some questions. There was no investigation into the facts themselves. I was really shocked by the way the auditor dealt with suspected wrongdoing. For example, the accounts also contained a lot of illicit payments and expenditure that couldn’t be explained. I didn’t even tell the auditor about those because I was convinced that she would discover them herself. If the auditor isn’t even capable of checking whether invoices are genuine, that leaves a great deal of scope for fraud and corruption. I believed that the consequences were very serious for the entire organisation.

How were you treated at work when you made it known that you suspected wrongdoing?

I reported my concerns to the confidential integrity advisor first. At first, he supported me fully and helped me to inform the auditor about my suspicions anonymously. After the auditor had rejected my concerns, the confidential integrity advisor didn’t support or help me any more. A second confidential integrity advisor, to whom I showed the evidence, did support me right to the end.

What further action did you take?

After first raising my concerns internally to the auditor, I reported the matter internally again with the assistance of the Advice Centre for Whistleblowers, this time to the management. Their ‘investigation’ and conclusions were also very unsatisfactory. I had everything ready to report my concerns externally and was just about to send in the report, when my manager informed me that everyone at the office was aware of ‘what I had done’.

Then the situation altered unexpectedly and in the end I was able to prove all my suspicions and discuss everything in detail with the new management team. They then engaged a lawyer themselves to confirm certain matters (forgery and illegal payments). My suspicions turned out to be justified, but the people involved were only given a warning. They didn’t want to know how much these people had personally gained from the fraud. The fact that one of the employees had a relationship with the owner of the company that acted fraudulently was not regarded as an integrity issue. This conclusion was incomprehensible and disappointing.

How was the situation at work after that?
When it became known that I had raised my concerns, the atmosphere in my department changed. The employees who were involved started saying nasty things about me and implied that I had done it because I was afraid of losing my job. I was regarded as a traitor who had done it all in her own interest. Every day I was excluded from conversations, from decisions and so on. I went to work crying, cried sitting at my computer and cried on the way home in the afternoon. It all got too much for me and at one point I started having suicidal thoughts.

How do you see your future at work?

My current contract will terminate shortly (it expires automatically). I will still be officially incapacitated for work for some time. It’s going to take me a long time to get back to full physical and mental health. My doctor says that this is a case of ‘mobbing’, which affects many whistleblowers. ‘Seeing wrongdoing’ already puts you under a lot of stress. The point when you have to decide whether you want to take action to address the wrongdoing is a very difficult time. You feel as though you’re viewed as a ‘traitor’. And then everyone finds out at work and then you really feel it. I completely understand why people keep their mouths shut. I don’t think I will be ready for a full-time job any time soon. I even think I’ll just look for a ‘simple’ job: cleaning, working in a shop, helping in a kitchen. I need to avoid stress as much as possible.

How did the Advice Centre help you?

In every step I took after the first time I raised my concerns internally, I followed the advice of the Advice Centre. They researched everything for me (the regulations, the relevant organisations, the people and so on) and compiled a full account of my concerns with me. I could never have written such a detailed, professional description of my concerns on my own, so the Advice Centre’s assistance was really indispensable. Each time anything happened that was in any way related to my raising my concerns, I was able to contact my advisor immediately. She showed a great deal of patience by first calming me down each time and then listening attentively to what I had to say. I’m hugely grateful to the Advice Centre for everything they’ve done for me.

How does it feel to be a whistleblower?

Terribly lonely. On many occasions I felt as if it was just me against the whole world. Very often I thought that I was the one with a problem, that a false invoice was nothing special, that I was just making a mountain out of a molehill. I even kept thinking that my eyes weren’t seeing properly. I would look at one of the invoices twenty times to convince myself that it was false. I know I am a person with high moral standards. Sometimes I wondered if they were too high.

How do you look back on the situation?

The thing that really broke me up was the disappointment. I was proud of our Dutch standards and values, our no-nonsense attitude. But I can’t say that any more.

I do feel as though I have offered myself up to be sacrificed in order to bring this wrongdoing to light. I’ve lost my job and my health and my future looks pretty grim. But after all these years there is now a ‘zero tolerance’ policy in the department where I work. A great deal has changed as a result of my
raising my concerns. Unfortunately I have to conclude that in my organisation the focus isn’t on the concerns raised but on the person who raises them. As a result of everything I’ve been through, I’ve lost my faith in the organisation. And I don’t believe in ‘anonymity’ within my organisation any more either. Your identity will always come out one way or another. That’s why procedures are required to give whistleblowers better protection in future. But if I’m entirely honest I wouldn’t recommend being a whistleblower to anyone in my organisation.

For confidentiality reasons this interview has been anonymised and certain information has been omitted.
9. Looking to the future

In the coming year, we will continue our efforts to achieve better treatment of whistleblowers. An important aspect of these efforts is advising and supporting whistleblowers themselves. To perform our activities to the highest possible standard, we consider it important to exchange expertise and experience on various levels with experts in a number of specialist areas. For this reason, we are setting up a Board of External Experts in 2014. We also want to ensure in the coming year that the conditions under which whistleblowers are able to raise their concerns improve.

We have observed that raising concerns has repercussions for the people concerned. Not just in legal terms but particularly in terms of the mental impact they experience. In some cases, whistleblowers themselves have expressed a need for psychological assistance. With the aim of understanding and supporting our clients even better, we will in the coming year seek detailed guidance from experts on this issue. We understand that stress at work is one of the issues that Minister Asscher will be focusing on in 2014 and that he intends to address the stress at work that accounts for high levels of sickness absence. We hope that the Minister’s plan will lead to better understanding of the situation of whistleblowers and people who encounter or suspect wrongdoing at their work. In many cases they have to deal with stress at work caused by discovering or suspecting wrongdoing and then raising or considering whether to raise their concerns.

Two other important matters planned for 2014 are the review of the Advice Centre and the conference that the Advice Centre is due to organise in collaboration with several other organisations. The review of the Advice Centre for Whistleblowers by the ministries under whose authority it operates has been brought forward due to the fact that a draft legislation proposal has been presented to the Senate that would involve incorporating the Advice Centre into the proposed House for Whistleblowers.

One of the purposes of the conference that the Advice Centre is organising together with several other key players in the field of integrity is to share our main findings and recommendations with an audience that includes employers and journalists. Employers will be able to use this information to their advantage and formulate their policy such that whistleblowers are able to raise their concerns internally and actually have the confidence to do so. We will also make changes to our website in the coming year to include more information aimed at informing employers.

In this annual report we argue for the introduction of a system of ‘protected disclosures’ in the Netherlands. The reason for this is that we believe that if someone has exhausted all the options for raising his concerns about wrongdoing, following the correct procedures, and this does not result in the wrongdoing being addressed then that person should be able to take the matter to the press. At each stage of raising his concerns (internally, externally to a regulator and externally to the press) the whistleblower is protected, provided that he complies with certain conditions. We have detected a glimmer of hope in this area in a judgment of the duty judge in a case concerning the Rotterdam whistleblower who wanted to draw attention to fire safety in mosque boarding schools. One of the issues in this case was whether he was permitted to approach the press after he had raised his concerns about wrongdoing internally and externally. When he approached the press, the municipality of Rotterdam dismissed him from his position with immediate effect. The duty judge’s conclusions included the following remarks:

“In view of the years of inaction by the borough and the inadequate response by the defendant [the municipality of Rotterdam], the court takes the view that the applicant had no alternative
means to combat the irregularities he had identified. Any damage that the defendant may have suffered as a result of the news reports has primarily been caused by its own actions and those of the borough. Furthermore, it is outweighed by the interest of maintaining public confidence in government.”

The court’s judgment represents a victory, provisionally at least, for whistleblowers. It also corresponds with our ideas about the form that legislation in the Netherlands should take if we actually intend to protect whistleblowers. We await with interest the court’s decision on the appeal, which is expected to be issued in 2014.

Hannah de Jong (Director)
10. Literature list

We set out below an overview of the literature and case law that are referred to in this annual report or have been used as the basis for information in the report.

- Decree of 27 September 2011 establishing the Advice and Referral Centre for Whistleblowers Committee (Temporary decree on Advice and Referral Centre for Whistleblowers Committee), Dutch State Journal 2011, 427.
- Motion by Members of the Dutch House of Representatives Recourt and Schouw dated 7 November 2013, Dutch Parliamentary Records II 2013/14, 30 977, 69.

Abbreviations and definitions

BIOS: the Dutch National Office for promoting Ethics and Integrity in the Public Sector

BZK: the Dutch Ministry of the Interior and Kingdom Relations

CAOP: the Dutch Centre for Labour Relations in the Public Sector

Employee: any person working in an organisation under the terms of an employment contract or an appointment

NGO: Non-Governmental Organisation

PIDA: the British Public Interest Disclosure Act 1998

Private: the private sector consists of businesses and private organisations that do not form part of the semi-public sector.

Public: the public sector consists of government bodies (such as local councils, regional water authorities, regional government etc.).

ROP: the Dutch Council for Public Sector Personnel Policy

Semi-public: in determining which organisations form part of the semi-public sector we have been guided by the provisions of the Dutch Executive Pay (Standards) Act. This act determines which organisations can be said to form part of the semi-public sector on the basis of certain criteria including the extent to which an organisation receives income from public funds and the public
interest that an organisation represents. Semi-public organisations include organisations such as healthcare institutions and housing corporations.

**StvdA:** the Dutch Labour Foundation

**SZW:** the Dutch Ministry of Social Affairs and Employment

**Temporary Decree:** the Dutch temporary decree establishing the Advice and Referral Centre for Whistleblowers Committee dated 27 September 2011 (including explanatory notes)

**Whistleblower:** (definition used by the Advice Centre for Whistleblowers) someone who has reasonable grounds to suspect wrongdoing in an organisation, which affects the public interest. This person has obtained knowledge of the possible wrongdoing through his work. The person may have already reported his concerns internally and/or externally or may be considering doing so. Our definition of a whistleblower therefore includes a person who is actually a potential whistleblower.

In this annual report, where the words ‘he’ and ‘him’ are used they are intended to refer to ‘he/she’ and ‘him/her’.