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Empirical illumination: fortifying whistleblowing



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Across the business world fraud and corruption are pervasive. While significant efforts have been made to bring guilty parties to justice, there is some way to go before those that expose such acts can do so

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is data compiled as part of World Whistleblowing Day (WWD) on 23 June 2023, which provides a snapshot of prevailing attitudes toward whistleblowing and the extent of the trust placed in organisations' willingness to protect whistleblowers.

In the UK, for example, one in 10 employees stated they had witnessed possible corruption, wrongdoing or malpractice, notes the WDD data. However, while 84 percent said they would report what they witnessed, only 69 percent actually did so. This was despite 92 percent of organisations' leaders indicating that they would likely act upon whistleblowing reports if they were aware of them.

So, what is it that prevents more whistleblowers from coming forward? According to the WDD data: (i) 42 percent believe that no

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action will be taken; (ii) 44 percent fear retaliation; (iii) 45 percent believe their organisation is not ethically committed; (iv) 55 percent do not want to get involved; (v) 57 percent believe it will not make a difference; and (vi) 57 percent believe there is no legal protection for whistleblowers.

Also un conducive to whistleblowing is the lack of information emanating from employers themselves. As highlighted by the WDD data, only 57 percent of UK employees know their employer has a whistleblowing policy, only 39 percent of organisations promote whistleblowing education to their workforce, and only 17 percent of organisations use an independent, impartial whistleblowing reporting channel.

In the view of Chris Preston, founder of Culture Builders, responses to whistleblowing can roughly be divided into three categories. First, organisations that have a healthy approach to it, and welcome it as a backstop for ensuring good behaviour. Second, organisations that have failed to create a clear policy and process, purely because they have not felt it is needed, did not have the capacity or were unaware of how to start. And third, organisations that know bad practices and behaviours are happening, but would rather turn a blind eye to the issue, likely because the leaders themselves are part of the problem.

“It is a continuum – from ‘compliant’, through ‘unprepared’ and ending on ‘culpable,’” adds Mr Preston. “In the middle, there is a sense of ‘head in the sand’ – some organisations, and often at a senior level, are unaware of what is going on, and thus do not feel it is a priority.”

“A changing landscape, whistleblowing has evolved from being viewed as the mindset of ‘troublemakers’ to being part of a healthy dialogue between an organisation and its workforce.”

Moreover, this ‘head in the sand’ approach is frequently rooted in

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whistleblowing, such as retaliation from the whistleblower’s employer or colleagues,” she asserts. “Organisations may be reluctant to acknowledge their possible non-compliance and the existence of issues that need to be addressed.

“However, whistleblowing is a crucial ‘compliance tool’ in preventing misconduct, including corruption and unethical behaviour, especially in the public sector,” she continues. “It serves as a powerful mechanism for organisations to maintain ethical standards, transparency and legal compliance.”

Core components

A workplace culture where the existence of a whistleblowing programme is the norm rather than the exception is essential if



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organisations are serious about acting on reports of possible corruption, wrongdoing or malpractice, as well as minimising the costs associated with investigating activities of this nature.

“A whistleblowing programme needs to have really clear boundaries and make clear what is and what is not covered under the policy, as well as where help should be sought,” explains Mr Preston. “Done correctly, such a programme can become a source of pride for the organisation, and something that builds both trust in the leaders and demonstrates a stronger employee value proposition.”

According to Weil, Gotshal & Manges LLP’s 2023 analysis – ‘Implementing an Effective Whistleblowing Policy’ – there are several practical steps, outlined below, that organisations can take in implementing and maintaining effective whistleblowing policies and procedures.

First, encourage a culture conducive to disclosure. Organisations should see their whistleblowing programme as an opportunity, not a threat. If a company’s management does not properly engage with or refuses to endorse whistleblowing, employees will lose trust and the whistleblowing programme will fail to achieve its purpose. Critically, this will increase the risk of disclosures to third parties such as the press or social media.

Second, set the right tone. A potential whistleblower will find themselves in a difficult position when contemplating making a report implicating their colleagues. Setting the right tone by starting the whistleblowing policy with an encouraging introduction and conveying that the employer will treat disclosures sympathetically and, where possible, confidentially, will help demonstrate that whistleblowers will be regarded as an asset, not a threat, and encourage disclosure.

Third, send the right message, in the right way. An effective whistleblowing policy should balance the interests of the reporter and that of the organisation. The benefits for a business can be numerous. However, a whistleblowing policy should also communicate its benefits to employees, including altruism and helping to improve business practices. The means of communication should also be as user friendly as possible.

Fourth, know the law. Organisations should keep up to date with

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the whistleblowing policy is effective, to help reduce legal risk and potential liability, and to ensure that it works in harmony with other existing policies and procedures.

Lastly, handle reports effectively. Handling whistleblowing reports effectively is critical to a policy’s success. Thus, it is important that organisations ensure the reporting channel is secure and confidential, with reports investigated promptly and handled by the right individuals. Post-reporting care and non-retaliation are key in developing and maintaining trust in the procedure, so the rights of whistleblowers need to be considered, as well as the employees who are the subjects of reports.

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“Creating a culture where whistleblowing is seen as a positive and constructive action is of utmost importance,” notes Ms Martins. “This involves communicating the programme’s significance to all employees, providing clear and concise policies and procedures, protecting whistleblowers from retaliation, and taking reports seriously while ensuring appropriate action is taken.”

Empirical evidence

A key challenge for organisations in developing a whistleblower programme is finding empirical evidence to evaluate existing systems. Such evidence can play a crucial role in the entire lifecycle of a whistleblowing programme, from its design and implementation to demonstrating its effectiveness.

“Data on past whistleblowing reports and their outcomes can inform the initial design and implementation of the programme,” concurs Ms Martins. “For example, if certain types of misconduct are frequently reported, the programme can be tailored to address these specific issues. This data can guide the creation of effective reporting mechanisms, communication strategies and whistleblower protection measures.

“As the programme operates, ongoing collection of empirical evidence helps in measuring its effectiveness. Information on the number of reports, their resolution and the impact on addressing misconduct can provide concrete proof of the programme’s success,” she continues. “This evidence can be used to gain stakeholders’ trust, both internally and externally, and to continuously improve the programme.”

Empirical evidence, in the view of Mr Preston, while absolutely necessary, is often difficult to quantify. “We are talking about instances, rather than statistics,” he explains. “Wrongdoing in terms of business practice, embezzlement and insider activity lends itself well to data and solid evidence. Bullying, people practices and poor culture, however, is far from easy to call out and give solid proof points.”

Gauging effectiveness

In order for it to remain fit for purpose, a whistleblowing programme needs to be subjected to continual reviews and improvements, with

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in the view of Ms Martins, that effectiveness should be based on: (i) the number and types of whistleblowing reports received; (ii) the outcomes of whistleblowing investigations; (iii) the actions taken by the organisation in response to whistleblowing reports; and (iv) the impact of whistleblowing on the organisation’s ethics, culture and conduct.

“You have to get on the scales to see if you are losing weight,” opines Mr Preston. “So, how is an organisation currently measuring its culture? If organisations see whistleblowing as a way of improving things, then they either accept that the implementation of a positive policy will move things forward or they regularly check the culture and watch the key factors rise.



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“Ideally, it is a mixture of both,” he continues. “What it is not is a chief executive proudly saying ‘things are great, we have had zero reports’. A lack of whistleblowing is not evidence of a strong culture. It could be, but it could also be a sign that people are terrified of the fallout if they raise a hand to wrongdoing.”

Achieving aspirations

A changing landscape, whistleblowing has evolved from being viewed as the mindset of ‘troublemakers’ to being part of a healthy dialogue between an organisation and its workforce – strengthening corporate compliance programmes and recognising the critical role whistleblowers have to play in exposing poor practices.

“Whistleblowers hold companies accountable and promote transparency,” summarises Ms Martins. “Organisations should embrace whistleblowers and focus on effective whistleblowing programmes to build a culture of integrity, trust and compliance.

“These programmes empower reporting of misconduct, allowing swift resolution of issues that could harm an organisation’s reputation and integrity,” she continues. “Whistleblowing is crucial for maintaining legal and ethical standards, thereby promoting a culture of compliance.”

For Mr Preston, there is no doubt that whistleblowing has strengthened compliance and helped build better cultures. “Being able to call out wrongdoing without fear of reprisal creates a powerful reason to ‘be good’ and creates the right conversations around how an organisation wants to deliver its business,” he concludes. “Organisations with really strong cultures do not need a whistleblowing policy because their people feel safe in calling out issues if they arise. That is an aspiration, I know, but it is a good one.”

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